TEXAS PROPERTY TAX CODE

2019 EDITION

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Foreword

Dear Fellow Texan:

The 2019 edition of the *Texas Property Tax Code* is now available. This publication is a valuable tool for property tax professionals and the public to be informed about property tax administration.

In our continued effort to make the information from our office more accessible, we provide the Property Tax Code on our website at comptroller.texas.gov/taxes/property-tax/96-297-19.pdf. You may order a hard copy by completing a form at comptroller.texas.gov/forms/50-803.pdf.

You may contact us at ptad.cpa@cpa.texas.gov or 800-252-9121 or write to us at Texas Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

I hope this information is helpful.

Sincerely,

Glenn Hegar

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TEXAS PROPERTY TAX CODE

TAX CODE

TITLE 1

PROPERTY TAX CODE

SUBTITLE A

GENERAL PROVISIONS

CHAPTER 1

General Provisions

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Sec. 1.01. Short Title.

This title may be cited as the Property Tax Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation
General Overview. — In the tenants' action against the appraisal district challenging the assessments of improvements they made on their leased tracts, summary judgment in favor of the tenants was improper as the lease agreements showed that tenants "owned" the improvements on the leased tracts, for purposes of Tex. Tax Code Ann. § 1.01, until their leases expired. Dallas Cent. Appraisal Dist. v. Mission Aire IV, L.P., 279 S.W.3d 471, 2009 Tex. App. LEXIS 1714 (Tex. App. Dallas Mar. 11, 2009, no pet.).

Sec. 1.02. Applicability of Title.

This title applies to a taxing unit that is created by or pursuant to any general, special, or local law enacted before or after the enactment of this title unless a law enacted after enactment of this title by or pursuant to which the taxing unit is created expressly provides that this title does not apply. This title supersedes any provision of a municipal charter or ordinance relating to property taxation. Nothing in this title invalidates or restricts the right of voters to utilize municipal-level initiative and referendum to set a tax rate, level of spending, or limitation on tax increase for that municipality.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 1, effective January 1, 1982.

Sec. 1.03. Construction of Title.

The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision of this title except as otherwise expressly provided by this title.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 479 (S.B. 813), § 72, effective September 1, 1985.

NOTES TO DECISIONS

GOVERNMENTS
Legislation

Interpretation. — Texas Tax Code must be construed in accordance with the Code Construction Act, except as otherwise expressly provided under Tex. Tax Code Ann. § 1.03, and Tex. Gov't Code Ann. §§ 311.001, 311.011, and 311.021. Nipper-Bertram Trust v. Aldine Indep. Sch. Dist., 76 S.W.3d 788, 2002 Tex. App. LEXIS 3321 (Tex. App. Houston 14th Dist. May 9, 2002, pet. filed).

Sec. 1.04. Definitions.

In this title:

(1) "Property" means any matter or thing capable of private ownership.

(2) "Real property" means:

(A) land;

(B) an improvement;

(C) a mine or quarry;

(D) a mineral in place;

(E) standing timber; or

(F) an estate or interest, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation, in a property enumerated in Paragraphs (A) through (E) of this subdivision.

(3) "Improvement" means:

(A) a building, structure, fixture, or fence erected on or affixed to land;

(B) a transportable structure that is designed to be occupied for residential or business purposes, whether or not it is affixed to land, if the owner of the structure owns the land on which it is located, unless the structure is unoccupied and held for sale or normally is located at a particular place only temporarily; or

(C) for purposes of an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, the:

(i) subdivision of land by plat;

(ii) installation of water, sewer, or drainage lines; or

(iii) paving of undeveloped land.

(3-a) Notwithstanding anything contained herein to the contrary, a manufactured home is an improvement to real property only if the owner of the home has elected to treat the manufactured home as real property pursuant to Section 1201.2055, Occupations Code, and a copy of the statement of ownership has been filed with the real property records of the county in which the home is located as provided in Section 1201.2055(d), Occupations Code.

(4) "Personal property" means property that is not real property.

(5) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or otherwise perceived by the senses, but does not include a document or other perceptible object that constitutes evidence of a valuable interest, claim, or right and has negligible or no intrinsic value.

(6) "Intangible personal property" means a claim, interest (other than an interest in tangible property), right, or other thing that has value but cannot be seen, felt, weighed, measured, or otherwise perceived by the senses, although its existence may be evidenced by a document. It includes a stock, bond, note or account receivable, franchise, license or permit, demand or time deposit, certificate of deposit, share account, share certificate account, share deposit account, insurance policy, annuity, pension, cause of action, contract, and goodwill.

(7) "Market value" means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if:

(A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;

(B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

(C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.

(8) "Appraised value" means the value determined as provided by Chapter 23 of this code.

(9) "Assessed value" means, for the purposes of assessment of property for taxation, the amount determined by multiplying the appraised value by the applicable assessment ratio, but, for the purposes of determining the debt limitation imposed by Article III, Section 52, of the Texas Constitution, shall mean the market value of the property recorded by the chief appraiser.

(10) "Taxable value" means the amount determined by deducting from assessed value the amount of any applicable partial exemption.

(11) "Partial exemption" means an exemption of part of the value of taxable property.

(12) "Taxing unit" means a county, an incorporated city or town (including a home-rule city), a school district, a special district or authority (including a junior college district, a hospital district, a district created by or pursuant to the Water Code, a mosquito control district, a fire prevention district, or a noxious weed control district), or any other political unit of this state, whether created by or pursuant to the constitution or a local, special, or general law, that

is authorized to impose and is imposing ad valorem taxes on property even if the governing body of another political unit determines the tax rate for the unit or otherwise governs its affairs.

(13) "Tax year" means the calendar year.

(14) "Assessor" means the officer or employee responsible for assessing property taxes as provided by Chapter 26 of this code for a taxing unit by whatever title he is designated.

(15) "Collector" means the officer or employee responsible for collecting property taxes for a taxing unit by whatever title he is designated.

(16) "Possessory interest" means an interest that exists as a result of possession or exclusive use or a right to possession or exclusive use of a property and that is unaccompanied by ownership of a fee simple or life estate in the property. However, "possessory interest" does not include an interest, whether of limited or indeterminate duration, that involves a right to exhaust a portion of a real property.

(17) "Conservation and reclamation district" means a district created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, or under a statute enacted under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(18) "Clerical error" means an error:

(A) that is or results from a mistake or failure in writing, copying, transcribing, entering or retrieving computer data, computing, or calculating; or

(B) that prevents an appraisal roll or a tax roll from accurately reflecting a finding or determination made by the chief appraiser, the appraisal review board, or the assessor; however, "clerical error" does not include an error that is or results from a mistake in judgment or reasoning in the making of the finding or determination.

(19) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(20) "Heir property" means real property:

(A) owned by one or more individuals, at least one of whom claims the property as the individual's residence homestead; and

(B) acquired by the owner or owners by will, transfer on death deed, or intestacy, regardless of whether the interests of the owners are recorded in the real property records of the county in which the property is located.

(21) "Heir property owner" means an owner of heir property who claims the property as the individual's residence homestead.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (S.B. 17), § 2, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 984 (S.B. 1315), § 25, effective June 19, 1987; am. Acts 1989, 71st Leg., ch. 1123 (H.B. 2301), § 1, effective January 1, 1990; am. Acts 1991, 72nd Leg., 1st C.S., ch. 14 (H.B. 169), § 8.01(22), effective November 12, 1991; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), § 13, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 393 (S.B. 514), § 1, effective June 10, 1991; am. Acts 1991, 72nd Leg., ch. 843 (S.B. 984), § 6, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.04, effective May 31, 1993; am. Acts 1997, 75th Leg., ch. 1070 (S.B. 1865), § 52, effective September 1, 1997; am. Acts 2005, 79th Leg., ch. 1284 (H.B. 2438), § 30, effective June 18, 2005; am. Acts 2017, 85th Leg., ch. 408 (H.B. 2019), § 79, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 663 (S.B. 1943), § 1, effective September 1, 2019.

NOTES TO DECISIONS

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Methods
Admissions

General Overview. — Order granting summary judgment to a taxpayer in a suit to reduce a tax appraisal was improper where it was based on an improperly deemed admission that an error was clerical in nature as contemplated by Tex. Tax Code Ann. § 1.04 because this determination was a question of law, not subject to resolution by a deemed admission. Ft. Bend Cent. Appraisal Dist. v. Hines Wholesale Nurseries, 844 S.W.2d 857, 1992 Tex. App. LEXIS 3098 (Tex. App. Texarkana Dec. 15, 1992, writ denied).

TRIALS
Judgment as Matter of Law

Judgments Notwithstanding Verdicts. — In a valuation dispute relating to the taxation of furniture, fixtures, and equipment under Tex. Tax Code Ann. § 1.04(7), even if the testimony of an expert regarding market value was considered, a jury's findings were not supported by the evidence because they were outside of the range given by the experts; therefore, a judgment notwithstanding the verdict (JNOV) should have been granted; moreover, a no-evidence issue was preserved for review by the filing of a JNOV request. Harris County Appraisal Dist. v. Sigmor Corp., No. 01-06-00740-CV, 2008 Tex. App. LEXIS 2456 (Tex. App. Houston 1st Dist. Apr. 3, 2008).

JURY TRIALS
Jury Instructions

General Overview. — Trial court did not err in upholding the appraised value of oil and gas interests because a jury was provided with sufficient instructions and definitions to enable it to render a verdict, the jury heard evidence on the value of the oil and gas interests using Tex. Tax Code Ann. § 23.175, and the jury was instructed to find the market value. Moreover, an objector did not show that the charge probably caused the rendition of an improper judgment. Averitt v. Caudle, No. 11-07-00225-CV, 2009 Tex. App. LEXIS 2284 (Tex. App. Eastland Apr. 2, 2009).

GOVERNMENTS
Legislation

Interpretation. — Tex. Tax Code Ann. § 33.95 uses the word property and does not distinguish between realty or personalty; Tex. Tax Code Ann. § 1.04(1) defines property as any matter or thing capable of private ownership; thus, to interpret the statute in a manner that would limit its application solely to real property tax sales, as compared to all property sales, would be contrary to the overall purpose of the chapter. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

REAL PROPERTY LAW
Estates

General Overview. — Tex. Tax Code Ann. § 1.04(16) provides that possessory interest does not include an interest, whether of limited or indeterminate duration, that involves a right to exhaust a portion of a real property. Gifford-Hill & Co. v. Wise County Appraisal Dist., 791 S.W.2d 576, 1990 Tex. App. LEXIS 1726 (Tex. App. Fort Worth June 6, 1990), writ granted No. D-0201 (Tex. 1991), rev'd, 827 S.W.2d 811, 1991 Tex. LEXIS 149 (Tex. 1991).

FIXTURES & IMPROVEMENTS

Fixture Characteristics. — Although the lien-holding bank erred in arguing that "permanence" was not required in the personalty-as-fixture consideration, the trial court erred in holding that the fuel dispensers at the taxpayer's service station were personalty subject to sale pursuant to a tax warrant for delinquent taxes, and were not "fixtures" and "improvements" as defined by Tex. Tax Code Ann. § 1.04 where city provided no evidence other than a Field Appraisers Guide and one unexplained photograph, while the bank's evidence established the dispensers as realty. Citizens Nat'l Bank v. City of Rhome, 201 S.W.3d 254, 2006 Tex. App. LEXIS 7066 (Tex. App. Fort Worth Aug. 10, 2006, no pet.).

PROPERTY VALUATION. — Market value is defined in other contexts as the price the property will bring when offered for sale by one who desires to sell, but is not obliged to sell, and is bought by one who desires to buy, but is under no necessity of buying, and the court noted Tex. Tax Code Ann. § 1.04(7), under which market value for Tax Code purposes was defined in similar terms; the court and other courts of appeals have used the same definition for fair market value, and the court's sister court has used this same definition in the context of Tex. Prop. Code Ann. § 51.003, and the court, too, adopts the foregoing definition for the term fair market value as used in § Vill. Place, LTD. v. VP Shopping, LLC, 404 S.W.3d 115, 2013 Tex. App. LEXIS 6224 (Tex. App. Houston 1st Dist. May 21, 2013, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Clerical error has always been defined as one that did not result from reasoning or determination, and although Tex. Tax Code Ann. § 1.04(18)(A) uses some different terms to describe the scenario, the language employed simply provides additional synonyms without altering the underlying meaning of the term. Lack's Stores, Inc. v. Gregg County Appraisal Dist., No. 06-10-00125-CV, 2011 Tex. App. LEXIS 7364 (Tex. App. Texarkana Sept. 9, 2011).

Hidalgo County Appraisal District's alleged failure to properly assess the market value of the taxpayer's inventory was not clerical error, Tex. Tax Code Ann. § /Aa1.04(18), but as a result of error in methodology, procedure, and/or computation, and Tex. Tax Code Ann. § /Aa25.25(c) was not available to remedy issues pertaining to disputed property valuations. Lack's Valley Stores, Ltd. v. Hidalgo County Appraisal Dist., No. 13-10-500-CV, 2011 Tex. App. LEXIS 4752 (Tex. App. Corpus Christi June 23, 2011), pet. dism'd w.o.j. No. 11-0590, 2011 Tex. LEXIS 997 (Tex. Dec. 16, 2011).

Because the provisions of the Tax Code and the water code conflicted, the Code Construction Act, Tex. Gov't Code Ann. § 311.026, applied, and the special provisions of Tax Code Ann. § 33.07 prevailed over Tex. Water Code Ann. § 51.591; attorney fees were recoverable under Tax. Code Ann. § 33.48, and the court also noted that the provisions of the tax code applied to the water district pursuant to Tex. Tax Code Ann. § 1.04(12). Harris County Water Control & Improvement Dist. # 99 v. Duke, 59 S.W.3d 333, 2001 Tex. App. LEXIS 6850 (Tex. App. Houston 1st Dist. Oct. 11, 2001, no pet.).

ASSESSMENTS. — Even assuming that the appraisal district had appraised the store's inventory incorrectly, evidence of this alone would be insufficient to establish the store's right to summary judgment under its Tex. Tax Code Ann. § 25.25(c) claim, and the store would still have to establish that the appraisal district's error was clerical; the appraisal district's alleged erroneous evaluation of the market value was not the result of an error in its calculation. Stacy Family Enters. v. Tarrant Appraisal Dist., No. 02-13-00170-CV, 2013 Tex. App. LEXIS 15015 (Tex. App. Fort Worth Dec. 12, 2013).

Trial court erred by dismissing appellant homeowners' claims against appellees, the city and government officials, for assessing back city taxes because sovereign immunity was waived by actions taken by government officials that were outside their statutory authority as no remedy was provided in Tex. Prop. Code Ann. § 25.21 for omitted taxing units. The terms "property" and "taxing unit" were not interchangeable terms under Tex. Tax Code Ann. § 1.04(1), (12); appellants' properties were already properly appraised and entered in the appraisal records for the years at issue. Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

Trial court erred in reducing the taxpayer's appraised value of its aircraft where, pursuant to Tex. Tax Code Ann. §§ 1.04(18) and 25.25(c), any error by the taxpayer in determining the value of its aircraft was not a clerical error as contemplated by statute. Dallas Cent. Appraisal Dist. v. Southwest Airlines Co., No. 05-10-00682-CV, 2012 Tex. App. LEXIS 518 (Tex. App. Dallas Jan. 24, 2012).

Because a taxpayer's allegations of error in a county appraisal district's evaluation method amounted to a difference of opinion as to the proper means to evaluate property, not of a clerical mistake, they could not fall within the parameters of Tex. Tax Code Ann. § 25.25, the statute under which the taxpayer sought relief. Lack's Stores, Inc. v. Gregg County Appraisal Dist., No. 06-10-00125-CV, 2011 Tex. App. LEXIS 7364 (Tex. App. Texarkana Sept. 9, 2011).

DEFICIENCIES. — Trial court erred by dismissing appellant homeowners' claims against appellees, the city and government officials, for assessing back city taxes because sovereign immu-

nity was waived by actions taken by government officials that were outside their statutory authority as no remedy was provided in Tex. Prop. Code Ann. § 25.21 for omitted taxing units. The terms "property" and "taxing unit" were not interchangeable terms under Tex. Tax Code Ann. § 1.04(1), (12); appellants' properties were already properly appraised and entered in the appraisal records for the years at issue. Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

TAXPAYER PROTESTS. — Trial court erred in reducing the taxpayer's appraised value of its aircraft where, pursuant to Tex. Tax Code Ann. §§ 1.04(18) and 25.25(c), any error by the taxpayer in determining the value of its aircraft was not a clerical error as contemplated by statute. Dallas Cent. Appraisal Dist. v. Southwest Airlines Co., No. 05-10-00682-CV, 2012 Tex. App. LEXIS 518 (Tex. App. Dallas Jan. 24, 2012).

County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

NATURAL RESOURCES TAX

Imposition of Tax. — Trial court did not err in upholding the appraised value of oil and gas interests because a jury was provided with sufficient instructions and definitions to enable it to render a verdict, the jury heard evidence on the value of the oil and gas interests using Tex. Tax Code Ann. § 23.175, and the jury was instructed to find the market value. Moreover, an objector did not show that the charge probably caused the rendition of an improper judgment. Averitt v. Caudle, No. 11-07-00225-CV, 2009 Tex. App. LEXIS 2284 (Tex. App. Eastland Apr. 2, 2009).

PERSONAL PROPERTY TAX

General Overview. — Because personal property was defined as property that was not real property, the court had to first determine whether the recreational vehicles were improvements and therefore real property. Rourk v. Cameron Appraisal Dist., 305 S.W.3d 231, 2009 Tex. App. LEXIS 9053 (Tex. App. Corpus Christi Nov. 24, 2009, no pet.).

Although the lien-holding bank erred in arguing that "permanence" was not required in the personalty-as-fixture consideration, the trial court erred in holding that the fuel dispensers at the taxpayer's service station were personalty subject to sale pursuant to a tax warrant for delinquent taxes, and were not "fixtures" and "improvements" as defined by Tex. Tax Code Ann. § 1.04 where city provided no evidence other than a Field Appraisers Guide and one unexplained photograph, while the bank's evidence established the dispensers as realty. Citizens Nat'l Bank v. City of Rhome, 201 S.W.3d 254, 2006 Tex. App. LEXIS 7066 (Tex. App. Fort Worth Aug. 10, 2006, no pet.).

EXEMPT PROPERTY

General Overview. — As a matter of law, property owners did not intend to affix their travel trailers and park model homes so that they became "improvements," as defined in Tex. Tax Code Ann. § 1.04(3); the vehicles were transportable structures designed to be occupied for residential or business purposes, whether or not affixed to land, but were not taxable because they were not owned by the owner of the land on which they were located. Rourk v. Cameron Appraisal Dist., 131 S.W.3d 285, 2004 Tex. App. LEXIS 2100 (Tex. App. Corpus Christi Mar. 4, 2004), rev'd, 194 S.W.3d 501, 2006 Tex. LEXIS 504 (Tex. 2006).

INTANGIBLE PROPERTY

General Overview. — Finding in favor of the taxpayer in a property tax dispute was inappropriate. Because because the taxpayer's interest savings resulted from its nontaxable favorable financing agreement and because those savings did not affect the apartment complex's ability to produce income, the taxpayer's favorable financing should not be considered in determining the apartment complex's market value, Tex. Tax Code Ann. §§ 1.04(6), 11.02(a)(b). Cent. Appraisal Dist. v. Western AH 406, Ltd., 372 S.W.3d 672, 2012 Tex. App. LEXIS 3299 (Tex. App. Eastland Apr. 26, 2012, no pet.).

Bequest of the contents of a safe in the subtitle of a decedent's will that disposed of tangible personal property did not include a certificate of deposit, since such certificates are recognized as bank notes under Tex. Bus. & Com. Code Ann. § 3.104(j), which are classified as intangible personal property, and are classified as intangible property by Tex. Tax Code Ann. § 1.04(6). May v. Walter, 956 S.W.2d 138, 1997 Tex. App. LEXIS 5865 (Tex. App. Amarillo Nov. 12, 1997, review denied).

TANGIBLE PROPERTY

General Overview. — In a valuation dispute relating to the taxation of furniture, fixtures, and equipment under Tex. Tax Code Ann. § 1.04(7), even if the testimony of an expert regarding market value was considered, a jury's findings were not supported by the evidence because they were outside of the range given by the experts; therefore, a judgment notwithstanding the verdict (JNOV) should have been granted; moreover, a no-evidence issue was preserved for review by the filing of a JNOV request. Harris County Appraisal Dist. v. Sigmor Corp., No. 01-06-00740-CV, 2008 Tex. App. LEXIS 2456 (Tex. App. Houston 1st Dist. Apr. 3, 2008).

Mobile home purchaser, who had bought the mobile home at a tax sale for delinquent taxes, held a junior lien to the finance company; the application of real property nonjudicial procedures to the disposition of personal property was a reasonable application, and the tax sale extinguished the purchaser's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

REAL PROPERTY TAX. — Where an appellate court did not find that an overriding royalty interest in lignite reserves exclusively constituted an interest in land, the trial court and jury were free to find that it was another type of taxable real property. Destec Props., Ltd. Pshp. v. Freestone Cent. Appraisal Dist., 6 S.W.3d 601, 1999 Tex. App. LEXIS 6671 (Tex. App. Waco Aug. 31, 1999, no pet.).

REAL PROPERTY TAX

General Overview. — Recreational vehicles (RVs) were transportable structures and the taxpayers did not own the land underlying their RVs, plus the RVs could be moved within a matter of hours, and the taxpayers used them for residential purposes, such that under Tex. Tax Code Ann. § 1.04(3), the RVs could not be improvements and the trial court erred in so deciding. Rourk v. Cameron Appraisal Dist., 305 S.W.3d 231, 2009 Tex. App. LEXIS 9053 (Tex. App. Corpus Christi Nov. 24, 2009, no pet.).

County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

Mobile home purchaser, who had bought the mobile home at a tax sale for delinquent taxes, held a junior lien to the finance company; the application of real property nonjudicial procedures to the disposition of personal property was a reasonable application, and the tax sale extinguished the purchaser's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

Plaintiff landowner's limestone was not taxable by defendants county appraisal district and county review board as a mineral in place under Tex. Tax Code Ann. § 1.04(2), as the term "mineral"

as used in § 1.04, was to be construed according to its ordinary and natural meaning which, as a matter of law, did not include limestone. Gifford-Hill & Co. v. Wise County Appraisal Dist., 827 S.W.2d 811, 1991 Tex. LEXIS 149 (Tex. 1991).

ASSESSMENT & VALUATION

General Overview. — Appraisal district properly categorzed saltwater disposal wells as an estate or interest in land under Tex. Tax Code Ann. § 1.04(2); the taxed property referred to as the wells was made up of a real property portion together with above ground pumps and tanks, which were personal property. Key Energy Servs., LLC v. Shelby County Appraisal Dist., 428 S.W.3d 133, 2014 Tex. App. LEXIS 439 (Tex. App. Tyler Jan. 15, 2014, no pet.).

County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

Each property should be appraised based upon the individual characteristics that affect the property's market value. While Tex. Const. art. VIII, § 1(a) requires that taxation shall be equal and uniform, that mandate may render different appraisal methods appropriate in different circumstances; therefore, caverns built to store hydrocarbons underneath land were subject to taxation separate from the land because they were in active commercial use that was distinct from the use of the land above. Matagorda County Appraisal Dist. v. Coastal Liquids Partners, L.P., 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

So long as an appraisal district's records gave a taxpayer notice of what property was included in each tax account (and thus some assurance that it was not included twice), including property under an incorrect category will not exempt them from taxation; therefore, the classification of underground caverns as improvements, even if incorrect, did not mean that they were not properly taxed separate from the land above. Matagorda County Appraisal Dist. v. Coastal Liquids Partners, L.P., 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

Trial court erred in ruling under Tex. Tax Code Ann. § 23.23(a)(2) that the appraised value of a taxpayer's real property was limited to the "capped value" amount and that this amount was also the property's market value; there is a distinction between market value and appraised value in the statutory definitions in Tex. Tax Code Ann. § 1.04(7), (8), and the appraised value is not necessarily the same as the market value, which is computed in accordance with Tex. Tax Code Ann. § 23.01(b). Dallas Cent. Appraisal Dist. v. Cunningham, 161 S.W.3d 293, 2005 Tex. App. LEXIS 3274 (Tex. App. Dallas Apr. 29, 2005, no pet.).

Salt dome storage caverns, which were expanded to meet the needs of the company leasing the storage space, did not fit the tax code's definition of an "improvement," and they were not subject to an appraisal separate from the surface land. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., 118 S.W.3d 464, 160 Oil & Gas Rep. 969, 2003 Tex. App. LEXIS 7577 (Tex. App. Corpus Christi Aug. 29, 2003), rev'd, 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

Current market value, and not annual contract rent paid, was a fairer way of assessing water district residents' leasehold estates, since the current market value took into account the price at which property would transfer for cash or its equivalent under prevailing market conditions and the water district routinely approved transfers lessees' made to other people who assumed not only the contract rent price owed to the water district but also the amount the transferor required as consideration to transfer the lease, which might be significant given the great demand for the leaseholds. Panola County Fresh Water Supply Dist. No. One v. Panola County Appraisal Dist., 69 S.W.3d 278, 2002 Tex. App. LEXIS 821 (Tex. App. Texarkana Jan. 31, 2002, no pet.).

Tex. Tax Code Ann. § 1.04(18) referred to clerical errors made by the chief appraiser, the appraisal review board, or the assessor. It did not provide a method to correct the appraisal roll for clerical or designation errors of the property owner. Collin County Appraisal Dist. v. Northeast Dallas Assocs., 855 S.W.2d 843, 1993 Tex. App. LEXIS 1907 (Tex. App. Dallas May 18, 1993, no writ).

Application of generally accepted appraisal techniques, pursuant to Tex. Tax Code Ann. § 23.01, did not abrogate case law, Tex. Const. art. VII, § 20, or Tex. Tax Code Ann. § 1.04(7), in which the fair market value of real estate incorporated purchase price. Bailey County Appraisal Dist. v. Smallwood, 848 S.W.2d 822, 1993 Tex. App. LEXIS 458 (Tex. App. Amarillo Feb. 11, 1993, no writ).

ASSESSMENT METHODS & TIMING. — Even assuming that the appraisal district had appraised the store's inventory incorrectly, evidence of this alone would be insufficient to establish the store's right to summary judgment under its Tex. Tax Code Ann. § 25.25(c) claim, and the store would still have to establish that the appraisal district's error was clerical; the appraisal district's alleged erroneous evaluation of the market value was not the result of an error in its calculation. Stacy Family Enters. v. Tarrant Appraisal Dist., No. 02-13-00170-CV, 2013 Tex. App. LEXIS 15015 (Tex. App. Fort Worth Dec. 12, 2013).

Evidence supported the trial court's judgment because it showed that the property was located in Texas and was therefore subject to taxation; the government entities were "taxing units" and therefore had the authority to impose taxes on the landowner's real property. Haley v. Harris County, No. 14-11-01051-CV, 2012 Tex. App. LEXIS 8694 (Tex. App. Houston 14th Dist. Oct. 18, 2012).

Taxpayers did not have to exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a) in challenging the validity of notices for omitted city tax bills, which purported to be under the authority of Tex. Tax Code Ann. § 25.21, because an exception applied for governmental actions taken without statutory authority. Section 25.21 provides no remedy for omitted taxing units, which have a separate definition from property in Tex. Tax Code Ann. § 1.04; the county's supplemental appraisal records did not specify the omitted years under Tex. Tax Code Ann. § 25.23(a)(10); and Tex. Tax Code Ann. § 11.43(i) was inapplicable because no exemption was involved. Brennan v. City of Willow Park, No. 02-11-00265-CV, 2012 Tex. App. LEXIS 4943 (Tex. App. Fort Worth June 21, 2012), op. withdrawn, sub. op., 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012).

VALUATION. — Market value is defined in other contexts as the price the property will bring when offered for sale by one who desires to sell, but is not obliged to sell, and is bought by one who desires to buy, but is under no necessity of buying, and the court noted Tex. Tax Code Ann. § 1.04(7), under which market value for Tax Code purposes was defined in similar terms; the court and other courts of appeals have used the same definition for fair market value, and the court's sister court has used this same definition in the context of Tex. Prop. Code Ann. § 51.003, and the court, too, adopts the foregoing definition for the term fair market value as used in § Vill. Place, LTD. v. VP Shopping, LLC, 404 S.W.3d 115, 2013 Tex. App. LEXIS 6224 (Tex. App. Houston 1st Dist. May 21, 2013, no pet.).

Finding in favor of the taxpayer in a property tax dispute was inappropriate, in part because the rent and occupancy restrictions directly affected the ability of the apartment complex to produce income. A willing buyer would not buy the complex for a price that was based on an amount of rent that could not actually be collected because of the restrictions and the complex should not be valued as though a buyer would not consider the restrictions, Tex. Tax Code Ann. § 1.04(7)(B); thus, the rent and occupancy restrictions should be considered when determining the complex's market value. Cent. Appraisal Dist. v. Western AH 406, Ltd., 372 S.W.3d 672, 2012 Tex. App. LEXIS 3299 (Tex. App. Eastland Apr. 26, 2012, no pet.).

County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a

clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

Hidalgo County Appraisal District's alleged failure to properly assess the market value of the taxpayer's inventory was not clerical error, Tex. Tax Code Ann. § /Aa1.04(18), but as a result of error in methodology, procedure, and/or computation, and Tex. Tax Code Ann. § /Aa25.25(c) was not available to remedy issues pertaining to disputed property valuations. Lack's Valley Stores, Ltd. v. Hidalgo County Appraisal Dist., No. 13-10-500-CV, 2011 Tex. App. LEXIS 4752 (Tex. App. Corpus Christi June 23, 2011), pet. dism'd w.o.j. No. 11-0590, 2011 Tex. LEXIS 997 (Tex. Dec. 16, 2011).

In a dispute about the valuation of underground salt caverns, the evidence was sufficient to support the market value determined by the use of a cost method under Tex. Tax Code Ann. § 23.011 because a taxpayer did not cross-examine witnesses about any deficiencies in using this method; it merely offered evidence of the use of the market data comparison method by its own appraiser; because both methods were equally applicable, the findings made by the trial court were given deference. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., No. 13-02-237-CV, 2008 Tex. App. LEXIS 3149 (Tex. App. Corpus Christi Apr. 30, 2008).

ATTORNEY GENERAL OPINIONS

Travel Trailers.

Section 1.04(3)(B) of the Tax Code does not foreclose as a matter of law the possibility that a travel trailer attached to someone else's property is an improvement within the meaning of section 1.04(3)(A). A political subdivision's failure to comply with the procedural requirements of section 11.14 of the Tax Code may void an assessment of personal property taxes. 2000 Tex. Op. Att'y Gen. JC-0282.

Sec. 1.045. Reference to Certain Terms in Law. [Effective January 1, 2020]

Unless the context indicates otherwise:

(1) a reference in law to a taxing unit's effective maintenance and operations rate is a reference to the taxing unit's no-new-revenue maintenance and operations rate, as defined by Chapter 26;

(2) a reference in law to a taxing unit's effective tax rate is a reference to the taxing unit's no-new-revenue tax rate, as defined by Chapter 26; and

(3) a reference in law to a taxing unit's rollback tax rate is a reference to the taxing unit's voter-approval tax rate, as defined by Chapter 26.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 2, effective January 1, 2020.

Sec. 1.05. City Fiscal Year.

The governing body of a home-rule city may establish by ordinance a fiscal year different from that fixed in its charter if a different fiscal year is desirable to adapt budgeting and other fiscal activities to the tax cycle required by this title.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 1.06. Effect of Weekend or Holiday.

If the last day for the performance of an act is a Saturday, Sunday, or legal state or national holiday, the act is timely if performed on the next regular business day.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 1.07. Delivery of Notice.

(a) **[Effective until January 1, 2020]** An official or agency required by this title to deliver a notice to a property owner may deliver the notice by regular first-class mail, with postage prepaid, unless this section or another provision of this title requires or authorizes a different method of delivery or the parties agree that the notice must be delivered as provided by Section 1.085.

(a) **[Effective January 1, 2020]** An official or agency required by this title to deliver a notice to a property owner may deliver the notice by regular first-class mail, with postage prepaid, unless this section or another provision of this title requires or authorizes a different method of delivery or the parties agree that the notice must be delivered as provided by Section 1.085 or 1.086.

(b) The official or agency shall address the notice to the property owner, the person designated under Section 1.111(f) to receive the notice for the property owner, if that section applies, or, if appropriate, the property owner's agent at the agent's address according to the most recent record in the possession of the official or agency. However, if a property owner files a written request with the appraisal district that notices be sent to a particular address, the official or agency shall send the notice to the address stated in the request.

(c) A notice permitted to be delivered by first-class mail by this section is presumed delivered when it is deposited in the mail. This presumption is rebuttable when evidence of failure to receive notice is provided.

(d) A notice required by Section 11.43(q), 11.45(d), 23.44(d), 23.46(c) or (f), 23.54(e), 23.541(c), 23.55(e), 23.551(a), 23.57(d), 23.76(e), 23.79(d), or 23.85(d) must be sent by certified mail.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 885 (H.B. 1447), § 1, effective January 1, 1984; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 1, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 1, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 441 (S.B. 1209), § 1, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 1, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 483 (H.B. 843), § 1, effective January 1, 2012; am. Acts 2013, 83rd Leg., ch. 230 (H.B. 242), § 1, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 352 (H.B. 1464), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 531 (H.B. 1463), § 1, effective September 1, 2015; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 3, effective January 1, 2020.

NOTES TO DECISIONS

Analysis

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ADMINISTRATIVE LAW
Judicial Review
Standards of Review

Substantial Evidence. — Because the record from the administrative hearing reflected evidence of delivery of delinquent notices to the business—a green card signed by the business followed by multiple pages of delinquent statement notices and other correspondence for each year from 1994 through 2002—and there was no evidence that the business failed to receive notice, the Texas Alcoholic Beverage Commission was entitled to the presumption of delivery and thus presented substantial evidence of the business's delinquency. Miller v. Tex. Alcoholic Bev. Comm'n, No. 2-03-246-CV, 2004 Tex. App. LEXIS 7507 (Tex. App. Fort Worth Aug. 19, 2004).

CIVIL PROCEDURE
Pleading & Practice
Service of Process
Methods

General Overview. — Evidence was sufficient to rebut the presumption that the Agriculture Review Board's notice denying the taxpayer's agricultural-use exemption was received where the notice was not sent to the taxpayer's last known address. Cooke County Tax Appraisal v. Teel, No. 2-03-115-CV, 2003 Tex. App. LEXIS 10017 (Tex. App. Fort Worth Nov. 26, 2003), op. withdrawn, sub. op., reh'g denied, 129 S.W.3d 724, 2004 Tex. App. LEXIS 1153 (Tex. App. Fort Worth Feb. 5, 2004).

SUMMARY JUDGMENT
Burdens of Production & Proof

General Overview. — Trial court erred in granting summary judgment under Tex. R. Civ. P. 166 for a taxing unit in its action for delinquent taxes against a property owner because the owner's affidavit was evidence of non-receipt of notice of the loss of his agricultural use exemption and the taxing unit failed to present any summary judgment evidence to reestablish the presumption of delivery pursuant to Tex. Tax Code Ann. § 1.07(c). Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

EVIDENCE
Inferences & Presumptions

General Overview. — In a suit for collection of past due real property taxes, where the current landowner intervened for a refund of penalties and interest that it had paid under protest contending that it was entitled to a refund because the taxing authorities failed to mail proper notices of the delinquent taxes and the taxing authorities offered no evidence to show that notices of delinquent taxes were ever mailed, whether a witness's testimony was credible on the issue of notice was found to have been immaterial in that the taxing authorities did not establish that the notices had been mailed and, thus, they were not entitled to the legal presumption of delivery under Tex. Tax Code Ann. § 1.07; the statute clearly required evidence of mailing as a precondition to the burden shifting to a property owner. WHM Props. v. Dallas County, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco Aug. 4, 2003, no pet.).

There must be evidence of mailing before a presumption of delivery arises under Tex. Tax Code Ann. § 1.07. WHM Props. v. Dallas County, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco Aug. 4, 2003, no pet.).

When notice of delinquent taxes is mailed, there is a presumption of delivery of notice afforded to the taxing authority; however, pursuant to Tex. Tax Code Ann. § 1.07(c), this presumption may be rebutted by competent evidence of non-receipt by a property owner; in the event of proof of non-receipt, the taxing authority must come forward with competent proof of compliance with Tex. Tax Code Ann. § 1.07(b) regarding mailing of the notice, addressed to the property owner at the most recent address in the taxing authority's records; compliance by the taxing authority with § 1.07(b) reestablishes a presumption of delivery. WHM Props. v. Dallas County, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco Aug. 4, 2003, no pet.).

Evidence of mailing notices of delinquent taxes is a precondition to the burden shifting to a property owner under Tex. Tax Code Ann. § 1.07(c); in a suit for collection of real property taxes, where the landowner intervened seeking a refund of penalties and interest on ad valorem taxes it paid under protest, the taxing authorities did not establish that the notice of delinquent taxes had been mailed in compliance with Tex. Tax Code Ann. § 1.07(b); therefore, they were not entitled to the legal presumption of delivery. WHM Props. v. Dallas County, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco Aug. 4, 2003, no pet.).

In a suit for collection of real property taxes, where the landowner intervened seeking a refund of penalties and interest on ad valorem taxes it paid under protest, the taxing authorities were not entitled to the legal presumption of delivery of the delinquency notice under Tex. Tax Code Ann. § 1.07(c); therefore, pursuant to Tex. Tax Code Ann. § 33.04(c), the penalties and interest could not be collected from the landowner. WHM Props. v. Dallas County, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco Aug. 4, 2003, no pet.).

Notice of an increase in the appraised value of a taxpayer's property mailed via first class mail is presumed delivered, but the presumption in favor of delivery is rebutted if the taxpayer presents evidence that he in fact never received the notice.

Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

PROCEDURAL CONSIDERATIONS
Burdens of Proof

General Overview. — If a taxpayer provides evidence of non-receipt of a notice of an increase in the appraised value of his property to rebut the presumption of delivery, the taxing authority must come forward with competent proof of compliance with Tex. Tax Code Ann. § 1.07 by mailing of the notice, addressed to the property owner at the most recent address in the taxing authority's records. Compliance with the statute reestablishes the presumption of delivery. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — In the county tax appraisal district and the county appraisal review board's challenge to the trial court's grant of an agricultural-use valuation to the taxpayers, certified letter receipts, testimony at trial, and briefs from both parties, all indicating that the taxpayers' counsel received the board's notice, was sufficient to overcome the presumption of delivery under Tex. Tax Code Ann. § 1.07(c). Cooke County Tax Appraisal Dist. v. Teel, 129 S.W.3d 724, 2004 Tex. App. LEXIS 1153 (Tex. App. Fort Worth Feb. 5, 2004, no pet.).

In addition to the presumption of delivery accorded the taxing units under Tex. Tax Code Ann. § 33.47, Tex. Tax Code Ann. § 1.07(c) provides for the presumption of delivery of notice upon the notice's deposit in the mail for delivery by first-class mail; the presumption was rebutted by a taxpayer who showed that the taxing unit did not send notices by first-class mail. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

Taxing authority acquires jurisdiction over a property owner via delivery of notice that the appraised value of the owner's property is greater than it was in the preceding year. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

ASSESSMENTS. — In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

COLLECTION. — Because several taxing authorities introduced the records in Tex. Tax Code Ann. § 33.47(a), they established a prima facie case, and a rebuttable presumption arose that the authorities had taken all actions necessary to obtain legal authority to levy a tax, including the proper delivery of the tax notices; the bill was mailed to the most current address listed on the tax rolls, even though it was not the proper mailing address for a trustee; therefore, the evidence was legally insufficient to rebut the presumption that the authorities properly sent out a 1997 tax bill, and they were entitled to seek penalties and interest. Houston Indep. Sch. Dist. v. Old Farms Owners Ass'n, 236 S.W.3d 375, 2007 Tex. App. LEXIS 5898 (Tex. App. Houston 1st Dist. July 26, 2007), reh'g denied, No. 01-04-00538-CV, 2007 Tex. App. LEXIS 9309 (Tex. App. Houston 1st Dist. Sept. 25, 2007), rev'd, 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

DEFICIENCIES. — In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

FAILURE TO PAY TAX. — Because several taxing authorities introduced the records in Tex. Tax Code Ann. § 33.47(a), they established a prima facie case, and a rebuttable presumption arose that the authorities had taken all actions necessary to obtain legal authority to levy a tax, including the proper delivery of the tax notices; the bill was mailed to the most current address listed on the tax rolls, even though it was not the proper mailing address for a trustee; therefore, the evidence was legally insufficient to rebut the presumption that the authorities properly sent out a 1997 tax bill, and they were entitled to seek penalties and interest. Houston Indep. Sch. Dist. v. Old Farms Owners Ass'n, 236 S.W.3d 375, 2007 Tex. App. LEXIS 5898 (Tex. App. Houston 1st Dist. July 26, 2007), reh'g denied, No. 01-04-00538-CV, 2007 Tex. App. LEXIS 9309 (Tex. App. Houston 1st Dist. Sept. 25, 2007), rev'd, 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

JUDICIAL REVIEW. — Based on the presumption in Tex. Tax Code Ann. § 1.07(c) that an appraisal review board's decision was received at the time it was mailed on August 29, a taxpayer's petition filed on October 16 was untimely under former Tex. Tax Code Ann. § 42.21(a), requiring dismissal under Tex. R. App. P. 42.3. Palaniappan v. Harris County Appraisal Dist., No. 01-11-00344-CV, 2012 Tex. App. LEXIS 10335 (Tex. App. Houston 1st Dist. Dec. 13, 2012), op. withdrawn, sub. op., No. 01-11-00344-CV, 2013 Tex. App. LEXIS 15460 (Tex. App. Houston 1st Dist. Dec. 31, 2013).

REAL PROPERTY TAX

General Overview. — On an appeal of the judgment of the trial court determining the appraised value of taxpayer's property and reducing the value from that found by the county appraisal district and county appraisal review board (the county), the court found that the trial court had jurisdiction to review the county's determination under Tex. Tax Code Ann. §§ 1.07(b), 1.11(a) and (b), 1.111(b) and (c) and 42.21(a) because the county failed to serve notice properly upon the taxpayer. Harris County Appraisal Dist. v. Drever Partners, 938 S.W.2d 196, 1997 Tex. App. LEXIS 271 (Tex. App. Houston 14th Dist. Jan. 23, 1997, no writ).

Notice of an increase in the appraised value of a taxpayer's property mailed via first class mail is presumed delivered, but the presumption in favor of delivery is rebutted if the taxpayer presents evidence that he in fact never received the notice. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

Taxing authority acquires jurisdiction over a property owner via delivery of notice that the appraised value of the owner's property is greater than it was in the preceding year. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

Where the taxpayer instituted a suit against the county appraisal review board, against the county appraisal district board (district), and others, the court held that the trial court had jurisdiction under Tex. Tax Code Ann. § 1.07(a), (b) (Supp. 1986), to hear the suit because the district did not address the notice to the appropriate party. Uvalde County Appraisal Dist. v. F.T. Kincaid Estate, 720 S.W.2d 678, 1986 Tex. App. LEXIS 9314 (Tex. App. San Antonio Nov. 19, 1986, writ ref'd n.r.e.).

ASSESSMENT & VALUATION

General Overview. — Notice of an increase in the appraised value of a taxpayer's property mailed via first class mail is presumed delivered, but the presumption in favor of delivery is

rebutted if the taxpayer presents evidence that he in fact never received the notice. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

Taxing authority acquires jurisdiction over a property owner via delivery of notice that the appraised value of the owner's property is greater than it was in the preceding year. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

VALUATION. — Based on the presumption in Tex. Tax Code Ann. § 1.07(c) that an appraisal review board's decision was received at the time it was mailed on August 29, a taxpayer's petition filed on October 16 was untimely under former Tex. Tax Code Ann. § 42.21(a), requiring dismissal under Tex. R. App. P. 42.3. Palaniappan v. Harris County Appraisal Dist., No. 01-11-00344-CV, 2012 Tex. App. LEXIS 10335 (Tex. App. Houston 1st Dist. Dec. 13, 2012), op. withdrawn, sub. op., No. 01-11-00344-CV, 2013 Tex. App. LEXIS 15460 (Tex. App. Houston 1st Dist. Dec. 31, 2013).

Sec. 1.071. Delivery of Refund.

(a) A collector or taxing unit required by this title to deliver a refund to a person shall send the refund to the person's mailing address as listed on the appraisal roll.

(b) Notwithstanding Subsection (a), if a person files a written request with the collector or taxing unit that a refund owed to the person be sent to a particular address, the collector or taxing unit shall send the refund to the address stated in the request.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 448 (S.B. 1856), § 1, effective September 1, 2019.

Sec. 1.08. Timeliness of Action by Mail or Common or Contract Carrier.

When a property owner is required by this title to make a payment or to file or deliver a report, application, statement, or other document or paper by a specified due date, the property owner's action is timely if it is properly addressed with postage or handling charges prepaid and:

(1) it is sent by regular first-class mail and bears a post office cancellation mark of a date earlier than or on the specified due date and within the specified period;

(2) it is sent by common or contract carrier and bears a receipt mark indicating a date earlier than or on the specified due date and within the specified period; or

(3) it is sent by regular first-class mail or common or contract carrier and the property owner furnishes satisfactory proof that it was deposited in the mail or with the common or contract carrier on or before the specified due date and within the specified period.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), § 2, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 779 (S.B. 1224), § 1, effective June 14, 2013.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings

Collection. — Under Tex. Tax Code Ann. § 1.08(1), "postage prepaid," by its plain meaning, requires full payment of the postal charges. Tenaska Frontier Partners, Ltd. v. Sullivan, 273 S.W.3d 734, 2008 Tex. App. LEXIS 8637 (Tex. App. Houston 14th Dist. Nov. 13, 2008, no pet.).

Taxpayer did not comply with the payment requirements of Tex. Tax Code Ann. § 1.08 when it attempted to pay its ad valorem tax payment by mailing a check in an envelope that, although properly addressed and timely mailed, was returned as undeliverable because the taxpayer had attached insufficient postage. Tenaska Frontier Partners, Ltd. v. Sullivan, 273 S.W.3d 734, 2008 Tex. App. LEXIS 8637 (Tex. App. Houston 14th Dist. Nov. 13, 2008, no pet.).

Sec. 1.085. Communication in Electronic Format.

(a) **[Effective until January 1, 2020]** Notwithstanding any other provision in this title and except as provided by this section, any notice, rendition, application form, or completed application that is required or permitted by this title to be delivered between a chief appraiser, an appraisal district, an appraisal review board, or any combination of those persons and a property owner or between a chief appraiser, an appraisal district, an appraisal review board, or any combination of those persons and a person designated by a property owner under Section 1.111(f) may be delivered in an electronic format if the chief appraiser and the property owner or person designated by the owner agree under this section.

(a) **[Effective January 1, 2020]** Notwithstanding any other provision in this title and except as provided by this section, any notice, rendition, application form, or completed application, or information requested under Section 41.461(a)(2), that is required or permitted by this title to be delivered between a chief appraiser, an appraisal district, an appraisal review board, or any combination of those persons and a property owner or a person designated by a property owner under Section 1.111(f) may be delivered in an electronic format if the chief appraiser and the property owner or person designated by the owner agree under this section.

(b) An agreement between a chief appraiser and a property owner, or the person designated by the owner under Section 1.111(f), must:

(1) be in writing or in an electronic form;

(2) be signed by the chief appraiser;

(3) be signed by the property owner or person designated by the owner in a form acceptable to the chief appraiser; and

(4) specify:

(A) the medium of communication;

(B) the type of communication covered;

(C) the means for protecting the security of a communication;

(D) the means for confirming delivery of a communication; and

(E) the electronic mail address of the property owner or person designated by the property owner, as applicable.

(c) An agreement may address other matters.

(d) Unless otherwise provided by an agreement, the delivery of any information in an electronic format is effective on receipt by a chief appraiser, an appraisal district, an appraisal review board, a property owner, or a person designated by a property owner. An agreement entered into under this section remains in effect until rescinded in writing by the property owner or person designated by the owner.

(e) The comptroller by rule:

(1) shall prescribe acceptable media, formats, content, and methods for the electronic transmission of notices required by Section 25.19; and

(2) may prescribe acceptable media, formats, content, and methods for the electronic transmission of other notices, renditions, and applications.

(f) In an agreement entered into under this section, a chief appraiser may select the medium, format, content, and method to be used by the appraisal district from among those prescribed by the comptroller under Subsection (e). If the comptroller has not prescribed the media, format, content, and method applicable to the communication, the chief appraiser may determine the medium, format, content, and method to be used.

(g) Notwithstanding Subsection (a), if a property owner whose property is included in 25 or more accounts in the appraisal records of the appraisal district requests the chief appraiser to enter into an agreement for the delivery of the notice required by Section 25.19 in an electronic format, the chief appraiser must enter into an agreement under this section for that purpose if the appraisal district is located in a county that has a population of more than 200,000. If the chief appraiser must enter into an agreement under this subsection, the chief appraiser shall deliver the notice in accordance with an electronic medium, format, content, and method prescribed by the comptroller under Subsection (e). If the comptroller has not prescribed the media, format, content, and method applicable to the notice, the chief appraiser may determine the medium, format, content, and method to be used.

(h) This subsection applies to the chief appraiser of an appraisal district only if the appraisal district is located in a county described by Subsection (g) or the chief appraiser has decided to authorize electronic communication under this section and the appraisal district has implemented a system that allows such communication. The chief appraiser shall provide notice regarding the availability of agreement forms authorizing electronic communication under this section. The chief appraiser shall provide the notice by:

(1) publishing a notice in a newspaper having general circulation in the district at least once on or before February 1 of each year that includes the words "Notice of Availability of Electronic Communications"; or

(2) delivering the agreement form on or before February 1, or as soon as practicable after that date, to each owner of property shown on the certified appraisal roll for the preceding tax year and on or before February 1 of each subsequent year, or as soon as practicable after that date, to each new owner of property shown on the certified appraisal roll for the preceding tax year.

(i) A property owner or a person designated by the property owner who enters into an agreement under this section that has not been rescinded shall notify the appraisal district of a change in the electronic mail address specified in the agreement before the first April 1 that occurs following the change. If notification is not received by the appraisal district before that date, until notification is received, any notices delivered under the agreement to the property owner or person designated by the owner are considered to be timely delivered.

(j) An electronic signature that is included in any notice, rendition, application form, or completed application subject to an agreement under this section and that is required by Chapters 11, 22, 23, 24, 25, 26, and 41 shall be considered to be a digital signature for purposes of Section 2054.060, Government Code, and that section applies to the electronic signature.

(k) Unless the chief appraiser is required to enter an agreement under this section, a decision by the chief appraiser not to enter into an agreement under this section may not be reviewed by the appraisal review board or be the subject of:

(1) a suit to compel;

(2) a protest under Section 41.41;

(3) an appeal under Chapter 42; or

(4) a complaint under Chapter 1151, Occupations Code.

(*l*) Unless the chief appraiser and the property owner or person designated by the owner agree otherwise under Subsection (b), the chief appraiser, appraisal district, or appraisal review board shall deliver a notice electronically in a manner that allows for confirmation of receipt by the property owner or the person designated by the owner, such as electronic mail. If confirmation of receipt is not received by the 30th day following the date the electronic notice is delivered, the chief appraiser, appraisal district, or appraisal review board, as applicable, shall deliver the notice to the property owner or the person designated by the owner in the manner provided by Section 1.07.

(m) Notwithstanding any other provision of this section, a property owner need not enter into an agreement under this section to be entitled to electronic delivery of a notice of a protest hearing under Section 41.46.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 441 (S.B. 1209), § 2, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 984 (S.B. 1833), § 1, effective January 1, 2005; am. Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 1, effective January 1, 2005; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), §§ 3, 18, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 831 (H.B. 3216), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 229 (H.B. 241), § 1, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 753 (H.B. 1060), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 4, effective January 1, 2020.

Sec. 1.086. Delivery of Certain Notices by E-Mail. [Effective January 1, 2020]

(a) On the written request of the owner of a residential property that is occupied by the owner as the owner's principal residence, the chief appraiser of the appraisal district in which the property is located shall send each notice required by this title related to the following to the e-mail address of the owner:

(1) a change in value of the property;

(2) the eligibility of the property for an exemption; or

(3) the grant, denial, cancellation, or other change in the status of an exemption or exemption application applicable to the property.

(b) A property owner must provide the e-mail address to which the chief appraiser must send the notices described by Subsection (a) in a request made under that subsection.

(c) A chief appraiser who delivers a notice electronically under this section is not required to mail the same notice to the property owner.

(d) A request made under this section remains in effect until revoked by the property owner in a written revocation filed with the chief appraiser.

(e) After a property owner makes a request under this section and before a chief appraiser may deliver a notice electronically under this section, the chief appraiser must send an e-mail to the address provided by the property owner confirming the owner's request to receive notices electronically.

(f) The chief appraiser of an appraisal district that maintains an Internet website shall provide a form on the website that a property owner may use to electronically make a request under this section.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 5, effective January 1, 2020.

Sec. 1.09. Availability of Forms.

When a property owner is required by this title to use a form, the office or agency with which the form is filed shall make printed and electronic versions of the forms readily and timely available and shall furnish a property owner a form without charge.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2003, 78th Leg., ch. 984 (S.B. 1833), § 2; am. Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 2, effective January 1, 2005.

Sec. 1.10. Rolls in Electronic Data-Processing Records.

The appraisal roll for an appraisal district and the appraisal roll or the tax roll for the unit may be retained in electronic data-processing equipment. However, a physical document for each must be prepared and made readily available to the public.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 3, effective January 1, 1982.

Sec. 1.11. Communications to Fiduciary.

(a) On the written request of a property owner, an appraisal office or an assessor or collector shall deliver all notices, tax bills, and other communications relating to the owner's property or taxes to the owner's fiduciary.

(b) To be effective, a request made under this section must be filed with the appraisal district. A request remains in effect until revoked by a written revocation filed with the appraisal district by the owner or the owner's designated agent.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 4, effective January 1, 1982; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 2, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 715 (H.B. 3439), § 1, effective September 1, 2013.

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CIVIL PROCEDURE
Justiciability
Standing

General Overview. — Where neither a property's seller nor its buyer fulfilled the jurisdictional prerequisites to seeking judicial review of a county appraisal review board's adverse determination of a property-valuation protest, both entities lacked standing to appeal the board's order to the district court because although the seller timely filed a petition for review, it did not own the property on the date at issue and was not a designated agent or lessee of the buyer, the actual record owner of the property. The buyer did not complete the administrative protest process before the board and could not take advantage of Tex. Tax Code Ann. § 42.21(e) to change the named plaintiff from one party who did not have standing to seek judicial review—the seller—to another party who did not have standing—the buyer. GSL Welcome BP 32 LLC v. Harris County Appraisal Dist., No. 01-10-00189-CV, 2010 Tex. App. LEXIS 8950 (Tex. App. Houston 1st Dist. Nov. 10, 2010).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — When a fiduciary is appointed by a taxpayer under Tex. Tax Code Ann. § 1.11, the taxing unit must deliver all notices and tax bills to the fiduciary. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

JUDICIAL REVIEW. — Where neither a property's seller nor its buyer fulfilled the jurisdictional prerequisites to seeking judicial review of a county appraisal review board's adverse determination of a property-valuation protest, both entities lacked standing to appeal the board's order to the district court because although the seller timely filed a petition for review, it did not own the property on the date at issue and was not a designated agent or lessee of the buyer, the actual record owner of the property. The buyer did not complete the administrative protest process before the board and could not take advantage of Tex. Tax Code Ann. § 42.21(e) to change the named plaintiff from one party who did not have standing to seek judicial review—the seller—to another party who did not have standing—the buyer. GSL Welcome BP 32 LLC v. Harris County Appraisal Dist., No. 01-10-00189-CV, 2010 Tex. App. LEXIS 8950 (Tex. App. Houston 1st Dist. Nov. 10, 2010).

REAL PROPERTY TAX

General Overview. — On an appeal of the judgment of the trial court determining the appraised value of taxpayer's property and reducing the value from that found by the county appraisal district and county appraisal review board (the county), the court found that the trial court had jurisdiction to review the county's determination under Tex. Tax Code Ann. §§ 1.07(b), 1.11(a) and (b), 1.111(b) and (c) and 42.21(a) because the county failed to serve notice properly upon the taxpayer. Harris County Appraisal Dist. v. Drever Partners, 938 S.W.2d 196, 1997 Tex. App. LEXIS 271 (Tex. App. Houston 14th Dist. Jan. 23, 1997, no writ).

Sec. 1.111. Representation of Property Owner.

(a) A property owner may designate a lessee or other person to act as the agent of the owner for any purpose under this title in connection with the property or the property owner.

(a-1) A lessee designated by a property owner as the owner's agent under Subsection (a) may, subject to the property owner's approval, designate a person to act as the lessee's agent for any purpose under this title for which the lessee is authorized to act on behalf of the owner in connection with the owner or the owner's property. An agent designated by a lessee under this subsection has the same authority and is subject to the same limitations as an agent designated by a property owner under Subsection (a).

(b) The designation of an agent must be made by written authorization on a form prescribed by the comptroller under Subsection (h) and signed by the owner, a property manager authorized to designate agents for the owner, or another person authorized to act on behalf of the owner other than the person being designated as agent, and must clearly indicate that the person is authorized to act on behalf of the property owner in property tax matters relating to the property or the property owner. The designation may authorize the agent to represent the owner in all property tax matters or in specific property tax matters as identified in the designation. The designation does not take effect with respect to an appraisal district or a taxing unit participating in the appraisal district until a copy of the designation is filed with the appraisal district. Each appraisal district established for a county having a population of 500,000 or more shall implement a system that allows a designation to be signed and filed electronically.

(c) The designation of an agent under this section remains in effect until revoked in a written revocation filed with the appraisal district by the property owner or designated agent. The designated agent revoking the designation must send notice of the revocation by certified mail to the property owner at the owner's last known address. A designation may be made to expire according to its own terms but is still subject to prior revocation by the property owner or designated agent.

(d) A property owner may not designate more than one agent to represent the property owner in connection with an item of property. The designation of an agent in connection with an item of property revokes any previous designation of an agent in connection with that item of property.

(e) An agreement between a property owner or the owner's agent and the chief appraiser is final if the agreement relates to a matter:

(1) which may be protested to the appraisal review board or on which a protest has been filed but not determined by the board; or

(2) which may be corrected under Section 25.25 or on which a motion for correction under that section has been filed but not determined by the board.

(f) A property owner in writing filed with the appraisal district may direct the appraisal district, appraisal review board, and each taxing unit participating in the appraisal district to deliver all notices, tax bills, orders, and other communications relating to one or more specified items of the owner's property to a specified person instead of to the property owner. The instrument must clearly identify the person by name and give the person's address to which all notices, tax bills, orders, and other communications are to be delivered. The property owner may but is not required to designate the person's agent for other tax matters designated under Subsection (a) as the person to receive all notices, tax bills, orders, and other communications. The designation of an agent for other tax matters under Subsection (a) may also provide that the agent is the person to whom notices, tax bills, orders, and other communications are to be delivered under this subsection.

(g) An appraisal district, appraisal review board, or taxing unit may not require a person to designate an agent to represent the person in a property tax matter other than as provided by this section.

(h) The comptroller shall prescribe forms and adopt rules to facilitate compliance with this section. The comptroller shall include on any form used for designation of an agent for a single-family residential property in which the property owner resides the following statement in boldfaced type:

"In some cases, you may want to contact your appraisal district or other local taxing units for free information and/or forms concerning your case before designating an agent."

(i) An appraisal review board shall accept and consider a motion or protest filed by an agent of a property owner if an agency authorization is filed at or before the hearing on the motion or protest.

(j) An individual exempt from registration as a property tax consultant under Section 1152.002, Occupations Code, who is not supervised, directed, or compensated by a person required to register as a property tax consultant under that chapter and who files a protest with the appraisal review board on behalf of the property owner is entitled to receive all notices from the appraisal district and appraisal review board regarding the property subject to the protest until the authority is revoked by the property owner as provided by this section. An individual to which this subsection applies who is not designated by the property owner to receive notices, tax bills, orders, and other communications as provided by Subsection (f) or Section 1.11 shall file a statement with the protest that includes:

(1) the individual's name and address;

(2) a statement that the individual is acting on behalf of the property owner; and

(3) a statement of the basis for the individual's exemption from registration under Section 1152.002, Occupations Code.

(k) On written request by the chief appraiser, an agent who electronically submits a designation of agent form shall provide the chief appraiser information concerning:

(1) the electronic signature of the person who signed the form;

(2) the date the person signed the form; and

(3) the Internet Protocol address of the computer the person used to complete the form.

(*l*) A person may not knowingly make a false entry in, or false alteration of, a designation of agent form that has been signed as provided by Subsection (b).

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 435 (S.B. 1352), § 1, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 2, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 981 (H.B. 2716), § 1, effective January 1, 1994; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 1, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 349 (S.B. 1014), § 1, effective September 1, 1997; am. Acts 2009, 81st Leg., ch. 156 (H.B. 1203), § 1, effective May 26, 2009; am. Acts 2009, 81st Leg., ch. 1267 (H.B. 1030), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 1, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 831 (H.B. 3216), § 2, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 715 (H.B. 3439), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 481 (S.B. 1760), § 1, effective January 1, 2016.

NOTES TO DECISIONS

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CIVIL PROCEDURE
Justiciability
Standing

General Overview. — Trial court lacked subject matter jurisdiction over two lawsuits filed to challenge a decision from an appraisal review board regarding real property taxes because a limited partner was not a record owner of the property, a lessee, or an authorized agent; strict compliance with Tex. Tax Code Ann. §§ 1.111, 41.413(b), 42.01, 42.21(b) was required. Therefore, a plea to the jurisdiction was properly granted. Ray v. Bexar Appraisal Dist., No. 04-08-00210-CV, No. 04-08-00212-CV, 2009 Tex. App. LEXIS 1812 (Tex. App. San Antonio Mar. 18, 2009).

PARTIES

Fictitious Names. — In an action in which a property seller sought judicial review of a county appraisal district's resolution of an ad valorem tax protest, the trial court erred in denying the district's plea to the jurisdiction, which claimed that the seller was not the property owner for the tax year at issue, where the seller and the buyer of the property lacked standing to bring suit because the seller did not claim rights to protest under the Texas Tax Code as either a lessee or an agent, and because the record did not reflect that the buyer pursued its right of protest as the actual property owner. Because neither the seller nor the buyer was a proper party entitled to judicial review under the Texas Tax Code, Tex. Tax Code Ann. § 42.21(e)(1) did not apply to change the name of the plaintiff, and, likewise, because there was no evidence in the record that the buyer was doing business as the seller or that the entities used the name the seller as a common name for the buyer, Tex. R. Civ. P. 28 could not be used to substitute the buyer for the seller. Harris County Appraisal Dist. v. KMI Yorktown LP, No. 01-09-00661-CV, 2010 Tex. App. LEXIS 3201 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

SUMMARY JUDGMENT

General Overview. — Summary judgment evidence contradicted the taxpayer's assertion that no agreement existed between it and the taxing authorities as to the appraised value of the property, and that no evidence suggested that the taxpayer was deprived of its statutory due process rights to appeal an order of the appraisal review board determining a protest by the property owner. The taxpayer failed to show why the information sought could not have already been discovered during the pendency of the litigation or through its designated agent who attended the tax protest proceedings. BPAC Tex., LP v. Harris County Appraisal Dist., No. 01-03-01238-CV, 2004 Tex. App. LEXIS 9592 (Tex. App. Houston 1st Dist. Oct. 28, 2004).

CONSTITUTIONAL LAW
Bill of Rights
Fundamental Rights
Procedural Due Process

General Overview. — Property owners were not deprived of their rights to due process by application of Tex. Tax Code Ann. § 1.111(e) because they were given the opportunity to present their arguments to a review board, and they reached an agreement with an appraisal district regarding the property value that fully satisfied their contentions. Prince v. Harris County Appraisal Dist., No. 14-07-00919-CV, 2009 Tex. App. LEXIS 8 (Tex. App. Houston 14th Dist. Jan. 6, 2009).

SCOPE OF PROTECTION. — Where property owners in an ad valorem property tax case were given the opportunity to present their arguments to a legal panel, and they reached an agreement fully satisfying their stated contentions, their agreement under Tex. Tax Code Ann. § 1.111(e) with the county appraisal district did not violate their due process rights by precluding them from appealing the appraisal issue. Sondock v. Harris County Appraisal Dist., 231 S.W.3d 65, 2007 Tex. App. LEXIS 4361 (Tex. App. Houston 14th Dist. May 31, 2007, no pet.).

GOVERNMENTS
Local Governments

Claims By & Against. — Allegations regarding breach of an appraisal agreement did not implicate governmental immunity from suit because a Tex. Tax Code Ann. § 1.111(e) appraisal agreement is not a contract; rather, the suit was a proper declaratory action for a determination of whether the reappraisal was contrary to Tex. Tax Code Ann. § 41.01(b), and the trial court had subject matter jurisdiction to rule on declaratory relief, including attorney fees and court costs under Tex. Civ. Prac. & Rem. Code Ann. § 37.009. MHCB (USA) Leasing & Fin. Corp. v. Galveston Cent. Appraisal Dist., 249 S.W.3d 68, 2007 Tex. App. LEXIS 7669 (Tex. App. Houston 1st Dist. Sept. 20, 2007), reh'g denied, No. 01-06-00529-CV, 2007 Tex. App. LEXIS 10146 (Tex. App. Houston 1st Dist. Nov. 6, 2007).

TAX LAW
State & Local Taxes
Administration & Proceedings

Assessments. — Taxpayers could not appeal a real property appraisal because a final and binding agreement between the parties was reached at the review board hearing, within the meaning of Tex. Tax Code Ann. § 1.111(e)(1), when the appraiser expressed the same opinion as the taxpayers' agent on the value of the property. Hartman v. Harris County Appraisal Dist., 251 S.W.3d 595, 2007 Tex. App. LEXIS 8145 (Tex. App. Houston 1st Dist. Oct. 11, 2007, no pet.).

Allegations regarding breach of an appraisal agreement did not implicate governmental immunity from suit because a Tex. Tax Code Ann. § 1.111(e) appraisal agreement is not a contract; rather, the suit was a proper declaratory action for a determination of whether the reappraisal was contrary to Tex. Tax Code Ann. § 41.01(b), and the trial court had subject matter jurisdiction to rule on declaratory relief, including attorney fees and court costs under Tex. Civ. Prac. & Rem. Code Ann. § 37.009. MHCB (USA) Leasing & Fin. Corp. v. Galveston Cent. Appraisal Dist., 249 S.W.3d 68, 2007 Tex. App. LEXIS 7669 (Tex. App. Houston 1st Dist. Sept. 20, 2007), reh'g denied, No. 01-06-00529-CV, 2007 Tex. App. LEXIS 10146 (Tex. App. Houston 1st Dist. Nov. 6, 2007).

JUDICIAL REVIEW. — Because a county appraisal district's chief appraiser could delegate authority to appraisal district employees to appear at protest hearings and present a valuation opinion, by stating the same opinion regarding the value of the property, a taxpayer's agent and the district's representative had reached an agreement pursuant to Tex. Tax Code Ann. § 1.111(e), thereby precluding the taxpayer from seeking judicial review of a subsequent order of the county's appraisal review board. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Agreement between a property owner's agent and an appraisal district representative-as opposed to the chief appraiser-qualifies as a Tex. Tax Code Ann. § 1.111(e) agreement that precludes a suit for judicial review, and this issue may permissibly be determined via a plea to the jurisdiction. Section 1.111(e) does not require that a chief appraiser delegate to the representative of the appraisal district in each case the specific authority to enter into an agreement with the property owner before a court may determine that a § 1.111(e) agreement has been reached, and § 1.111(e) also does not require the parties to act on an agreement or announce the agreement to the court. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Taxpayers' claims were barred because they, through their agent, reached a final and enforceable agreement with a representative of the Harris County Appraisal District (HCAD), Tex. Tax Code Ann. §§ 6.05(e), 41.45(c), as to the value of the subject property, Tex. Tax Code Ann. § /Aa1.111(e), which was not subject to protest or judicial review; the taxpayers' due process rights were not violated because they were given an opportunity to be heard through the Appraisal Review Board of Harris County and they reached an agreement with HCAD during their protest review. Kelly v. Harris County Appraisal Dist., No. 01-09-00996-CV, 2011 Tex. App. LEXIS 966 (Tex. App. Houston 1st Dist. Feb. 10, 2011).

Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code

Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003. Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

In an action in which a property seller sought judicial review of a county appraisal district's resolution of an ad valorem tax protest, the trial court erred in denying the district's plea to the jurisdiction, which claimed that the seller was not the property owner for the tax year at issue, where the seller and the buyer of the property lacked standing to bring suit because the seller did not claim rights to protest under the Texas Tax Code as either a lessee or an agent, and because the record did not reflect that the buyer pursued its right of protest as the actual property owner. Because neither the seller nor the buyer was a proper party entitled to judicial review under the Texas Tax Code, Tex. Tax Code Ann. § 42.21(e)(1) did not apply to change the name of the plaintiff, and, likewise, because there was no evidence in the record that the buyer was doing business as the seller or that the entities used the name the seller as a common name for the buyer, Tex. R. Civ. P. 28 could not be used to substitute the buyer for the seller. Harris County Appraisal Dist. v. KMI Yorktown LP, No. 01-09-00661-CV, 2010 Tex. App. LEXIS 3201 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Plea to the jurisdiction filed by the county appraisal district was proper, because the partnership, which filed the tax assessment protest, did not own the property as of January 1, 2007 and did not claim rights to protest as either a lessee or an agent, the record did not reflect that the company pursued its right of protest as the actual property owner and was not named as a party until February 2009, and when no proper party timely appealed, the trial court did not acquire subject matter jurisdiction and the appraisal review board's determination became final. Woodway Drive LLC v. Harris County Appraisal Dist., 311 S.W.3d 649, 2010 Tex. App. LEXIS 2494 (Tex. App. Houston 14th Dist. Apr. 8, 2010, no pet.).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a property seller's action that challenged a 2007 tax assessment of the property because the seller did not own the property as of January 1, 2007; the seller did not claim rights to protest as either a lessee or an agent. Scott Plaza Assocs. v. Harris County Appraisal Dist., No. 14-09-00707-CV, 2010 Tex. App. LEXIS 1532 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction on a property seller's petition that challenged a 2008 tax assessment for the property because the seller did not own the property as of January 1, 2008; the seller did not claim rights to protest as either a lessee or an agent. Woodway Drive LLC v. Harris County Appraisal Dist., No. 14-09-00524-CV, 2010 Tex. App. LEXIS 1527 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Exhibit B was properly before the trial court and it constituted competent summary judgment evidence that the homeowners granted the law firm full authority to represent them in their property tax matters before the Appraisal Review Board (ARB), which necessarily included acting through its employee; the employee's execution of the disclosure statement in order to appear before the ARB was necessarily in conjunction with the general authority that the homeowners granted to represent them in a hearing before the ARB, and Exhibit D was properly before the trial court. Amidei v. Harris County Appraisal Dist., No. 01-08-00833-CV, 2009 Tex. App. LEXIS 5559 (Tex. App. Houston 1st Dist. July 16, 2009).

Taxing authorities' summary judgment evidence showed that the homeowners, through their authorized agent, entered into an appraisal agreement with Harris County Appraisal District, under Tex. Tax Code Ann. § 1.111(e); hence, the agreement was not subject to a statutory suit for judicial review under Tex. Tax Code Ann. § 42.23, and the trial court did not err by granting summary judgment in favor of the taxing authorities. Amidei v. Harris County Appraisal Dist., No. 01-08-00833-CV, 2009 Tex. App. LEXIS 5559 (Tex. App. Houston 1st Dist. July 16, 2009).

Trial court lacked subject matter jurisdiction over two lawsuits filed to challenge a decision from an appraisal review board regarding real property taxes because a limited partner was not a record owner of the property, a lessee, or an authorized agent; strict compliance with Tex. Tax Code Ann. §§ 1.111, 41.413(b), 42.01, 42.21(b) was required. Therefore, a plea to the jurisdiction was properly granted. Ray v. Bexar Appraisal Dist., No. 04-08-00210-CV, No. 04-08-00212-CV, 2009 Tex. App. LEXIS 1812 (Tex. App. San Antonio Mar. 18, 2009).

Despite an order from a review board stating that property owners were able to seek judicial review, summary judgment was properly granted to an appraisal district in a case alleging that property was excessively and unequally appraised because the district and the property owners had reached a final agreement under Tex. Tax Code Ann. § 1.111(e)(1) at a hearing when a district representative concurred with the owners' agent regarding value. Prince v. Harris County Appraisal Dist., No. 14-07-00919-CV, 2009 Tex. App. LEXIS 8 (Tex. App. Houston 14th Dist. Jan. 6, 2009).

Owners' claims in an ad valorem property tax case that their property was unequally and excessively appraised lacked merit because an agreement related to a matter specified under Tex. Tax Code Ann. § 1.111(e) was reached between the owners, through their agent, and the county appraisal district, and even though the owners contended that the lack of an agreement was evidenced by the fact that the parties did not act upon the agreement or announce the agreement to the court, Tex. Tax Code Ann. § 1.111(e) does not require such actions. Sondock v. Harris County Appraisal Dist., 231 S.W.3d 65, 2007 Tex. App. LEXIS 4361 (Tex. App. Houston 14th Dist. May 31, 2007, no pet.).

SETTLEMENTS. — Agreement reached between a taxpayer and an appraisal district regarding entitlement to a pollution-control exemption was final because it concerned a statutorily defined matter regarding the parties' agreement to the property value based on the granted exemption. Bastrop Cent. Appraisal Dist. v. Acme Brick Co., 428 S.W.3d 911, 2014 Tex. App. LEXIS 4001 (Tex. App. Austin Apr. 11, 2014, no pet.).

As an agreement between a taxpayer and an appraisal district that the property qualified for the pollution-control exemption in the particular tax years was final and binding, the district was prevented from removing the exemption. Bastrop Cent. Appraisal Dist. v. Acme Brick Co., 428 S.W.3d 911, 2014 Tex. App. LEXIS 4001 (Tex. App. Austin Apr. 11, 2014, no pet.).

Because a county appraisal district's chief appraiser could delegate authority to appraisal district employees to appear at protest hearings and present a valuation opinion, by stating the same opinion regarding the value of the property, a taxpayer's agent and the district's representative had reached an agreement pursuant to Tex. Tax Code Ann. § 1.111(e), thereby precluding the taxpayer from seeking judicial review of a subsequent order of the county's appraisal review board. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied,

No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Agreement between a property owner's agent and an appraisal district representative-as opposed to the chief appraiser-qualifies as a Tex. Tax Code Ann. § 1.111(e) agreement that precludes a suit for judicial review, and this issue may permissibly be determined via a plea to the jurisdiction. Section 1.111(e) does not require that a chief appraiser delegate to the representative of the appraisal district in each case the specific authority to enter into an agreement with the property owner before a court may determine that a § 1.111(e) agreement has been reached, and § 1.111(e) also does not require the parties to act on an agreement or announce the agreement to the court. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Despite an order from a review board stating that property owners were able to seek judicial review, summary judgment was properly granted to an appraisal district in a case alleging that property was excessively and unequally appraised because the district and the property owners had reached a final agreement under Tex. Tax Code Ann. § 1.111(e)(1) at a hearing when a district representative concurred with the owners' agent regarding value. Prince v. Harris County Appraisal Dist., No. 14-07-00919-CV, 2009 Tex. App. LEXIS 8 (Tex. App. Houston 14th Dist. Jan. 6, 2009).

Property owners were not deprived of their rights to due process by application of Tex. Tax Code Ann. § 1.111(e) because they were given the opportunity to present their arguments to a review board, and they reached an agreement with an appraisal district regarding the property value that fully satisfied their contentions. Prince v. Harris County Appraisal Dist., No. 14-07-00919-CV, 2009 Tex. App. LEXIS 8 (Tex. App. Houston 14th Dist. Jan. 6, 2009).

Summary judgment was granted to a county appraisal district in a case filed by property owners because there was a final agreement entered into under Tex. Tax Code Ann. § 1.111(e) regarding the valuation of property while the case was being deliberated by an appraisal review board; the parties did not have to act on the agreement or inform the appraisal review board that an agreement had been reached; since the agreement was final at the moment it was reached, any determination by the appraisal review board regarding value was irrelevant. Verm v. Harris County Appraisal Dist., No. 14-06-01046-CV, 2008 Tex. App. LEXIS 4900 (Tex. App. Houston 14th Dist. July 1, 2008).

Because taxpayers' representative stated a property value at a review board hearing, and the taxing authority agreed to that value, the parties had a final agreement under Tex. Tax Code Ann. § 1.111(e), and the taxpayers had no right to appeal the review board's valuation under Tex. Tax Code Ann. § 42.21(a). Mann v. Harris County Appraisal Dist., No. 01-07-00436-CV, 2008 Tex. App. LEXIS 2790 (Tex. App. Houston 1st Dist. Apr. 17, 2008).

TAXPAYER PROTESTS. — Taxpayers' claims were barred because they, through their agent, reached a final and enforceable agreement with a representative of the Harris County Appraisal District (HCAD), Tex. Tax Code Ann. §§ 6.05(e), 41.45(c), as to the value of the subject property, Tex. Tax Code Ann. § / Aa1.111(e), which was not subject to protest or judicial review; the taxpayers' due process rights were not violated because they were given an opportunity to be heard through the Appraisal Review Board of Harris County and they reached an agreement with HCAD during their protest review. Kelly v. Harris County Appraisal Dist., No. 01-09-00996-CV, 2011 Tex. App. LEXIS 966 (Tex. App. Houston 1st Dist. Feb. 10, 2011).

Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003. Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a real property seller's action challenging a 2008 tax assessment for the property because the seller lacked standing to pursue judicial review; the seller did not claim rights to protest under the Texas Tax Code as either a lessee or an agent. RRB Land Invs., Ltd. v. County Appraisal Dist., No. 01-09-00519-CV, 2010 Tex. App. LEXIS 3191 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court erred in denying an appraisal district's plea to the jurisdiction in a property seller's petition for judicial review of a 2007 tax assessment for the property because the seller lacked standing to prosecute the buyer's tax protest; the seller did not own the property as of January 1, 2007 and did not claim rights to protest as either a lessee or an agent. Harris County Appraisal Dist. v. Shen, No. 01-09-00652-CV, 2010 Tex. App. LEXIS 3202 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in real property sellers' action challenging a 2008 tax assessment for the properties because the buyers were the legal owners of the properties on January 1, 2008; the sellers did not claim rights to protest as either lessees or agents. Milbank 521 Sam Houston I, LLC v. Harris Cnty. Appraisal Dist., No. 01-09-00541-CV, 2010 Tex. App. LEXIS 3154 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Plea to the jurisdiction filed by the county appraisal district was proper, because the partnership, which filed the tax assessment protest, did not own the property as of January 1, 2007 and did not claim rights to protest as either a lessee or an agent, the record did not reflect that the company pursued its right of protest as the actual property owner and was not named as a party until February 2009, and when no proper party timely appealed, the trial court did not acquire subject matter jurisdiction and the appraisal review board's determination became final. Woodway Drive LLC v. Harris County Appraisal Dist., 311 S.W.3d 649, 2010 Tex. App. LEXIS 2494 (Tex. App. Houston 14th Dist. Apr. 8, 2010, no pet.).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a property seller's action that challenged a 2007 tax assessment of the property because the seller did not own the property as of January 1, 2007; the seller did not claim rights to protest as either a lessee or an agent. Scott Plaza Assocs. v. Harris County Appraisal Dist., No. 14-09-00707-CV, 2010 Tex. App. LEXIS 1532 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction on a property seller's petition that challenged a 2008 tax assessment for the property because the seller did not own the property as of January 1, 2008; the seller did not claim rights to protest as either a lessee or an agent. Woodway Drive LLC v. Harris County Appraisal Dist., No. 14-09-00524-CV, 2010 Tex. App. LEXIS 1527 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Property owners' suit against a county appraisal district, in which they claimed their property was unequally and excessively appraised, was barred by Tex. Tax Code Ann. § 1.111(e), because the owners' agent agreed with the appraisal district at a hearing before the Appraisal Review Board that the property was worth $ 1,207,083. Loposer v. Harris County Appraisal Dist., No. 14-07-00956-CV, 2009 Tex. App. LEXIS 5532 (Tex. App. Houston 14th Dist. July 21, 2009).

Owners' claims in an ad valorem property tax case that their property was unequally and excessively appraised lacked merit because an agreement related to a matter specified under Tex. Tax Code Ann. § 1.111(e) was reached between the owners, through their agent, and the county appraisal district, and even though the owners contended that the lack of an agreement was evidenced by the fact that the parties did not act upon the agreement or announce the agreement to the court, Tex. Tax Code Ann. § 1.111(e) does not require such actions. Sondock v. Harris County Appraisal Dist., 231 S.W.3d 65, 2007 Tex. App. LEXIS 4361 (Tex. App. Houston 14th Dist. May 31, 2007, no pet.).

Where property owners in an ad valorem property tax case were given the opportunity to present their arguments to a legal panel, and they reached an agreement fully satisfying their stated contentions, their agreement under Tex. Tax Code Ann. § 1.111(e) with the county appraisal district did not violate their due process rights by precluding them from appealing the appraisal issue. Sondock v. Harris County Appraisal Dist., 231

S.W.3d 65, 2007 Tex. App. LEXIS 4361 (Tex. App. Houston 14th Dist. May 31, 2007, no pet.).

REAL PROPERTY TAX

General Overview. — On an appeal of the judgment of the trial court determining the appraised value of taxpayer's property and reducing the value from that found by the county appraisal district and county appraisal review board (the county), the court found that the taxpayers had filed a valid designation of an agent with the appraisal district under Tex. Tax Code Ann. § 1.111(b); where an agent was an employee of a subsidiary of the owner, as the agent was in this case, the owner was not required to provide documentation supporting that agent's authority to receive tax notices. Harris County Appraisal Dist. v. Drever Partners, 938 S.W.2d 196, 1997 Tex. App. LEXIS 271 (Tex. App. Houston 14th Dist. Jan. 23, 1997, no writ).

On an appeal of the judgment of the trial court determining the appraised value of taxpayer's property and reducing the value from that found by the county appraisal district and county appraisal review board (the county), the court found that the trial court had jurisdiction to review the county's determination under Tex. Tax Code Ann. §§ 1.07(b), 1.11(a) and (b), 1.111(b) and (c) and 42.21(a) because the county failed to serve notice properly upon the taxpayer. Harris County Appraisal Dist. v. Drever Partners, 938 S.W.2d 196, 1997 Tex. App. LEXIS 271 (Tex. App. Houston 14th Dist. Jan. 23, 1997, no writ).

ASSESSMENT & VALUATION

General Overview. — Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Exhibit B was properly before the trial court and it constituted competent summary judgment evidence that the homeowners granted the law firm full authority to represent them in their property tax matters before the Appraisal Review Board (ARB), which necessarily included acting through its employee; the employee's execution of the disclosure statement in order to appear before the ARB was necessarily in conjunction with the general authority that the homeowners granted to represent them in a hearing before the ARB, and Exhibit D was properly before the trial court. Amidei v. Harris County Appraisal Dist., No. 01-08-00833-CV, 2009 Tex. App. LEXIS 5559 (Tex. App. Houston 1st Dist. July 16, 2009).

Taxing authorities' summary judgment evidence showed that the homeowners, through their authorized agent, entered into an appraisal agreement with Harris County Appraisal District, under Tex. Tax Code Ann. § 1.111(e); hence, the agreement was not subject to a statutory suit for judicial review under Tex. Tax Code Ann. § 42.23, and the trial court did not err by granting summary judgment in favor of the taxing authorities. Amidei v. Harris County Appraisal Dist., No. 01-08-00833-CV, 2009 Tex. App. LEXIS 5559 (Tex. App. Houston 1st Dist. July 16, 2009).

VALUATION. — Code did not define agreement, so the court applied the ordinary meaning of the term, which the court had previously defined as the act of agreeing. Houston Cement Co. v. Harris County Appraisal Dist., No. 14-12-00491-CV, 2013 Tex. App. LEXIS 7635 (Tex. App. Houston 14th Dist. June 25, 2013).

Taxpayer and the county clearly expressed harmony of opinion as to the final values of the taxpayer's personal property and inventory in agreements, and because those final values were matters on which protests could have been filed or had been filed but not yet determined, the agreements were final as to those values, for purposes of Tex. Tax Code Ann. § 1.111(e)(1); as the challenge to a subtotal is necessarily a challenge to its corresponding total, the court's conclusion would have been the same even absent the line item values for specific property types. Houston Cement Co. v. Harris County Appraisal Dist., No. 14-12-00491-CV, 2013 Tex. App. LEXIS 7635 (Tex. App. Houston 14th Dist. June 25, 2013).

Appellees' plea to the jurisdiction did not rest on an overly broad interpretation of Tex. Tax Code Ann. § 1.111(e) that disregarded its subsections, and because the value of inventory was a specific matter to which the agreements related, the agreements precluded the taxpayer's lawsuit, and the trial court correctly granted the plea to the jurisdiction. Houston Cement Co. v. Harris County Appraisal Dist., No. 14-12-00491-CV, 2013 Tex. App. LEXIS 7635 (Tex. App. Houston 14th Dist. June 25, 2013).

Witness did not testify that the parties intended the agreement to relate to only certain grounds, and even if he did, such would have been immaterial because an agreement was created for purposes of the statute when parties expressed harmony of opinion, regardless of the parties' intent. Houston Cement Co. v. Harris County Appraisal Dist., No. 14-12-00491-CV, 2013 Tex. App. LEXIS 7635 (Tex. App. Houston 14th Dist. June 25, 2013).

Plea to jurisdiction entered in favor of the county appraisal district was proper, because the property valuation agreement entered between the taxpayer and the district's representative appearing on behalf of the chief appraiser was not an agreement subject to Tex. Tax Code § 1.111(e), when at the moment the agreement was reached, it became final. Crescent Oaks LP v. Harris County Appraisal Dist., No. 14-10-00199-CV, 2011 Tex. App. LEXIS 218 (Tex. App. Houston 14th Dist. Jan. 13, 2011).

Trial court properly granted a county appraisal district's plea to the jurisdiction in real property sellers' action challenging a 2008 tax assessment for the properties because the buyers were the legal owners of the properties on January 1, 2008; the sellers did not claim rights to protest as either lessees or agents. Milbank 521 Sam Houston I, LLC v. Harris Cnty. Appraisal Dist., No. 01-09-00541-CV, 2010 Tex. App. LEXIS 3154 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Property owners' suit against a county appraisal district, in which they claimed their property was unequally and excessively appraised, was barred by Tex. Tax Code Ann. § 1.111(e), because the owners' agent agreed with the appraisal district at a hearing before the Appraisal Review Board that the property was worth $ 1,207,083. Loposer v. Harris County Appraisal Dist., No. 14-07-00956-CV, 2009 Tex. App. LEXIS 5532 (Tex. App. Houston 14th Dist. July 21, 2009).

Because taxpayers' representative stated a property value at a review board hearing, and the taxing authority agreed to that value, the parties had a final agreement under Tex. Tax Code Ann. § 1.111(e), and the taxpayers had no right to appeal the review board's valuation under Tex. Tax Code Ann. § 42.21(a). Mann v. Harris County Appraisal Dist., No. 01-07-00436-CV, 2008 Tex. App. LEXIS 2790 (Tex. App. Houston 1st Dist. Apr. 17, 2008).

EXEMPTIONS. — Agreement reached between a taxpayer and an appraisal district regarding entitlement to a pollution-control exemption was final because it concerned a statutorily defined matter regarding the parties' agreement to the property value based on the granted exemption. Bastrop Cent. Appraisal Dist. v. Acme Brick Co., 428 S.W.3d 911, 2014 Tex. App. LEXIS 4001 (Tex. App. Austin Apr. 11, 2014, no pet.).

As an agreement between a taxpayer and an appraisal district that the property qualified for the pollution-control exemption in the particular tax years was final and binding, the district was prevented from removing the exemption. Bastrop Cent. Appraisal Dist. v. Acme Brick Co., 428 S.W.3d 911, 2014 Tex. App. LEXIS 4001 (Tex. App. Austin Apr. 11, 2014, no pet.).

ATTORNEY GENERAL OPINIONS

Agents.

Tex. Tax Code Ann. § 1.111(b) sets out the scheme under which a property owner may designate an agent for property tax matters; under the statute, a designation must be made by written authorization signed by the owner, a property manager authorized to designate agents for the owner, or other person authorized to act on behalf of the owner, and must clearly indicate that the person is authorized to act on behalf of the property owner in property tax; therefore, a property tax consultant may be authorized by section 1.111(b) to execute and complete the designation form. 2008 Tex. Op. Att'y Gen. GA-0589, 2008 Tex. AG LEXIS 1 (Superseded by Tex. Tax Code § 1.111).

Sec. 1.12. Median Level of Appraisal.

(a) For purposes of this title, the median level of appraisal is the median appraisal ratio of a reasonable and representative sample of properties in an appraisal district or, for purposes of Section 41.43 or 42.26, of a sample of properties specified by that section.

(b) An appraisal ratio is the ratio of a property's appraised value as determined by the appraisal office or appraisal review board, as applicable, to:

(1) the appraised value of the property according to law if the property qualifies for appraisal for tax purposes according to a standard other than market value; or

(2) the market value of the property if Subdivision (1) of this subsection does not apply.

(c) The median appraisal ratio for a sample of properties is, in a numerically ordered list of the appraisal ratios for the properties:

(1) if the sample contains an odd number of properties, the appraisal ratio above and below which there is an equal number of appraisal ratios in the list; or

(2) if the sample contains an even number of properties, the average of the two consecutive appraisal ratios above and below which there is an equal number of appraisal ratios in the list.

(d) For purposes of this section, the appraisal ratio of a homestead to which Section 23.23 applies is the ratio of the property's market value as determined by the appraisal district or appraisal review board, as applicable, to the market value of the property according to law. The appraisal ratio is not calculated according to the appraised value of the property as limited by Section 23.23.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 5, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 877 (H.B. 1395), § 1, effective January 1, 1984; am. Acts 1985, 69th Leg., ch. 823 (S.B. 908), § 1, effective January 1, 1986; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 3, effective June 15, 1989; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 46, effective January 1, 1998.

Sec. 1.13. Master for Tax Suits [Renumbered].

Renumbered to Tex. Tax Code §§ 33.71—33.73 by Acts 1991, 72nd Leg., ch. 525 (H.B. 2197), § 1, effective September 1, 1991.

Sec. 1.14. [Blank].

Sec. 1.15. Appraisers for Taxing Units Prohibited.

A taxing unit may not employ any person for the purpose of appraising property for taxation purposes except to the extent necessary to perform a contract under Section 6.05(b) of this code.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 1028 (H.B. 2284), § 1, effective October 1, 1985; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 5.01(a)(50), effective September 1, 1987 (renumbered from Sec. 1.13).

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Because debtors did not prosecute their valuation motion in a timely manner, and no excuse was given for the delay, and the taxing authorities were unfairly prejudiced because the local appraisal district took the position that it had no obligation to defend its values because debtors allowed the values to become final and did not protest them pursuant to Tex. Tax Code Ann. § 1.15, debtors' motion for leave to amend their valuation motion under 11 U.S.C.S. § 505(a) was denied. In re Davidson, No. 98-42080-BJH-11, 2004 Bankr. LEXIS 319 (Bankr. N.D. Tex. Mar. 22, 2004).

CHAPTERS 2 TO 4

[Reserved for expansion]

SUBTITLE B

PROPERTY TAX ADMINISTRATION

CHAPTER 5

State Administration

Section	
5.01.	Property Tax Administration Advisory Board. [Effective January 1, 2020]
5.01.	State Property Tax Board [Repealed].
5.011.	Grounds for Removal of Board Members [Repealed].
5.02.	Board Personnel [Repealed].
5.021.	Equal Employment Opportunity Policy [Repealed].
5.022.	Restrictions on Board Membership and Employment [Repealed].
5.03.	Powers and Duties Generally.
5.04.	Training and Education of Appraisers.
5.041.	Training of Appraisal Review Board Members.
5.042.	Required Training for Chief Appraisers.
5.043.	Training of Arbitrators. [Effective January 1, 2020]
5.05.	Appraisal Manuals and Other Materials.
5.06.	Explanation of Taxpayer Remedies.
5.061.	Explanation of Information Related to Heir Property.
5.07.	Property Tax Forms and Records Systems.
5.08.	Professional and Technical Assistance.
5.09.	Biennial Reports.
5.091.	Statewide List of Tax Rates.
5.10.	Ratio Studies.
5.101.	Technical Advisory Committee [Repealed].
5.102.	Review of Appraisal Districts.
5.103.	Appraisal Review Board Oversight.
5.104.	Appraisal Review Board Survey; Report. [Effective January 1, 2020]
5.11.	Sunset Provision [Repealed].
5.12.	Performance Audit of Appraisal District.
5.13.	Administration of Performance Audits.
5.14.	Public Access, Information, and Complaints.
5.15.	Examinations [Repealed].
5.16.	Administrative Provisions.

Sec. 5.01. Property Tax Administration Advisory Board. [Effective January 1, 2020]

(a) The comptroller shall appoint the property tax administration advisory board to advise the comptroller with respect to the division or divisions within the office of the comptroller with primary responsibility for state administration of property taxation and state oversight of appraisal districts. The advisory board may make recommendations to the comptroller regarding improving the effectiveness and efficiency of the property tax system, best practices, and complaint resolution procedures.

(b) The advisory board is composed of at least six members appointed by the comptroller. The members of the board should include:

(1) representatives of property tax payers, appraisal districts, assessors, and school districts; and

(2) a person who has knowledge or experience in conducting ratio studies.

(c) The members of the advisory board serve at the pleasure of the comptroller.

(d) Any advice to the comptroller relating to a matter described by Subsection (a) that is provided by a member of the advisory board must be provided at a meeting called by the comptroller.

(e) Chapter 2110, Government Code, does not apply to the advisory board.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 6, effective January 1, 2020.

Sec. 5.01. State Property Tax Board [Repealed].

Repealed by Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 66, effective January 8, 1992.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 1, effective September 1, 1989.

Sec. 5.011. Grounds for Removal of Board Members [Repealed].

Repealed by Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 66, effective January 8, 1992.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 729 (H.B. 1585), § 13, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 2.20(45), effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 11, effective September 1, 1989.

Sec. 5.02. Board Personnel [Repealed].

Repealed by Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 66, effective January 8, 1992.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 3, effective September 1, 1989.

Sec. 5.021. Equal Employment Opportunity Policy [Repealed].

Repealed by Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 66, effective January 8, 1992.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 4, effective September 1, 1989.

Sec. 5.022. Restrictions on Board Membership and Employment [Repealed].

Repealed by Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 66, effective January 8, 1992.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 5, effective September 1, 1989.

Sec. 5.03. Powers and Duties Generally.

(a) The comptroller shall adopt rules establishing minimum standards for the administration and operation of an appraisal district. The minimum standards may vary according to the number of parcels and the kinds of property the district is responsible for appraising.

(b) The comptroller may require from each district engaged in appraising property for taxation an annual report on a form prescribed by the comptroller on the administration and operation of the appraisal office.

(c) The comptroller may contract with consultants to assist in performance of the duties imposed by this chapter.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 6, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 2, effective September 1, 1991.

Sec. 5.04. Training and Education of Appraisers.

(a) The comptroller shall enter into a memorandum of understanding with the Texas Department of Licensing and Regulation or any successor agency responsible for certifying tax professionals in this state in setting standards for and approving curricula and materials for use in training and educating appraisers and assessor-collectors, and the comptroller may contract or enter into a memorandum of understanding with other public agencies, educational institutions, or private organizations in sponsoring courses of instruction and training programs.

(b) An appraisal district shall reimburse an employee of the appraisal office for all actual and necessary expenses, tuition and other fees, and costs of materials incurred in attending, with approval of the chief appraiser, a course or training program sponsored or approved by the Texas Department of Licensing and Regulation.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 7, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 2, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 450 (H.B. 2447), § 40, effective September 1, 2009.

Sec. 5.041. Training of Appraisal Review Board Members.

(a) The comptroller shall:

(1) approve curricula and provide materials for use in training and educating members of an appraisal review board;

(2) supervise a comprehensive course for training and education of appraisal review board members and issue certificates indicating course completion;

(3) make all materials for use in training and educating members of an appraisal review board freely available online;

(4) establish and maintain a toll-free telephone number that appraisal review board members may call for answers to technical questions relating to the duties and responsibilities of appraisal review board members and property appraisal issues; and

(5) provide, as feasible, online technological assistance to improve the operations of appraisal review boards and appraisal districts.

(b) **[Effective until January 1, 2020]** A member of the appraisal review board established for an appraisal district must complete the course established under Subsection (a). A member of the appraisal review board may not participate in a hearing conducted by the board unless the person has completed the course established under Subsection (a) and received a certificate of course completion.

(b) **[Effective January 1, 2020]** A member of the appraisal review board established for an appraisal district must complete the course established under Subsection (a). The course must provide at least eight hours of classroom training and education. A member of the appraisal review board may not participate in a hearing conducted by the board unless the person has completed the course established under Subsection (a) and received a certificate of course completion.

(b-1) At the conclusion of a course established under Subsection (a), each member of an appraisal review board in attendance shall complete a statement, on a form prescribed by the comptroller, indicating that the member will comply with the requirements of this title in conducting hearings.

(c) **[Effective until January 1, 2020]** The comptroller may contract with service providers to assist with the duties imposed under Subsection (a), but the course required may not be provided by an appraisal district, the chief appraiser or another employee of an appraisal district, a member of the board of directors of an appraisal district, a member of

an appraisal review board, or a taxing unit. The comptroller may assess a fee to recover a portion of the costs incurred for the training course, but the fee may not exceed $50 per person trained.

(c) **[Effective January 1, 2020]** The comptroller may contract with service providers to assist with the duties imposed under Subsection (a), but the course required may not be provided by an appraisal district, the chief appraiser or another employee of an appraisal district, a member of the board of directors of an appraisal district, a member of an appraisal review board, or a taxing unit. The comptroller may assess a fee to recover a portion of the costs incurred for the training course, but the fee may not exceed $50 for each person trained. If the training is provided to an individual other than a member of an appraisal review board, the comptroller may assess a fee not to exceed $50 for each person trained.

(d) The course material for the course required under Subsection (a) is the comptroller's Appraisal Review Board Manual in use on the effective date of this section. The manual shall be updated regularly. It may be revised on request, in writing, to the comptroller. The revision language must be approved on the unanimous agreement of a committee selected by the comptroller and representing, equally, taxpayers and chief appraisers. The person requesting the revision shall pay the costs of mediation if the comptroller determines that mediation is required.

(e) Notwithstanding the provisions of Subsection (b), an appraisal review board member appointed after a course offering may continue to serve until the completion of the subsequent course offering.

(e-1) **[Effective until January 1, 2020]** In addition to the course established under Subsection (a), the comptroller shall approve curricula and provide materials for use in a continuing education course for members of an appraisal review board. The curricula and materials must include information regarding:

(1) the cost, income, and market data comparison methods of appraising property;

(2) the appraisal of business personal property;

(3) the determination of capitalization rates for property appraisal purposes;

(4) the duties of an appraisal review board;

(5) the requirements regarding the independence of an appraisal review board from the board of directors and the chief appraiser and other employees of the appraisal district;

(6) the prohibitions against ex parte communications applicable to appraisal review board members;

(7) the Uniform Standards of Professional Appraisal Practice;

(8) the duty of the appraisal district to substantiate the district's determination of the value of property;

(9) the requirements regarding the equal and uniform appraisal of property;

(10) the right of a property owner to protest the appraisal of the property as provided by Chapter 41; and

(11) a detailed explanation of each of the actions described by Sections 25.25, 41.41(a), 41.411, 41.412, 41.413, 41.42, and 41.43 so that members are fully aware of each of the grounds on which a property appraisal can be appealed.

(e-1) **[Effective January 1, 2020]** In addition to the course established under Subsection (a), the comptroller shall approve curricula and provide materials for use in a continuing education course for members of an appraisal review board. The course must provide at least four hours of classroom training and education. The curricula and materials must include information regarding:

(1) the cost, income, and market data comparison methods of appraising property;

(2) the appraisal of business personal property;

(3) the determination of capitalization rates for property appraisal purposes;

(4) the duties of an appraisal review board;

(5) the requirements regarding the independence of an appraisal review board from the board of directors and the chief appraiser and other employees of the appraisal district;

(6) the prohibitions against ex parte communications applicable to appraisal review board members;

(7) the Uniform Standards of Professional Appraisal Practice;

(8) the duty of the appraisal district to substantiate the district's determination of the value of property;

(9) the requirements regarding the equal and uniform appraisal of property;

(10) the right of a property owner to protest the appraisal of the property as provided by Chapter 41; and

(11) a detailed explanation of each of the actions described by Sections 25.25, 41.41(a), 41.411, 41.412, 41.413, 41.42, and 41.43 so that members are fully aware of each of the grounds on which a property appraisal can be appealed.

(e-2) During the second year of an appraisal review board member's term of office, the member must successfully complete the course established under Subsection (e-1). At the conclusion of the course, the member must complete a statement described by Subsection (b-1). A person may not participate in a hearing conducted by the board, vote on a determination of a protest, or be reappointed to an additional term on the board until the person has completed the course established under Subsection (e-1) and has received a certificate of course completion. If the person is reappointed to an additional term on the appraisal review board, the person must successfully complete the course established under Subsection (e-1) and comply with the other requirements of this subsection in each year the member continues to serve.

(e-3) **[Effective until January 1, 2020]** The comptroller may contract with service providers to assist with the duties imposed under Subsection (e-1), but the course required by that subsection may not be provided by an appraisal district, the chief appraiser or another employee of an appraisal district, a member of the board of directors of an

appraisal district, a member of an appraisal review board, or a taxing unit. The comptroller may assess a fee to recover a portion of the costs incurred for the continuing education course, but the fee may not exceed $50 for each person trained.

(e-3) **[Effective January 1, 2020]** The comptroller may contract with service providers to assist with the duties imposed under Subsection (e-1), but the course required by that subsection may not be provided by an appraisal district, the chief appraiser or another employee of an appraisal district, a member of the board of directors of an appraisal district, a member of an appraisal review board, or a taxing unit. The comptroller may assess a fee to recover a portion of the costs incurred for the continuing education course, but the fee may not exceed $50 for each person trained. If the training is provided to an individual other than a member of an appraisal review board, the comptroller may assess a fee not to exceed $50 for each person trained.

(f) The comptroller may not advise a property owner, a property owner's agent, or the chief appraiser or another employee of an appraisal district on a matter that the comptroller knows is the subject of a protest to the appraisal review board. The comptroller may provide advice to an appraisal review board member as authorized by Subsection (a)(4) of this section or Section 5.103 and may communicate with the chairman of an appraisal review board or a taxpayer liaison officer concerning a complaint filed under Section 6.052.

(g) Except during a hearing or other appraisal review board proceeding and as provided by Subsection (h) and Section 6.411(c-1), the following persons may not communicate with a member of an appraisal review board about a course provided under this section or any matter presented or discussed during the course:

(1) the chief appraiser of the appraisal district for which the appraisal review board is established;

(2) another employee of the appraisal district for which the appraisal review board is established;

(3) a member of the board of directors of the appraisal district for which the appraisal review board is established;

(4) an officer or employee of a taxing unit that participates in the appraisal district for which the appraisal review board is established; and

(5) an attorney who represents or whose law firm represents the appraisal district or a taxing unit that participates in the appraisal district for which the appraisal review board is established.

(h) An appraisal review board may retain an appraiser certified by the Texas Appraiser Licensing and Certification Board to instruct the members of the appraisal review board on valuation methodology if the appraisal district provides for the instruction in the district's budget.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 691 (S.B. 1017), § 1, effective September 1, 1997; am. Acts 2009, 81st Leg., ch. 1294 (H.B. 2317), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 2, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 2, effective January 1, 2014; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 7, effective January 1, 2020.

ATTORNEY GENERAL OPINIONS

Comptroller.

Tex. Tax Code Ann. § 5.041(f) prohibits the Comptroller from advising "a property owner, a property owner's agent, an appraisal district, or an appraisal review board on a matter that the comptroller knows is the subject of a protest to the appraisal review board." 2008 Tex. Op. Att'y Gen. GA-0589, 2008 Tex. AG LEXIS 1 (Superseded byTex. Tax Code § 1.111).

Sec. 5.042. Required Training for Chief Appraisers.

(a) Except as provided by this section, a person may not serve as a chief appraiser for an appraisal district unless the person has completed the course of training prescribed by Section 1151.164, Occupations Code.

(b) A person may serve in a temporary, provisional, or interim capacity as chief appraiser for a period of up to one year without completing the training required by this section.

(c) This section does not apply to a county assessor-collector who serves as chief appraiser under Section 6.05(c).

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1111 (H.B. 2382), § 2, effective July 1, 2006.

Sec. 5.043. Training of Arbitrators. [Effective January 1, 2020]

(a) This section applies only to persons who have agreed to serve as arbitrators under Chapter 41A.

(b) The comptroller shall:

(1) approve curricula and provide an arbitration manual and other materials for use in training and educating arbitrators;

(2) make all materials for use in training and educating arbitrators freely available online; and

(3) establish and supervise a training program on property tax law for the training and education of arbitrators.

(c) The training program must:

(1) emphasize the requirements regarding the equal and uniform appraisal of property; and

(2) be at least four hours in length.

(d) The training program may be provided online. The comptroller by rule may prescribe the manner by which the comptroller may verify that a person taking the training program online has taken and completed the program.

(e) The comptroller may contract with service providers to assist with the duties imposed under Subsection (b), but the training program may not be provided by an appraisal district, the chief appraiser or another employee of an

appraisal district, a member of the board of directors of an appraisal district, a member of an appraisal review board, or a taxing unit. The comptroller may assess a fee to recover a portion of the costs incurred for the training program, but the fee may not exceed $50 for each person trained. If the training is provided to a person other than a person who has agreed to serve as an arbitrator under Chapter 41A, the comptroller may assess a fee not to exceed $50 for each person trained.

(f) The comptroller shall prepare an arbitration manual for use in the training program. The manual shall be updated regularly and may be revised on request, in writing, to the comptroller. The revised language must be approved by the unanimous agreement of a committee selected by the comptroller and representing, equally, taxpayers and chief appraisers. The person requesting the revision must pay the costs of mediation if the comptroller determines that mediation is required.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 8, effective January 1, 2020.

Sec. 5.05. Appraisal Manuals and Other Materials.

(a) The comptroller may prepare and issue publications relating to the appraisal of property and the administration of taxes, or may approve other publications relating to those matters, including materials published by The Appraisal Foundation, the International Association of Assessing Officers, or other professionally recognized organizations, for use in the administration of property taxes, including:

(1) a general appraisal manual;

(2) special appraisal manuals as authorized by law;

(3) cost, price, and depreciation schedules as authorized by law;

(4) periodic news and reference bulletins;

(5) an annotated version of this title and Title 3; and

(6) a handbook containing selected laws and all rules promulgated by the comptroller relating to the property tax and its administration.

(b) The comptroller shall revise or supplement all materials issued by the comptroller or approve other publications periodically as necessary to keep them current.

(c) The comptroller shall electronically publish all materials under this section for administering the property tax system. The comptroller shall make the materials available to local governmental officials and members of the public but may charge a reasonable fee to offset the costs of preparing, printing, and distributing the materials.

(c-1) **[Effective January 1, 2020]** An appraisal district shall appraise property in accordance with any appraisal manuals required by law to be prepared and issued by the comptroller.

(c-2) **[Effective January 1, 2020]** Appraisal manuals required by law to be prepared and issued by the comptroller for the purpose of determining the market value of property shall be prepared based on generally accepted appraisal methods and techniques.

(d) If the appraised value of property is at issue in a lawsuit involving property taxation, a court may not admit in evidence appraisal manuals or cost, price, and depreciation schedules, or portions thereof, that are prepared and issued pursuant to this section. The manuals or schedules may only be used for the limited purpose of impeachment in the same manner and pursuant to the same evidentiary rules as applicable to books and treatises.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 8, effective January 1, 1982; am. Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 6, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 3, effective September 1, 1991; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), § 4, effective September 1, 2005; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 17.02, effective September 28, 2011; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 9, effective January 1, 2020.

Sec. 5.06. Explanation of Taxpayer Remedies.

The comptroller shall prepare and electronically publish a pamphlet explaining the remedies available to dissatisfied taxpayers and the procedures to be followed in seeking remedial action. The comptroller shall include in the pamphlet advice on preparing and presenting a protest.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 7, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 4, effective September 1, 1991; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 17.03, effective September 28, 2011.

Sec. 5.061. Explanation of Information Related to Heir Property.

The comptroller shall prepare and electronically publish a pamphlet that provides information to assist heir property owners in applying for a residence homestead exemption authorized by Chapter 11. The pamphlet must include:

(1) a list of the residence homestead exemptions authorized by Chapter 11;

(2) a description of the process for applying for an exemption as prescribed by Section 11.43;

(3) a description of the documents an owner is required by Section 11.43(o) to submit with an application to demonstrate the owner's ownership of an interest in heir property;

(4) contact information for the division of the State Bar of Texas from which a person may obtain a listing of individuals and organizations available to provide free or reduced-fee legal assistance; and

(5) a general description of the process by which an owner may record the owner's interest in heir property in the real property records of the county in which the property is located.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 663 (S.B. 1943), § 2, effective September 1, 2019.

Sec. 5.07. Property Tax Forms and Records Systems.

(a) The comptroller shall prescribe the contents of all forms necessary for the administration of the property tax system and on request shall furnish sufficient copies of model forms of each type to the appropriate local officials. The comptroller may require reimbursement for the costs of printing and distributing the forms.

(b) The comptroller shall make the contents of the forms uniform to the extent practicable but may prescribe or approve additional or substitute forms for special circumstances.

(c) The comptroller shall also prescribe a uniform record system to be used by all appraisal districts for the purpose of submitting data to be used in the studies required by Section 5.10 of this code and by Section 403.302, Government Code. The record system shall include a compilation of information concerning sales of real property within the boundaries of the appraisal district. The sales information maintained in the uniform record system shall be submitted annually in a form prescribed by the comptroller.

(d) A property tax form that requires a signature may be signed by means of an electronically captured handwritten signature.

(e) A property tax form is not invalid or unenforceable solely because the form is a photocopy, facsimile, or electronic copy of the original.

(f) **[Effective January 1, 2020]** The comptroller shall prescribe tax rate calculation forms to be used by the designated officer or employee of each:

(1) taxing unit other than a school district to calculate and submit the no-new-revenue tax rate and the voter-approval tax rate for the taxing unit as required by Chapter 26; and

(2) school district to:

(A) calculate and submit the no-new-revenue tax rate and the voter-approval tax rate for the district as required by Chapter 26; and

(B) submit the rate to maintain the same amount of state and local revenue per weighted student that the district received in the school year beginning in the preceding tax year as required by Chapter 26.

(g) **[Effective January 1, 2020]** The forms described by Subsection (f) must be in an electronic format and:

(1) have blanks that can be filled in electronically;

(2) be capable of being certified by the designated officer or employee after completion as accurately calculating the applicable tax rates and using values that are the same as the values shown in, as applicable:

(A) the taxing unit's certified appraisal roll; or

(B) the certified estimate of taxable value of property in the taxing unit prepared under Section 26.01(a-1); and

(3) be capable of being electronically incorporated into the property tax database maintained by each appraisal district under Section 26.17 and submitted electronically to the county assessor-collector of each county in which all or part of the territory of the taxing unit is located.

(h) **[Effective January 1, 2020]** For purposes of Subsections (f) and (g), the comptroller shall use the forms published on the comptroller's Internet website as of January 1, 2019, modified as necessary to comply with the requirements of this section. The comptroller shall update the forms as necessary to reflect formatting or other nonsubstantive changes.

(i) **[Effective January 1, 2020]** The comptroller may revise the forms to reflect substantive changes other than those described by Subsection (h) or on receipt of a request in writing. A revision under this subsection must be approved by the agreement of a majority of the members of a committee selected by the comptroller who are present at a committee meeting at which a quorum is present. The members of the committee must represent, equally, taxpayers, taxing units or persons designated by taxing units, and assessors. In the case of a revision for which the comptroller receives a request in writing, the person requesting the revision shall pay the costs of mediation if the comptroller determines that mediation is required.

(j) **[Effective January 1, 2020]** A meeting of the committee held under Subsection (i) is not subject to the requirements of Chapter 551, Government Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 4, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 1183 (S.B. 671), § 4, effective June 20, 2003; am. Acts 2009, 81st Leg., ch. 288 (H.B. 8), § 5, effective January 1, 2010; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 10, effective January 1, 2020.

Sec. 5.08. Professional and Technical Assistance.

(a) The comptroller may provide professional and technical assistance on request in appraising property, installing or updating tax maps, purchasing equipment, developing recordkeeping systems, or performing other appraisal activities. The comptroller may also provide professional and technical assistance on request to an appraisal review board. The comptroller may require reimbursement for the costs of providing the assistance.

(b) The comptroller may provide information to and consult with persons actively engaged in appraising property for tax purposes about any matter relating to property taxation without charge.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 9, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 4, effective September 1, 1991.

Sec. 5.09. Biennial Reports.

(a) **[Effective until January 1, 2020]** The comptroller shall prepare a biennial report of the total appraised values and taxable values of taxable property by category and the tax rates of each county, municipality, and school district in effect for the two years preceding the year in which the report is prepared.

(a) **[Effective January 1, 2020]** The comptroller shall prepare a biennial report of the total appraised values and taxable values of taxable property by category and the tax rates of each county, municipality, special district, and school district in effect for the two years preceding the year in which the report is prepared.

(a-1) **[Effective January 1, 2020]** The comptroller shall:

(1) prescribe the format by which an appraisal district or taxing unit must submit information under this section to the comptroller;

(2) collect and review in detail the information submitted that relates to each county, municipality, and school district; and

(3) collect and review the information submitted that relates to each special district.

(b) Not later than December 31 of each even-numbered year, the comptroller shall:

(1) electronically publish on the comptroller's Internet website the report required by Subsection (a); and

(2) notify the governor, the lieutenant governor, and each member of the legislature that the report is available on the website.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 10, effective January 1, 1982; am. Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 8, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 5, effective September 1, 1991; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 66, effective October 17, 1991; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 17.04, effective September 28, 2011; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 11, effective January 1, 2020.

Sec. 5.091. Statewide List of Tax Rates.

(a) **[Effective until January 1, 2020]** Each year the comptroller shall prepare a list that includes the total tax rate imposed by each taxing unit in this state, other than a school district, if the tax rate is reported to the comptroller, for the year preceding the year in which the list is prepared. The comptroller shall list the tax rates in descending order.

(a) **[Effective January 1, 2020]** Each year the comptroller shall prepare a list that includes the total tax rate imposed by each taxing unit in this state, as reported to the comptroller by each appraisal district, for the year in which the list is prepared. The comptroller shall:

(1) prescribe the manner in which and deadline by which appraisal districts are required to submit the tax rates to the comptroller; and

(2) list the tax rates alphabetically according to:

(A) the county or counties in which each taxing unit is located; and

(B) the name of each taxing unit.

(b) **[Effective until January 1, 2020]** Not later than December 31 of each year, the comptroller shall publish on the comptroller's Internet website the list required by Subsection (a).

(b) **[Effective January 1, 2020]** Not later than January 1 of the following year, the comptroller shall publish on the comptroller's Internet website the list required by Subsection (a).

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 481 (S.B. 1760), § 3, effective January 1, 2016; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 12, effective January 1, 2020.

Sec. 5.10. Ratio Studies.

(a) At least once every two years, the comptroller shall conduct a study in each appraisal district to determine the degree of uniformity of and the median level of appraisals by the appraisal district within each major category of property. The comptroller shall publish a report of the findings of the study, including in the report the median levels of appraisal for each major category of property, the coefficient of dispersion around the median level of appraisal for each major category of property, and any other standard statistical measures that the comptroller considers appropriate. In conducting the study, the comptroller shall apply appropriate standard statistical analysis techniques to data collected as part of the study of school district taxable values required by Section 403.302, Government Code.

(b) The published findings of a ratio study conducted by the comptroller shall be distributed to all members of the legislature and to all appraisal districts.

(c) In conducting a study under this section, the comptroller or the comptroller's authorized representative may enter the premises of a business, trade, or profession and inspect the property to determine the existence and market value of property used for the production of income. An inspection under this subsection must be made during normal

business hours or at a time mutually agreeable to the comptroller or the comptroller's authorized representative and the person in control of the premises.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 11, effective January 1, 1984; am. Acts 1983, 68th Leg., ch. 1001 (H.B. 2134), § 2, effective January 1, 1984; am. Acts 1985, 69th Leg., ch. 823 (S.B. 908), § 2, effective January 1, 1986; am. Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 9, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 843 (S.B. 984), § 7, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 44, effective May 30, 1995; am. Acts 2009, 81st Leg., ch. 288 (H.B. 8), § 6, effective January 1, 2010.

Sec. 5.101. Technical Advisory Committee [Repealed].

Repealed by Acts 2009, 81st Leg., ch. 288 (H.B. 8), § 11, effective January 1, 2010.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 10, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 843 (S.B. 984), § 8, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 45, effective May 30, 1995; am. Acts 2001, 77th Leg., ch. 268 (S.B. 1095), § 1, effective September 1, 2001.

Sec. 5.102. Review of Appraisal Districts.

(a) **[Effective until January 1, 2020]** At least once every two years, the comptroller shall review the governance of each appraisal district, the taxpayer assistance provided by each appraisal district, and the operating and appraisal standards, procedures, and methodology used by each appraisal district, to determine compliance with generally accepted standards, procedures, and methodology.

(a) **[Effective January 1, 2020]** At least once every two years, the comptroller shall review the governance of each appraisal district, the taxpayer assistance provided by each appraisal district, and the operating and appraisal standards, procedures, and methodology used by each appraisal district, to determine compliance with generally accepted standards, procedures, and methodology, including compliance with standards, procedures, and methodology prescribed by any appraisal manuals required by law to be prepared and issued by the comptroller. After consultation with the property tax administration advisory board, the comptroller by rule may establish procedures and standards for conducting and scoring the review.

(a-1) The comptroller may conduct a limited-scope review in place of the review required by Subsection (a) if:

(1) the appraisal district is established in a county located wholly or partly in an area declared by the governor to be a disaster area during the tax year in which the review is required;

(2) the chief appraiser of the appraisal district requests that the review conducted be a limited-scope review; and

(3) the comptroller determines that one of the following circumstances exists and was caused by the disaster:

(A) a building used by the appraisal district to conduct business is destroyed or is inaccessible or damaged to the extent that it is unusable for at least 30 days;

(B) the appraisal district's records are destroyed or are unusable for at least 30 days;

(C) the appraisal district's computer system is destroyed or is unusable for at least 30 days; or

(D) due to extraordinary circumstances, the appraisal district does not have the resources to undergo a review under this section unless the review is limited in scope.

(a-2) After consultation with the advisory committee created under Section 403.302, Government Code, the comptroller by rule may establish procedures and standards for conducting and scoring a review under this section.

(b) In conducting the review, the comptroller is entitled to access to all records and reports of the appraisal district, to copy or print any record or report of the appraisal district, and to the assistance of the appraisal district's officers and employees.

(c) **[Effective until January 1, 2020]** At the conclusion of the review, the comptroller shall, in writing, notify the appraisal district concerning its performance in the review. If the review results in a finding that an appraisal district is not in compliance with generally accepted standards, procedures, and methodology, the comptroller shall deliver a report that details the comptroller's findings and recommendations for improvement to:

(1) the appraisal district's chief appraiser and board of directors; and

(2) the superintendent and board of trustees of each school district participating in the appraisal district.

(c) **[Effective January 1, 2020]** At the conclusion of the review, the comptroller shall, in writing, notify the appraisal district concerning its performance in the review. If the review results in a finding that an appraisal district is not in compliance with generally accepted standards, procedures, and methodology, including compliance with standards, procedures, and methodology prescribed by any appraisal manuals required by law to be prepared and issued by the comptroller, the comptroller shall deliver a report that details the comptroller's findings and recommendations for improvement to:

(1) the appraisal district's chief appraiser and board of directors; and

(2) the superintendent and board of trustees of each school district participating in the appraisal district.

(d) If the appraisal district fails to comply with the recommendations in the report and the comptroller finds that the board of directors of the appraisal district failed to take remedial action reasonably designed to ensure substantial compliance with each recommendation in the report before the first anniversary of the date the report was issued, the comptroller shall notify the Texas Department of Licensing and Regulation, or a successor to the department, which shall take action necessary to ensure that the recommendations in the report are implemented as soon as practicable.

(e) Before February 1 of the year following the year in which the Texas Department of Licensing and Regulation, or its successor, takes action under Subsection (d), and with the assistance of the comptroller, the department shall determine whether the recommendations in the most recent report have been substantially implemented. The executive director of the department shall notify the chief appraiser and the board of directors of the appraisal district in writing of the department's determination.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 843 (S.B. 984), § 9, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 46, effective May 30, 1995; am. Acts 1997, 75th Leg., ch. 1040 (S.B. 862), § 65, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 1183 (S.B. 671), § 5, effective June 20, 2003; am. Acts 2009, 81st Leg., ch. 288 (H.B. 8), § 7, effective January 1, 2010; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 14.001, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 490 (H.B. 3384), § 1, effective June 7, 2019; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 13, effective January 1, 2020.

Sec. 5.103. Appraisal Review Board Oversight.

(a) The comptroller shall prepare model hearing procedures for appraisal review boards.

(b) The model hearing procedures shall address:

(1) the statutory duties of an appraisal review board;

(2) the process for conducting a hearing;

(3) the scheduling of hearings;

(4) the postponement of hearings;

(5) the notices required under this title;

(6) the determination of good cause under Section 41.44(b);

(7) the determination of good cause under Sections 41.45(e) and (e-1);

(8) a party's right to offer evidence and argument;

(9) a party's right to examine or cross-examine witnesses or other parties;

(10) a party's right to appear by an agent;

(11) the prohibition of an appraisal review board's consideration of information not provided at a hearing;

(12) ex parte and other prohibited communications;

(13) the exclusion of evidence at a hearing as required by Section 41.67(d);

(14) the postponement of a hearing as required by Section 41.66(h);

(15) conflicts of interest;

(16) the process for the administration of applications for membership on an appraisal review board; and

(17) any other matter related to fair and efficient appraisal review board hearings.

(c) The comptroller may:

(1) categorize appraisal districts based on the size of the district, the number of protests filed in the district, or similar characteristics; and

(2) develop different model hearing procedures for different categories of districts.

(d) An appraisal review board shall follow the model hearing procedures prepared by the comptroller when establishing its procedures for hearings as required by Section 41.66(a).

(e) **[Effective until January 1, 2020]** The comptroller shall prescribe the contents of a survey form for the purpose of providing the public a reasonable opportunity to offer comments and suggestions concerning the appraisal review board established for an appraisal district. The survey form must permit a person to offer comments and suggestions concerning the matters listed in Subsection (b) or any other matter related to the fairness and efficiency of the appraisal review board. The survey form, together with instructions for completing the form and submitting the form, shall be provided to each property owner at or before each hearing on a protest conducted by an appraisal review board. The appraisal office may provide clerical assistance to the comptroller for purposes of the implementation of this subsection, including assistance in providing and receiving the survey form. The comptroller, or an appraisal office providing clerical assistance to the comptroller, may provide for the provision and submission of survey forms electronically.

(e) **[Effective January 1, 2020]** [Repealed.]

(f) **[Effective until January 1, 2020]** The comptroller shall issue an annual report summarizing the survey forms submitted by property owners concerning each appraisal review board. The report may not disclose the identity of a person who submits a survey form.

(f) **[Effective January 1, 2020]** [Repealed.]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 3, effective January 1, 2014; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 91(4), effective January 1, 2020.

Sec. 5.104. Appraisal Review Board Survey; Report. [Effective January 1, 2020]

(a) The comptroller shall:

(1) prepare an appraisal review board survey that allows an individual described by Subsection (b) to submit comments and suggestions to the comptroller regarding an appraisal review board;

(2) prepare instructions for completing and submitting the survey; and

(3) implement and maintain a method that allows an individual described by Subsection (b) to electronically complete and submit the survey through a uniform resource locator (URL) address.

(b) The following individuals who attend a hearing in person or by telephone conference call on a motion filed under Section 25.25 to correct the appraisal roll or a protest under Chapter 41 may complete and submit a survey under this section:

(1) a property owner whose property is the subject of the motion or protest;

(2) the designated agent of the owner; or

(3) a designated representative of the appraisal district in which the motion or protest is filed.

(c) The survey must allow an individual to submit comments and suggestions regarding:

(1) the matters listed in Section 5.103(b); and

(2) any other matter related to the fairness and efficiency of the appraisal review board.

(d) An appraisal district must provide to each property owner or designated agent of the owner who is authorized to submit a survey under this section a notice that states that the owner or agent:

(1) is entitled to complete and submit the survey;

(2) may submit the survey to the comptroller:

(A) in person;

(B) by mail;

(C) by electronic mail; or

(D) through the uniform resource locator (URL) address described by Subsection (a)(3); and

(3) may obtain a paper copy of the survey and instructions for completing the survey at the appraisal office.

(e) The notice described by Subsection (d) must include the uniform resource locator (URL) address described by Subsection (a)(3).

(f) An appraisal district must provide the notice described by Subsection (d) to a property owner or the designated agent of the owner:

(1) at or before the first hearing on the motion or protest described by Subsection (b) by the appraisal review board established for the appraisal district or by a panel of the board; and

(2) with each order under Section 25.25 or 41.47 determining a motion or protest, as applicable, delivered by the board or a panel of the board.

(g) At or before the first hearing on the motion or protest described by Subsection (b) by the appraisal review board established for the appraisal district or by a panel of the board, the board or panel must provide verbal notice to the property owner or designated agent of the owner of the owner or agent's right to complete and submit the survey.

(h) Notwithstanding Subsections (d), (f), and (g), if an appraisal district provides the notice described by Subsection (d), or an appraisal review board provides the verbal notice required by Subsection (g), to a property owner or the designated agent of the owner at or before a hearing on a motion or protest described by Subsection (b), the appraisal district or board, as applicable, is not required to provide another notice in the same manner to the owner or agent at or before another hearing on a motion or protest held on the same day.

(i) An individual who elects to submit the survey must submit the survey to the comptroller as provided by this section. An individual may submit only one survey for each hearing.

(j) The comptroller shall allow an individual to submit a survey to the comptroller in the following manner:

(1) in person;

(2) by mail;

(3) by electronic mail; or

(4) through the uniform resource locator (URL) address described by Subsection (a)(3).

(k) An appraisal district may not require a property owner or the designated agent of the owner to complete a survey at the appraisal office.

(*l*) The comptroller shall issue an annual report that summarizes the information included in the surveys submitted during the preceding tax year. The report may not disclose the identity of an individual who submitted a survey.

(m) The comptroller may adopt rules necessary to implement this section.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 14, effective January 1, 2020.

Sec. 5.11. Sunset Provision [Repealed].

Repealed by Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 66, effective January 8, 1992.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 729 (H.B. 1585), § 13, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 2.20(45), effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 11, effective September 1, 1989.

Sec. 5.12. Performance Audit of Appraisal District.

(a) The comptroller shall audit the performance of an appraisal district if one or more of the following conditions exist according to each of two consecutive studies conducted by the comptroller under Section 5.10, regardless of whether the prescribed condition or conditions that exist are the same for each of those studies:

(1) the overall median level of appraisal for all property in the district for which the comptroller determines a median level of appraisal is less than 0.75;

(2) the coefficient of dispersion around the overall median level of appraisal of the properties used to determine the overall median level of appraisal for all property in the district for which the comptroller determines a median level of appraisal exceeds 0.30; or

(3) the difference between the median levels of appraisal for any two classes of property in the district for which the comptroller determines a median level of appraisal is more than 0.45.

(b) At the written request of the governing bodies of a majority of the taxing units participating in an appraisal district or of a majority of the taxing units entitled to vote on the appointment of appraisal district directors, the comptroller shall audit the performance of the appraisal district. The governing bodies may request a general audit of the performance of the appraisal district or may request an audit of only one or more particular duties, practices, functions, departments, or other appraisal district matters.

(c) At the written request of the owners of not less than 10 percent of the number of accounts or parcels of property in an appraisal district belonging to a single class of property, if the class constitutes at least five percent of the appraised value of taxable property within the district in the preceding year, or at the written request of the owners of property representing not less than 10 percent of the appraised value of all property in the district belonging to a single class of property, if the class constitutes at least five percent of the appraised value of taxable property in the district in the preceding year, the comptroller shall audit the performance of the appraisal district. The property owners may request a general audit of the performance of the appraisal district or may request an audit of only one or more particular duties, practices, functions, departments, or other appraisal district matters. A property owner may authorize an agent to sign a request for an audit under this subsection on the property owner's behalf. The comptroller may require a person signing a request for an audit to provide proof that the person is entitled to sign the request as a property owner or as the agent of a property owner.

(d) A request for a performance audit of an appraisal district may not be made under Subsection (b) or (c) if according to each of the two most recently published studies conducted by the comptroller under Section 5.10:

(1) the overall median level of appraisal for all property in the district for which the comptroller determines a median level of appraisal is more than 0.90 and less than 1.10;

(2) the coefficient of dispersion around the overall median level of appraisal of the properties used to determine the overall median level of appraisal for all property in the district for which the comptroller determines a median level of appraisal is less than 0.15; and

(3) the difference between the highest and lowest median levels of appraisal in the district for the classes of property for which the comptroller determines a median level of appraisal is less than 0.20.

(e) A request for a performance audit of an appraisal district may not be made under Subsection (b) or (c):

(1) during the two years immediately following the publication of the second of two consecutive studies according to which the comptroller is required to conduct an audit of the district under Subsection (a);

(2) during the year immediately following the date the results of an audit of the district conducted by the comptroller under Subsection (a) are reported to the chief appraiser of the district; or

(3) during a year in which the comptroller is conducting a review of the district under Section 5.102.

(f) For purposes of this section, "class of property" means a major kind of property for which the comptroller determines a median level of appraisal under Section 5.10 of this code.

(g) [Repealed by Acts 2009, 81st Leg., ch. 288 (H.B. 8), § 11, effective January 1, 2010.]

(h) In addition to the performance audits required by Subsections (a), (b), and (c) and the review of appraisal standards required by Section 5.102, the comptroller may audit an appraisal district to analyze the effectiveness and efficiency of the policies, management, and operations of the appraisal district. The results of the audit shall be delivered in a report that details the comptroller's findings and recommendations for improvement to the appraisal district's chief appraiser and board of directors and the governing body of each taxing unit participating in the appraisal district. The comptroller may require reimbursement by the appraisal district for some or all of the costs of the audit, not to exceed the actual costs associated with conducting the audit.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 860 (H.B. 354), § 1, effective January 1, 1990; am. Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 12, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 843 (S.B. 984), § 10, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 1183 (S.B. 671), § 6, effective June 20, 2003; am. Acts 2009, 81st Leg., ch. 288 (H.B. 8), §§ 8, 11, effective January 1, 2010.

Sec. 5.13. Administration of Performance Audits.

(a) The comptroller shall complete an audit required by Section 5.12(a) within two years after the date of the publication of the second of the two studies the results of which required the audit to be conducted. The comptroller shall complete an audit requested under Section 5.12(b) or (c) as soon as practicable after the request is made.

(b) The comptroller may not audit the financial condition of an appraisal district or a district's tax collections. If the request is for an audit limited to one or more particular matters, the comptroller's audit must be limited to those matters.

(c) The comptroller must approve the specific plan for the performance audit of an appraisal district. Before approving an audit plan, the comptroller must provide any interested person an opportunity to appear before the comptroller and to comment on the proposed plan. Not later than the 20th day before the date the comptroller considers the plan for an appraisal district performance audit, the comptroller must notify the presiding officer of the appraisal

district board of directors that the comptroller intends to consider the plan. The notice must include the time, date, and place of the meeting to consider the plan. Immediately after receiving the notice, the presiding officer shall deliver a copy of the notice to the other members of the appraisal district board of directors.

(d) **[Effective until January 1, 2020]** In conducting a general audit, the comptroller shall consider and report on:

(1) the extent to which the district complies with applicable law or generally accepted standards of appraisal or other relevant practice;

(2) the uniformity and level of appraisal of major kinds of property and the cause of any significant deviations from ideal uniformity and equality of appraisal of major kinds of property;

(3) duplication of effort and efficiency of operation;

(4) the general efficiency, quality of service, and qualification of appraisal district personnel; and

(5) except as otherwise provided by Subsection (b) of this section, any other matter included in the request for the audit.

(d) **[Effective January 1, 2020]** In conducting a general audit, the comptroller shall consider and report on:

(1) the extent to which the district complies with applicable law or generally accepted standards of appraisal or other relevant practice, including appraisal standards and practices prescribed by any appraisal manuals required by law to be prepared and issued by the comptroller;

(2) the uniformity and level of appraisal of major kinds of property and the cause of any significant deviations from ideal uniformity and equality of appraisal of major kinds of property;

(3) duplication of effort and efficiency of operation;

(4) the general efficiency, quality of service, and qualification of appraisal district personnel; and

(5) except as otherwise provided by Subsection (b), any other matter included in the request for the audit.

(e) In conducting the audit, the comptroller is entitled to have access at all times to the books, appraisal and other records, reports, vouchers, and other information, whether confidential or not, of the appraisal district. The comptroller may require the assistance of appraisal district officers or employees that does not interfere significantly with the ordinary functions of the appraisal district. The comptroller may rely on any analysis it has made previously relating to the appraisal district if the previous analysis is useful or relevant to the audit.

(f) The comptroller shall report the results of its audit in writing to the governing body of each taxing unit that participates in the appraisal district, to the chief appraiser, and to the presiding officer of the appraisal district board of directors. If the audit was requested under Section 5.12(c) of this code, the comptroller shall also provide a report to a representative of the property owners who requested the audit.

(g) If the audit is required or requested under Section 5.12(a) or (b) of this code, the appraisal district shall reimburse the comptroller for the costs incurred in conducting the audit and making its report of the audit. The costs shall be allocated among the taxing units participating in the district in the same manner as an operating expense of the district. If the audit is requested under Section 5.12(c) of this code, the property owners who requested the audit shall reimburse the comptroller for the costs incurred in conducting the audit and making its report of the audit and shall allocate the costs among those property owners in proportion to the appraised value of each property owner's property in the district or on such other basis as the property owners may agree. If the audit confirms that the median level of appraisal for a class of property exceeds 1.10 or that the median level of appraisal for a class of property varies at least 10 percent from the overall median level of appraisal for all property in the district for which the comptroller determines a median level of appraisal, within 90 days after the date a request is made by the property owners for reimbursement the appraisal district shall reimburse the property owners who requested the audit for the amount paid to the comptroller for the costs incurred in conducting the audit and making the report. Before conducting an audit under Section 5.12(c), the comptroller may require the requesting taxing units or property owners to provide the comptroller with a bond, deposit, or other financial security sufficient to cover the expected costs of conducting the audit and making the report. For purposes of this subsection, "costs" include expenses related to salaries, professional fees, travel, reproduction or other printing services, and consumable supplies that are directly attributable to conducting the audit.

(h) At any time after the request for an audit is made, the comptroller may discontinue the audit in whole or in part if requested to do so by:

(1) the governing bodies of a majority of the taxing units participating in the district, if the audit was requested by a majority of those units;

(2) the governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district directors, if the audit was requested by a majority of those units; or

(3) if the audit was requested under Section 5.12(c) of this code, by the taxpayers who requested the audit.

(i) The comptroller by rule may adopt procedures, audit standards, and forms for the administration of the performance audits.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 860 (H.B. 354), § 1, effective January 1, 1990; am. Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 12, effective September 1, 1989 (renumbered from Sec. 5.12(c)—(i); am. Acts 1991, 72nd Leg., ch. 843 (S.B. 984), § 11, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 288 (H.B. 8), § 9, effective January 1, 2010; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 15, effective January 1, 2020.

Sec. 5.14. Public Access, Information, and Complaints.

(a) The comptroller shall develop and implement policies that provide the public with a reasonable opportunity to submit information on any property tax issue under the jurisdiction of the comptroller.

(b) The comptroller shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the comptroller's programs.

(c) The comptroller shall prepare information of public interest describing the property tax functions of the office of the comptroller and the comptroller's procedures by which complaints are filed with and resolved by the comptroller. The comptroller shall make the information available to the public and appropriate state agencies.

(d) If a written complaint is filed with the comptroller that the comptroller has authority to resolve, the comptroller, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(e) The comptroller shall keep an information file about each complaint filed with the comptroller that the comptroller has authority to resolve.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 13, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 6, effective September 1, 1991.

Sec. 5.15. Examinations [Repealed].

Repealed by Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 66, effective January 8, 1992.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 13, effective September 1, 1989.

Sec. 5.16. Administrative Provisions.

(a) The comptroller may inspect the records or other materials of an appraisal office or taxing unit, including the relevant records and materials in the possession or control of a consultant, advisor, or expert hired by the appraisal office or taxing unit, for the purpose of:

(1) establishing, reviewing, or evaluating the value of or an appraisal of any property; or

(2) conducting a study, review, or audit required by Section 5.10 or 5.102 or by Section 403.302, Government Code.

(b) On request of the comptroller, the chief appraiser or administrative head of the taxing unit shall produce the materials in the form and manner prescribed by the comptroller.

HISTORY: Enacted by Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 7, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 1040 (S.B. 862), § 66, effective September 1, 1997.

CHAPTER 6

Local Administration

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Subchapter A

Appraisal Districts

Sec. 6.01. Appraisal Districts Established.

(a) An appraisal district is established in each county.

(b) The district is responsible for appraising property in the district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the district.

(c) An appraisal district is a political subdivision of the state.

HISTORY: Enacted by 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), §§ 12, 13, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 1, effective August 29, 1983.

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CIVIL PROCEDURE
Jurisdiction
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General Overview. — Taxpayers who sought attorneys fees in their suit challenging taxation of travel trailers pursuant to the Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code Ann. §§ 37.001-.011, failed to show that the taxing district had waived sovereign immunity as to their claims. They were not challenging the validity of a provision of the tax code, for which immunity was waived under Tex. Civ. Prac. & Rem. Code Ann. § 37.006; instead, they challenged the district's actions under it. Rourk v. Cameron Appraisal Dist., 443 S.W.3d 217, 2013 Tex. App. LEXIS 10348 (Tex. App. Corpus Christi Aug. 15, 2013, no pet.).

FEDERAL & STATE INTERRELATIONSHIPS
Sovereign Immunity

State Immunity. — Both the county appraisal district and review board were entitled to governmental immunity from suit, and nothing in the record revealed that they waived their immunity in any way Groves v. Cameron Appraisal Dist., No. 13-12-00149-CV, 2012 Tex. App. LEXIS 7461 (Tex. App. Corpus Christi Aug. 31, 2012).

DECLARATORY JUDGMENT ACTIONS
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Uniform Declaratory Judgment Act. — Taxpayers who sought attorneys fees in their suit challenging taxation of travel trailers pursuant to the Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code Ann. §§ 37.001-.011, failed to show that the taxing district had waived sovereign immunity as to their claims. They were not challenging the validity of a provision of the tax code, for which immunity was waived under Tex. Civ. Prac. & Rem. Code Ann. § 37.006; instead, they challenged the district's actions under it. Rourk v. Cameron Appraisal Dist., 443 S.W.3d 217, 2013 Tex. App. LEXIS 10348 (Tex. App. Corpus Christi Aug. 15, 2013, no pet.).

ENERGY & UTILITIES LAW
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General Overview. — Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. Devon Energy Prod., L.P. v. Hockley County Appraisal Dist., 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

EVIDENCE
Procedural Considerations
Burdens of Proof

General Overview. — Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. Devon Energy Prod., L.P. v. Hockley County Appraisal Dist., 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

GOVERNMENTS
Local Governments

Claims By & Against. — Trial court properly granted a plea to the jurisdiction filed by a county appraisal district in a taxpayer's action challenging a property tax appraisal because, as a political subdivision of the state under Tex. Tax Code Ann. § 6.01(c), the district was entitled to the protections of sovereign immunity. Parra Furniture & Appliance Ctr., Inc. v. Cameron Appraisal Dist., No. 13-09-00211-CV, 2010 Tex. App. LEXIS 1321 (Tex. App. Corpus Christi Feb. 25, 2010).

Appraisal district's inconsistent positions with regards to an energy company's untimely application for an open-space agricultural appraisal did not bar it from refusing to act because estoppel did not generally apply to governmental entities, and there was no showing of any exceptional circumstances that warranted otherwise. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

DUTIES & POWERS. — Unilateral contract between employer and retirees in no way bargained away the employer's ability to appraise property; the contract with the retirees did not, in any way, prohibit the employer from performing its public duties. Davidson v. McLennan County Appraisal District, No. 10-11-00061-CV, 2012 Tex. App. LEXIS 7482 (Tex. App. Waco Aug. 30, 2012), reh'g denied, No. 10-11-00061-CV, 2012 Tex. App. LEXIS 10445 (Tex. App. Waco Oct. 24, 2012), review denied, No. 12-0943, 2013 Tex. LEXIS 252 (Tex. Mar. 29, 2013).

FINANCE. — Appraisal districts were created by statute and constituted political subdivisions of the State and constituted entities independent from the cities and counties within their borders; the McLennan County Appraisal District was neither a city nor a county for purposes of the constitutional provision. Hoppenstein Props. v. McLennan County Appraisal Dist., No. 07-13-00035-CV, 2014 Tex. App. LEXIS 5413 (Tex. App. Amarillo May 20, 2014).

STATE & TERRITORIAL GOVERNMENTS

Claims By & Against. — Taxpayer failed to plead any statutory provision that operated to waive the Appraisal District's immunity; because the pleadings and jurisdictional evidence failed to demonstrate that the legislature gave consent to the types of claims the taxpayer asserted in his suit, the trial court could reasonably have concluded that it lacked subject matter jurisdiction over the taxpayer's tort claims. Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Trial court properly granted a plea to the jurisdiction filed by a county appraisal district in a taxpayer's action challenging a property tax appraisal because, as a political subdivision of the state under Tex. Tax Code Ann. § 6.01(c), the district was entitled to the protections of sovereign immunity. Parra Furniture & Appliance Ctr., Inc. v. Cameron Appraisal Dist., No. 13-09-00211-CV, 2010 Tex. App. LEXIS 1321 (Tex. App. Corpus Christi Feb. 25, 2010).

Tax Code is a classic example of a pervasive regulatory scheme evidencing a legislative intent to vest the responsible agency with exclusive jurisdiction. Jim Wells County v. El Paso Prod. Oil & Gas Co., 189 S.W.3d 861, 162 Oil & Gas Rep. 140, 2006 Tex. App. LEXIS 737 (Tex. App. Houston 1st Dist. Jan. 26, 2006, no pet.).

Taxing units could not avoid the procedures and remedies in the Tax Code by characterizing a statutory tax case as a common law fraud case; market value for ad valorem tax purposes is determined by appraisal districts and appraisal review boards. Jim Wells County v. El Paso Prod. Oil & Gas Co., 189 S.W.3d 861, 162 Oil & Gas Rep. 140, 2006 Tex. App. LEXIS 737 (Tex. App. Houston 1st Dist. Jan. 26, 2006, no pet.).

JUDICIAL REVIEW. — Both the county appraisal district and review board were entitled to governmental immunity from suit, and nothing in the record revealed that they waived their immunity in any way Groves v. Cameron Appraisal Dist., No. 13-12-00149-CV, 2012 Tex. App. LEXIS 7461 (Tex. App. Corpus Christi Aug. 31, 2012).

Taxpayer failed to plead any statutory provision that operated to waive the Appraisal District's immunity; because the pleadings and jurisdictional evidence failed to demonstrate that the legislature gave consent to the types of claims the taxpayer asserted in his suit, the trial court could reasonably have concluded that it lacked subject matter jurisdiction over the taxpayer's tort claims. Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

PERSONAL PROPERTY TAX

General Overview. — Under Tex. Tax Code Ann. § 6.01(b), the appraisal district is responsible for appraising properties for ad valorem taxes for the taxing units that impose such a tax on property in the district. State v. Heal, 884 S.W.2d 864, 1994 Tex. App. LEXIS 2592 (Tex. App. Dallas Aug. 31, 1994), writ granted No. 94-1187 (Tex. 1995), rev'd, No. 94-1187, 1995 Tex. LEXIS 145 (Tex. Nov. 2, 1995).

Court affirmed judgment dismissing the appeal of a property valuation protest for want of jurisdiction because under Tex. Tax Code Ann. §§ 6.01 and 6.03, taxpayer gave notice of appeal to the wrong entity. Ganassi v. Fort Bend Cty. Appraisal Dist., 1987 Tex. App. LEXIS 6792 (Tex. App. Houston 1st Dist. Mar. 26, 1987).

REAL PROPERTY TAX

General Overview. — Taxing units could not avoid the procedures and remedies in the Tax Code by characterizing a statutory tax case as a common law fraud case; market value for ad valorem tax purposes is determined by appraisal districts and appraisal review boards. Jim Wells County v. El Paso Prod. Oil & Gas Co., 189 S.W.3d 861, 162 Oil & Gas Rep. 140, 2006 Tex. App. LEXIS 737 (Tex. App. Houston 1st Dist. Jan. 26, 2006, no pet.).

Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. Devon Energy Prod., L.P. v. Hockley County Appraisal Dist., 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

Finding that the taxpayer's property was unequally appraised under Tex. Tax Code Ann. § 6.01 was not supported by the evidence because the court failed to use the revised appraisal. Harris County Appraisal Dist. v. Duncan, 944 S.W.2d 706, 1997 Tex. App. LEXIS 1718 (Tex. App. Houston 14th Dist. Apr. 3, 1997, writ denied).

ASSESSMENT & VALUATION

General Overview. — Appraisal districts were created by statute and constituted political subdivisions of the State and

constituted entities independent from the cities and counties within their borders; the McLennan County Appraisal District was neither a city nor a county for purposes of the constitutional provision. Hoppenstein Props. v. McLennan County Appraisal Dist., No. 07-13-00035-CV, 2014 Tex. App. LEXIS 5413 (Tex. App. Amarillo May 20, 2014).

Provisions of Tex. Tax Code Ann. §§ 6.01, 6.03, 23.01, 25.21 expressly provide the necessary authority for an appraisal review board to ensure that the mineral interests of a county are appraised based on market value, unreduced by fraud, and for local taxing units to bring a challenge, if necessary, to insist that the appraisal review board do so. Therefore, the court issued a writ of mandamus directing a district court to vacate its order denying pleas to jurisdiction and to dismiss an action brought by local taxing units alleging that certain companies owning oil properties in the county committed fraud and conspiracy with respect to the valuation of the oil properties for ad valorem tax purposes. Under Tex. Const. art. V, § 8, the district court did not have subject matter jurisdiction because the legislature had provided that the claim had to be heard before the appraisal review board. In re ExxonMobil Corp., 153 S.W.3d 605, 162 Oil & Gas Rep. 115, 2004 Tex. App. LEXIS 7811 (Tex. App. Amarillo Aug. 26, 2004, no pet.).

When a company challenged the appraisal of its spaghetti sauce plant, it was not a party to the taxing unit challenge proceedings, and as an individual taxpayer, it was not entitled to notice of the proceedings. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

ASSESSMENT METHODS & TIMING. — Unilateral contract between employer and retirees in no way bargained away the employer's ability to appraise property; the contract with the retirees did not, in any way, prohibit the employer from performing its public duties. Davidson v. McLennan County Appraisal District, No. 10-11-00061-CV, 2012 Tex. App. LEXIS 7482 (Tex. App. Waco Aug. 30, 2012), reh'g denied, No. 10-11-00061-CV, 2012 Tex. App. LEXIS 10445 (Tex. App. Waco Oct. 24, 2012), review denied, No. 12-0943, 2013 Tex. LEXIS 252 (Tex. Mar. 29, 2013).

VALUATION. — Appraisal district's inconsistent positions with regards to an energy company's untimely application for an open-space agricultural appraisal did not bar it from refusing to act because estoppel did not generally apply to governmental entities, and there was no showing of any exceptional circumstances that warranted otherwise. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

ATTORNEY GENERAL OPINIONS

Tax Appraisals.

An appraisal district and its participating taxing units are not authorized to submit an issue to the voters for an election to require a particular appraisal schedule, whether initiated by petition or otherwise. Sections 23.01, 23.23, and 25.18 of the Tax Code do not prohibit conducting appraisals every third year rather than annually. 2009 Tex. Op. Att'y Gen. GA-0740, 2009 Tex. AG LEXIS 60.

Sec. 6.02. District Boundaries.

(a) The appraisal district's boundaries are the same as the county's boundaries.

(b) This section does not preclude the board of directors of two or more adjoining appraisal districts from providing for the operation of a consolidated appraisal district by interlocal contract.

(c) to (g) [Repealed by Acts 2007, 80th Leg., ch. 648 (H.B. 1010), § 5(2), effective January 1, 2008.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), §§ 14, 167(a), effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 117 (S.B. 433), § 1, effective May 17, 1983; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), § 14, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 391 (H.B. 2885), § 13, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.05, effective May 31, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.72, effective September 1, 1997; am. Acts 2007, 80th Leg., ch. 648 (H.B. 1010), §§ 1, 5(2), effective January 1, 2008.

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ENERGY & UTILITIES LAW
Oil, Gas & Mineral Interests

General Overview. — Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. Devon Energy Prod., L.P. v. Hockley County Appraisal Dist., 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

EVIDENCE
Procedural Considerations
Burdens of Proof

General Overview. — Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. Devon Energy Prod., L.P. v. Hockley County Appraisal Dist., 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the

minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. Devon Energy Prod., L.P. v. Hockley County Appraisal Dist., 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

ATTORNEY GENERAL OPINIONS

Analysis

Jurisdiction.
Savings Clause.

Jurisdiction.
Despite the enactment of House Bill 1010 by the Eightieth Legislature, an appraisal district operating in overlapping territory by operation of Tex. Tax Code Ann. § 6.02(b) retains authority to hear and determine pending corrective motions and taxpayer protests concerning property in that territory that relate to the 2007, or prior, tax year. 2008 Tex. Op. Att'y Gen. GA-0631, 2008 Tex. AG LEXIS 45.

Savings Clause.
After the 2007 legislation that altered the legal framework for appraising property for ad valorem taxation in taxing units located in more than one county, an appraisal district is still responsible for litigation filed against it prior to January 1, 2008, and involving property that is no longer in its appraisal district; the general savings clause continues in effect relevant portions of Tex. Tax Code Ann. § 6.02, such that a taxing district has continuing authority to defend itself in the pending litigation, and a taxing unit has a continuing obligation to pay the related costs. 2008 Tex. Op. Att'y Gen. GA-0590, 2008 Tex. AG LEXIS 2.

Sec. 6.025. Overlapping Appraisal Districts; Joint Procedures [Repealed].

Repealed by Acts 2007, 80th Leg., ch. 648 (H.B. 1010), § 5(3), effective January 1, 2008.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 186 (H.B. 623), § 1, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 1357 (H.B. 670), § 1, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 250 (H.B. 1037), § 1, 2, effective January 1, 2000; am. Acts 2003, 78th Leg., ch. 455 (H.B. 703), § 1, effective January 1, 2004; am. Acts 2003, 78th Leg., ch. 1041 (H.B. 1082), § 1, effective January 1, 2004.

ATTORNEY GENERAL OPINIONS

Overlapping Districts.
With respect to property lying in overlapping appraisal districts, section 6.025(d) of the Tax Code requires the chief appraiser of each of the overlapping districts to enter in the appraisal records the lowest values, appraised and market, listed by any of the overlapping districts. 2004 Tex. Op. Att'y Gen. GA-0283.

Sec. 6.03. Board of Directors.

(a) The appraisal district is governed by a board of directors. Five directors are appointed by the taxing units that participate in the district as provided by this section. If the county assessor-collector is not appointed to the board, the county assessor-collector serves as a nonvoting director. The county assessor-collector is ineligible to serve if the board enters into a contract under Section 6.05(b) or if the commissioners court of the county enters into a contract under Section 6.24(b). To be eligible to serve on the board of directors, an individual other than a county assessor-collector serving as a nonvoting director must be a resident of the district and must have resided in the district for at least two years immediately preceding the date the individual takes office. An individual who is otherwise eligible to serve on the board is not ineligible because of membership on the governing body of a taxing unit. An employee of a taxing unit that participates in the district is not eligible to serve on the board unless the individual is also a member of the governing body or an elected official of a taxing unit that participates in the district.

(b) Members of the board of directors other than a county assessor-collector serving as a nonvoting director serve two-year terms beginning on January 1 of even-numbered years.

(c) Members of the board of directors other than a county assessor-collector serving as a nonvoting director are appointed by vote of the governing bodies of the incorporated cities and towns, the school districts, the junior college districts, and, if entitled to vote, the conservation and reclamation districts that participate in the district and of the county. A governing body may cast all its votes for one candidate or distribute them among candidates for any number of directorships. Conservation and reclamation districts are not entitled to vote unless at least one conservation and reclamation district in the district delivers to the chief appraiser a written request to nominate and vote on the board of directors by June 1 of each odd-numbered year. On receipt of a request, the chief appraiser shall certify a list by June 15 of all eligible conservation and reclamation districts that are imposing taxes and that participate in the district.

(d) The voting entitlement of a taxing unit that is entitled to vote for directors is determined by dividing the total dollar amount of property taxes imposed in the district by the taxing unit for the preceding tax year by the sum of the total dollar amount of property taxes imposed in the district for that year by each taxing unit that is entitled to vote, by multiplying the quotient by 1,000, and by rounding the product to the nearest whole number. That number is multiplied by the number of directorships to be filled. A taxing unit participating in two or more districts is entitled to vote in each district in which it participates, but only the taxes imposed in a district are used to calculate voting entitlement in that district.

(e) The chief appraiser shall calculate the number of votes to which each taxing unit other than a conservation and reclamation district is entitled and shall deliver written notice to each of those units of its voting entitlement before October 1 of each odd-numbered year. The chief appraiser shall deliver the notice:

(1) to the county judge and each commissioner of the county served by the appraisal district;

(2) to the presiding officer of the governing body of each city or town participating in the appraisal district, to the city manager of each city or town having a city manager, and to the city secretary or clerk, if there is one, of each city or town that does not have a city manager;

(3) to the presiding officer of the governing body of each school district participating in the district and to the superintendent of those school districts; and

(4) to the presiding officer of the governing body of each junior college district participating in the district and to the president, chancellor, or other chief executive officer of those junior college districts.

(f) The chief appraiser shall calculate the number of votes to which each conservation and reclamation district entitled to vote for district directors is entitled and shall deliver written notice to the presiding officer of each conservation and reclamation district of its voting entitlement and right to nominate a person to serve as a director of the district before July 1 of each odd-numbered year.

(g) Each taxing unit other than a conservation and reclamation district that is entitled to vote may nominate by resolution adopted by its governing body one candidate for each position to be filled on the board of directors. The presiding officer of the governing body of the unit shall submit the names of the unit's nominees to the chief appraiser before October 15.

(h) Each conservation and reclamation district entitled to vote may nominate by resolution adopted by its governing body one candidate for the district's board of directors. The presiding officer of the conservation and reclamation district's governing body shall submit the name of the district's nominee to the chief appraiser before July 15 of each odd-numbered year. Before August 1, the chief appraiser shall prepare a nominating ballot, listing all the nominees of conservation and reclamation districts alphabetically by surname, and shall deliver a copy of the nominating ballot to the presiding officer of the board of directors of each district. The board of directors of each district shall determine its vote by resolution and submit it to the chief appraiser before August 15. The nominee on the ballot with the most votes is the nominee of the conservation and reclamation districts in the appraisal district if the nominee received more than 10 percent of the votes entitled to be cast by all of the conservation and reclamation districts in the appraisal district, and shall be named on the ballot with the candidates nominated by the other taxing units. The chief appraiser shall resolve a tie vote by any method of chance.

(i) If no nominee of the conservation and reclamation districts receives more than 10 percent of the votes entitled to be cast under Subsection (h), the chief appraiser, before September 1, shall notify the presiding officer of the board of directors of each conservation and reclamation district of the failure to select a nominee. Each conservation and reclamation district may submit a nominee by September 15 to the chief appraiser as provided by Subsection (h). The chief appraiser shall submit a second nominating ballot by October 1 to the conservation and reclamation districts as provided by Subsection (h). The conservation and reclamation districts shall submit their votes for nomination before October 15 as provided by Subsection (h). The nominee on the second nominating ballot with the most votes is the nominee of the conservation and reclamation districts in the appraisal district and shall be named on the ballot with the candidates nominated by the other taxing units. The chief appraiser shall resolve a tie vote by any method of chance.

(j) Before October 30, the chief appraiser shall prepare a ballot, listing the candidates whose names were timely submitted under Subsections (g) and, if applicable, (h) or (i) alphabetically according to the first letter in each candidate's surname, and shall deliver a copy of the ballot to the presiding officer of the governing body of each taxing unit that is entitled to vote.

(k) The governing body of each taxing unit entitled to vote shall determine its vote by resolution and submit it to the chief appraiser before December 15. The chief appraiser shall count the votes, declare the five candidates who receive the largest cumulative vote totals elected, and submit the results before December 31 to the governing body of each taxing unit in the district and to the candidates. For purposes of determining the number of votes received by the candidates, the candidate receiving the most votes of the conservation and reclamation districts is considered to have received all of the votes cast by conservation and reclamation districts and the other candidates are considered not to have received any votes of the conservation and reclamation districts. The chief appraiser shall resolve a tie vote by any method of chance.

(*l*) If a vacancy occurs on the board of directors other than a vacancy in the position held by a county assessor-collector serving as a nonvoting director, each taxing unit that is entitled to vote by this section may nominate by resolution adopted by its governing body a candidate to fill the vacancy. The unit shall submit the name of its nominee to the chief appraiser within 45 days after notification from the board of directors of the existence of the vacancy, and the chief appraiser shall prepare and deliver to the board of directors within the next five days a list of the nominees. The board of directors shall elect by majority vote of its members one of the nominees to fill the vacancy.

(m) [Repealed by Acts 2007, 80th Leg., ch. 648 (H.B. 1010), § 5(4), effective January 1, 2008.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), §§ 15, 167(a), effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 59 (S.B. 469), § 1, effective September 1, 1987; am. Acts 1987, 70th Leg., ch. 270 (H.B. 268), § 1, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 1123 (H.B. 2301), § 2, effective January 1, 1990; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), § 15, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 371 (H.B. 864), § 1, effective

September 1, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.06, effective May 31, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.73, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1039, § 2, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 705 (H.B. 834), § 1, effective January 1, 2000; am. Acts 2003, 78th Leg., ch. 629 (H.B. 2043), effective June 20, 2003; am. Acts 2007, 80th Leg., ch. 648 (H.B. 1010), § 5(4), effective January 1, 2008; am. Acts 2013, 83rd Leg., ch. 1161 (S.B. 359), § 1, effective June 14, 2013.

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CONSTITUTIONAL LAW
Equal Protection

Scope of Protection. — Judgment that denied a municipal utility district's request to declare Tex. Tax Code Ann. § 6.03(c), (d), (f), (h), (i) unconstitutional was affirmed because a political subdivision did not have any equal protection rights; equal protection rights were vested in persons. Colony Municipal Utility Dist. v. Appraisal Dist. of Denton County, 626 S.W.2d 930, 1982 Tex. App. LEXIS 3784 (Tex. App. Fort Worth Jan. 13, 1982, writ ref'd n.r.e.).

GOVERNMENTS
Local Governments

Finance. — Appraisal districts were created by statute and constituted political subdivisions of the State and constituted entities independent from the cities and counties within their borders; the McLennan County Appraisal District was neither a city nor a county for purposes of the constitutional provision. Hoppenstein Props. v. McLennan County Appraisal Dist., No. 07-13-00035-CV, 2014 Tex. App. LEXIS 5413 (Tex. App. Amarillo May 20, 2014).

TAX LAW
State & Local Taxes
Personal Property Tax

General Overview. — Court affirmed judgment dismissing the appeal of a property valuation protest for want of jurisdiction because under Tex. Tax Code Ann. §§ 6.01 and 6.03, taxpayer gave notice of appeal to the wrong entity. Ganassi v. Fort Bend Cty. Appraisal Dist., 1987 Tex. App. LEXIS 6792 (Tex. App. Houston 1st Dist. Mar. 26, 1987).

Three-fourths of county taxing units was not authorized by Tex. Tax Code Ann. § 6.03 to change method of selecting board of director members for local tax appraisal district because state legislature provided a clear formula concerning voting entitlement. Huffman v. Arlington, 619 S.W.2d 425, 1981 Tex. App. LEXIS 3815 (Tex. Civ. App. Fort Worth June 18, 1981, writ ref'd n.r.e.).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — Appraisal districts were created by statute and constituted political subdivisions of the State and constituted entities independent from the cities and counties within their borders; the McLennan County Appraisal District was neither a city nor a county for purposes of the constitutional provision. Hoppenstein Props. v. McLennan County Appraisal Dist., No. 07-13-00035-CV, 2014 Tex. App. LEXIS 5413 (Tex. App. Amarillo May 20, 2014).

Provisions of Tex. Tax Code Ann. §§ 6.01, 6.03, 23.01, 25.21 expressly provide the necessary authority for an appraisal review board to ensure that the mineral interests of a county are appraised based on market value, unreduced by fraud, and for local taxing units to bring a challenge, if necessary, to insist that the appraisal review board do so. Therefore, the court issued a writ of mandamus directing a district court to vacate its order denying pleas to jurisdiction and to dismiss an action brought by local taxing units alleging that certain companies owning oil properties in the county committed fraud and conspiracy with respect to the valuation of the oil properties for ad valorem tax purposes. Under Tex. Const. art. V, § 8, the district court did not have subject matter jurisdiction because the legislature had provided that the claim had to be heard before the appraisal review board. In re ExxonMobil Corp., 153 S.W.3d 605, 162 Oil & Gas Rep. 115, 2004 Tex. App. LEXIS 7811 (Tex. App. Amarillo Aug. 26, 2004, no pet.).

ATTORNEY GENERAL OPINIONS

Analysis

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Anti-Nepotism Rule.

Texas Tax Code section 6.035(a) does not apply when an appraisal district board member is married to an employee of the appraisal district. The words in section 6.035(a), "is engaged in the business of appraising property for compensation for use in proceedings under this title," refer to an individual who appraises property for commercial profit. Consequently, a tax assessor-collector is eligible to serve as a nonvoting member of the appraisal district board of directors under Section 6.03(a) despite her marriage to an appraisal district employee. 2005 Tex. Op. Att'y Gen. GA-0375.

Dates are Directory.

The selection process for appointing members of the appraisal districts' boards of directors set forth in section 6.03 of the Tax Code is not governed by the Texas Election Code. The dates set forth in subsections 6.03(f) and (g) are directory and not mandatory. A taxing unit may not cast its voting entitlement for a person other than one nominated and named on the ballot. 1984 Tex. Op. Att'y Gen. JM-166.

Definition of "Employee".

An attorney who has contracted with a taxing unit to collect its delinquent taxes is not an "employee" under section 6.03(a) of the Tax Code and is not ineligible under that provision to be a director of the appraisal district which includes that taxing unit. 1989 Tex. Op. Att'y Gen. JM-1060 (Modified by LO-89-70).

Quorum.

Under the provisions of sections 6.03(a) and 6.04(a) of the Tax Code, an assessor-collector who is a nonvoting member of an appraisal district board is counted in determining the presence of a quorum. Such individual may in turn serve as chairman or secretary of the board. An appraisal district board may determine by rule whether to permit the assessor-collector to make and second motions. Attorney General Opinion DM-160 (1992) is overruled to the extent that it conflicts with this conclusion. 2002 Tex. Op. Att'y Gen. JC-0580.

Sec. 6.031. Changes in Board Membership or Selection.

(a) The board of directors of an appraisal district, by resolution adopted and delivered to each taxing unit participating in the district before August 15, may increase the number of members on the board of directors of the district to not more than 13, change the method or procedure for appointing the members, or both, unless the governing body of a taxing unit that is entitled to vote on the appointment of board members adopts a resolution opposing the change, and files it with the board of directors before September 1. If a change is rejected, the board shall notify, in writing, each taxing unit participating in the district before September 15.

(b) The taxing units participating in an appraisal district may increase the number of members on the board of directors of the district to not more than 13, change the method or procedure for appointing the members, or both, if the governing bodies of three-fourths of the taxing units that are entitled to vote on the appointment of board members adopt resolutions providing for the change. However, a change under this subsection is not valid if it reduces the voting entitlement of one or more taxing units that do not adopt a resolution proposing it to less than a majority of the voting entitlement under Section 6.03 of this code or if it reduces the voting entitlement of any taxing unit that does not adopt a resolution proposing it to less than 50 percent of its voting entitlement under Section 6.03 of this code and if that taxing unit's allocation of the budget is not reduced to the same proportional percentage amount, or if it expands the types of taxing units that are entitled to vote on appointment of board members.

(b-1) If an appraisal district increases the number of members on the board of directors of the district or changes the method or procedure for appointing the members as provided by this section, the board of directors by resolution shall provide for the junior college districts that participate in the appraisal district to collectively participate in the selection of directors in the same manner as the school district that imposes the lowest total dollar amount of property taxes in the appraisal district among all of the school districts with representation in the appraisal district. A resolution adopted under this section is not subject to rejection by a resolution opposing the change filed with the board of directors by a taxing unit under Subsection (a).

(c) An official copy of a resolution under this section must be filed with the chief appraiser of the appraisal district after June 30 and before October 1 of a year in which board members are appointed or the resolution is ineffective.

(d) Before October 5 of each year in which board members are appointed, the chief appraiser shall determine whether a sufficient number of eligible taxing units have filed valid resolutions proposing a change for the change to take effect. The chief appraiser shall notify each taxing unit participating in the district of each change that is adopted before October 10.

(e) A change in membership or selection made as provided by this section remains in effect until changed in a manner provided by this section or rescinded by resolution of a majority of the governing bodies that are entitled to vote on appointment of board members under Section 6.03 of this code.

(f) A provision of Section 6.03 of this code that is subject to change under this section but is not expressly changed by resolution of a sufficient number of eligible taxing units remains in effect.

(g) For purposes of this section, the conservation and reclamation districts in an appraisal district are considered to be entitled to vote on the appointment of appraisal district directors if:

(1) a conservation and reclamation district has filed a request to the chief appraiser to nominate and vote on directors in the current year as provided by Section 6.03(c); or

(2) conservation and reclamation districts were entitled to vote on the appointment of directors in the appraisal district in the most recent year in which directors were appointed under Section 6.03.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 16, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 59 (S.B. 469), § 2, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1123 (H.B. 2301), § 3, effective January 1, 1990; am. Acts 2013, 83rd Leg., ch. 1161 (S.B. 359), § 2, effective June 14, 2013.

Sec. 6.032. [Blank].

Sec. 6.033. Recall of Director.

(a) The governing body of a taxing unit may call for the recall of a member of the board of directors of an appraisal district appointed under Section 6.03 of this code for whom the unit cast any of its votes in the appointment of the board. The call must be in the form of a resolution, be filed with the chief appraiser of the appraisal district, and state that the unit is calling for the recall of the member. If a resolution calling for the recall of a board member is filed under this subsection, the chief appraiser, not later than the 10th day after the date of filing, shall deliver a written notice of the filing of the resolution and the date of its filing to the presiding officer of the governing body of each taxing unit entitled to vote in the appointment of board members.

(b) On or before the 30th day after the date on which a resolution calling for the recall of a member of the board is filed, the governing body of a taxing unit that cast any of its votes in the appointment of the board for that member may vote to recall the member by resolution submitted to the chief appraiser. Each taxing unit is entitled to the same number of votes in the recall as it cast for that member in the appointment of the board. The governing body of the taxing unit calling for the recall may cast its votes in favor of the recall in the same resolution in which it called for the recall.

(c) Not later than the 10th day after the last day provided by this section for voting in favor of the recall, the chief appraiser shall count the votes cast in favor of the recall. If the number of votes in favor of the recall equals or exceeds a majority of the votes cast for the member in the appointment of the board, the member is recalled and ceases to be a member of the board. The chief appraiser shall immediately notify in writing the presiding officer of the appraisal district board of directors and of the governing body of each taxing unit that voted in the recall election of the outcome of the recall election. If the presiding officer of the appraisal district board of directors is the member whose recall was voted on, the chief appraiser shall also notify the secretary of the appraisal district board of directors of the outcome of the recall election.

(d) If a vacancy occurs on the board of directors after the recall of a member of the board under this section, the taxing units that were entitled to vote in the recall election shall appoint a new board member. Each taxing unit is entitled to the same number of votes as it originally cast to appoint the recalled board member. Each taxing unit entitled to vote may nominate one candidate by resolution adopted by its governing body. The presiding officer of the governing body of the unit shall submit the name of the unit's nominee to the chief appraiser on or before the 30th day after the date it receives notification from the chief appraiser of the result of the recall election. On or before the 15th day after the last day provided for a nomination to be submitted, the chief appraiser shall prepare a ballot, listing the candidates nominated alphabetically according to each candidate's surname, and shall deliver a copy of the ballot to the presiding officer of the governing body of each taxing unit that is entitled to vote. On or before the 15th day after the date on which a taxing unit's ballot is delivered, the governing body of the taxing unit shall determine its vote by resolution and submit it to the chief appraiser. On or before the 15th day after the last day on which a taxing unit may vote, the chief appraiser shall count the votes, declare the candidate who received the largest vote total appointed, and submit the results to the presiding officer of the governing body of the appraisal district and of each taxing unit in the district and to the candidates. The chief appraiser shall resolve a tie vote by any method of chance.

(e) If the board of directors of an appraisal district is appointed by a method or procedure adopted under Section 6.031 of this code, the governing bodies of the taxing units that voted for or otherwise participated in the appointment of a member of the board may recall that member and appoint a new member to the vacancy by any method adopted by resolution of a majority of those governing bodies. If the appointment was by election, the method of recall and of appointing a new member to the vacancy is not valid unless it provides that each taxing unit is entitled to the same number of votes in the recall and in the appointment to fill the vacancy as it originally cast for the member being recalled.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 273 (H.B. 1202), § 1, effective August 26, 1985; am. Acts 1987, 70th Leg., ch. 59 (S.B. 469), § 5, effective September 1, 1987 (renumbered from Sec. 6.032).

Sec. 6.034. Optional Staggered Terms for Board of Directors.

(a) The taxing units participating in an appraisal district may provide that the terms of the appointed members of the board of directors be staggered if the governing bodies of at least three-fourths of the taxing units that are entitled to vote on the appointment of board members adopt resolutions providing for the staggered terms. A change to staggered terms may be adopted only if the method or procedure for appointing board members is changed under Section 6.031 of this code to eliminate or have the effect of eliminating cumulative voting for board members as provided by Section 6.03 of this code. A change to staggered terms may be proposed concurrently with a change that eliminates or has the effect of eliminating cumulative voting.

(b) An official copy of a resolution providing for staggered terms adopted by the governing body of a taxing unit must be filed with the chief appraiser of the appraisal district after June 30 and before October 1 of a year in which board members are to be appointed, or the resolution is ineffective.

(c) Before October 5 of each year in which board members are to be appointed, the chief appraiser shall determine whether a sufficient number of taxing units have filed valid resolutions proposing a change to staggered terms for the change to take effect. Before October 10 the chief appraiser shall notify each taxing unit participating in the district of a change that is adopted under this section.

(d) A change to staggered terms made under this section becomes effective beginning on January 1 of the next even-numbered year after the chief appraiser determines that the change has been adopted. The entire board of directors shall be appointed for that year without regard to the staggered terms. At the earliest practical date after January 1 of that year, the board shall determine by lot which of its members shall serve one-year terms and which shall serve two-year terms in order to implement the staggered terms. If the board consists of an even number of board members, one-half of the members must be designated to serve one-year terms and one-half shall be designated to serve two-year terms. If the board consists of an odd number of board members, the number of members designated to serve two-year terms must exceed by one the number of members designated to serve one-year terms.

(e) After the staggered terms have been implemented as provided by Subsection (d) of this section, the appraisal district shall appoint annually for terms to begin on January 1 of each year a number of board members equal to the number of board members whose terms expire on that January 1, unless a change in the total number of board members is adopted under Section 6.031 of this code to take effect on that January 1.

(f) If a change in the number of directors is adopted under Section 6.031 of this code in an appraisal district that has adopted staggered terms for board members, the change must specify how many members' terms are to begin in

even-numbered years and how many members' terms are to begin in odd-numbered years. The change may not provide that the number of members whose terms are to begin in even-numbered years differs by more than one from the number of members whose terms are to begin in odd-numbered years.

(g) A change to staggered terms made as provided by this section may be rescinded by resolution of a majority of the governing bodies that are entitled to vote on appointment of board members under Section 6.03 of this code. To be effective, a resolution providing for the rescission must be adopted by the governing body and filed with the chief appraiser after June 30 and before October 1 of an odd-numbered year. If the required number of resolutions are filed during that period, the chief appraiser shall notify each taxing unit participating in the district that the rescission is adopted. If the rescission is adopted, the terms of all members of the board serving at the time of the adoption expire on January 1 of the even-numbered year following the adoption, including terms of members who will have served only one year of a two-year term on that date. The entire board of directors shall be appointed for two-year terms beginning on that date.

(h) If an appraisal district that has adopted staggered terms adopts or rescinds a change in the method or procedure for appointing board members and the change or rescission results in a method of appointing board members by cumulative voting, the change or rescission has the same effect as a rescission of the change to staggered terms made under Subsection (g) of this section.

(i) If a vacancy occurs on the board of directors of an appraisal district that has adopted staggered terms for board members, the vacancy shall be filled by appointment by resolution of the governing body of the taxing unit that nominated the person whose departure from the board caused the vacancy, and the procedure for filling a vacancy provided by Section 6.03 of this code does not apply in that event.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 601 (S.B. 79), § 1, effective June 14, 1985; am. Acts 1987, 70th Leg., ch. 59 (S.B. 469), § 4, effective September 1, 1987; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 5.01(a)(51), effective September 1, 1987 (renumbered from Sec. 6.032); am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 3, effective January 1, 1998.

Sec. 6.035. Restrictions on Eligibility and Conduct of Board Members and Chief Appraisers and Their Relatives.

(a) An individual is ineligible to serve on an appraisal district board of directors and is disqualified from employment as chief appraiser if the individual:

(1) is related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district; or

(2) owns property on which delinquent taxes have been owed to a taxing unit for more than 60 days after the date the individual knew or should have known of the delinquency unless:

(A) the delinquent taxes and any penalties and interest are being paid under an installment payment agreement under Section 33.02; or

(B) a suit to collect the delinquent taxes is deferred or abated under Section 33.06 or 33.065.

(a-1) **[Effective until January 1, 2020]** An individual is ineligible to serve on an appraisal district board of directors if the individual has engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district at any time during the preceding five years.

(a-1) **[Effective January 1, 2020]** An individual is ineligible to serve on an appraisal district board of directors if the individual has engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district at any time during the preceding three years.

(b) A member of an appraisal district board of directors or a chief appraiser commits an offense if the board member continues to hold office or the chief appraiser remains employed knowing that an individual related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to the board member or chief appraiser is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district in which the member serves or the chief appraiser is employed. An offense under this subsection is a Class B misdemeanor.

(c) A chief appraiser commits an offense if the chief appraiser refers a person, whether gratuitously or for compensation, to another person for the purpose of obtaining an appraisal of property, whether or not the appraisal is for ad valorem tax purposes. An offense under this subsection is a Class B misdemeanor.

(d) An appraisal performed by a chief appraiser in a private capacity or by an individual related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to the chief appraiser may not be used as evidence in a protest or challenge under Chapter 41 or an appeal under Chapter 42 concerning property that is taxable in the appraisal district in which the chief appraiser is employed.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 4, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 561 (H.B. 1345), § 43, effective August 26, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(27), effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 1, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 4, effective June 14, 2013; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 16, effective January 1, 2020.

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Analysis

Anti-Nepotism Rule.
Qualifications.

Anti-Nepotism Rule.

Texas Tax Code section 6.035(a) does not apply when an appraisal district board member is married to an employee of the appraisal district. The words in section 6.035(a), "is engaged in the business of appraising property for compensation for use in proceedings under this title," refer to an individual who appraises property for commercial profit. Consequently, a tax assessor-collector is eligible to serve as a nonvoting member of the appraisal district board of directors under 6.03(a) despite her marriage to an appraisal district employee. 2005 Tex. Op. Att'y Gen. GA-0375.

Qualifications.

Tex. Tax Code Ann. § 6.035(a) disqualifies from employment as a chief appraiser an individual who is related within the second degree by consanguinity "to an individual who is engaged in the business of appraising property for compensation for use in proceedings under [title 1, Tax Code] or of representing property owners for compensation in proceedings under [title 1, Tax Code] in the appraisal district;" whether a chief appraiser's son is, in particular circumstances, "engaged in the business of appraising property for compensation for use in proceedings under [title 1, Tax Code] or of representing property owners for compensation in proceedings under [title 1, Tax Code] in the appraisal district" is a question of fact. 2008 Tex. Op. Att'y Gen. GA-0627, 2008 Tex. AG LEXIS 39.

Sec. 6.036. Interest in Certain Contracts Prohibited.

(a) An individual is not eligible to be appointed to or to serve on the board of directors of an appraisal district if the individual or a business entity in which the individual has a substantial interest is a party to a contract with:

(1) the appraisal district; or

(2) a taxing unit that participates in the appraisal district, if the contract relates to the performance of an activity governed by this title.

(b) An appraisal district may not enter into a contract with a member of the board of directors of the appraisal district or with a business entity in which a member of the board has a substantial interest.

(c) A taxing unit may not enter into a contract relating to the performance of an activity governed by this title with a member of the board of directors of an appraisal district in which the taxing unit participates or with a business entity in which a member of the board has a substantial interest.

(d) For purposes of this section, an individual has a substantial interest in a business entity if:

(1) the combined ownership of the individual and the individual's spouse is at least 10 percent of the voting stock or shares of the business entity; or

(2) the individual or the individual's spouse is a partner, limited partner, or officer of the business entity.

(e) In this section, "business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law.

(f) This section does not limit the application of any other law, including the common law relating to conflicts of interest, to an appraisal district director.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 5, effective September 1, 1989.

Sec. 6.037. Participation of Conservation and Reclamation Districts in Appraisal District Matters.

In this title, a reference to the taxing units entitled to vote on the appointment of appraisal district board members includes the conservation and reclamation districts participating in the appraisal district, without regard to whether the conservation and reclamation districts are currently entitled to do so under Section 6.03(c). In a provision of this title other than Section 6.03 or 6.031 that grants authority to a majority or other number of the taxing units entitled to vote on the appointment of appraisal district directors, including the disapproval of the appraisal district budget under Section 6.06 and the disapproval of appraisal district board actions under Section 6.10, the conservation and reclamation districts participating in the appraisal district are given the vote or authority of one taxing unit. That vote or authority is considered exercised only if a majority of the conservation and reclamation districts take the same action to exercise that vote or authority. Otherwise, the conservation and reclamation districts are treated in the same manner as a single taxing unit that is entitled to act but does not take any action on the matter.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1123 (H.B. 2301), § 4, effective January 1, 1990; am. Acts 1990, 71st Leg., 6th C.S., ch. 12 (S.B. 51), § 2(28), effective September 6, 1990 (renumbered from Sec. 6.035).

Sec. 6.04. Organization, Meetings, and Compensation.

(a) A majority of the appraisal district board of directors constitutes a quorum. At its first meeting each calendar year, the board shall elect from its members a chairman and a secretary.

(b) The board may meet at any time at the call of the chairman or as provided by board rule, but may not meet less often than once each calendar quarter.

(c) Members of the board may not receive compensation for service on the board but are entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties as provided by the budget adopted by the board.

(d) The board shall develop and implement policies that provide the public with reasonable opportunity to appear before the board to speak on any issue under the jurisdiction of the board. Reasonable time shall be provided during each board meeting for public comment on appraisal district and appraisal review board policies and procedures, and a report from the taxpayer liaison officer if one is required by Section 6.052.

(e) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board.

(f) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and the appropriate taxing jurisdictions.

(g) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1983, 68th Leg., ch. 262 (H.B. 532), § 1, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 796 (H.B. 1464), § 6, effective September 1, 1989.

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Quorum.

Under the provisions of sections 6.03(a) and 6.04(a) of the Tax Code, an assessor-collector who is a nonvoting member of an appraisal district board is counted in determining the presence of a quorum. Such individual may in turn serve as chairman or secretary of the board. An appraisal district board may determine by rule whether to permit the assessor-collector to make and second motions. Attorney General Opinion DM-160 (1992) is overruled to the extent that it conflicts with this conclusion. 2002 Tex. Op. Att'y Gen. JC-0580.

Sec. 6.05. Appraisal Office.

(a) Except as authorized by Subsection (b) of this section, each appraisal district shall establish an appraisal office. The appraisal office must be located in the county for which the district is established. An appraisal district may establish branch appraisal offices outside the county for which the district is established.

(b) The board of directors of an appraisal district may contract with an appraisal office in another district or with a taxing unit in the district to perform the duties of the appraisal office for the district.

(c) The chief appraiser is the chief administrator of the appraisal office. Except as provided by Section 6.0501, the chief appraiser is appointed by and serves at the pleasure of the appraisal district board of directors. If a taxing unit performs the duties of the appraisal office pursuant to a contract, the assessor for the unit is the chief appraiser. To be eligible to be appointed or serve as a chief appraiser, a person must be certified as a registered professional appraiser under Section 1151.160, Occupations Code, possess an MAI professional designation from the Appraisal Institute, or possess an Assessment Administration Specialist (AAS), Certified Assessment Evaluator (CAE), or Residential Evaluation Specialist (RES) professional designation from the International Association of Assessing Officers. A person who is eligible to be appointed or serve as a chief appraiser by having a professional designation described by this subsection must become certified as a registered professional appraiser under Section 1151.160, Occupations Code, not later than the fifth anniversary of the date the person is appointed or begins to serve as chief appraiser. A chief appraiser who is not eligible to be appointed or serve as chief appraiser may not perform an action authorized or required by law to be performed by a chief appraiser, including the preparation, certification, or submission of any part of the appraisal roll. Not later than January 1 of each year, a chief appraiser shall notify the comptroller in writing that the chief appraiser is either eligible to be appointed or serve as the chief appraiser or not eligible to be appointed or serve as the chief appraiser.

(d) Except as provided by Section 6.0501, the chief appraiser is entitled to compensation as provided by the budget adopted by the board of directors. The chief appraiser's compensation may not be directly or indirectly linked to an increase in the total market, appraised, or taxable value of property in the appraisal district. Except as provided by Section 6.0501, the chief appraiser may employ and compensate professional, clerical, and other personnel as provided by the budget, with the exception of a general counsel to the appraisal district.

(e) The chief appraiser may delegate authority to his employees.

(f) The chief appraiser may not employ any individual related to a member of the board of directors within the second degree by affinity or within the third degree by consanguinity, as determined under Chapter 573, Government Code. A person commits an offense if the person intentionally or knowingly violates this subsection. An offense under this subsection is a misdemeanor punishable by a fine of not less than $100 or more than $1,000.

(g) The chief appraiser is an officer of the appraisal district for purposes of the nepotism law, Chapter 573, Government Code. An appraisal district may not employ or contract with an individual or the spouse of an individual who is related to the chief appraiser within the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code.

(h) The board of directors of an appraisal district by resolution may prescribe that specified actions of the chief appraiser relating to the finances or administration of the appraisal district are subject to the approval of the board.

(i) To ensure adherence with generally accepted appraisal practices, the board of directors of an appraisal district shall develop biennially a written plan for the periodic reappraisal of all property within the boundaries of the district

according to the requirements of Section 25.18 and shall hold a public hearing to consider the proposed plan. Not later than the 10th day before the date of the hearing, the secretary of the board shall deliver to the presiding officer of the governing body of each taxing unit participating in the district a written notice of the date, time, and place for the hearing. Not later than September 15 of each even-numbered year, the board shall complete its hearings, make any amendments, and by resolution finally approve the plan. Copies of the approved plan shall be distributed to the presiding officer of the governing body of each taxing unit participating in the district and to the comptroller within 60 days of the approval date.

(j) The board of directors of an appraisal district may employ a general counsel to the district to serve at the will of the board. The general counsel shall provide counsel directly to the board and perform other duties and responsibilities as determined by the board. The general counsel is entitled to compensation as provided by the budget adopted by the board.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1987, 70th Leg., ch. 55 (S.B. 312), § 1, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 384 (S.B. 531), § 15, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 7, effective September 1, 1989; am. Acts 1990, 71st Leg., 6th C.S., ch. 12 (S.B. 51), § 2(29), effective September 6, 1990; am. Acts 1991, 72nd Leg., ch. 561 (H.B. 1345), § 44, effective August 26, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(25), (27), effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), § 5, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 205 (H.B. 35), § 1, effective May 25, 2007; am. Acts 2011, 82nd Leg., ch. 528 (H.B. 2387), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 5, effective January 1, 2014.

NOTES TO DECISIONS

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•Local Governments
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GOVERNMENTS
Local Governments

Employees & Officials. — The chief appraiser is the chief administrator of the appraisal office pursuant to Tex. Tax Code Ann. § 6.05(c); because he is an official of a governmental unit, he does not fall within the definition of governmental unit. Dallas v. Hamilton, No. 05-99-01401-CV, 2000 Tex. App. LEXIS 5069 (Tex. App. Dallas July 31, 2000).

TAX LAW
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Judicial Review. — Because a county appraisal district's chief appraiser could delegate authority to appraisal district employees to appear at protest hearings and present a valuation opinion, by stating the same opinion regarding the value of the property, a taxpayer's agent and the district's representative had reached an agreement pursuant to Tex. Tax Code Ann. § 1.111(e), thereby precluding the taxpayer from seeking judicial review of a subsequent order of the county's appraisal review board. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Agreement between a property owner's agent and an appraisal district representative-as opposed to the chief appraiser-qualifies as a Tex. Tax Code Ann. § 1.111(e) agreement that precludes a suit for judicial review, and this issue may permissibly be determined via a plea to the jurisdiction. Section 1.111(e) does not require that a chief appraiser delegate to the representative of the appraisal district in each case the specific authority to enter into an agreement with the property owner before a court may determine that a § 1.111(e) agreement has been reached, and § 1.111(e) also does not require the parties to act on an agreement or announce the agreement to the court. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Taxpayers' claims were barred because they, through their agent, reached a final and enforceable agreement with a representative of the Harris County Appraisal District (HCAD), Tex. Tax Code Ann. §§ 6.05(e), 41.45(c), as to the value of the subject property, Tex. Tax Code Ann. § /Aa1.111(e), which was not subject to protest or judicial review; the taxpayers' due process rights were not violated because they were given an opportunity to be heard through the Appraisal Review Board of Harris County and they reached an agreement with HCAD during their protest review. Kelly v. Harris County Appraisal Dist., No. 01-09-00996-CV, 2011 Tex. App. LEXIS 966 (Tex. App. Houston 1st Dist. Feb. 10, 2011).

SETTLEMENTS. — Because a county appraisal district's chief appraiser could delegate authority to appraisal district employees to appear at protest hearings and present a valuation opinion, by stating the same opinion regarding the value of the property, a taxpayer's agent and the district's representative had reached an agreement pursuant to Tex. Tax Code Ann. § 1.111(e), thereby precluding the taxpayer from seeking judicial review of a subsequent order of the county's appraisal review board. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Agreement between a property owner's agent and an appraisal district representative-as opposed to the chief appraiser-qualifies as a Tex. Tax Code Ann. § 1.111(e) agreement that precludes a suit for judicial review, and this issue may permissibly be determined via a plea to the jurisdiction. Section 1.111(e) does not require that a chief appraiser delegate to the representative of the appraisal district in each case the specific authority to enter into an agreement with the property owner before a court may determine that a § 1.111(e) agreement has been reached, and § 1.111(e) also does not require the parties to act on an agreement or announce the agreement to the court. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

TAXPAYER PROTESTS. — Taxpayers' claims were barred because they, through their agent, reached a final and enforceable agreement with a representative of the Harris County Appraisal District (HCAD), Tex. Tax Code Ann. §§ 6.05(e), 41.45(c), as to the value of the subject property, Tex. Tax Code Ann. § /Aa1.111(e), which was not subject to protest or judicial review; the taxpayers' due process rights were not violated because they were given an opportunity to be heard through the Appraisal Review Board of Harris County and they reached an agreement with HCAD during their protest review. Kelly v. Harris County Ap-

praisal Dist., No. 01-09-00996-CV, 2011 Tex. App. LEXIS 966 (Tex. App. Houston 1st Dist. Feb. 10, 2011).

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Anti-Nepotism.
Appraisal District Office.
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Anti-Nepotism.

Section 6.05(f) of the Tax Code provides that a chief appraiser of an appraisal district "may not employ any individual related to a member of the board of directors within the second degree by affinity or within the third degree by consanguinity." The exception for continuous employment in the general nepotism statute, Government Code chapter 573, does not apply to an employment relationship prohibited by section 6.05(f). 2004 Tex. Op. Att'y Gen. GA-0187.

Appraisal District Office.

Under Tax Code section 6.05, an appraisal district's office must be located within the county for which the district is established, unless (1) the office is a branch office or (2) the appraisal district has entered an interlocal contract with an appraisal office in another district to perform appraisal duties for the district. In the absence of either of these two exceptions, the Waller County Appraisal District's primary office must be located in Waller County. Until the primary office is located in Waller County, the Appraisal District will not comply with section 6.05. 2008 Tex. Op. Att'y Gen. GA-0681.

Continuous-Employment Exception.

The continuous-employment exception to the general anti-nepotism statute, found in Government Code chapter 573, does not apply to section 6.05(f) of the Tax Code. Consequently, upon an appraisal district employee's marriage to the tax assessor-collector, the appraisal district cannot continue to employ him. The employee may retain his employment either until the end of his contract with the appraisal district, or if the employee is employed at-will, he may retain his employment until the end of the pay period during which his marriage occurs. 2005 Tex. Op. Att'y Gen. GA-0375.

Employment Qualifications.

Tex. Tax Code Ann. § 6.05(g) prohibits an appraisal district from employing or contracting with "an individual . . . who is related to the chief appraiser within the first degree by consanguinity;" an individual for purposes of Tex. Tax Code Ann. § 6.05(g) is a natural person; this section does not prohibit a contract with an appraisal company that employs the chief appraiser's son. 2008 Tex. Op. Att'y Gen. GA-0627, 2008 Tex. AG LEXIS 39.

Lease of Office Space.

Section 6.05 of the Tax Code permits the board of directors of an appraisal district to contract with another appraisal district or another taxing unit in its county to perform appraisal functions, as defined in the Tax Code; it does not confer authority on an appraisal district to lease office space from another taxing unit. Contracts properly entered into by the board of directors of an appraisal district pursuant to section 6.05 of the Tax Code need not be approved by the governing bodies of three-fourths of the taxing units that comprise the appraisal district. 1990 Tex. Op. Att'y Gen. JM-1197.

Sec. 6.0501. Appointment of Eligible Chief Appraiser by Comptroller.

(a) The comptroller shall appoint a person eligible to be a chief appraiser under Section 6.05(c) or a person who has previously been appointed or served as a chief appraiser to perform the duties of chief appraiser for an appraisal district whose chief appraiser is ineligible to serve.

(b) A chief appraiser appointed under this section serves until the earlier of:

(1) the first anniversary of the date the comptroller appoints the chief appraiser; or

(2) the date the board of directors of the appraisal district:

(A) appoints a chief appraiser under Section 6.05(c); or

(B) contracts with an appraisal district or a taxing unit to perform the duties of the appraisal office for the district under Section 6.05(b).

(c) The comptroller shall determine the compensation of a chief appraiser appointed under this section. A chief appraiser appointed under this section shall determine the budget necessary for the adequate operation of the appraisal office, subject to the approval of the comptroller. The board of directors of the appraisal district shall amend the budget as necessary to compensate the appointed chief appraiser and fund the appraisal office as determined under this subsection.

(d) An appraisal district that does not appoint a chief appraiser or contract with an appraisal district or a taxing unit to perform the duties of the appraisal office by the first anniversary of the date the comptroller appoints a chief appraiser shall contract with an appraisal district or a taxing unit to perform the duties of the appraisal office or with a qualified public or private entity to perform the duties of the chief appraiser, subject to the approval of the comptroller.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 6, effective January 1, 2014.

Sec. 6.051. Ownership or Lease of Real Property.

(a) The board of directors of an appraisal district may purchase or lease real property and may construct improvements as necessary to establish and operate the appraisal office or a branch appraisal office.

(b) The acquisition or conveyance of real property or the construction or renovation of a building or other improvement by an appraisal district must be approved by the governing bodies of three-fourths of the taxing units entitled to vote on the appointment of board members. The board of directors by resolution may propose a property transaction or other action for which this subsection requires approval of the taxing units. The chief appraiser shall notify the presiding officer of each governing body entitled to vote on the approval of the proposal by delivering a copy

of the board's resolution, together with information showing the costs of other available alternatives to the proposal. On or before the 30th day after the date the presiding officer receives notice of the proposal, the governing body of a taxing unit by resolution may approve or disapprove the proposal. If a governing body fails to act on or before that 30th day or fails to file its resolution with the chief appraiser on or before the 10th day after that 30th day, the proposal is treated as if it were disapproved by the governing body.

(c) The board of directors may convey real property owned by the district, and the proceeds shall be credited to each taxing unit that participates in the district in proportion to the unit's allocation of the appraisal district budget in the year in which the transaction occurs. A conveyance must be approved as provided by Subsection (b) of this section, and any proceeds shall be apportioned by an amendment to the annual budget made as provided by Subsection (c) of Section 6.06 of this code.

(d) An acquisition of real property by an appraisal district before January 1, 1988, may be validated before March 1, 1988, in the manner provided by Subsection (b) of this section for the acquisition of real property.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 55 (S.B. 312), § 2, effective January 1, 1988.

Sec. 6.052. Taxpayer Liaison Officer.

(a) The board of directors for an appraisal district created for a county with a population of more than 120,000 shall appoint a taxpayer liaison officer who shall serve at the pleasure of the board. The taxpayer liaison officer shall administer the public access functions required by Sections 6.04(d), (e), and (f), and is responsible for resolving disputes not involving matters that may be protested under Section 41.41. In addition, the taxpayer liaison officer is responsible for receiving, and compiling a list of, comments and suggestions filed by the chief appraiser, a property owner, or a property owner's agent concerning the matters listed in Section 5.103(b) or any other matter related to the fairness and efficiency of the appraisal review board established for the appraisal district. The taxpayer liaison officer shall forward to the comptroller comments and suggestions filed under this subsection in the form and manner prescribed by the comptroller.

(b) The taxpayer liaison officer shall provide to the public information and materials designed to assist property owners in understanding the appraisal process, protest procedures, the procedure for filing comments and suggestions under Subsection (a) of this section or a complaint under Section 6.04(g), and other matters. Information concerning the process for submitting comments and suggestions to the comptroller concerning an appraisal review board shall be provided at each protest hearing.

(c) The taxpayer liaison officer shall report to the board at each meeting on the status of all comments and suggestions filed with the officer under Subsection (a) of this section and all complaints filed with the board under Section 6.04(g).

(d) The taxpayer liaison officer is entitled to compensation as provided by the budget adopted by the board of directors.

(e) The chief appraiser or any other person who performs appraisal or legal services for the appraisal district for compensation is not eligible to be the taxpayer liaison officer.

(f) The taxpayer liaison officer for an appraisal district described by Section 6.41(d-1) is responsible for providing clerical assistance to the local administrative district judge in the selection of appraisal review board members. The officer shall deliver to the local administrative district judge any applications to serve on the board that are submitted to the officer and shall perform other duties as requested by the local administrative district judge. The officer may not influence the process for selecting appraisal review board members.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 8, effective January 1, 1990; am. Acts 1991, 72nd Leg., ch. 371 (H.B. 864), § 2, effective September 1, 1991; am. Acts 2007, 80th Leg., ch. 1086 (H.B. 3038), § 1, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 7, effective January 1, 2014.

Sec. 6.053. Assistance to Emergency Management Authorities.

The chief appraiser shall, if requested by the emergency management authorities of a federal, state, or local government agency, provide information and assistance pertinent to disaster mitigation or recovery, including assisting in the estimation of damage from an actual or potential disaster event.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 844 (S.B. 2148), § 1, effective June 19, 2009.

Sec. 6.054. Restriction on Employment by Appraisal District. [Effective January 1, 2020]

An individual may not be employed by an appraisal district if the individual is:

(1) an officer of a taxing unit that participates in the appraisal district; or

(2) an employee of a taxing unit that participates in the appraisal district.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 17, effective January 1, 2020.

Sec. 6.06. Appraisal District Budget and Financing.

(a) Each year the chief appraiser shall prepare a proposed budget for the operations of the district for the following tax year and shall submit copies to each taxing unit participating in the district and to the district board of directors

before June 15. He shall include in the budget a list showing each proposed position, the proposed salary for the position, all benefits proposed for the position, each proposed capital expenditure, and an estimate of the amount of the budget that will be allocated to each taxing unit. Each taxing unit entitled to vote on the appointment of board members shall maintain a copy of the proposed budget for public inspection at its principal administrative office.

(b) The board of directors shall hold a public hearing to consider the budget. The secretary of the board shall deliver to the presiding officer of the governing body of each taxing unit participating in the district not later than the 10th day before the date of the hearing a written notice of the date, time, and place fixed for the hearing. The board shall complete its hearings, make any amendments to the proposed budget it desires, and finally approve a budget before September 15. If governing bodies of a majority of the taxing units entitled to vote on the appointment of board members adopt resolutions disapproving a budget and file them with the secretary of the board within 30 days after its adoption, the budget does not take effect, and the board shall adopt a new budget within 30 days of the disapproval.

(c) The board may amend the approved budget at any time, but the secretary of the board must deliver a written copy of a proposed amendment to the presiding officer of the governing body of each taxing unit participating in the district not later than the 30th day before the date the board acts on it.

(d) Each taxing unit participating in the district is allocated a portion of the amount of the budget equal to the proportion that the total dollar amount of property taxes imposed in the district by the unit for the tax year in which the budget proposal is prepared bears to the sum of the total dollar amount of property taxes imposed in the district by each participating unit for that year. If a taxing unit participates in two or more districts, only the taxes imposed in a district are used to calculate the unit's cost allocations in that district. If the number of real property parcels in a taxing unit is less than 5 percent of the total number of real property parcels in the district and the taxing unit imposes in excess of 25 percent of the total amount of the property taxes imposed in the district by all of the participating taxing units for a year, the unit's allocation may not exceed a percentage of the appraisal district's budget equal to three times the unit's percentage of the total number of real property parcels appraised by the district.

(e) Unless the governing body of a unit and the chief appraiser agree to a different method of payment, each taxing unit shall pay its allocation in four equal payments to be made at the end of each calendar quarter, and the first payment shall be made before January 1 of the year in which the budget takes effect. A payment is delinquent if not paid on the date it is due. A delinquent payment incurs a penalty of 5 percent of the amount of the payment and accrues interest at an annual rate of 10 percent. If the budget is amended, any change in the amount of a unit's allocation is apportioned among the payments remaining.

(f) Payments shall be made to a depository designated by the district board of directors. The district's funds may be disbursed only by a written check, draft, or order signed by the chairman and secretary of the board or, if authorized by resolution of the board, by the chief appraiser.

(g) If a taxing unit decides not to impose taxes for any tax year, the unit is not liable for any of the costs of operating the district in that year, and those costs are allocated among the other taxing units as if that unit had not imposed taxes in the year used to calculate allocations. However, if that unit has made any payments, it is not entitled to a refund.

(h) If a newly formed taxing unit or a taxing unit that did not impose taxes in the preceding year imposes taxes in any tax year, that unit is allocated a portion of the amount budgeted to operate the district as if it had imposed taxes in the preceding year, except that the amount of taxes the unit imposes in the current year is used to calculate its allocation. Before the amount of taxes to be imposed for the current year is known, the allocation may be based on an estimate to which the district board of directors and the governing body of the unit agree, and the payments made after that amount is known shall be adjusted to reflect the amount imposed. The payments of a newly formed taxing unit that has no source of funds are postponed until the unit has received adequate tax or other revenues.

(i) The fiscal year of an appraisal district is the calendar year unless the governing bodies of three-fourths of the taxing units entitled to vote on the appointment of board members adopt resolutions proposing a different fiscal year and file them with the secretary of the board not more than 12 and not less than eight months before the first day of the fiscal year proposed by the resolutions. If the fiscal year of an appraisal district is changed under this subsection, the chief appraiser shall prepare a proposed budget for the fiscal year as provided by Subsection (a) of this section before the 15th day of the seventh month preceding the first day of the fiscal year established by the change, and the board of directors shall adopt a budget for the fiscal year as provided by Subsection (b) of this section before the 15th day of the fourth month preceding the first day of the fiscal year established by the change. Unless the appraisal district adopts a different method of allocation under Section 6.061 of this code, the allocation of the budget to each taxing unit shall be calculated as provided by Subsection (d) of this section using the amount of property taxes imposed by each participating taxing unit in the most recent tax year preceding the fiscal year established by the change for which the necessary information is available. Each taxing unit shall pay its allocation as provided by Subsection (e) of this section, except that the first payment shall be made before the first day of the fiscal year established by the change and subsequent payments shall be made quarterly. In the year in which a change in the fiscal year occurs, the budget that takes effect on January 1 of that year may be amended as necessary as provided by Subsection (c) of this section in order to accomplish the change in fiscal years.

(j) If the total amount of the payments made or due to be made by the taxing units participating in an appraisal district exceeds the amount actually spent or obligated to be spent during the fiscal year for which the payments were made, the chief appraiser shall credit the excess amount against each taxing unit's allocated payments for the following year in proportion to the amount of each unit's budget allocation for the fiscal year for which the payments were made.

If a taxing unit that paid its allocated amount is not allocated a portion of the district's budget for the following fiscal year, the chief appraiser shall refund to the taxing unit its proportionate share of the excess funds not later than the 150th day after the end of the fiscal year for which the payments were made.

(k) For good cause shown, the board of directors may waive the penalty and interest on a delinquent payment under Subsection (e).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1981; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), §§ 17, 18, effective August 14, 1981; am. Acts 1985, 69th Leg., ch. 311 (H.B. 2300), § 1, effective August 26, 1985; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 9, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), § 16, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.07, effective May 31, 1993; am. Acts 2007, 80th Leg., ch. 87 (S.B. 948), § 1, effective May 14, 2007.

ATTORNEY GENERAL OPINIONS

Analysis

Authority of Appraisal District.
Budget Process.
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Authority of Appraisal District.

An appraisal district is without authority to rescind or waive the penalty and interest imposed by section 6.06(e) of the Tax Code upon taxing units which are delinquent in paying their allocation of the appraisal district's expenditures. 1983 Tex. Op. Att'y Gen. JM-74 (Affirmed by LO-95-62).

Budget Process.

Excess funds must be returned or credited to the participating taxing units as required by Tex. Tax Code Ann. § 6.06(j); the fact that a particular line item is not "prepared in the proposed budget" by the June 15 deadline is not by itself fatal to the expenditure; the budget process in section 6.06 does not prevent amendments to the proposed budget after the public hearing process and before the budget is finally approved. 2014 Tex. Op. Att'y Gen. GA-1040.

Calculations.

Only "payments made or due to be made by the taxing units" should be included in the excess-funds calculation and returned or credited back to the taxing units as required by Tex. Tax Code Ann. § 6.06(j). 2014 Tex. Op. Att'y Gen. GA-1040.

Costs Allocation.

The budget of a tax appraisal district may allocate to the taxing units within the district only the costs of operating the appraisal district for its appraisal purposes. The costs of tax assessment or collection, which the appraisal district may opt to perform for taxing units under contract, are paid for by the taxing unit that has contracted with the district for these services and are not allocated to all taxing units within the district regardless of whether or not the unit contracted with the district for assessment or collection services. 2003 Tex. Op. Att'y Gen. GA-0030.

Obligations.

An expenditure that an appraisal district has committed during the fiscal year to meet or secure an obligation is an expenditure that is obligated to be spent under Tex. Tax Code Ann. § 6.06(j). 2014 Tex. Op. Att'y Gen. GA-1040.

Sec. 6.061. Changes in Method of Financing.

(a) The board of directors of an appraisal district, by resolution adopted and delivered to each taxing unit participating in the district after June 15 and before August 15, may prescribe a different method of allocating the costs of operating the district unless the governing body of any taxing unit that participates in the district adopts a resolution opposing the different method, and files it with the board of directors before September 1. If a board proposal is rejected, the board shall notify, in writing, each taxing unit participating in the district before September 15.

(b) The taxing units participating in an appraisal district may adopt a different method of allocating the costs of operating the district if the governing bodies of three-fourths of the taxing units that are entitled to vote on the appointment of board members adopt resolutions providing for the other method. However, a change under this subsection is not valid if it requires any taxing unit to pay a greater proportion of the appraisal district's costs than the unit would pay under Section 6.06 of this code without the consent of the governing body of that unit.

(c) An official copy of a resolution under this section must be filed with the chief appraiser of the appraisal district after April 30 and before May 15 or the resolution is ineffective.

(d) Before May 20, the chief appraiser shall determine whether a sufficient number of eligible taxing units have filed valid resolutions proposing a change in the allocation of district costs for the change to take effect. Before May 25, the chief appraiser shall notify each taxing unit participating in the district of each change that is adopted.

(e) A change in allocation of district costs made as provided by this section remains in effect until changed in a manner provided by this section or rescinded by resolution of a majority of the governing bodies that are entitled to vote on appointment of board members under Section 6.03 of this code.

(f) [Repealed by Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.13(2), effective May 31, 1993.]

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 19, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 59 (S.B. 469), § 3, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), § 17, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.13(2), effective May 31, 1993.

Sec. 6.062. Publication of Budget.

(a) Not later than the 10th day before the date of the public hearing at which the board of directors considers the appraisal district budget, the chief appraiser shall give notice of the public hearing by publishing the notice in a newspaper having general circulation in the county for which the appraisal district is established. The notice may not

be smaller than one-quarter page of a standard-size or tabloid-size newspaper and may not be published in the part of the paper in which legal notices and classified advertisements appear.

(b) The notice must set out the time, date, and place of the public hearing and must set out a summary of the proposed budget. The summary must set out as separate items:

(1) the total amount of the proposed budget;

(2) the amount of increase proposed from the budget adopted for the current year; and

(3) the number of employees compensated under the current budget and the number of employees to be compensated under the proposed budget.

(c) The notice must state that the appraisal district is supported solely by payments from the local taxing units served by the appraisal district. The notice must also contain the following statement: "If approved by the appraisal district board of directors at the public hearing, this proposed budget will take effect automatically unless disapproved by the governing bodies of the county, school districts, cities, and towns served by the appraisal district. A copy of the proposed budget is available for public inspection in the office of each of those governing bodies."

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 10, effective September 1, 1989.

Sec. 6.063. Financial Audit.

(a) At least once each year, the board of directors of an appraisal district shall have prepared an audit of its affairs by an independent certified public accountant or a firm of independent certified public accountants.

(b) The report of the audit is a public record. A copy of the report shall be delivered to the presiding officer of the governing body of each taxing unit eligible to vote on the appointment of district directors, and a reasonable number of copies shall be available for inspection at the appraisal office.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 860 (H.B. 354), § 2, effective September 1, 1987.

Sec. 6.07. Taxing Unit Boundaries.

If a new taxing unit is formed or an existing taxing unit's boundaries are altered, the unit shall notify the appraisal office of the new boundaries within 30 days after the date the unit is formed or its boundaries are altered.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980.

Sec. 6.08. Notice of Optional Exemptions.

If a taxing unit adopts, amends, or repeals an exemption that the unit by law has the option to adopt or not, the taxing unit shall notify the appraisal office of its action and of the terms of the exemption within 30 days after the date of its action.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980.

Sec. 6.09. Designation of District Depository.

(a) The appraisal district depository must be a banking corporation incorporated under the laws of this state or the United States or a savings and loan association in this state whose deposits are insured by the Federal Savings and Loan Insurance Corporation.

(b) The appraisal district board of directors shall designate as the district depository the financial institution or institutions that offer the most favorable terms and conditions for the handling of the district's funds.

(c) The board shall solicit bids to be designated as depository for the district. The depository when designated shall serve for a term of two years and until its successor is designated and has qualified. The board and the depository may agree to extend a depository contract for one additional two-year period.

(d) To the extent that funds in the depository are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, they shall be secured in the manner provided by law for the security of funds of counties.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 20, effective January 1, 1982; am. Acts 2003, 78th Leg., ch. 906 (S.B. 902), § 1, effective June 20, 2003.

Sec. 6.10. Disapproval of Board Actions.

If the governing bodies of a majority of the taxing units entitled to vote on the appointment of board members adopt resolutions disapproving an action, other than adoption of the budget, by the appraisal district board of directors and file them with the secretary of the board within 15 days after the action is taken, the action is revoked effective the day after the day on which the required number of resolutions is filed.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 21, effective January 1, 1982.

ATTORNEY GENERAL OPINIONS

Budget Procedures.

An appraisal district's participating taxing units may utilize Tex. Tax Code Ann. § 6.10 to disapprove the amendment of a budget by an appraisal district board. 2014 Tex. Op. Att'y Gen. GA-1040.

Sec. 6.11. Purchasing and Contracting Authority.

(a) An appraisal district is subject to the same requirements and has the same purchasing and contracting authority as a municipality under Chapter 252, Local Government Code.

(b) For purposes of this section, all the provisions of Chapter 252, Local Government Code, applicable to a municipality or to purchases and contracts by a municipality apply to an appraisal district and to purchases and contracts by an appraisal district to the extent they can be made applicable, and all references to the municipality in that chapter mean the appraisal district. For purposes of applying Section 252.061, Local Government Code, to an appraisal district, any resident of the appraisal district may seek an injunction under that section. Sections 252.062 and 252.063, Local Government Code, apply to an officer or employee of an appraisal district in the same manner those sections apply to a municipal officer or employee.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 21, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 149 (S.B. 896), § 42, effective September 1, 1987; am. Acts 1993, 73rd Leg., ch. 757 (H.B. 1651), § 21, effective September 1, 1993; am. Acts 2003, 78th Leg., ch. 152 (S.B. 726), § 1, effective July 1, 2003.

Sec. 6.12. Agricultural Appraisal Advisory Board.

(a) The chief appraiser of each appraisal district shall appoint, with the advice and consent of the board of directors, an agricultural advisory board composed of three or more members as determined by the board.

(b) The agricultural advisory board members must be landowners of the district whose land qualifies for appraisal under Subchapter C, D, E, or H, Chapter 23, and who have been residents of the district for at least five years.

(c) Members of the board serve for staggered terms of two years. In making the initial appointments of members of the agricultural advisory board the chief appraiser shall appoint for a term of one year one-half of the members, or if the number of members is an odd number, one fewer than a majority of the membership.

(d) The board shall meet at the call of the chief appraiser at least once a year.

(e) An employee or officer of an appraisal district may not be appointed and may not serve as a member of the agricultural advisory board.

(f) A member of the agricultural advisory board is not entitled to compensation.

(g) The board shall advise the chief appraiser on the valuation and use of land that may be designated for agricultural use or that may be open space agricultural or timber land within the district.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 274 (H.B. 2756), § 1, effective August 28, 1989; am. Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 1, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 228 (H.B. 361), § 1, effective September 1, 2011.

Sec. 6.13. District Records.

The preservation, microfilming, destruction, or other disposition of the records of each appraisal district is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1248, (H.B. 1285), § 67, effective September 1, 1989; am. Acts 1990, 71st Leg., 6th C.S., ch. 12 (S.B. 51), § 2(30), effective September 6, 1990 (renumbered from Sec. 6.12).

Sec. 6.14. Information Provided to Texas Legislative Council.

(a) On the written request of the Texas Legislative Council, an appraisal district that maintains its appraisal records in electronic format shall provide a copy of the information or data maintained in the district's appraisal records to the council without charge.

(b) The appraisal district shall provide the requested information or data to the council as soon as practicable but not later than the 30th day after the date the request is received by the district.

(c) The information or data shall be provided in a form approved by the council.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1585 (S.B. 1367), § 4, effective June 20, 1999.

Sec. 6.15. Ex Parte Communications; Penalty.

(a) A member of the board of directors of an appraisal district commits an offense if the member directly or indirectly communicates with the chief appraiser on any matter relating to the appraisal of property by the appraisal district, except in:

(1) an open meeting of the appraisal district board of directors or another public forum; or

(2) a closed meeting of the board of directors held to consult with the board's attorney about pending litigation, at which the chief appraiser's presence is necessary for full communication between the board and the board's attorney.

(b) A chief appraiser commits an offense if the chief appraiser directly or indirectly communicates with a member of the board of directors of the appraisal district on any matter relating to the appraisal of property by the appraisal district, except in:

(1) an open meeting of the board of directors or another public forum; or

(2) a closed meeting of the board of directors held to consult with the board's attorney about pending litigation, at which the chief appraiser's presence is necessary for full communication between the board and the board's attorney.

(c) Subsections (a) and (b) do not apply to a routine communication between the chief appraiser and the county assessor-collector that relates to the administration of an appraisal roll, including a communication made in connection with the certification, correction, or collection of an account, regardless of whether the county assessor-collector was appointed to the board of directors of the appraisal district or serves as a nonvoting director.

(c-1) **[Effective January 1, 2020]** Subsections (a) and (b) do not prohibit a member of the board of directors of an appraisal district from transmitting to the chief appraiser without comment a complaint by a property owner or taxing unit about the appraisal of a specific property, provided that the transmission is in writing.

(d) An offense under this section is a Class C misdemeanor.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 208 (H.B. 402), § 1, effective September 1, 2007; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 18, effective January 1, 2020.

Sec. 6.16. Residential Property Owner Assistance. [Effective January 1, 2020]

(a) The chief appraiser of an appraisal district may maintain a list of the following individuals who have designated themselves as an individual who will provide free assistance to an owner of residential property that is occupied by the owner as the owner's principal residence:

(1) a real estate broker or sales agent licensed under Chapter 1101, Occupations Code;

(2) a real estate appraiser licensed or certified under Chapter 1103, Occupations Code; or

(3) a property tax consultant registered under Chapter 1152, Occupations Code.

(b) On the request of an owner described by Subsection (a), a chief appraiser who maintains a list under this section shall provide to the owner a copy of the list.

(c) A list must:

(1) be organized by county;

(2) be available on the appraisal district's Internet website, if the appraisal district maintains a website; and

(3) provide the name, contact information, and job title of each individual who will provide free assistance.

(d) A person must designate himself or herself as an individual who will provide free assistance by completing a form prescribed by the chief appraiser and submitting the form to the chief appraiser.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 19, effective January 1, 2020.

Secs. 6.17 to 6.20. [Reserved for expansion].

Subchapter B

Assessors and Collectors

Sec. 6.21. County Assessor-Collector.

(a) The assessor-collector for a county is determined as provided by Article VIII, Sections 14, 16, and 16a, of the Texas Constitution.

(b) If a county with a population of less than 10,000 authorizes a separate county assessor-collector as provided by Article VIII, Section 16a, of the Texas Constitution, the commissioners court may appoint a county assessor-collector to serve until an assessor-collector is elected at the next general election and has qualified.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 6.22. Assessor and Collector for Other Taxing Units.

(a) The assessor and collector for a taxing unit other than a county or a home-rule city are determined by the law creating or authorizing creation of the unit.

(b) The assessor and collector for a home-rule city are determined by the city's charter and ordinances.

(c) The governing body of a taxing unit authorized to have its own assessor and collector by official action in the manner required by law for official action by the body may require the county to assess and collect the taxes the unit imposes in the county in the manner in which the county assesses and collects its taxes. The governing body of the unit may revoke the requirement at any time by the same official action.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — In a school district's mandamus suit to compel county tax assessor-collector to assess and collect taxes pursuant to the terms of a contract between the school district and the tax assessor-collector, the county judge and the county commissioners were necessary and proper parties to the suit under Tex. Tax. Code Ann. § 6.22. Lampson v. South Park Independent School Dist., 698 S.W.2d 407, 1985 Tex. App. LEXIS 12225 (Tex. App. Beaumont Sept. 25, 1985, writ ref'd n.r.e.), writ granted 742 S.W.2d 275, 1987 Tex. LEXIS 423 (Tex. 1987).

ATTORNEY GENERAL OPINIONS

County Assessor of City Property.

Where a city and a county enter into a contract for the County Tax Assessor-Collector to act in such capacity for the city, the property situated within such city shall be assessed at the same value as it was assessed for county and state purposes. 1970 Tex. Op. Att'y Gen. M-569.

Sec. 6.23. Duties of Assessor and Collector.

(a) The county assessor-collector shall assess and collect taxes on property in the county for the county. He shall also assess and collect taxes on property for another taxing unit if:

(1) the law creating or authorizing creation of the unit requires it to use the county assessor-collector for the taxes the unit imposes in the county;

(2) the law creating or authorizing creation of the unit does not mention who assesses and collects its taxes and the unit imposes taxes in the county;

(3) the governing body of the unit requires the county to assess and collect its taxes as provided by Subsection (c) of Section 6.22 of this code; or

(4) required by an intergovernmental contract.

(b) The assessor and collector for a taxing unit other than a county shall assess, collect, or assess and collect taxes, as applicable, for the unit. He shall also assess, collect, or assess and collect taxes, as applicable, for another unit if:

(1) required by or pursuant to the law creating or authorizing creation of the other unit; or

(2) required by an intergovernmental contract.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 22, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 2, effective August 29, 1983.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Pursuant to Tex. Tax. Code Ann. § 6.23(a)(4), a county tax assessor-collector had the duty to assess and collect taxes for a school district, where the tax assessor-collector entered into a contract with the school to assess and collect taxes, and where the contract specifically provided that the contract was entered into pursuant to Tex. Tax. Code Ann. § 6.24. Lampson v. South Park Independent School Dist., 698 S.W.2d 407, 1985 Tex. App. LEXIS 12225 (Tex. App. Beaumont Sept. 25, 1985, writ ref'd n.r.e.), writ granted 742 S.W.2d 275, 1987 Tex. LEXIS 423 (Tex. 1987).

ATTORNEY GENERAL OPINIONS

Role of Commissioners' Court.

The administrative responsibility of deciding whether property is exempt from taxation by the Constitution and Statutes of Texas is vested with the county tax assessor and collector, and the county commissioners, functioning as a county commissioners court, has the authority to reconsider and revise his decisions with reference to all real property. 1969 Tex. Op. Att'y Gen. M-328.

Sec. 6.231. Continuing Education.

(a) A county assessor-collector must successfully complete 20 hours of continuing education before each anniversary of the date on which the county assessor-collector takes office. The continuing education must include at least 10 hours of instruction on laws relating to the assessment and collection of property taxes for a county assessor-collector who assesses or collects property taxes.

(b) In addition to the requirement described by Subsection (a), a county assessor-collector shall:

(1) successfully complete continuing education courses on ethics and on the constitutional and statutory duties of the county assessor-collector not later than the 90th day after the date on which the county assessor-collector first takes office; and

(2) if the county assessor-collector assesses or collects property taxes, successfully complete at least 40 hours of continuing education courses on the assessment and collection of property taxes, including a course dedicated to Chapter 26, not later than the first anniversary of the date on which the county assessor-collector first takes office.

(c) Continuing education required by this section must be approved by a state agency or an accredited institution of higher education, including an institution that is a part of or associated with an accredited institution of higher education, such as the V. G. Young Institute of County Government.

(d) A county assessor-collector shall file annually a continuing education certificate of completion with the commissioners court of the county in which the county assessor-collector holds office.

(e) To satisfy the requirement described by Subsection (a), a county assessor-collector may carry forward from one 12-month period to the next not more than 10 continuing education hours that the county assessor-collector completes in excess of the required 20 hours.

(f) For purposes of removal under Subchapter B, Chapter 87, Local Government Code, "incompetency" in the case of a county assessor-collector includes the failure to complete continuing education requirements in accordance with this section.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 429 (S.B. 546), § 1, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 28 (S.B. 929), § 1, effective May 18, 2017.

Sec. 6.235. Continuing Education Requirements [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 815 (S.B. 276), § 19(1), effective September 1, 2003.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 501 (H.B. 610), § 2, effective August 30, 1993.

Sec. 6.24. Contracts for Assessment and Collection.

(a) The governing body of a taxing unit other than a county may contract as provided by the Interlocal Cooperation Act with the governing body of another unit or with the board of directors of an appraisal district for the other unit or the district to perform duties relating to the assessment or collection of taxes.

(b) The commissioners court with the approval of the county assessor-collector may contract as provided by the Interlocal Cooperation Act with the governing body of another taxing unit in the county or with the board of directors of the appraisal district for the other unit or the district to perform duties relating to the assessment or collection of taxes for the county. If a county contracts to have its taxes assessed and collected by another taxing unit or by the appraisal district, except as provided by Subsection (c), the contract shall require the other unit or the district to assess and collect all taxes the county is required to assess and collect.

(c) A contract entered into under Subsection (b) may exclude from the taxes the other unit or the district is required to assess and collect taxes the county is required to assess and collect under one or more of the following provisions:

(1) Section 23.121;
(2) Section 23.122;
(3) Section 23.124;
(4) Section 23.1241;
(5) Section 23.1242;
(6) Section 23.125;
(7) Section 23.127; or
(8) Section 23.128.

(d) A contract under this section may provide for the entity that collects taxes to contract with an attorney, as provided by Section 6.30 of this code, for collection of delinquent taxes.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), §§ 23, 24, effective August 14, 1981; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 28, effective August 29, 1983; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 2, effective September 1, 2001.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
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General Overview. — Pursuant to Tex. Tax. Code Ann. § 6.23(a)(4), a county tax assessor-collector had the duty to assess and collect taxes for a school district, where the tax assessor-collector entered into a contract with the school to assess and collect taxes, and where the contract specifically provided that the contract was entered into pursuant to Tex. Tax. Code Ann. § 6.24. Lampson v. South Park Independent School Dist., 698 S.W.2d 407, 1985 Tex. App. LEXIS 12225 (Tex. App. Beaumont Sept. 25, 1985, writ ref'd n.r.e.), writ granted 742 S.W.2d 275, 1987 Tex. LEXIS 423 (Tex. 1987).

ATTORNEY GENERAL OPINIONS

Analysis

Accounting.
Conflict of Interest.
Interest.
Motor Vehicle Inventory Tax.
Personal Liability.
Tax Collector Registration with Board of Tax Professional Examiners.

Accounting.

The accounting and remittance of funds belonging to the county from a particular tax year would depend at least in part on the terms of any contract entered into pursuant to Tex. Tax Code Ann. § 6.24(b). 2016 Tex. Op. Att'y Gen. KP-0092.

Conflict of Interest.

The trustees of an independent school district may enter into an Interlocal Cooperation Act contract with the commissioners

court of a county for the collection of taxes in an instance in which the county assessor- collector is a member of the board of directors of the appraisal district in which the independent school district participates. 1990 Tex. Op. Att'y Gen. JM-1157.

Interest.

Interest earned on county taxes collected by an appraisal district pursuant to a contract under Tex. Tax Code Ann. § 6.24(b) belongs to the county and, as such, must generally be remitted to the county. 2016 Tex. Op. Att'y Gen. KP-0092.

Motor Vehicle Inventory Tax.

The motor vehicle inventory tax is a tax the county must assess and collect. As such, the tax must be included in an interlocal contract under section 6.24(b) of the Tax Code. The collection of such taxes by an assessor-collector, rather than pursuant to the section 6.24(b) interlocal contract, precludes application of article 8885, section 11B of the Revised Civil Statutes exempting assessor-collectors from regulation by the Texas Board of Tax Professional Examiners. 2000 Tex. Op. Att'y Gen. JC-0273.

Personal Liability.

The personal liability of the tax assessor-collector for funds held in the custody of the appraisal district is ultimately a question of fact, dependent on various factors. 2016 Tex. Op. Att'y Gen. KP-0092.

Tax Collector Registration with Board of Tax Professional Examiners.

The tax collector of a county that contracts under section 6.24(b) of the Tax Code to have its taxes collected by another entity must register with the Board of Tax Professional Examiners. 1998 Tex. Op. Att'y Gen. DM-0470.

Sec. 6.25. County Contract with Appraisal District [Repealed].

Repealed by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 167(a), effective January 1, 1982.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 6.26. Election to Consolidate Assessing and Collecting Functions.

(a) The qualified voters residing in an appraisal district by petition submitted to the county clerk of the county principally served by the appraisal district may require that an election be held to determine whether or not to require the appraisal district, the county assessor-collector, or a specified taxing unit within the appraisal district to assess, collect, or assess and collect property taxes on property appraised by the district for all taxing units.

(b) The qualified voters of a taxing unit that assesses, collects, or assesses and collects its own property taxes by petition submitted to the governing body of the taxing unit may require that an election be held to determine whether or not to require the appraisal district, the county assessor-collector, or another taxing unit that is assessing and collecting property taxes to assess, collect, or assess and collect the unit's property taxes.

(c) A petition is valid if:

(1) it states that it is intended to require an election in the appraisal district or taxing unit on the question of consolidation of assessing or collecting functions or both;

(2) it states the functions to be consolidated and identifies the entity or office that will be required to perform the functions; and

(3) it is signed by a number of qualified voters equal to at least 10 percent of the number of qualified voters, according to the most recent official list of qualified voters, residing in the appraisal district, if the petition is authorized by Subsection (a) of this section, or in the taxing unit, if the petition is authorized by Subsection (b) of this section, or by 10,000 qualified voters, whichever number is less.

(d) Not later than the 10th day after the day the petition is submitted, the commissioners court, if the petition is authorized by Subsection (a) of this section, or the governing body of the taxing unit, if the petition is authorized by Subsection (b) of this section, shall determine whether the petition is valid and pass a resolution stating its finding. The signature of a person may not be counted for purposes of validating the petition under Subsection (c)(3) of this section if:

(1) the person does not enter beside his signature at the time of his signing the date on which he signs the petition; or

(2) the person signs the petition more than 30 days before the date on which the petition is submitted to the county clerk or the governing body.

(e) If the commissioners court or the governing body finds that the petition is valid, it shall order that an election be held in the district or taxing unit on the next uniform election date prescribed by the Texas Election Code that is more than 60 days after the last day on which it could have acted to approve or disapprove the petition. At the election, the ballots shall be prepared to permit voting for or against the proposition:

"Requiring the (name of entity or office) to (assess, collect, or assess and collect, as applicable) property taxes for (all taxing units in the appraisal district for _____ county or name of taxing unit or units, as applicable)."

(f) If a majority of the qualified voters voting on the question in the election favor the proposition, the entity or office named by the ballot shall perform the functions named by the ballot beginning with the next time property taxes are assessed or collected, as applicable, that is more than 90 days after the date of the election. If the governing bodies (and appraisal district board of directors when the district is involved) agree, a function may be consolidated when performance of the function begins in less than 90 days after the date of the election.

(g) A taxing unit shall pay the actual cost of performance of the functions to the office or entity that performs functions for it pursuant to an election as provided by this section.

(h) If a taxing unit is required by election pursuant to Subsection (b) of this section to assess, collect, or assess and collect property taxes for another taxing unit, it also shall perform the functions for all taxing units for which the other unit previously performed those functions pursuant to law or intergovernmental contract.

(i) If functions are consolidated by an election, a taxing unit may not terminate the consolidation within two years after the date of the consolidation.

(j) An appraisal district may not be required by an election to assess, collect, or assess and collect taxes on property outside the district's boundaries. A taxing unit may not be required by an election to assess, collect, or assess and collect taxes on property outside the boundaries of the appraisal district that appraises property for the unit.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 25, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 785 (H.B. 645), § 1, effective September 1, 1983.

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GOVERNMENTS
Local Governments

Elections. — Election to consolidate the assessing and collecting functions of taxing units within a county pursuant to Tex. Tax. Code Ann. § 6.26, was declared a nullity; Tex. Tax Code Ann. § 6.26 was unconstitutional, as it authorized by general statute action which could only be authorized by special statute. Weatherford v. Parker County, 794 S.W.2d 33, 1990 Tex. LEXIS 104 (Tex. 1990).

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — There was no conflict between Tex. Tax Code Ann. § 6.26 and Tex. Const. art. VII, § 3-b regarding the power of independent school districts to assess and collect their own taxes, and § 6.26 did not violate the home rule provisions of Tex. Const. art. XI, § 5. Parker County v. Weatherford Independent School Dist., 775 S.W.2d 881, 1989 Tex. App. LEXIS 2392 (Tex. App. Fort Worth Aug. 3, 1989), writ granted No. C-9217 (Tex. 1990), rev'd, 794 S.W.2d 33, 1990 Tex. LEXIS 104 (Tex. 1990).

ATTORNEY GENERAL OPINIONS

Consolidating Appraisals.

A commissioners court may not call an election for the purpose of consolidating tax assessing and appraisal functions in the office of county tax assessor-collector. Section 6.26, Tax Code, permits an election for the consolidation of tax assessing and collecting only. 1987 Tex. Op. Att'y Gen. JM-747.

Sec. 6.27. Compensation for Assessment and Collection.

(a) [Repealed by Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 28, effective August 29, 1983.]

(b) Except as provided by Subsection (d), the county assessor-collector is entitled to a reasonable fee, which may not exceed the actual costs incurred, for assessing and collecting taxes for a taxing unit pursuant to Section 6.23(a)(1), (2), or (3).

(c) The assessor or collector for a taxing unit other than a county is entitled to reasonable compensation, which may not exceed the actual costs incurred, for assessing or collecting taxes for a taxing unit pursuant to Subsection (b) of Section 6.23 of this code.

(d) If a law enacted under Section 59, Article XVI, Texas Constitution, creating a river authority authorizes the river authority to impose a tax, specifies the maximum tax rate, and specifies the maximum fee that the authority may pay for the assessment and collection of the authority's taxes, and if the county assessor-collector assesses and collects the taxes the river authority imposes pursuant to Section 6.23(a)(1), (2), or (3), the county assessor-collector may not charge the river authority a fee for assessing and collecting the taxes that exceeds the fee specified in the law creating the river authority.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 26, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 28, effective August 29, 1983; am. Acts 2005, 79th Leg., ch. 32 (S.B. 692), § 1, effective May 9, 2005.

ATTORNEY GENERAL OPINIONS

Analysis

Community College Tax Fee.
Costs.

Community College Tax Fee.

Pursuant to section 6.27 of the Tax Code, a county is entitled to a reasonable fee, not to exceed actual costs incurred, for those junior college districts, other than joint county junior college districts, for which it assesses and collects taxes. If a county assesses and collects taxes for a joint county junior college district, it shall receive compensation in an amount agreed upon between the parties, but not to exceed two percent of the ad valorem taxes assessed, as provided in section 130.121(c) of the Education Code. 1987 Tex. Op. Att'y Gen. JM-655.

Costs.

The phrase "actual costs" set forth in Tex. Tax Code Ann. § 6.27 refers to those costs that the collecting taxing unit or appraisal district incurs over and above the cost that it would incur if it were not collecting for another taxing unit; the county commissioners court has implicit authority to determine as a final matter what are the "actual costs" incurred by the county pursuant to Tex. Tax Code Ann. § 6.27. 1988 Tex. Op. Att'y Gen. JM-996.

Sec. 6.275. Release of Assessor and Collector from Liability.

A county assessor-collector is not personally liable for the loss of public funds in the custody of the assessor-collector or the assessor-collector's office if a district court enters a declaratory judgment that the loss is due to a reason other than the negligence or misconduct of the assessor-collector.

HISTORY: Enacted by Acts 1987, 70th Leg., 2nd C.S., ch. 37 (H.B. 95), § 1, effective October 20, 1987.

ATTORNEY GENERAL OPINIONS

Analysis

Immunity from Liability.
Liability of Tax Assessor-Collector.

Immunity from Liability.
The County Tax Assessor-Collector is generally immune from liability on claims of third parties where title is issued in good faith and within the scope of his official authority and in line of official duty under Section 39 of the Certificate of Title Act, and even though done erroneously, there being no wanton or willful negligence, malice or intentional conduct to inflict injury, or corruption, or arbitrariness or self-enhancement so as to constitute an abuse of his legally entrusted powers. 1972 Tex. Op. Att'y Gen. M-1126.

Liability of Tax Assessor-Collector.
Section 6.275 of the Tax Code provides the exclusive method for relieving the county tax assessor-collector of personal responsibility for loss of funds in his custody or the custody of his office. The assessor-collector is not required to prepay any shortfall pending the determination of the district court regarding negligence or misconduct of such official. 1989 Tex. Op. Att'y Gen. JM-1055.

Sec. 6.28. Bonds for State and County Taxes.

(a) Before beginning to perform the duties of office, a person elected or appointed as county assessor-collector must give bonds to the state and to the county, conditioned on the faithful performance of the person's duties as assessor-collector.

(b) The bond for state taxes must be payable to the governor and his successors in office in an amount equal to five percent of the net state collections from motor vehicle sales and use taxes and motor vehicle registration fees in the county during the year ending August 31 preceding the date bond is given, except that the amount of bond may not be less than $2,500 or more than $100,000. To be effective, the bond must be approved by the commissioners court and the state comptroller of public accounts.

(c) The bond for county taxes must be payable to the commissioners court in an amount equal to 10 percent of the total amount of county taxes imposed in the preceding tax year, except that the amount of the bond may not be less than $2,500 or more than $100,000, except as otherwise provided by this subsection. The commissioners court of a county with a population of 1.5 million or more by order may set the maximum amount of the bond in an amount greater than $100,000. To be effective, a bond under this subsection must be approved by the commissioners court.

(d) The state comptroller of public accounts or the commissioners court may require a new bond for state taxes at any time. The commissioners court may require a new bond for county taxes at any time. However, the total amount of state bonds or county bonds required of an assessor-collector may not exceed $100,000 at one time, except that in a county in which the commissioners court by order has set the maximum amount of the bond for county taxes in an amount greater than $100,000, the total amount of state bonds or county bonds required may not exceed that greater amount. The commissioners court shall suspend the assessor-collector from office and begin removal proceedings if the assessor-collector fails to give new bond within a reasonable time after demand.

(e) The assessor-collector's official oath and bonds for state and county taxes shall be recorded in the office of the county clerk, and the county judge shall submit the bond for state taxes to the state comptroller of public accounts.

(f) A county shall pay a reasonable premium for the assessor-collector's bonds for state and county taxes out of the county general revenue fund on presentation to the commissioners court of a bill for the premium authenticated as required by law for other claims against the county. A court of competent jurisdiction may determine the reasonableness of any amount claimed as premium.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 27, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 3, effective August 29, 1983; am. Acts 1999, 76th Leg., ch. 1097 (H.B. 3458), § 1, effective August 30, 1999; am. Acts 2011, 82nd Leg., ch. 1155 (H.B. 2104), § 1, effective September 1, 2011.

Sec. 6.29. Bonds for Other Taxes.

(a) A taxing unit, other than a county, that has its own collector shall require him to give bond conditioned on the faithful performance of his duties. To be effective, the bond must be made payable to and must be approved by the governing body of the unit in an amount determined by the governing body. The governing body may require a new bond at any time, and failure to give new bond within a reasonable time after demand is a ground for removal from office. The governing body may prescribe additional requirements for the bond.

(b) A taxing unit whose taxes are collected by the collector for another taxing unit, by an officer or employee of another taxing unit or of an appraisal district, or by any other person other than the unit's own collector may require that collector, officer, employee, or other person to give bond conditioned on the faithful performance of his duties. To

be effective, the bond must be made payable to and must be approved by and paid for by the governing body of the unit requiring bond in an amount determined by the governing body. The governing body may prescribe additional requirements for the bond.

(c) A taxing unit shall pay the premium for a bond required pursuant to this section from its general fund or as provided by intergovernmental contract.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 125 (S.B. 379), § 1, effective May 20, 1987.

Sec. 6.30. Attorneys Representing Taxing Units.

(a) The county attorney or, if there is no county attorney, the district attorney shall represent the county to enforce the collection of delinquent taxes if the commissioners court does not contract with a private attorney as provided by Subsection (c) of this section.

(b) The governing body of a taxing unit other than a county may determine who represents the unit to enforce the collection of delinquent taxes. If a taxing unit collects taxes for another taxing unit, the attorney representing the unit to enforce the collection of delinquent taxes may represent the other unit with consent of its governing body.

(c) The governing body of a taxing unit may contract with any competent attorney to represent the unit to enforce the collection of delinquent taxes. The attorney's compensation is set in the contract, but the total amount of compensation provided may not exceed 20 percent of the amount of delinquent tax, penalty, and interest collected.

(d) [Repealed by Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 28, effective August 29, 1983.]

(e) A contract with an attorney that does not conform to the requirements of this section is void.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 28, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), §§ 4, 28, effective August 29, 1983.

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GOVERNMENTS
Local Governments

General Overview. — In a tax delinquency action, a taxpayer could not challenge the validity of the contract between the taxing units and their attorneys under Tex. Tax Code Ann. § 6.30 because the taxpayer inadequately briefed the issue under Tex. R. App. P. 38.1(i) as he did not cite authority to show that the validity or existence of the taxing units' contract with their attorneys affected the propriety of the trial court's judgment that was based on the delinquency of his taxes. Bello v. Tarrant County, No. 02-09-00462-CV, 2010 Tex. App. LEXIS 9763 (Tex. App. Fort Worth Dec. 9, 2010), reh'g denied, No. 2-09-462-CV, 2011 Tex. App. LEXIS 289 (Tex. App. Fort Worth Jan. 6, 2011).

ADMINISTRATIVE BOARDS. — City council of Fort Worth, Texas, possesses quasi-judicial power because all six powers relevant to the determination of whether a body's proceedings are quasi-judicial abide in the council. Accordingly, where the city council exercised quasi-judicial power in its deliberations on whether to extend a law firm's contract, the proceeding in question was quasi-judicial, and a competing law firm's allegedly defamatory statements to the council were thus absolutely privileged under the doctrine of quasi-judicial immunity, regardless of their truth, falsity, or malicious nature. Perdue, Brackett, Flores, Utt & Burns v. Linebarger, Goggan, Blair, Sampson & Meeks, L.L.P., 291 S.W.3d 448, 2009 Tex. App. LEXIS 3174 (Tex. App. Fort Worth May 7, 2009, no pet.).

TAX LAW
State & Local Taxes
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Collection. — Taxpayers argued that the judgment improperly awarded fees for a law firm's actions in collecting taxes, penalties, and interest, but the judgment awarded a penalty in lieu of fees as permitted by Tex. Tax Code Ann. § 33.07; Tex. Tax Code Ann. § 6.30 provided that a taxing unit could contract with an attorney for representation regarding collection of delinquent taxes, but the judgment did not award fees and instead awarded a penalty, such that the taxpayer's argument lacked merit. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

REAL PROPERTY TAX

General Overview. — In a tax delinquency action, a taxpayer could not challenge the validity of the contract between the taxing units and their attorneys under Tex. Tax Code Ann. § 6.30 because the taxpayer inadequately briefed the issue under Tex. R. App. P. 38.1(i) as he did not cite authority to show that the validity or existence of the taxing units' contract with their attorneys affected the propriety of the trial court's judgment that was based on the delinquency of his taxes. Bello v. Tarrant County, No. 02-09-00462-CV, 2010 Tex. App. LEXIS 9763 (Tex. App. Fort Worth Dec. 9, 2010), reh'g denied, No. 2-09-462-CV, 2011 Tex. App. LEXIS 289 (Tex. App. Fort Worth Jan. 6, 2011).

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Absolute Privileges. — City council of Fort Worth, Texas, possesses quasi-judicial power because all six powers relevant to the determination of whether a body's proceedings are quasi-judicial abide in the council. Accordingly, where the city council exercised quasi-judicial power in its deliberations on whether to extend a law firm's contract, the proceeding in question was quasi-judicial, and a competing law firm's allegedly defamatory statements to the council were thus absolutely privileged under the doctrine of quasi-judicial immunity, regardless of

their truth, falsity, or malicious nature. Perdue, Brackett, Flores, Utt & Burns v. Linebarger, Goggan, Blair, Sampson & Meeks, L.L.P., 291 S.W.3d 448, 2009 Tex. App. LEXIS 3174 (Tex. App. Fort Worth May 7, 2009, no pet.).

ATTORNEY GENERAL OPINIONS

Analysis

Attorney Compensation.
Enforcement by County Attorney.
Performance of Tax Collection Duties.

Attorney Compensation.

Pursuant to section 33.07 of the Tax Code, a taxing unit that has contracted with an attorney to collect delinquent taxes under section 6.30 of the Tax Code is authorized to impose a penalty not to exceed 15 percent against delinquent taxpayers to cover the attorney's compensation. The taxing unit may not apply any part of the penalties collected under section 33.07 to any additional costs of collection which it incurs but must use all of the assessed penalties solely to compensate the attorney with whom it contracted. 1988 Tex. Op. Att'y Gen. JM-0857.

Enforcement by County Attorney.

A commissioners court may not execute a contract pursuant to section 6.30 of the Tax code with its county attorney. Thus, it may not impose an additional penalty to defray collection costs as provided by section 33.07 of the Tax Code when the county attorney enforces collection of the taxes. 1983 Tex. Op. Att'y Gen. JM-14.

Performance of Tax Collection Duties.

Section 6.30 of the Tax Code does not violate article VIII, section 14, of the Texas Constitution insofar as it attempts to ascribe duties incident to tax collections to persons other than the County Tax Assessor-Collector. 1989 Tex. Op. Att'y Gen. JM-1015.

Secs. 6.31 to 6.40. [Reserved for expansion].

Subchapter C

Appraisal Review Board

Sec. 6.41. Appraisal Review Board.

(a) The appraisal review board is established for each appraisal district.

(b) **[Effective until September 1, 2020]** The board consists of three members. However, the district board of directors by resolution of a majority of its members may increase the size of the appraisal review board to the number of members the board of directors considers appropriate.

(b) **[Effective September 1, 2020]** Except as provided by Subsection (b-1) or (b-2), an appraisal review board consists of three members.

(b-1) **[Effective September 1, 2020]** An appraisal district board of directors by resolution of a majority of the board's members may increase the size of the district's appraisal review board to the number of members the board of directors considers appropriate.

(b-2) **[Effective September 1, 2020]** An appraisal district board of directors for a district established in a county with a population of one million or more by resolution of a majority of the board's members shall increase the size of the district's appraisal review board to the number of members the board of directors considers appropriate to manage the duties of the appraisal review board, including the duties of each special panel established under Section 6.425.

(c) To be eligible to serve on the board, an individual must be a resident of the district and must have resided in the district for at least two years.

(d) Except as provided by Subsection (d-1), members of the board are appointed by resolution of a majority of the appraisal district board of directors. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(d-1) In a county with a population of 120,000 or more the members of the board are appointed by the local administrative district judge under Subchapter D, Chapter 74, Government Code, in the county in which the appraisal district is established. All applications submitted to the appraisal district or to the appraisal review board from persons seeking appointment as a member of the appraisal review board shall be delivered to the local administrative district judge. The appraisal district may provide the local administrative district judge with information regarding whether an applicant for appointment to or a member of the board owes any delinquent ad valorem taxes to a taxing unit participating in the appraisal district.

(d-2) A local administrative district judge making appointments under Subsection (d-1) may make such appointments directly or may, by written order, appoint from three to five persons to perform the duties of appraisal review board commissioner. If the local administrative district judge chooses to appoint appraisal review board commissioners, each commissioner shall possess the same qualifications as those required of an appraisal review board member.

(d-3) The local administrative judge making appointments under Subsection (d-1) shall cause the proper officer to notify such appointees of such appointment, and when and where they are to appear.

(d-4) If appraisal review board commissioners are appointed under Subsection (d-2), they shall meet as directed by the local administrative district judge in order to complete their duties.

(d-5) The appraisal district of the county shall provide to the local administrative district judge, or to the appraisal review board commissioners, as the case may be, the number of appraisal review board positions that require appointment and shall provide whatever reasonable assistance is requested by the local administrative district judge or the commissioners.

(d-6) An appraisal review board commissioner is not disqualified from serving as a member of the appraisal review board.

(d-7) If appraisal review board commissioners are appointed under this section, the commissioners shall return a list of proposed appraisal review board members to the local administrative district judge at a time directed by such local administrative judge, but in no event later than January 1 of each year. Such list shall be composed of no less than five (5) names in excess of the number of appraisal review board positions to be filled by the local administrative district judge. The local administrative judge may accept the proposed names, or reject the proposed list and return the proposed list to the commissioners upon which the commissioners shall propose a revised list until the local administrative judge accepts the list.

(d-8) Any appraisal review board commissioners appointed pursuant to this section shall hold office for a term of one year beginning January 1. A commissioner may be appointed to successive terms at the discretion of the local administrative district judge.

(d-9) **[Effective until September 1, 2020]** Upon selection of the individuals who are to serve as members of the appraisal review board, the local administrative district judge shall enter an appropriate order designating such members and setting each member's respective term of office, as provided elsewhere in this section.

(d-9) **[Effective September 1, 2020]** In selecting individuals who are to serve as members of the appraisal review board for an appraisal district described by Subsection (b-2), the local administrative district judge shall select an adequate number of qualified individuals to permit the chairman of the appraisal review board to fill the positions on each special panel established under Section 6.425.

(d-10) **[Effective September 1, 2020]** Upon selection of the individuals who are to serve as members of the appraisal review board, the local administrative district judge shall enter an appropriate order designating such members and setting each member's respective term of office, as provided elsewhere in this section.

(e) Members of the board hold office for terms of two years beginning January 1. The appraisal district board of directors by resolution shall provide for staggered terms, so that the terms of as close to one-half of the members as possible expire each year. In making the initial or subsequent appointments, the board of directors or the local administrative district judge or the judge's designee shall designate those members who serve terms of one year as needed to comply with this subsection.

(f) A member of the board may be removed from the board by a majority vote of the appraisal district board of directors, or by the local administrative district judge or the judge's designee, as applicable, that appointed the member. Grounds for removal are:

(1) a violation of Section 6.412, 6.413, 41.66(f), or 41.69;

(2) good cause relating to the attendance of members at called meetings of the board as established by written policy adopted by a majority of the appraisal district board of directors; or

(3) evidence of repeated bias or misconduct.

(g) Subsection (a) does not preclude the boards of directors of two or more adjoining appraisal districts from providing for the operation of a consolidated appraisal review board by interlocal contract.

(h) When adjoining appraisal districts by interlocal contract have provided for the operation of a consolidated appraisal review board:

(1) a reference in this or another section of this code to the appraisal district means the adjoining appraisal districts;

(2) a reference in this or another section of this code to the appraisal district board of directors means the boards of directors of the adjoining appraisal districts;

(3) a provision of this code that applies to an appraisal review board also applies to the consolidated appraisal review board; and

(4) a reference in this code to the appraisal review board shall be construed to also refer to the consolidated appraisal review board.

(i) This subsection applies only to an appraisal district described by Subsection (d-1). A chief appraiser or another employee or agent of the appraisal district, a member of the appraisal review board for the appraisal district, a member of the board of directors of the appraisal district, a property tax consultant, or an agent of a property owner commits an offense if the person communicates with the local administrative district judge regarding the appointment of appraisal review board members. This subsection does not apply to:

(1) a communication between a member of the appraisal review board and the local administrative district judge regarding the member's reappointment to the board;

(2) a communication between the taxpayer liaison officer for the appraisal district and the local administrative district judge in the course of the performance of the officer's clerical duties so long as the officer does not offer an opinion or comment regarding the appointment of appraisal review board members;

(3) a communication between a chief appraiser or another employee or agent of the appraisal district, a member of the appraisal review board for the appraisal district, or a member of the board of directors of the appraisal district and the local administrative district judge regarding information relating to or described by Subsection (d-1), (d-5), or (f) of this section or Section 411.1296, Government Code;

(4) a communication between a property tax consultant or a property owner or an agent of the property owner and the taxpayer liaison officer for the appraisal district regarding information relating to or described by Subsection (f).

The taxpayer liaison officer for the appraisal district shall report the contents of the communication relating to or described by Subsection (f) to the local administrative district judge; or

(5) a communication between a property tax consultant or a property owner or an agent of the property owner and the local administrative district judge regarding information relating to or described by Subsection (f).

(j) A chief appraiser or another employee or agent of an appraisal district commits an offense if the person communicates with a member of the appraisal review board for the appraisal district, a member of the board of directors of the appraisal district, or, if the appraisal district is an appraisal district described by Subsection (d-1), the local administrative district judge regarding a ranking, scoring, or reporting of the percentage by which the appraisal review board or a panel of the board reduces the appraised value of property.

(k) An offense under Subsection (i) or (j) is a Class A misdemeanor.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 29, effective January 1, 1982; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 11, effective September 1, 1989 (Subsection (b) effective January 1, 1990); am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 8, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 597 (S.B. 33), § 107, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 154 (H.B. 356), § 1, effective August 28, 1995; am. Acts 1995, 74th Leg., ch. 299 (H.B. 674), § 1, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 4, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 639 (H.B. 79), § 1, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 354 (S.B. 650), § 1, effective January 1, 2002; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 3, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 408 (H.B. 193), § 1, effective January 1, 2004; am. Acts 2009, 81st Leg., ch. 970 (H.B. 3611), § 1, effective January 1, 2010; am. Acts 2009, 81st Leg., ch. 1267 (H.B. 1030), § 2, effective January 1, 2010; am. Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 112, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 8, effective January 1, 2014; am. Acts 2019, 86th Leg., ch. 802 (H.B. 2179), § 1, effective June 10, 2019; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 20, effective September 1, 2020.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation

General Overview. — When a company challenged the appraisal of its spaghetti sauce plant, it was not a party unit to the taxing unit challenge proceedings, and as an individual taxpayer, it was not entitled to notice of the appraisal review board proceedings. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

Sec. 6.411. Ex Parte Communications; Penalty.

(a) A member of an appraisal review board commits an offense if the member communicates with the chief appraiser or another employee or a member of the board of directors of the appraisal district for which the appraisal review board is established in violation of Section 41.66(f).

(b) A chief appraiser or another employee of an appraisal district, a member of a board of directors of an appraisal district, or a property tax consultant or attorney representing a party to a proceeding before the appraisal review board commits an offense if the person communicates with a member of the appraisal review board established for the appraisal district with the intent to influence a decision by the member in the member's capacity as a member of the appraisal review board.

(c) This section does not apply to communications between the board and its legal counsel.

(c-1) This section does not apply to communications with a member of an appraisal review board by the chief appraiser or another employee or a member of the board of directors of an appraisal district or a property tax consultant or attorney representing a party to a proceeding before the appraisal review board:

(1) during a hearing on a protest or other proceeding before the appraisal review board;

(2) that constitute social conversation;

(3) that are specifically limited to and involve administrative, clerical, or logistical matters related to the scheduling and operation of hearings, the processing of documents, the issuance of orders, notices, and subpoenas, and the operation, appointment, composition, or attendance at training of the appraisal review board; or

(4) that are necessary and appropriate to enable the board of directors of the appraisal district to determine whether to appoint, reappoint, or remove a person as a member or the chairman or secretary of the appraisal review board.

(d) An offense under this section is a Class A misdemeanor.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 950 (S.B. 1452), § 1, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 12, effective January 1, 2010; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 3, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 9, effective June 14, 2013.

Sec. 6.412. Restrictions on Eligibility of Board Members.

(a) **[Effective until January 1, 2020]** An individual is ineligible to serve on an appraisal review board if the individual:

(1) is related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district for which the appraisal review board is established;

(2) owns property on which delinquent taxes have been owed to a taxing unit for more than 60 days after the date the individual knew or should have known of the delinquency unless:

(A) the delinquent taxes and any penalties and interest are being paid under an installment payment agreement under Section 33.02; or

(B) a suit to collect the delinquent taxes is deferred or abated under Section 33.06 or 33.065; or

(3) is related within the third degree by consanguinity or within the second degree by affinity, as determined under Chapter 573, Government Code, to a member of the appraisal district's board of directors.

(a) **[Effective January 1, 2020]** An individual is ineligible to serve on an appraisal review board if the individual:

(1) is related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district for which the appraisal review board is established;

(2) owns property on which delinquent taxes have been owed to a taxing unit for more than 60 days after the date the individual knew or should have known of the delinquency unless:

(A) the delinquent taxes and any penalties and interest are being paid under an installment payment agreement under Section 33.02; or

(B) a suit to collect the delinquent taxes is deferred or abated under Section 33.06 or 33.065; or

(3) is related within the third degree by consanguinity or within the second degree by affinity, as determined under Chapter 573, Government Code, to a member of:

(A) the appraisal district's board of directors; or

(B) the appraisal review board.

(b) A member of an appraisal review board commits an offense if the board member continues to hold office knowing that an individual related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to the board member is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district for which the appraisal review board is established. An offense under this subsection is a Class B misdemeanor.

(c) A person is ineligible to serve on the appraisal review board if the person is a member of the board of directors, an officer, or employee of the appraisal district, an employee of the comptroller, or a member of the governing body, officer, or employee of a taxing unit.

(d) **[Effective until January 1, 2020]** A person is ineligible to serve on the appraisal review board of an appraisal district established for a county having a population of more than 100,000 if the person:

(1) is a former member of the board of directors, former officer, or former employee of the appraisal district;

(2) served as a member of the governing body or officer of a taxing unit for which the appraisal district appraises property, until the fourth anniversary of the date the person ceased to be a member or officer; or

(3) appeared before the appraisal review board for compensation during the two-year period preceding the date the person is appointed.

(d) **[Effective January 1, 2020]** A person is ineligible to serve on the appraisal review board of an appraisal district established for a county described by Section 6.41(d-1) if the person:

(1) is a former member of the board of directors, former officer, or former employee of the appraisal district;

(2) served as a member of the governing body or officer of a taxing unit for which the appraisal district appraises property, until the fourth anniversary of the date the person ceased to be a member or officer;

(3) appeared before the appraisal review board for compensation during the two-year period preceding the date the person is appointed; or

(4) served for all or part of three previous terms as a board member or auxiliary board member on the appraisal review board.

(e) **[Effective until January 1, 2020]** A person who has served for all or part of three consecutive terms as a board member on an appraisal review board is ineligible to serve on the appraisal review board during a term that begins on the next January 1 following the third of those consecutive terms.

(e) **[Effective January 1, 2020]** [Repealed.]

(f) [Repealed by Acts 2013, 83rd Leg., ch. 632 (H.B. 326), § 2, effective June 14, 2013.]

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 12, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 561 (H.B. 1345), § 45, effective August 26, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(27), effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 691 (S.B. 1017), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 639 (H.B. 79), § 2, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 354 (S.B. 650), § 2, effective January 1, 2002; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 4, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 730 (H.B. 896), § 2, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 4, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 632 (H.B. 326), §§ 1, 2, effective June 14, 2013; am. Acts 2013, 83rd Leg., ch. 714 (H.B. 3438), § 1, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), §§ 21, 91(4), effective January 1, 2020.

ATTORNEY GENERAL OPINIONS

Member Eligibility.
An individual who served as legal counsel to the El Paso Central Appraisal District was not eligible to be appointed to the El Paso Appraisal Review Board, pursuant to section 6.413 of the Tax Code. Section 6.412 thereof does not contain a grandfather clause, and is thus applicable to all members of an appraisal review board on the effective date of the statutory amendment. The ineligibility of a board member does not affect actions taken by the board during his tenure. 2000 Tex. Op. Att'y Gen. JC-0192.

Sec. 6.413. Interest in Certain Contracts Prohibited.

(a) An individual is not eligible to be appointed to or to serve on the appraisal review board established for an appraisal district if the individual or a business entity in which the individual has a substantial interest is a party to a contract with the appraisal district or with a taxing unit that participates in the appraisal district.

(b) An appraisal district may not enter into a contract with a member of the appraisal review board established for the appraisal district or with a business entity in which a member of the appraisal review board has a substantial interest.

(c) A taxing unit may not enter into a contract with a member of the appraisal review board established for an appraisal district in which the taxing unit participates or with a business entity in which a member of the appraisal review board has a substantial interest.

(d) For purposes of this section, an individual has a substantial interest in a business entity if:

(1) the combined ownership of the individual and the individual's spouse is at least 10 percent of the voting stock or shares of the business entity; or

(2) the individual or the individual's spouse is a partner, limited partner, or officer of the business entity.

(e) In this section, "business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law.

(f) This section does not limit the application of any other law, including the common law relating to conflicts of interest, to an appraisal review board member.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 13, effective September 1, 1989.

ATTORNEY GENERAL OPINIONS

Member Eligibility.
An individual who served as legal counsel to the El Paso Central Appraisal District was not eligible to be appointed to the El Paso Appraisal Review Board, pursuant to section 6.413 of the Tax Code. Section 6.412 thereof does not contain a grandfather clause, and is thus applicable to all members of an appraisal review board on the effective date of the statutory amendment. The ineligibility of a board member does not affect actions taken by the board during his tenure. 2000 Tex. Op. Att'y Gen. JC-0192.

Sec. 6.414. Auxiliary Appraisal Review Board Members.

(a) The board of directors of an appraisal district by resolution of a majority of the members may provide for a number of auxiliary appraisal review board members that the board considers appropriate to hear taxpayer protests before the appraisal review board and to assist the board in performing its duties.

(b) An auxiliary board member is appointed in the same manner and for the same term as an appraisal review board member under Section 6.41 and is subject to the same eligibility requirements and restrictions as a board member under Sections 6.41, 6.411, 6.412, and 6.413.

(c) An auxiliary board member may attend meetings of the appraisal review board but may not vote in a determination made by the board or serve as chairman or secretary of the board. An auxiliary board member is not included in determining what constitutes a quorum of the board or whether a quorum is present at any meeting of the board.

(d) **[Effective until January 1, 2020]** An auxiliary board member may hear taxpayer protests before the appraisal review board. If one or more auxiliary board members sit on a panel established under Section 41.45 to conduct a protest hearing, the number of regular appraisal review board members required by that section to constitute the panel is reduced by the number of auxiliary board members sitting. An auxiliary board member sitting on a panel is considered a regular board member for all purposes related to the conduct of the hearing.

(d) **[Effective January 1, 2020]** An auxiliary board member may hear taxpayer protests before the appraisal review board. An auxiliary board member may not hear taxpayer protests before a special panel established under Section 6.425 unless the member is eligible to be appointed to the special panel. If one or more auxiliary board members sit on a panel established under Section 6.425 or 41.45 to conduct a protest hearing, the number of regular appraisal review board members required by that section to constitute the panel is reduced by the number of auxiliary board members sitting. An auxiliary board member sitting on a panel is considered a regular board member for all purposes related to the conduct of the hearing.

(e) An auxiliary board member is entitled to make a recommendation to the appraisal review board regarding a protest heard by the member but is not entitled to vote on the determination of the protest by the board.

(f) An auxiliary board member is entitled to compensation as provided by the appraisal district budget and is not entitled to a per diem or reimbursement of expenses under Section 6.42(c).

(g) Except as provided by this section, in this title, "appraisal review board member" includes an auxiliary appraisal review board member.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 730 (H.B. 896), § 1, effective June 17, 2011; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 22, effective January 1, 2020.

Sec. 6.42. Organization, Meetings, and Compensation.

(a) **[Effective until January 1, 2020]** A majority of the appraisal review board constitutes a quorum. The board of directors of the appraisal district by resolution shall select a chairman and a secretary from among the members of the appraisal review board. The board of directors of the appraisal district is encouraged to select as chairman of the appraisal review board a member of the appraisal review board, if any, who has a background in law and property appraisal.

(a) **[Effective January 1, 2020]** A majority of the appraisal review board constitutes a quorum. The local administrative district judge under Subchapter D, Chapter 74, Government Code, in the county in which the appraisal district is established shall select a chairman and a secretary from among the members of the appraisal review board. The judge is encouraged to select as chairman a member of the appraisal review board, if any, who has a background in law and property appraisal.

(b) The board may meet at any time at the call of the chairman or as provided by rule of the board. The board shall meet to examine the appraisal records within 10 days after the date the chief appraiser submits the records to the board.

(c) Members of the board are entitled to per diem set by the appraisal district budget for each day the board meets and to reimbursement for actual and necessary expenses incurred in the performance of board functions as provided by the district budget.

(d) **[Effective January 1, 2020]** The concurrence of a majority of the members of the appraisal review board present at a meeting of the board is sufficient for a recommendation, determination, decision, or other action by the board. The concurrence of a majority of the members of a panel of the board present at a meeting of the panel is sufficient for a recommendation by the panel. The concurrence of more than a majority of the members of the board or panel may not be required.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 7.1, effective January 1, 1992; am. Acts 1995, 74th Leg., ch. 515 (H.B. 2661), § 1, effective June 12, 1995; am. Acts 2009, 81st Leg., ch. 1294 (H.B. 2317), § 2, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 23, effective January 1, 2020.

Sec. 6.425. Special Appraisal Review Board Panels in Certain Districts. [Effective January 1, 2020]

(a) This section applies only to the appraisal review board for an appraisal district described by Section 6.41(b-2).

(b) The appraisal review board shall establish special panels to conduct protest hearings under Chapter 41 relating to property that:

(1) has an appraised value as determined by the appraisal district equal to or greater than the minimum eligibility amount determined as provided by Subsection (g); and

(2) is included in one of the following classifications:

(A) commercial real and personal property;

(B) real and personal property of utilities;

(C) industrial and manufacturing real and personal property; and

(D) multifamily residential real property.

(c) Each special panel described by this section consists of three members of the appraisal review board appointed by the chairman of the board.

(d) To be eligible to be appointed to a special panel described by this section, a member of the appraisal review board must:

(1) hold a juris doctor or equivalent degree;

(2) hold a master of business administration degree;

(3) be licensed as a certified public accountant under Chapter 901, Occupations Code;

(4) be accredited by the American Society of Appraisers as an accredited senior appraiser;

(5) possess an MAI professional designation from the Appraisal Institute;

(6) possess a Certified Assessment Evaluator (CAE) professional designation from the International Association of Assessing Officers;

(7) have at least 10 years of experience in property tax appraisal or consulting; or

(8) be licensed as a real estate broker or sales agent under Chapter 1101, Occupations Code.

(e) Notwithstanding Subsection (d), the chairman of the appraisal review board may appoint to a special panel described by this section a member of the appraisal review board who does not meet the qualifications prescribed by that subsection if:

(1) the number of persons appointed to the board by the local administrative district judge who meet those qualifications is not sufficient to fill the positions on each special panel; and

(2) the board member being appointed to the panel holds a bachelor's degree in any field.

(f) In addition to conducting protest hearings relating to property described by Subsection (b) of this section, a special panel may conduct protest hearings under Chapter 41 relating to property not described by Subsection (b) of this section as assigned by the chairman of the appraisal review board.

(g) By February 1 or as soon thereafter as practicable, the comptroller shall determine the minimum eligibility amount for the current tax year for purposes of Subsection (b)(1) and publish that amount in the Texas Register. The minimum eligibility amount for the 2020 tax year is $50 million. For each succeeding tax year, the minimum eligibility amount is equal to the minimum eligibility amount for the preceding tax year as adjusted by the comptroller to reflect the inflation rate.

(h) In this section:

(1) "Consumer price index" means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, published by the Bureau of Labor Statistics of the United States Department of Labor.

(2) "Inflation rate" means the amount, expressed in decimal form rounded to the nearest thousandth, computed by determining the percentage change in the consumer price index for the preceding calendar year as compared to the consumer price index for the calendar year preceding that calendar year.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 24, effective January 1, 2020.

Sec. 6.43. Personnel.

(a) The appraisal review board may employ legal counsel as provided by the district budget or use the services of the county attorney.

(b) Except as provided by Subsection (c), an attorney may not serve as legal counsel for the appraisal review board if the attorney or a member of the attorney's law firm has during the year before the date of the appraisal review board's hiring of the attorney represented a property owner who owns property in the appraisal district, a taxing unit that participates in the appraisal district, or the appraisal district in a matter addressed by Section 1.111 or 25.25 of this code, Subtitle F of this title, or Subchapter Z, Chapter 2003, Government Code.

(c) The county attorney for the county in which the appraisal district is established may provide legal services to the appraisal review board notwithstanding that the county attorney or an assistant to the county attorney represents or has represented the appraisal district or a taxing unit that participates in the appraisal district in any matter.

(d) An attorney who serves as legal counsel for an appraisal review board may not act as an advocate in a hearing or proceeding conducted by the board. The attorney may provide advice to the board or a panel of the board during a hearing or proceeding and shall disclose to the board all legal authority in the controlling jurisdiction known to the attorney to be relevant to the matter and not disclosed by the parties. The attorney shall disclose to the board a material fact that may assist the board or panel in making an informed decision regardless of whether the fact is adverse to the position of a party.

(e) An appraisal district may specify in its budget whether the appraisal review board may employ legal counsel or must use the services of the county attorney. If the budget authorizes the board to employ legal counsel, the budget must provide for reasonable compensation to be paid to the attorney serving as legal counsel. An appraisal district may not require the board to employ a specific attorney as legal counsel.

(f) The appraisal office may provide clerical assistance to the appraisal review board, including assisting the board with the scheduling and arranging of hearings.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 5, effective September 1, 2011.

CHAPTERS 7 TO 10

[Reserved for expansion]

SUBTITLE C

TAXABLE PROPERTY AND EXEMPTIONS

CHAPTER 11

Taxable Property and Exemptions

Subchapter A. Taxable Property

Section	
11.01.	Real and Tangible Personal Property.
11.02.	Intangible Personal Property.
11.03 to 11.10.	[Reserved].

Subchapter B. Exemptions

Section	
11.11.	Public Property.
11.111.	Public Property Used to Provide Transitional Housing for Indigent Persons.
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Subchapter A

Taxable Property

Sec. 11.01. Real and Tangible Personal Property.

(a) All real and tangible personal property that this state has jurisdiction to tax is taxable unless exempt by law.

(b) This state has jurisdiction to tax real property if located in this state.

(c) This state has jurisdiction to tax tangible personal property if the property is:

(1) located in this state for longer than a temporary period;

(2) temporarily located outside this state and the owner resides in this state; or

(3) used continually, whether regularly or irregularly, in this state.

(d) Tangible personal property that is operated or located exclusively outside this state during the year preceding the tax year and on January 1 of the tax year is not taxable in this state.

(e) For purposes of Subsection (c)(3), property is considered to be used continually, whether regularly or irregularly, in this state if the property is used in this state three or more times on regular routes or for three or more completed assignments occurring in close succession throughout the year. For purposes of this subsection, a series of events are considered to occur in close succession throughout the year if they occur in sequence within a short period at intervals from the beginning to the end of the year.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1983, 68th Leg., ch. 353 (H.B. 1748), § 1, effective January 1, 1984; am. Acts 1989, 71st Leg., ch. 534 (H.B. 2959), § 2, effective January 1, 1990; am. Acts 2017, 85th Leg., ch. 893 (H.B. 3103), § 1, effective June 15, 2017.

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COMMERCIAL LAW (UCC)
Secured Transactions (Article 9)
Application & Construction

Leases. — Summary judgment in favor of the taxing units was proper in a suit for delinquent ad valorem taxes against an automobile leasing company as the company's affirmative defense of nonownership based on its claim that its leases with its customers were security agreements failed as a matter of law under Tex. Bus. & Com. Code Ann. § 1.203(b); the company's leases expressly provided that they were subject to termination by the lessee, and no party claimed ambiguity in the subject lease agreements. Excel Auto & Truck Leasing, LLP v. Alief Indep. Sch. Dist., No. 01-04-01185-CV, 2007 Tex. App. LEXIS 3032 (Tex. App. Houston 1st Dist. Apr. 19, 2007), op. withdrawn, sub. op., reh'g denied, 249 S.W.3d 46, 63 U.C.C. Rep. Serv. 2d (CBC) 846, 2007 Tex. App. LEXIS 7359 (Tex. App. Houston 1st Dist. Aug. 31, 2007).

CONSTITUTIONAL LAW
Congressional Duties & Powers
Commerce Clause
Interstate Commerce

Tests. — Tax on oil involved in interstate transit was violative of the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, where any delay at a tank farm was not attributable to several oil companies but, rather, was incidental to the transportation of the oil by a common carrier and was necessary for the safe and efficient operation of the pipeline system; there was no substantial nexus shown because the activity essentially being taxed in this case was the ownership of oil that was present, but in transit on January 1, in a tank farm that constituted an integral part of an interstate, common carrier pipeline system. The evidence was sufficient to show that the oil was involved in interstate commerce where there was testimony that only 10 percent of the oil at issue was actually offloaded in Texas. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

ASSESSMENTS. — Taxpayer established the right to remove "inventory in transit," inventory located in California, and intangible "work in process" accounts from the appraisal roll for the 2008 tax year and the appraisal roll had be corrected to reflect that the taxpayer owned $29,742,953 worth of taxable personal property and was entitled to a tax refund. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., No. 01-12-00052-CV, 2013 Tex. App. LEXIS 10086 (Tex. App. Houston 1st Dist. Aug. 13, 2013).

NATURAL RESOURCES TAX

Limitations. — Tax on oil involved in interstate transit was not permitted under Tex. Tax Code Ann. § 21.02(a)(1) because it had no taxable situs in a county; the evidence presented was sufficient to show that the oil was merely transported through the county and was only temporarily located there. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

Tax on oil involved in interstate transit was not permitted under Tex. Tax Code Ann. § 21.02(a)(4) because a trial court made no findings of fact on this issue, and an appraisal district did not request that the trial court make a finding regarding a principal place of business. Moreover, the evidence did not indicate that a certain county was the principal place of business in Texas for several oil companies. Midland Cent. Appraisal Dist. v.

BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

PERSONAL PROPERTY TAX

General Overview. — Corporation was not entitled to a refund after voluntarily paying ad valorem taxes on component parts; the court further held that the component parts that were shipped from out of state were not exempt from taxation because the property was not consigned property. Amplifone Corp. v. Cameron County, 577 S.W.2d 567, 1979 Tex. App. LEXIS 3188 (Tex. Civ. App. Corpus Christi Feb. 8, 1979, no writ).

INTANGIBLE PROPERTY

General Overview. — City's tax plan which omitted all personal property from the tax rolls was in violation of Tex. Const. art. VIII, § 1 and former Tex. Rev. Civ. Stat. Ann. arts. 7145 and 7174 (now Tex. Tax Code Ann. § 11.01), which provided that all property, real, personal, or mixed, was subject to taxation. Anderson County Taxpayers' League v. Palestine, 576 S.W.2d 679, 1979 Tex. App. LEXIS 3105 (Tex. Civ. App. Tyler Jan. 11, 1979, no writ).

IMPOSITION OF TAX. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

TANGIBLE PROPERTY

General Overview. — Tex. Tax Code Ann. § 11.01(c), requiring taxation of personal property held for export while within the state of Texas, does not violate the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, or the Equal Protection Clause, U.S. Const. amend. XIV, because the tax, which does not apply to property that is temporarily located in-state, does not impede interstate commerce. Vinmar, Inc. v. Harris County Appraisal Dist., 890 S.W.2d 493, 1994 Tex. App. LEXIS 2888 (Tex. App. El Paso Nov. 23, 1994), rev'd, 947 S.W.2d 554, 1997 Tex. LEXIS 57 (Tex. 1997).

Where taxpayer was domiciled in Texas, his principal place of business was in Texas, and his business aircraft were out of the state 20 percent of the time during a taxing period, the aircraft were tangible personal property subject to taxation under Tex. Tax Code Ann. § 11.01(c). Jet Fleet Corp. v. Dallas County Appraisal Dist., 773 S.W.2d 744, 1989 Tex. App. LEXIS 2053 (Tex. App. Dallas June 21, 1989, no writ).

If property is only temporarily located in Texas and is not used continually in Texas, it is not within Texas' taxing jurisdiction, and if goods, wares, ores and merchandise meet the requirements of Tex. Tax Code Ann. § 11.01(d), they are presumed to be only temporarily located in Texas. Dallas County Appraisal Dist. v. L.D. Brinkman & Co., 701 S.W.2d 20, 1985 Tex. App. LEXIS 12873 (Tex. App. Dallas Oct. 31, 1985, writ ref'd n.r.e.).

City's tax plan which omitted all personal property from the tax rolls was in violation of Tex. Const. art. VIII, § 1 and former Tex. Rev. Civ. Stat. Ann. arts. 7145 and 7174 (now Tex. Tax Code Ann. § 11.01), which provided that all property, real, personal, or mixed, was subject to taxation. Anderson County Taxpayers' League v. Palestine, 576 S.W.2d 679, 1979 Tex. App. LEXIS 3105 (Tex. Civ. App. Tyler Jan. 11, 1979, no writ).

FAILURE TO PAY TAX. — Summary judgment in favor of the taxing units was proper in a suit for delinquent ad valorem taxes against an automobile leasing company as the company's affirmative defense of nonownership based on its claim that its leases with its customers were security agreements failed as a matter of law under Tex. Bus. & Com. Code Ann. § 1.203(b); the company's leases expressly provided that they were subject to termination by the lessee, and no party claimed ambiguity in the subject lease agreements. Excel Auto & Truck Leasing, LLP v. Alief Indep. Sch. Dist., No. 01-04-01185-CV, 2007 Tex. App. LEXIS 3032 (Tex. App. Houston 1st Dist. Apr. 19, 2007), op. withdrawn, sub. op., reh'g denied, 249 S.W.3d 46, 63 U.C.C. Rep. Serv. 2d (CBC) 846, 2007 Tex. App. LEXIS 7359 (Tex. App. Houston 1st Dist. Aug. 31, 2007).

IMPOSITION OF TAX. — Tax on oil involved in interstate transit was not permitted under Tex. Tax Code Ann. § 21.02(a)(1) because it had no taxable situs in a county; the evidence presented was sufficient to show that the oil was merely transported through the county and was only temporarily located there. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

Tax on oil involved in interstate transit was not permitted under Tex. Tax Code Ann. § 21.02(a)(4) because a trial court made no findings of fact on this issue, and an appraisal district did not request that the trial court make a finding regarding a principal place of business. Moreover, the evidence did not indicate that a certain county was the principal place of business in Texas for several oil companies. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

Trial court's finding that the taxpayer housed its airplane in the county as of January 1, 2006 on more than a temporary basis was supported by substantial evidence because aside from the taxpayer's manager's testimony, there was nothing in the record showing the plane's return to Louisiana as of January 1, 2006. The evidence showed that the plane had been relocated to Texas just before Hurricane Katrina struck Louisiana, that the plane served only the owners and partners of the taxpayer's Houston affiliates, the hurricane destroyed the taxpayer's hanger in Louisiana and it was not rebuilt, the taxpayer's employees and the plane's pilot relocated to Houston, and the taxpayer's flight log showed that it was used regularly in the county where a majority percentage of the plane's 2005 departed from. Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741, 2009 Tex. App. LEXIS 2097 (Tex. App. Houston 1st Dist. Mar. 26, 2009, no pet.).

In the application of Tex. Tax Code Ann. § 11.01(c)(3), "continually" means while present in Texas, though not necessarily exclusively, for some period of the tax year. Personal property is "used continually, whether regularly or irregularly, in this state" if the property is used while it is present in Texas during the tax year; that use can be regular or irregular in pattern or amount, so long as the property is used over the course of the tax year. Alaska Flight Servs., LLC v. Dallas Cent. Appraisal Dist., 261 S.W.3d 884, 2008 Tex. App. LEXIS 6504 (Tex. App. Dallas Aug. 26, 2008, no pet.).

Aircraft was subject to ad valorem taxation for the year 2002 under Tex. Tax Code Ann. § 11.01(c)(3) due to nine or ten departures from Texas and servicing in the state in 2001; the word "continually" meant the property was present in the state, though not necessarily exclusively, for some period of the tax year. An aircraft could have been used continually outside of Texas and still have been used in Texas. Alaska Flight Servs., LLC v. Dallas Cent. Appraisal Dist., 261 S.W.3d 884, 2008 Tex. App. LEXIS 6504 (Tex. App. Dallas Aug. 26, 2008, no pet.).

Texas Legislature intends the same time period to be used to determine whether personal property is taxable (Tex. Tax Code Ann. § 11.01(c)) or is not taxable (Tex. Tax Code Ann. § 11.01(d)). Therefore, a trial court did not err when it looked backwards to 2001 to determine the taxes owed for 2002. Alaska Flight Servs., LLC v. Dallas Cent. Appraisal Dist., 261 S.W.3d 884, 2008 Tex. App. LEXIS 6504 (Tex. App. Dallas Aug. 26, 2008, no pet.).

Nothing in the Texas Tax Code requires nonincome-producing tangible personal property to be rendered for taxation before the property is taxable; therefore, a taxpayer's assertion that his manufactured home was not subject to ad valorem taxes because it was not rendered for taxation and it was not income-producing was rejected; Tex. Tax Code Ann. § 11.01, Tex. Tax Code Ann. § 11.14 and Tex. Const. art. VIII, § 11 were contrary to that proposition. Firman v. Everman Indep. Sch. Dist., No. 2-06-392-CV, 2007 Tex. App. LEXIS 7101 (Tex. App. Fort Worth Aug. 31,

2007), reh'g denied, No. 2-06-392-CV, 2007 Tex. App. LEXIS 7870 (Tex. App. Fort Worth Sept. 27, 2007).

LIMITATIONS. — Taxpayer established the right to remove "inventory in transit," inventory located in California, and intangible "work in process" accounts from the appraisal roll for the 2008 tax year and the appraisal roll had be corrected to reflect that the taxpayer owned $29,742,953 worth of taxable personal property and was entitled to a tax refund. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., No. 01-12-00052-CV, 2013 Tex. App. LEXIS 10086 (Tex. App. Houston 1st Dist. Aug. 13, 2013).

Tax on oil involved in interstate transit was violative of the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, where any delay at a tank farm was not attributable to several oil companies but, rather, was incidental to the transportation of the oil by a common carrier and was necessary for the safe and efficient operation of the pipeline system; there was no substantial nexus shown because the activity essentially being taxed in this case was the ownership of oil that was present, but in transit on January 1, in a tank farm that constituted an integral part of an interstate, common carrier pipeline system. The evidence was sufficient to show that the oil was involved in interstate commerce where there was testimony that only 10 percent of the oil at issue was actually offloaded in Texas. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — Salt dome storage caverns, which were expanded to meet the needs of the company leasing the storage space, did not fit the tax code's definition of an "improvement," and they were not subject to an appraisal separate from the surface land. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., 118 S.W.3d 464, 160 Oil & Gas Rep. 969, 2003 Tex. App. LEXIS 7577 (Tex. App. Corpus Christi Aug. 29, 2003), rev'd, 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

COLLECTION

General Overview. — Note maker was obligated to pay taxes on real property he possessed while paying on the note because although the extension of the lien and promissory note contractually released the note maker from personal liability on the note itself, it did not relieve the note maker from the covenant to pay taxes as the true owner of the property. Smart v. Tower Land & Inv. Co., 582 S.W.2d 543, 1979 Tex. App. LEXIS 3614 (Tex. Civ. App. Dallas May 10, 1979), writ granted No. B-8664 (Tex. 1979), rev'd, 597 S.W.2d 333, 1980 Tex. LEXIS 328 (Tex. 1980).

TRANSPORTATION LAW
Air Transportation

General Overview. — Aircraft was subject to ad valorem taxation for the year 2002 under Tex. Tax Code Ann. § 11.01(c)(3) due to nine or ten departures from Texas and servicing in the state in 2001; the word "continually" meant the property was present in the state, though not necessarily exclusively, for some period of the tax year. An aircraft could have been used continually outside of Texas and still have been used in Texas. Alaska Flight Servs., LLC v. Dallas Cent. Appraisal Dist., 261 S.W.3d 884, 2008 Tex. App. LEXIS 6504 (Tex. App. Dallas Aug. 26, 2008, no pet.).

ATTORNEY GENERAL OPINIONS

Analysis

Cattle in Feedlots as Tangible Property.
Processor's Gas as Real Property and Personal Property.
Valuation of Bank Shares.

Cattle in Feedlots as Tangible Property.

A custom cattle feeding lot is not a 'place of storage' as such phrase is intended in Article 7243, Vernon's Civil Statutes and is not obligated to furnish the county tax assessor a list of the names of those owning cattle located within said lot on January 1st of each year and the number of such cattle, upon demand by such assessor. 1969 Tex. Op. Att'y Gen. M-445.

Processor's Gas as Real Property and Personal Property.

The portion of the products received and retained under a processing contract between the Sun Oil Company and certain producers of natural gas which Sun, as processor, retains as a processing charge does not constitute gas in place, and is not taxable as real property but is taxable as personal property. Gas owned by Sun under leases which it holds Is subject to ad valorem taxation as real property so long as it remains in place unsevered and unprocessed, but after severance and processing the products derived therefrom do not constitute real property subject to taxation, but should be taxed as personal property. 1958 Tex. Op. Att'y Gen. M-431.

Valuation of Bank Shares.

The "Reserve for Bad Debts" and the "Reserve for Bond Depletion" are neither assessable nor taxable to the First Lockhart National Bank of Lockhart, Texas. As personal property they constitute part of the assets of the bank and should be taken into consideration by the Tax Assessor-Collector in determining the value of the shares of bank stock for ad valorem tax purposes. 1965 Tex. Op. Att'y Gen. C-519.

Sec. 11.02. Intangible Personal Property.

(a) Except as provided by Subsection (b) of this section, intangible personal property is not taxable.

(b) Intangible property governed by Article 4.01, Insurance Code, or by Section 89.003, Finance Code, is taxable as provided by law, unless exempt by law, if this state has jurisdiction to tax those intangibles.

(c) This state has jurisdiction to tax intangible personal property if the property is:

(1) owned by a resident of this state; or

(2) located in this state for business purposes.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1984, 68th Leg., 2nd C.S., ch. 31 (H.B. 122), art. 3, part A, § 1, effective January 1, 1985; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 7.88, effective September 1, 1999.

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CIVIL PROCEDURE
Summary Judgment
Burdens of Production & Proof

General Overview. — Bank appealed grant of summary judgment in favor of a county and tax assessor-collector, in the bank's action seeking a refund of taxes paid under Tex. Tax Code Ann. § 11.02; the court held that summary judgment was proper where the bank had failed to preserve the issue of its ownership of bank stock by administrative contest, and had failed to raise fact issues in its summary judgment proof. First Bank of Deer Park v. Harris County, 804 S.W.2d 588, 1991 Tex. App. LEXIS 199 (Tex. App. Houston 1st Dist. Jan. 24, 1991, no writ).

GOVERNMENTS
Public Improvements

Assessments. — Former Tex. Rev. Civ. Stat. Ann. art. 7150.6 (now Tex. Trans. Code Ann. § 11.02) prohibited taxation of all intangible property except as provided for in certain specified statutes. Bank of Texas v. Childs, 1980 Tex. App. LEXIS 4083 (Tex. Civ. App. Dallas July 1, 1980).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

Bank's notice of appeal of a tax assessed on its shares pursuant to Tex. Tax. Code Ann. § 11.02(b) was timely served under Tex. Tax Code Ann. § 42.06(b) when it was addressed to the appraisal district and forwarded to the appraisal review board, which shared the same office and used the same set of case files. Harris County Appraisal Dist. v. Texas Nat'l Bank, 775 S.W.2d 66, 1989 Tex. App. LEXIS 1931 (Tex. App. Houston 1st Dist. July 27, 1989, no writ).

Although the tax on bank shares under Tex. Tax Code Ann. § 11.02(b) had been ruled unconstitutional, a bank was not entitled to a refund of taxes that it had voluntarily paid, in the absence of a finding of fraud, express or implied duress, or mutual mistake of fact. First Bank of Deer Park v. Harris County, No. 01-88-00501-CV, 1989 Tex. App. LEXIS 1930 (Tex. App. Houston 1st Dist. July 27, 1989), op. withdrawn, sub. op., No. 01-88-00501-CV, 1990 Tex. App. LEXIS 492 (Tex. App. Houston 1st Dist. Mar. 8, 1990).

Trial court erred when it enjoined the city from taxing the capital stock of the bank under former Tex. Rev. Civ. Stat. Ann. art. 7166 on the ground that there was no double taxation of the stock; the bank was not entitled to deduct the value of its tower from the value of the stock because the bank did not include or consider the tower's value when it valued its stock. Midland v. Midland Nat'l Bank, 607 S.W.2d 303, 1980 Tex. App. LEXIS 4341 (Tex. Civ. App. El Paso Oct. 22, 1980, writ ref'd n.r.e.).

PERSONAL PROPERTY TAX
Intangible Property

General Overview. — Finding in favor of the taxpayer in a property tax dispute was inappropriate. Because because the taxpayer's interest savings resulted from its nontaxable favorable financing agreement and because those savings did not affect the apartment complex's ability to produce income, the taxpayer's favorable financing should not be considered in determining the apartment complex's market value, Tex. Tax Code Ann. §§ 1.04(6), 11.02(a)(b). Cent. Appraisal Dist. v. Western AH 406, Ltd., 372 S.W.3d 672, 2012 Tex. App. LEXIS 3299 (Tex. App. Eastland Apr. 26, 2012, no pet.).

Plaintiff taxing authority could not tax defendant corporation's computer software under Tex. Tax Code Ann. § 11.02, as that software was intangible personal property not subject to ad valorem taxation. Dallas Cent. Appraisal Dist. v. Tech Data Corp., 930 S.W.2d 119, 1996 Tex. App. LEXIS 2368 (Tex. App. Dallas May 30, 1996, writ denied).

Taxpayers were granted injunctive relief from a particular tax scheme that was found to be illegal, because the scheme was discriminatory by levying against only one type of moneyed capital, bank stock, and not against any other moneyed capital, in violation of former Tex. Rev. Civ. Stat. Ann. art. 7166; costs were properly assessed against the tax assessor and county board under former Tex. Rev. Civ. Stat. Ann. art. 7345b, § b; exemptions for governmental units, provided for in former Tex. Rev. Civ. Stat. Ann. art. 7297, did not apply. Childs v. Reunion Bank, 587 S.W.2d 466, 1979 Tex. App. LEXIS 4025 (Tex. Civ. App. Dallas Aug. 6, 1979, writ ref'd n.r.e.).

IMPOSITION OF TAX. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

Secs. 11.03 to 11.10. [Reserved for expansion].

Subchapter B

Exemptions

Sec. 11.11. Public Property.

(a) Except as provided by Subsections (b) and (c) of this section, property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes.

(b) Land owned by the Permanent University Fund is taxable for county purposes. Any notice required by Section

25.19 of this code shall be sent to the comptroller, and the comptroller shall appear in behalf of the state in any protest or appeal relating to taxation of Permanent University Fund land.

(c) Agricultural or grazing land owned by a county for the benefit of public schools under Article VII, Section 6, of the Texas Constitution is taxable for all purposes. The county shall pay the taxes on the land from the revenue derived from the land. If revenue from the land is insufficient to pay the taxes, the county shall pay the balance from the county general fund.

(d) Property owned by the state that is not used for public purposes is taxable. Property owned by a state agency or institution is not used for public purposes if the property is rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state agency or institution or used to provide private residential housing for compensation to members of the public other than students and employees of the state agency or institution owning the property, unless the residential use is secondary to its use by an educational institution primarily for instructional purposes. Any notice required by Section 25.19 of this code shall be sent to the agency or institution that owns the property, and it shall appear in behalf of the state in any protest or appeal related to taxation of the property.

(e) Property that is held or dedicated for the support, maintenance, or benefit of an institution of higher education as defined by Section 61.003, Education Code, but is not rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state or institution or is not rented or leased to provide private residential housing to members of the public other than students and employees of the state or institution is not taxable. If a portion of property of an institution of higher education is used for public purposes and a portion is not used for those purposes, the portion of the property used for public purposes is exempt under this subsection. All oil, gas, and other mineral interests owned by an institution of higher education are exempt from all ad valorem taxes. Property bequeathed to an institution is exempt from the assessment of ad valorem taxes from the date of the decedent's death, unless:

(1) the property is leased for compensation to a private business enterprise as provided in this subsection; or

(2) the transfer of the property to an institution is contested in a probate court, in which case ad valorem taxes shall be assessed to the estate of the decedent until the final determination of the disposition of the property is made. The property is exempt from the assessment of ad valorem taxes upon vesting of the property in the institution.

(f) Property of a higher education development foundation or an alumni association that is located on land owned by the state for the support, maintenance, or benefit of an institution of higher education as defined in Chapter 61, Education Code, is exempt from taxation if:

(1) the foundation or organization meets the requirements of Sections 11.18(e) and (f) and is organized exclusively to operate programs or perform other activities for the benefit of institutions of higher education; and

(2) the property is used exclusively in those programs or activities.

(g) For purposes of this section, an improvement is owned by the state and is used for public purposes if it is:

(1) located on land owned by the Texas Department of Criminal Justice;

(2) leased and used by the department; and

(3) subject to a lease-purchase agreement providing that legal title to the improvement passes to the department at the end of the lease period.

(h) For purposes of this section, tangible personal property is owned by this state or a political subdivision of this state if it is subject to a lease-purchase agreement providing that the state or political subdivision, as applicable, is entitled to compel delivery of the legal title to the property to the state or political subdivision, as applicable, at the end of the lease term. The property ceases to be owned by the state or political subdivision, as applicable, if, not later than the 30th day after the date the lease terminates, the state or political subdivision, as applicable, does not exercise its right to acquire legal title to the property.

(i) A corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), or a successor statute, that engages primarily in providing chilled water and steam to an eligible institution, as defined by Section 301.031, Health and Safety Code, is entitled to an exemption from taxation of the property the corporation owns as though the property of the corporation were owned by this state and used for health or educational purposes.

(j) For purposes of this section, any portion of a facility owned by the Texas Department of Transportation that is a rail facility or system or is a highway in the state highway system, and that is licensed or leased to a private entity by that department under Chapter 91 or 223, Transportation Code, is public property used for a public purpose if the rail facility or system, highway, or facility is operated by the private entity to provide transportation or utility services. Any part of a facility, rail facility or system, or state highway that is licensed or leased to a private entity for a commercial purpose is not exempt from taxation.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 30, effective January 1, 1984; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 5, effective August 29, 1983; am. Acts 1983, 68th Leg., ch. 1007 (H.B. 2156), § 1, effective January 1, 1984; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 14, effective January 1, 1990; am. Acts 1989, 71st Leg., ch. 1021 (H.B. 1078), § 1, effective August 28, 1989; am. Acts 1990, 71st Leg., 6th C.S., ch. 12 (S.B. 51), § 2(31), effective September 6, 1990; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 9, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 843 (H.B. 846), § 1, effective January 1, 1998; am. Acts 2001, 77th Leg., ch. 362 (S.B. 1189), § 1, effective May 26, 2001; am. Acts 2003, 78th Leg., ch. 1266 (S.B. 1652), § 1.01, effective June 21, 2003; am. Acts 2005, 79th Leg., ch. 281 (H.B. 2702), § 2.95, effective June 14, 2005; am. Acts 2007, 80th Leg., ch. 204 (S.B. 812), § 1, effective January 1, 2008; am. Acts 2009, 81st

Leg., ch. 87 (S.B. 1969), § 25.152, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 259 (H.B. 1201), § 1, effective June 17, 2011.

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CIVIL PROCEDURE
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Mandamus. — Mandamus relief was denied to an energy company because an appraisal district had no duty to act on an untimely application for an open-space agricultural appraisal for the years 1999 through 2002, pursuant to Tex. Tax Code Ann. § 23.541(a)(1). A tax-exemption for public use was revoked after it was discovered that the land in question was being leased after 1998 for mining. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

GOVERNMENTS
Local Governments

Property. — Because a municipally owned utility company had leased its lands for private commercial purposes and was no longer using the lands in question for a public purpose within the meaning of Tex. Const. art. VIII, § 2 or Tex. Tax Code Ann. § 11.11(a), it was not entitled to a tax exemption under either Tex. Const. art. VIII, § 2 or Tex. Tax Code Ann. § 11.11(a), and Tex. Const. art. XI, § 9 also required exclusive public use of public property to qualify for a tax exemption. City of San Antonio v. Bastrop Central Appraisal Dist., No. 03-06-00081-CV, 2006 Tex. App. LEXIS 9051 (Tex. App. Austin Oct. 19, 2006).

REAL PROPERTY LAW
Ownership & Transfer
Transfer Not By Deed
Dedication

Elements. — In an ad valorem tax case in which an appraisal district applied rollback taxes to certain parcels of land that landowners were developing as residential subdivisions, there was no merit in the landowners' claim that the appraisal district applied rollback taxes to portions of parcels dedicated to public use in violation of the Texas Tax Code where, based on the stipulated facts presented, acceptance of the dedicated land did not occur until the city issued its final acceptance certificates stating that the public improvements and dedications were accepted, and because the final acceptance certificates were signed after the date of the change of use, the property was not finally dedicated at the time the change of use occurred; accordingly, rollback tax penalties were properly assessed against the landowners for the land at issue because they owned the land at the time that the change of use occurred. Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist., 234 S.W.3d 809, 2007 Tex. App. LEXIS 7622 (Tex. App. Dallas Sept. 19, 2007, no pet.).

TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property

General Overview. — Application of Tex. Tax Code Ann. § 11.11, in the context of leaseholds, is "tantamount" to a tax exemption and must be strictly construed in the taxing authority's favor. Gables Realty L.P. v. Travis Cent. Appraisal Dist., 81 S.W.3d 869, 2002 Tex. App. LEXIS 3935 (Tex. App. Austin May 31, 2002, no pet.).

Where a private business enterprise leased tracts owned by state agencies for compensation for purposes not related to the performance of state duties and functions, a determination whether the tracts should have been assessed as "tax exempt" property under Tex. Tax Code Ann. § 25.07(a), depended on a determination whether the tracts were tax-exempt under Tex. Tax Code Ann. § 11.11, which had to be strictly construed in the taxing authority's favor. Gables Realty L.P. v. Travis Cent. Appraisal Dist., 81 S.W.3d 869, 2002 Tex. App. LEXIS 3935 (Tex. App. Austin May 31, 2002, no pet.).

Whether state property is exempt in the hands of its owner under Tex. Tax Code Ann. § 25.07 must be determined by applying Tex. Tax Code Ann. § 11.11, taking full account of the lessee's use of the property. Gables Realty L.P. v. Travis Cent. Appraisal Dist., 81 S.W.3d 869, 2002 Tex. App. LEXIS 3935 (Tex. App. Austin May 31, 2002, no pet.).

Court affirmed, stating that in order for property to receive tax exempt status, pursuant to Tex. Tax. Code Ann. § 11.11 and Tex. Const. art. VIII, § 2(a) the property had to be used for a purely public purpose. Grand Prairie Hospital Authority v. Dallas County Appraisal Dist., 730 S.W.2d 849, 1987 Tex. App. LEXIS 7595 (Tex. App. Dallas May 11, 1987, writ ref'd n.r.e.).

INTANGIBLE PROPERTY
General Overview. — In a case involving a dispute with respect to tax exempt status, the trial court properly determined that the land held by the municipal utility district solely for resale to pay off bankruptcy debts was for a public purpose and therefore was exempt from taxation under Tex. Tax Code Ann. § 11.11(a). Klein Independent School Dist. v. Appraisal Review Bd. for Harris County Appraisal Dist., 843 S.W.2d 201, 1992 Tex. App. LEXIS 2962 (Tex. App. Texarkana Nov. 24, 1992, no writ).

REAL PROPERTY TAX
General Overview. — Because a municipally owned utility company had leased its lands for private commercial purposes and was no longer using the lands in question for a public purpose within the meaning of Tex. Const. art. VIII, § 2 or Tex. Tax Code Ann. § 11.11(a), it was not entitled to a tax exemption under either Tex. Const. art. VIII, § 2 or Tex. Tax Code Ann. § 11.11(a), and Tex. Const. art. XI, § 9 also required exclusive public use of public property to qualify for a tax exemption. City of San Antonio v. Bastrop Central Appraisal Dist., No. 03-06-00081-CV, 2006 Tex. App. LEXIS 9051 (Tex. App. Austin Oct. 19, 2006).

ASSESSMENT & VALUATION
General Overview. — Tex. Const. art. VII, § 2 was inapplicable so as to allow the university and its foundation to claim property

tax exemption because the property in question was owned by the foundation, which was a private business enterprise, and the tax exemption was not for the benefit of an institution of higher education but for compensation to the private business. Hays County Appraisal Dist. v. Southwest Tex. State Univ., 973 S.W.2d 419, 1998 Tex. App. LEXIS 4326 (Tex. App. Austin July 16, 1998, no pet.).

ASSESSMENT METHODS & TIMING. — In an ad valorem tax case in which an appraisal district applied rollback taxes to certain parcels of land that landowners were developing as residential subdivisions, there was no merit in the landowners' claim that the appraisal district applied rollback taxes to portions of parcels dedicated to public use in violation of the Texas Tax Code where, based on the stipulated facts presented, acceptance of the dedicated land did not occur until the city issued its final acceptance certificates stating that the public improvements and dedications were accepted, and because the final acceptance certificates were signed after the date of the change of use, the property was not finally dedicated at the time the change of use occurred; accordingly, rollback tax penalties were properly assessed against the landowners for the land at issue because they owned the land at the time that the change of use occurred. Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist., 234 S.W.3d 809, 2007 Tex. App. LEXIS 7622 (Tex. App. Dallas Sept. 19, 2007, no pet.).

VALUATION. — Mandamus relief was denied to an energy company because an appraisal district had no duty to act on an untimely application for an open-space agricultural appraisal for the years 1999 through 2002, pursuant to Tex. Tax Code Ann. § 23.541(a)(1). A tax-exemption for public use was revoked after it was discovered that the land in question was being leased after 1998 for mining. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

EXEMPTIONS. — Incidental and occasional use of property by county hospital vendors was not a public purpose that made the property exempt from taxation under Tex. Tax Code Ann. § 11.11(a). Cooper v. Hamilton County, No. 10-12-00427-CV, 2014 Tex. App. LEXIS 1066 (Tex. App. Waco Jan. 30, 2014), pet. denied No. 14-0203, 2014 Tex. LEXIS 433 (Tex. May 23, 2014).

Student housing authority did not qualify for a tax exemption under ex. Tax Code Ann. § 11.11(a) for the tax years 2006 through 2008 where the provision of housing to hockey and cheerleading camps was not a public purpose. Tex. Student Hous. Auth. v. Brazos County Appraisal Dist., 440 S.W.3d 779, 2013 Tex. App. LEXIS 7950 (Tex. App. Amarillo June 27, 2013), rev'd in part, 460 S.W.3d 137, 2015 Tex. LEXIS 339 (Tex. 2015).

Student housing authority did not qualify for a tax exemption under Tex. Tax Code Ann. § 11.11(e) as there was no evidence that the housing facility was owned by an institution of higher learning. Tex. Student Hous. Auth. v. Brazos County Appraisal Dist., 440 S.W.3d 779, 2013 Tex. App. LEXIS 7950 (Tex. App. Amarillo June 27, 2013), rev'd in part, 460 S.W.3d 137, 2015 Tex. LEXIS 339 (Tex. 2015).

Texas Legislature's decision to pair "aircraft" with "equipment" inherently limits the type of equipment that qualifies under this exemption to that type of equipment used in the creation of aircrafts or used in conjunction with aircraft for the purpose of allowing the aircraft to properly function; moreover, the manner in which the Texas Legislature addresses aircraft, as well as the equipment used in conjunction with aircraft and aircraft components, in Tex. Tax Code Ann. § 151.328(a), (d), Tex. Tax Code Ann. § 162.115 (j), (k), Tex. Transp. Code Ann. § 22.087, and Tex. Transp. Code Ann. § 22.011(b)(1)(C) supports the conclusion that the Legislature does not intend to include entire aircraft within the phrase "aircraft equipment." Therefore, a tax exemption was properly denied in a case where tax exempt property leased from a city was used to store whole aircrafts because this was not equipment. ICAN Enter. v. Williamson County Appraisal Dist., No. 03-06-00594-CV, 2009 Tex. App. LEXIS 2596 (Tex. App. Austin Apr. 17, 2009).

TRANSPORTATION LAW

Air Transportation

General Overview. — Texas Legislature's decision to pair "aircraft" with "equipment" inherently limits the type of equipment that qualifies under this exemption to that type of equipment used in the creation of aircrafts or used in conjunction with aircraft for the purpose of allowing the aircraft to properly function; moreover, the manner in which the Texas Legislature addresses aircraft, as well as the equipment used in conjunction with aircraft and aircraft components, in Tex. Tax Code Ann. § 151.328(a), (d), Tex. Tax Code Ann. § 162.115 (j), (k), Tex. Transp. Code Ann. § 22.087, and Tex. Transp. Code Ann. § 22.011(b)(1)(C) supports the conclusion that the Legislature does not intend to include entire aircraft within the phrase "aircraft equipment." Therefore, a tax exemption was properly denied in a case where tax exempt property leased from a city was used to store whole aircrafts because this was not equipment. ICAN Enter. v. Williamson County Appraisal Dist., No. 03-06-00594-CV, 2009 Tex. App. LEXIS 2596 (Tex. App. Austin Apr. 17, 2009).

ATTORNEY GENERAL OPINIONS

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Ad Valorem Taxes.

Ranch property given in trust to a state university to use in its educational programs is exempt from ad valorem taxation under section 11.11(e) of the Tax Code. 1986 Tex. Op. Att'y Gen. JM-551.

Ad Valorem Taxes and State University's Property.

State-owned property used for public purposes is exempt from taxation. Whether the Aquarena Springs property owned by Southwest Texas State University is subject to ad valorem tax for 1995 involves questions of fact that cannot be resolved in the opinion process. 1996 Tex. Op. Att'y Gen. DM-428.

Continuing Tax Liability.

There is clear legislative intention that taxes shall not be released or cancelled, but that the State's rights shall be protected in every way possible. The taxes which became due upon land prior to it's purchase by a Texas University remain outstanding and cannot be stricken from the rolls. Recourse must be had upon the personal liability of the former owners of the property. 1944 Tex. Op. Att'y Gen. W-6293.

Exempt Properties.

Buildings that are owned by the city are not tax exempt if they are owned purely for the purpose of renting them to private commercial interests. Tex. Att'y Gen. DM-188 (1992).

Exempt Property.

Property is exempt under Tex. Tax Code Ann. § 11.11 if a public entity holds legal or equitable title to the property and the property is used for public purposes; an owner who has the present right to compel legal title holds equitable title. 2016 Tex. Op. Att'y Gen. KP-0066.

A court is likely to determine that under Tex. Tax Code Ann. § 11.11(e), property held or dedicated for the support, maintenance,

or benefit of an institution or institutions of higher education that is leased to students or employees of such institution or institutions is tax exempt. If such property is leased to provide private residential housing to members of the public other than students and employees of the institution or institutions, the property may lose its exemption under Tex. Tax Code Ann. § 11.11(e), in whole or in part. 2016 Tex. Op. Att'y Gen. KP-0066.

Exemptions from Ad Valorem Taxes.

Whether leasehold interests owned by the Lower Colorado River Authority (LCRA) in oil and gas wells in Fayette County are exempt from ad valorem taxation raises questions of fact that cannot be resolved in the opinion process. The holdings of the Grand Prairie cases do not dictate that the LCRA's mineral interests are subject to taxation as a matter of law. If the LCRA holds its working interests in oil and gas wells exclusively for the use and benefit of the public, those interests are exempt from ad valorem taxation. 1992 Tex. Op. Att'y Gen. DM-78.

Long-Term Care Hospital.

A building owned and operated by the Tomball Hospital Authority (the "Authority"), but leased in part to a private business for operation as a "long-term care hospital," must satisfy the exclusive public use requirement to qualify for property tax exemption under article VIII, section 2 of the Texas Constitution and section 11.11(a) of the Tax Code. That requirement is not, as a matter of law, satisfied by the statutory tax-exemption language of the Authority's enabling statute, section 262.004 of the Health and Safety Code. 2002 Tex. Op. Att'y Gen. JC-0571.

Public Property.

An office complex owned by the Amarillo Independent School District and partially leased to private parties and other political subdivisions remains tax exempt if the facility was acquired in its entirety for the purpose of conserving school district funds. Tex. Att'y Gen. DM-188 (1992).

Property acquired by the Amarillo Junior College District for purposes of future expansion and temporarily leased to private persons as storage units is tax-exempt. Tex. Att'y Gen. DM-188 (1992).

Property owned by the City of Amarillo consisting of an airport maintenance hangar that is leased to a private party for operation as such is exempt from ad valorem taxation if the property is used in direct support of the operation of the airport by the city. Tex. Att'y Gen. DM-188 (1992).

Property rented to students and employees of the Amarillo Junior College for residential housing remains tax exempt, but property rented for these purposes to persons who are not students or employees is subject to taxation. Tex. Att'y Gen. DM-188 (1992).

Public Purposes.

Foreclosed properties held by the Veterans' Land Board under the Veterans' Housing Assistance Program, which authorizes use of public funds to make home mortgage loans to qualified veterans for housing, are exempt from ad valorem property taxes while they are owned and held by the Board pending resale. 2003 Tex. Op. Att'y Gen. GA-0026.

Private Land Leased by Government.

Privately owned land that has been leased to a government entity for public purposes is not exempt from ad valorem taxation. 1940 Tex. Op. Att'y Gen. O-2904.

State Agencies Exempt.

State agencies which control state-owned property within the city limits of the city of Austin are exempt from a drainage fee which was recently approved by the city. 1982 Tex. Op. Att'y Gen. MW-551.

Tax-Exempt Status.

The fact that a hospital district receives remuneration for leasing a building owned by that district will not deprive that district of tax-exempt status on such property. 1985 Tex. Op. Att'y Gen. JM-405.

Tax on Land Leased to Individuals.

The city of Childress is not exempt from taxes under section 11.11 of the Tax Code, on city-owned airport land leased to individuals. 1986 Tex. Op. Att'y Gen. JM-464.

Tax on Leased Land and Easements.

The state's interest in land that is part of the permanent school fund is exempt from ad valorem taxation, even if the state has leased the land to a private concern to be used for a private purpose. The leasehold estates in land comprising the permanent school fund are taxable to the lessees. Easements granted by the School Land Board in coastal and upland public lands that are dedicated to the permanent school fund are taxable pursuant to sections 11.11 and 23.13 of the Tax Code 1989 Tex. Op. Att'y Gen. JM-1049.

Tax on Leased Public Property.

Property held by a city for the purpose of future expansion of an airport or other public purpose is tax exempt to the city. A leasehold estate covering tax exempt property of a city if held under a lease for a term of three years or more is taxable to the lessee and should he valued at such price as it would bring at a voluntary sale for cash. The interest of the lessee in improvements placed on the leased premises should be assessed for taxation as the personal property of the lessee. 1957 Tex. Op. Att'y Gen. M-281.

Sec. 11.111. Public Property Used to Provide Transitional Housing for Indigent Persons.

(a) The governing body of a taxing unit by ordinance or order may exempt from ad valorem taxation residential property owned by the United States or an agency of the United States and used to provide transitional housing for the indigent under a program operated or directed by the United States Department of Housing and Urban Development.

(b) For purposes of this section, transitional housing for indigent individuals is housing provided at no cost or nominal cost to an indigent individual or family during a temporary period in which the individual or a member of the family participates in a job training program, job placement program, or other program intended to assist the individual or family to become self-sufficient.

(c) The exemption provided by this section applies even if the United States or its agency leases the property to a nonprofit organization in return for the organization's assistance in operating the program to provide transitional housing, as long as the lease does not require the nonprofit organization to pay more than a nominal amount to lease the property.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 762, § 13, effective January 1, 1992.

Sec. 11.12. Federal Exemptions.

Property exempt from ad valorem taxation by federal law is exempt from taxation.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841, § 1, effective January 1, 1980.

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CONSTITUTIONAL LAW
Congressional Duties & Powers
Commerce Clause
Interstate Commerce

Tests. — Galveston Central Appraisal District was properly granted summary judgment on a claim that the petroleum products that were in a taxpayer's tanks and awaiting transportation to out-of-state customers were not shielded by the Commerce Clause, U.S. Const. art. I, § /Aa8, cl. 3, from local ad valorem taxation because they had not commenced their movement out of the state and had not entered the stream of interstate commerce. Marathon Ashland Petroleum L.L.C. v. Galveston Cent. Appraisal Dist., 236 S.W.3d 335, 170 Oil & Gas Rep. 383, 2007 Tex. App. LEXIS 5289 (Tex. App. Houston 1st Dist. July 6, 2007, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

Taxpayer Protests. — In a tax dispute that arose after a county appraisal district denied a property owner a foreign-trade zone (FTZ) exemption from county ad valorem taxes for inventory located in the owner's foreign-trade subzone, the owner met its burden of proving excuse from its obligation under an agreement with the county to waive its right of exemption that was conditioned upon the county's meeting two conditions, the first of which required consistent treatment for the owner with regard to similar industries, where the summary judgment affidavits from two of the owner's employees were not conclusory because the affiants testified that their statements were based on personal knowledge obtained by virtue of their employment, and where the evidence showed that all the companies listed in an exhibit presented by the owner had received an FTZ exemption for the tax year at issue and that several of the companies were in a similar industry as the owner; thus, the owner established that the county did not meet the first condition of the waiver as a matter of law, and, consequently, the waiver was not effective regardless of whether the owner proved that the county met the second condition. Harris County Appraisal Dist. v. Shell Oil Co., No. 14-07-00106-CV, 2008 Tex. App. LEXIS 3671 (Tex. App. Houston 14th Dist. May 22, 2008).

In a tax dispute that arose after a county appraisal district denied a property owner a foreign-trade zone (FTZ) exemption from county ad valorem taxes for inventory located in the owner's foreign-trade subzone, a district court did not err in refusing to join the county as a party; because the owner appealed the appraisal review board's order determining its protest action and denying the requested FTZ exemption, the county could not have been joined as a party in the appeal to the district court under Tex. Tax Code Ann. § 42.031(b). Harris County Appraisal Dist. v. Shell Oil Co., No. 14-07-00106-CV, 2008 Tex. App. LEXIS 3671 (Tex. App. Houston 14th Dist. May 22, 2008).

PERSONAL PROPERTY TAX
Tangible Property

Limitations. — In a tax dispute that arose after a county appraisal district denied a property owner a foreign-trade zone (FTZ) exemption from county ad valorem taxes for inventory located in the owner's foreign-trade subzone, the owner met its burden of proving excuse from its obligation under an agreement with the county to waive its right of exemption that was conditioned upon the county's meeting two conditions, the first of which required consistent treatment for the owner with regard to similar industries, where the summary judgment affidavits from two of the owner's employees were not conclusory because the affiants testified that their statements were based on personal knowledge obtained by virtue of their employment, and where the evidence showed that all the companies listed in an exhibit presented by the owner had received an FTZ exemption for the tax year at issue and that several of the companies were in a similar industry as the owner; thus, the owner established that the county did not meet the first condition of the waiver as a matter of law, and, consequently, the waiver was not effective regardless of whether the owner proved that the county met the second condition. Harris County Appraisal Dist. v. Shell Oil Co., No. 14-07-00106-CV, 2008 Tex. App. LEXIS 3671 (Tex. App. Houston 14th Dist. May 22, 2008).

In a tax dispute that arose after a county appraisal district denied a property owner a foreign-trade zone (FTZ) exemption from county ad valorem taxes for inventory located in the owner's foreign-trade subzone, a district court did not err in refusing to join the county as a party; because the owner appealed the appraisal review board's order determining its protest action and denying the requested FTZ exemption, the county could not have been joined as a party in the appeal to the district court under Tex. Tax Code Ann. § 42.031(b). Harris County Appraisal Dist. v. Shell Oil Co., No. 14-07-00106-CV, 2008 Tex. App. LEXIS 3671 (Tex. App. Houston 14th Dist. May 22, 2008).

Galveston Central Appraisal District was properly granted summary judgment on a claim that the petroleum products that were in a taxpayer's tanks and awaiting transportation to out-of-state customers were not shielded by the Commerce Clause, U.S. Const. art. I, § /Aa8, cl. 3, from local ad valorem taxation because they had not commenced their movement out of the state and had not entered the stream of interstate commerce. Marathon Ashland Petroleum L.L.C. v. Galveston Cent. Appraisal Dist., 236 S.W.3d 335, 170 Oil & Gas Rep. 383, 2007 Tex. App. LEXIS 5289 (Tex. App. Houston 1st Dist. July 6, 2007, no pet.).

REAL PROPERTY TAX

Exemptions. — Property owner was not entitled to an automatic exemption from ad valorem property taxation based on a federal income tax exemption. Public, Inc. v. County of Galveston, 264 S.W.3d 338, 2008 Tex. App. LEXIS 9235 (Tex. App. Houston 14th Dist. July 10, 2008, no pet.).

ATTORNEY GENERAL OPINIONS

Taxation of Servicemember's Mobile Homes.

Mobile homes or trailers owned by nonresident servicemembers are not subject to ad valorem taxation. A statute defining such property as real property must yield to the provisions of the Federal Servicemembers Civil Relief Act. 1970 Tex. Op. Att'y Gen. M-701.

Sec. 11.13. Residence Homestead.

(a) A family or single adult is entitled to an exemption from taxation for the county purposes authorized in Article VIII, Section 1-a, of the Texas Constitution of $3,000 of the assessed value of his residence homestead.

(b) An adult is entitled to exemption from taxation by a school district of $25,000 of the appraised value of the adult's

residence homestead, except that only $5,000 of the exemption applies to an entity operating under former Chapter 17, 18, 25, 26, 27, or 28, Education Code, as those chapters existed on May 1, 1995, as permitted by Section 11.301, Education Code.

(c) In addition to the exemption provided by Subsection (b) of this section, an adult who is disabled or is 65 or older is entitled to an exemption from taxation by a school district of $10,000 of the appraised value of his residence homestead.

(d) In addition to the exemptions provided by Subsections (b) and (c) of this section, an individual who is disabled or is 65 or older is entitled to an exemption from taxation by a taxing unit of a portion (the amount of which is fixed as provided by Subsection (e) of this section) of the appraised value of his residence homestead if the exemption is adopted either:

(1) by the governing body of the taxing unit; or

(2) by a favorable vote of a majority of the qualified voters of the taxing unit at an election called by the governing body of a taxing unit, and the governing body shall call the election on the petition of at least 20 percent of the number of qualified voters who voted in the preceding election of the taxing unit.

(e) The amount of an exemption adopted as provided by Subsection (d) of this section is $3,000 of the appraised value of the residence homestead unless a larger amount is specified by:

(1) the governing body authorizing the exemption if the exemption is authorized as provided by Subdivision (1) of Subsection (d) of this section; or

(2) the petition for the election if the exemption is authorized as provided by Subdivision (2) of Subsection (d) of this section.

(f) Once authorized, an exemption adopted as provided by Subsection (d) of this section may be repealed or decreased or increased in amount by the governing body of the taxing unit or by the procedure authorized by Subdivision (2) of Subsection (d) of this section. In the case of a decrease, the amount of the exemption may not be reduced to less than $3,000 of the market value.

(g) If the residence homestead exemption provided by Subsection (d) of this section is adopted by a county that levies a tax for the county purposes authorized by Article VIII, Section 1-a, of the Texas Constitution, the residence homestead exemptions provided by Subsections (a) and (d) of this section may not be aggregated for the county tax purposes. An individual who is eligible for both exemptions is entitled to take only the exemption authorized as provided by Subsection (d) of this section for purposes of that county tax.

(h) **[2 Versions: As added by Acts 2019 86th Leg., ch. 663 (S.B. 1943)]** Joint, community, or successive owners may not each receive the same exemption provided by or pursuant to this section for the same residence homestead in the same year. An eligible disabled person who is 65 or older may not receive both a disabled and an elderly residence homestead exemption but may choose either. A person may not receive an exemption under this section for more than one residence homestead in the same year. An heir property owner who qualifies heir property as the owner's residence homestead under this chapter is considered the sole recipient of any exemption granted to the owner for the residence homestead by or pursuant to this section.

(h) **[2 Versions: As added by Acts 2019 86th Leg., ch. 457 (H.B. 2441)]** Joint, community, or successive owners may not each receive the same exemption provided by or pursuant to this section for the same residence homestead in the same year. An eligible disabled person who is 65 or older may not receive both a disabled and an elderly residence homestead exemption from the same taxing unit in the same year but may choose either if a taxing unit has adopted both. An eligible disabled person who is 65 or older may receive both a disabled and an elderly residence homestead exemption in the same year if the person receives the exemptions with respect to taxes levied by different taxing units. A person may not receive an exemption under this section for more than one residence homestead in the same year.

(i) The assessor and collector for a taxing unit may disregard the exemptions authorized by Subsection (b), (c), (d), or (n) of this section and assess and collect a tax pledged for payment of debt without deducting the amount of the exemption if:

(1) prior to adoption of the exemption, the unit pledged the taxes for the payment of a debt; and

(2) granting the exemption would impair the obligation of the contract creating the debt.

(j) For purposes of this section:

(1) "Residence homestead" means a structure (including a mobile home) or a separately secured and occupied portion of a structure (together with the land, not to exceed 20 acres, and improvements used in the residential occupancy of the structure, if the structure and the land and improvements have identical ownership) that:

(A) is owned by one or more individuals, either directly or through a beneficial interest in a qualifying trust;

(B) is designed or adapted for human residence;

(C) is used as a residence; and

(D) is occupied as the individual's principal residence by an owner, by an owner's surviving spouse who has a life estate in the property, or, for property owned through a beneficial interest in a qualifying trust, by a trustor or beneficiary of the trust who qualifies for the exemption.

(2) "Trustor" means a person who transfers an interest in real or personal property to a qualifying trust, whether during the person's lifetime or at death, or the person's spouse.

(3) "Qualifying trust" means a trust:

(A) in which the agreement, will, or court order creating the trust, an instrument transferring property to the trust, or any other agreement that is binding on the trustee provides that the trustor of the trust or a beneficiary

of the trust has the right to use and occupy as the trustor's or beneficiary's principal residence residential property rent free and without charge except for taxes and other costs and expenses specified in the instrument or court order:

(i) for life;

(ii) for the lesser of life or a term of years; or

(iii) until the date the trust is revoked or terminated by an instrument or court order that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

(B) that acquires the property in an instrument of title or under a court order that:

(i) describes the property with sufficient certainty to identify it and the interest acquired; and

(ii) is recorded in the real property records of the county in which the property is located.

(k) A qualified residential structure does not lose its character as a residence homestead if a portion of the structure is rented to another or is used primarily for other purposes that are incompatible with the owner's residential use of the structure. However, the amount of any residence homestead exemption does not apply to the value of that portion of the structure that is used primarily for purposes that are incompatible with the owner's residential use.

(*l*) A qualified residential structure does not lose its character as a residence homestead when the owner who qualifies for the exemption temporarily stops occupying it as a principal residence if that owner does not establish a different principal residence and the absence is:

(1) for a period of less than two years and the owner intends to return and occupy the structure as the owner's principal residence; or

(2) caused by the owner's:

(A) military service inside or outside of the United States as a member of the armed forces of the United States or of this state; or

(B) residency in a facility that provides services related to health, infirmity, or aging.

(m) In this section:

(1) "Disabled" means under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance.

(2) "School district" means a political subdivision organized to provide general elementary and secondary public education. "School district" does not include a junior college district or a political subdivision organized to provide special education services.

(n) In addition to any other exemptions provided by this section, an individual is entitled to an exemption from taxation by a taxing unit of a percentage of the appraised value of his residence homestead if the exemption is adopted by the governing body of the taxing unit before July 1 in the manner provided by law for official action by the body. If the percentage set by the taxing unit produces an exemption in a tax year of less than $5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of $5,000 of the appraised value. The percentage adopted by the taxing unit may not exceed 20 percent.

(n-1) **[Expires December 31, 2019]** The governing body of a school district, municipality, or county that adopted an exemption under Subsection (n) for the 2014 tax year may not reduce the amount of or repeal the exemption. This subsection expires December 31, 2019.

(o) For purposes of this section, a residence homestead also may consist of an interest in real property created through ownership of stock in a corporation incorporated under the Cooperative Association Act (Article 1396-50.01, Vernon's Texas Civil Statutes) to provide dwelling places to its stockholders if:

(1) the interests of the stockholders of the corporation are appraised separately as provided by Section 23.19 of this code in the tax year to which the exemption applies;

(2) ownership of the stock entitles the owner to occupy a dwelling place owned by the corporation;

(3) the dwelling place is a structure or a separately secured and occupied portion of a structure; and

(4) the dwelling place is occupied as his principal residence by a stockholder who qualifies for the exemption.

(p) Exemption under this section for a homestead described by Subsection (o) of this section extends only to the dwelling place occupied as a residence homestead and to a portion of the total common area used in the residential occupancy that is equal to the percentage of the total amount of the stock issued by the corporation that is owned by the homestead claimant. The size of a residence homestead under Subsection (o) of this section, including any relevant portion of common area, may not exceed 20 acres.

(q) The surviving spouse of an individual who qualifies for an exemption under Subsection (d) for the residence homestead of a person 65 or older is entitled to an exemption for the same property from the same taxing unit in an amount equal to that of the exemption for which the deceased spouse qualified if:

(1) the deceased spouse died in a year in which the deceased spouse qualified for the exemption;

(2) the surviving spouse was 55 or older when the deceased spouse died; and

(3) the property was the residence homestead of the surviving spouse when the deceased spouse died and remains the residence homestead of the surviving spouse.

(r) An individual who receives an exemption under Subsection (d) is not entitled to an exemption under Subsection (q).

(s) [Expired pursuant to Acts 1997, 75th Leg., ch. 1071 (S.B. 1873), § 28, effective January 1, 1999.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 31, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 6, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 301 (S.B. 602), § 1, effective June 7, 1985; am. Acts 1987, 70th Leg., ch. 547 (S.B. 21), § 1, effective January 1, 1988; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), § 18, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), § 19(a), effective January 1, 1992; am. Acts 1991, 72nd Leg., ch. 391 (H.B. 2885), § 14; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.08, effective May 31, 1993; am. Acts 1993, 73rd Leg., ch. 854 (H.B. 2813), § 1, effective January 1, 1994; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 15.01, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 610 (H.B. 1127), § 1, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 194 (H.B. 1773), § 1, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 592 (H.B. 4), § 2.01, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 6, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1059 (S.B. 1437), § 2, effective June 19, 1997; am. Acts 1997, 75th Leg., ch. 1071 (S.B. 1873), § 28, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1199 (S.B. 435), § 1, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 1, effective January 1, 2000; am. Acts 2003, 78th Leg., ch. 240 (H.B. 1223), § 1, effective June 18, 2003; am. Acts 2005, 79th Leg., ch. 159 (H.B. 3240), § 1, effective January 1, 2006; am. Acts 2013, 83rd Leg., ch. 699 (H.B. 2913), § 6, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 391 (H.B. 1022), § 1, effective January 1, 2016; am. Acts 2015, 84th Leg., ch. 465 (S.B. 1), § 1, effective November 3, 2015; am. Acts 2015, 84th Leg., ch. 1169 (S.B. 833), § 1, effective June 19, 2015; am. Acts 2019, 86th Leg., ch. 457 (H.B. 2441), § 1, effective January 1, 2020; am. Acts 2019, 86th Leg., ch. 663 (S.B. 1943), § 3, effective September 1, 2019.

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BANKRUPTCY LAW

Exemptions

State Law

General Overview. — Where debtors left their residence because it was being foreclosed upon and returned to their prior residence, which they still owned, debtors could claim a homestead exemption in the prior residence pursuant to Tex. Const. art. XVI, § 50, and Tex. Prop. Code Ann. §§ 41.001(a), (b), 41.002(a), despite the fact that, due to the nature of their trucking business, they only occupied the residence for 18 hours a month. The property qualified as homestead property under state law because (1) the debtors continuously owned the property, (2) the property was designed for human residence, (3) the debtors actually resided at the residence and (4) the debtors intended to maintain the property as their homestead. In re Durban, No. 04-46088-DML-7, 2004 Bankr. LEXIS 2032 (Bankr. N.D. Tex. Dec. 21, 2004).

Boat owned by the Texas debtors was a moveable "motor boat" that could not support a homestead exemption under Tex. Const. art. 16, §§ 50, 51, or Tex. Prop. Code Ann. §§ 41.001, 41.002. The court noted that Tex. Tax Code § 11.13(j)(1) defined a "residence homestead" for purposes of exemption from taxable property as a "structure (including a mobile home)." Norris v. Thomas (In re Norris), 316 B.R. 246, 2004 U.S. Dist. LEXIS 21040 (W.D. Tex. 2004).

CIVIL PROCEDURE

Judgments

Entry of Judgments

Enforcement & Execution

Garnishments. — Although owner testified that he had resided on the property, that he only had a few furnishings because he had given them away, and that he bathed outside with a hose because there was no shower or bathtub on the property, the record was devoid of any reasonable proof that the owner actually lived on the property or intended to live on the property, and the owner's actions were not consistent with homestead use; thus, the property was not his homestead, under Tex. Tax Code Ann. § 11.13(j), the property did not qualify for an exemption under Tex. Const. art. XVI, § 51 or Tex. Prop. Code Ann. § 41.002(a), and the property was not exempt from sale under Tex. Const. art. XVI, § 50 or Tex Prop. Code Ann. § 41.001, and the trial court properly awarded the judgment creditors the excess funds derived from the tax foreclosure sale as the proceeds were not exempt from garnishment. Lares v. Garza, No. 04-03-00546-CV, 2004 Tex. App. LEXIS 2561 (Tex. App. San Antonio Mar. 24, 2004).

REAL PROPERTY LAW

Homestead Exemptions. — In a dispute over money judgments, a trial court did not err by finding that a parcel of a debtor's property was his homestead because two judgment creditors did not meet their burden of showing that the debtor discontinued his use of the property with the intent to permanently do so; the debtor's wife testified that the utilities were still connected to the property, the property was still maintained, and furniture was still located there. The debtor and his wife had not sold or rented the property, and they had not claimed any other property as their homestead; moreover, the fact that a tax exemption on the property had been allowed to lapsed was not dispositive in the abandonment analysis. Union Square Fed. Credit Union v. Clay, No. 2-07-167-CV, No. 2-07-168-CV, 2009 Tex. App. LEXIS 2839 (Tex. App. Fort Worth Apr. 23, 2009).

Summary judgment was properly granted to purchasers in a dispute regarding a homestead exemption under Tex. Const. art. XVI, §§ 50, 51 and Tex. Prop. Code Ann. §§ 41.001, 41.002 because an entire four-plex was subject to the exemption where a judgment debtor had lived in one unit and rented the rest of them out; the debtor's residence and usage of the property was sufficient to obviate the issue of intent and render the entire property his homestead. Further, the layout of the property did not limit the debtor's usage of such, and the fact that the debtor accepted a 25 percent homestead tax exemption under Tex. Tax Code Ann. § 11.13(k) did not mean that he declared only 25 percent of the property to be his constitutional homestead. Sifuentes v. Arriola, No. 03-05-00414-CV, 2009 Tex. App. LEXIS 2849 (Tex. App. Austin Apr. 22, 2009).

Proportional homestead tax exemption under Tex. Tax Code Ann. § 11.13(k) has no impact on a property's homestead status. Sifuentes v. Arriola, No. 03-05-00414-CV, 2009 Tex. App. LEXIS 2849 (Tex. App. Austin Apr. 22, 2009).

In holding a redemption of property from a tax sale untimely, a trial court did not err in relying on the definition of "residence homestead" in Tex. Tax Code Ann. § 11.13(j)(1) rather than the property code's definition of "homestead" because the protection given to a "homestead" (the prevention of a forced sale to pay general debts) and the protection given to a "residence homestead" (allowing for redemption after a constitution-sanctioned

tax sale) arose in distinct contexts. Hutson v. Tri-County Props., LLC, 240 S.W.3d 484, 2007 Tex. App. LEXIS 8933 (Tex. App. Fort Worth Nov. 8, 2007, no pet.).

Although owner testified that he had resided on the property, that he only had a few furnishings because he had given them away, and that he bathed outside with a hose because there was no shower or bathtub on the property, the record was devoid of any reasonable proof that the owner actually lived on the property or intended to live on the property, and the owner's actions were not consistent with homestead use; thus, the property was not his homestead, under Tex. Tax Code Ann. § 11.13(j), the property did not qualify for an exemption under Tex. Const. art. XVI, § 51 or Tex. Prop. Code Ann. § 41.002(a), and the property was not exempt from sale under Tex. Const. art. XVI, § 50 or Tex Prop. Code Ann. § 41.001, and the trial court properly awarded the judgment creditors the excess funds derived from the tax foreclosure sale as the proceeds were not exempt from garnishment. Lares v. Garza, No. 04-03-00546-CV, 2004 Tex. App. LEXIS 2561 (Tex. App. San Antonio Mar. 24, 2004).

In a suit by a former property owner claiming a homestead right of redemption on his property that had undergone tax foreclosure, former owner was entitled to the two-year right of redemption because he was a person who qualified for the homestead tax exemption pursuant to Tex. Tax Code Ann. § 11.13(j)(1)(d) even though he did not file the formal application seeking the exemption. Nichols v. Lincoln Trust Co., 8 S.W.3d 346, 1999 Tex. App. LEXIS 8467 (Tex. App. Amarillo Nov. 10, 1999, no pet.).

Where a wife was over age 65 but the husband, who owned the residence used as the marital residence as his separate property, was under age 65, the appeals court held that the residence was not subject to homestead exemption based upon the wife's age being over age 65 even though the home was used as the marital residence where she resided. Ripley v. Stephens, 686 S.W.2d 757, 1985 Tex. App. LEXIS 6448 (Tex. App. Austin Feb. 27, 1985, writ ref'd n.r.e.).

TAX LAW

Federal Income Tax Computation

Deductions for Business Expenses

Residential Property Used for Business (IRC sec. 280A). — In the context of Tex. Tax Code Ann. § 11.13, business use of a designated space is incompatible with residential use of the same space; therefore, a taxpayer was not entitled to a 100 percent homestead exemption under § 11.13 because he used portions of his residence for his law office. The conclusion that the taxpayer's use of the space for his law office was incompatible with residential use was supported by his federal income tax reporting under 26 U.S.C.S. § 280A; moreover, tax exemptions were construed narrowly since taxes had to be equal and uniform, and the definition of homestead contained in Tex. Prop. Code Ann. § 41.002(a) did not apply. Harris County Appraisal Dist. v. Nunu, No. 14-08-00528-CV, 2009 Tex. App. LEXIS 6775 (Tex. App. Houston 14th Dist. Aug. 27, 2009).

Court of Appeals of Texas, Fourteenth District, Houston, declines to apply the property code definition of a homestead to an ad valorem tax exemption. That exercise of one's calling or business in one's "urban home" does not nullify the exemption of that home from seizure for creditors' claims and does not mean that a taxpayer using part of his home for business purposes should be treated differently from a taxpayer who conducts his business in a building separate from his home or that he should be treated the same as a taxpayer who uses his entire home exclusively for purposes consistent with residential use. Harris County Appraisal Dist. v. Nunu, No. 14-08-00528-CV, 2009 Tex. App. LEXIS 6775 (Tex. App. Houston 14th Dist. Aug. 27, 2009).

STATE & LOCAL TAXES

Real Property Tax

General Overview. — Trial court properly granted summary judgment for tax appraisers where the 10 percent annual cap on valuation increase of residential homesteads applied to the residence homestead as a single unit, i.e., the land together with improvements. A "residence homestead" was a unit, and was not be treated by its separate components of land and improvements. Bader v. Dallas Cent. Appraisal Dist., 139 S.W.3d 778, 2004 Tex. App. LEXIS 6592 (Tex. App. Dallas July 22, 2004, no pet.).

ASSESSMENT & VALUATION

Valuation. — Because the character of a residence homestead as defined in Tex. Tax Code Ann. § 11.13(j)(1)(A) does not require full ownership vested in a single individual, the residence homestead appraised value cap under Tex. Tax Code Ann. § 23.23(a) could not be prorated based on a taxpayer's partial ownership of his homestead. Martinez v. Dallas Cent. Appraisal Dist., 339 S.W.3d 184, 2011 Tex. App. LEXIS 2031 (Tex. App. Dallas Mar. 22, 2011, no pet.).

COLLECTION

Tax Deeds & Tax Sales. — Evidence was insufficient to show that a property was not a homestead, within the meaning of Tex. Tax Code Ann. § 34.21 and Tex. Tax Code Ann. § 11.13, even though the purchaser testified that the original owners were not present on the property at the time of sale and that the home was uninhabitable, because the purchaser did not establish that this had been true for a period of over two years prior to the sale. Accordingly, the original owners had two years to seek redemption of their homestead property. Gonzalez v. Razi, 338 S.W.3d 167, 2011 Tex. App. LEXIS 2141 (Tex. App. Houston 1st Dist. Mar. 24, 2011, no pet.).

In holding a redemption of property from a tax sale untimely, a trial court did not err in relying on the definition of "residence homestead" in Tex. Tax Code Ann. § 11.13(j)(1) rather than the property code's definition of "homestead" because the protection given to a "homestead" (the prevention of a forced sale to pay general debts) and the protection given to a "residence homestead" (allowing for redemption after a constitution-sanctioned tax sale) arose in distinct contexts. Hutson v. Tri-County Props., LLC, 240 S.W.3d 484, 2007 Tex. App. LEXIS 8933 (Tex. App. Fort Worth Nov. 8, 2007, no pet.).

EXEMPTIONS. — School tax homestead exemptions under Tex. Const. art. VIII, § 1-b and Tex. Tax Code Ann. §§ 11.13(b) were subject to proration based on a taxpayer's partial ownership in accordance with Tex. Tax Code Ann. § 11.41(a), which restricts the amount of exemptions to which a property owner is entitled to the percentage of ownership interest in the property. Martinez v. Dallas Cent. Appraisal Dist., 339 S.W.3d 184, 2011 Tex. App. LEXIS 2031 (Tex. App. Dallas Mar. 22, 2011, no pet.).

In the context of Tex. Tax Code Ann. § 11.13, business use of a designated space is incompatible with residential use of the same space; therefore, a taxpayer was not entitled to a 100 percent homestead exemption under § 11.13 because he used portions of his residence for his law office. The conclusion that the taxpayer's use of the space for his law office was incompatible with residential use was supported by his federal income tax reporting under 26 U.S.C.S. § 280A; moreover, tax exemptions were construed narrowly since taxes had to be equal and uniform, and the definition of homestead contained in Tex. Prop. Code Ann. § 41.002(a) did not apply. Harris County Appraisal Dist. v. Nunu, No. 14-08-00528-CV, 2009 Tex. App. LEXIS 6775 (Tex. App. Houston 14th Dist. Aug. 27, 2009).

Court of Appeals of Texas, Fourteenth District, Houston, declines to apply the property code definition of a homestead to an ad valorem tax exemption. That exercise of one's calling or business in one's "urban home" does not nullify the exemption of that home from seizure for creditors' claims and does not mean that a taxpayer using part of his home for business purposes should be treated differently from a taxpayer who conducts his business in a building separate from his home or that he should be treated the same as a taxpayer who uses his entire home exclusively for purposes consistent with residential use. Harris County Appraisal Dist. v. Nunu, No. 14-08-00528-CV, 2009 Tex. App. LEXIS 6775 (Tex. App. Houston 14th Dist. Aug. 27, 2009).

In a dispute over money judgments, a trial court did not err by finding that a parcel of a debtor's property was his homestead because two judgment creditors did not meet their burden of showing that the debtor discontinued his use of the property with the intent to permanently do so; the debtor's wife testified that the utilities were still connected to the property, the property was still maintained, and furniture was still located there. The debtor

and his wife had not sold or rented the property, and they had not claimed any other property as their homestead; moreover, the fact that a tax exemption on the property had been allowed to lapsed was not dispositive in the abandonment analysis. Union Square Fed. Credit Union v. Clay, No. 2-07-167-CV, No. 2-07-168-CV, 2009 Tex. App. LEXIS 2839 (Tex. App. Fort Worth Apr. 23, 2009).

Summary judgment was properly granted to purchasers in a dispute regarding a homestead exemption under Tex. Const. art. XVI, §§ 50, 51 and Tex. Prop. Code Ann. §§ 41.001, 41.002 because an entire four-plex was subject to the exemption where a judgment debtor had lived in one unit and rented the rest of them out; the debtor's residence and usage of the property was sufficient to obviate the issue of intent and render the entire property his homestead. Further, the layout of the property did not limit the debtor's usage of such, and the fact that the debtor accepted a 25 percent homestead tax exemption under Tex. Tax Code Ann. § 11.13(k) did not mean that he declared only 25 percent of the property to be his constitutional homestead. Sifuentes v. Arriola, No. 03-05-00414-CV, 2009 Tex. App. LEXIS 2849 (Tex. App. Austin Apr. 22, 2009).

Proportional homestead tax exemption under Tex. Tax Code Ann. § 11.13(k) has no impact on a property's homestead status. Sifuentes v. Arriola, No. 03-05-00414-CV, 2009 Tex. App. LEXIS 2849 (Tex. App. Austin Apr. 22, 2009).

ATTORNEY GENERAL OPINIONS

Analysis

Funding computations.
Adoption of Exemption.
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Homestead Acreage.
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Funding computations.

The computation of state funding for school districts receiving additional state aid for tax reduction must not include local option homestead exemption repeals or reductions that Tex. Tax Code Ann. § 11.13(n-1) prohibits. 2017 Tex. Op. Att'y Gen. KP-0144.

Homestead Exemption Increase.Municipalities desiring to increase the homestead exemption (above the legislatively defined exemption amount) must do so by raising the tax exemption percentage, up to twenty percent, as authorized in the Constitution (Art. VIII, subsection 1-b(e)). 2018 Tex. Op. Att'y Gen. KP-0215.

Chief Appraiser Duty.If a taxing unit adopts an unlawful exemption, the appraiser maintains both a legal and ethical duty to determine that the exemption is inapplicable to the extent it violates the law. 2018 Tex. Op. Att'y Gen. KP-0215.

Adoption of Exemption.

There is no provision for the adoption of homestead exemptions under Tex. Tax Code Ann. § 11.13(n) by public election in a taxing unit. Said exemptions are adopted by action of the taxing unit's governing body. 1994 Tex. Op. Att'y Gen. DM-0312.

Division of Property.

If a portion of the residence homestead property is converted to business use, that portion of the property is no longer exempt. The homestead exemption continues to apply to the portion of the property used for residential purposes. 1939 Tex. Op. Att'y Gen. O-501.

Exemption for One Specified Class.

Pursuant to article VIII, section 1-b(b) of the Texas Constitution and section 11.13(d) of the Tax Code, the governing body of a taxing unit may offer the so-called "optional" residence homestead exemption to one of the specified classes of persons, i.e. either persons who are 65 years of age or older or persons who are disabled, without offering the residence homestead exemption to both. 1987 Tex. Op. Att'y Gen. JM-829.

Homestead Acreage.

A chief appraiser is not given the discretion to establish a minimum or maximum amount of acreage as the amount of land receiving designation as a residence homestead for ad valorem tax purposes. 1983 Tex. Op. Att'y Gen. JM-40.

Homestead Exemption.

Tex. Tax Code Ann. § 11.13(n-1) prohibits a school district, municipality, or county from repealing or reducing the local option homestead exemption from the amount that was adopted for the 2014 tax year through the 2019 tax year. 2016 Tex. Op. Att'y Gen. KP-0072.

Section 11.13(j) of the Tax Code defines "residence homestead" for purposes of the payment of property taxes to include "a structure . . . together with the land, not to exceed 20 acres," regardless of whether any part of the property is located in a platted subdivision. If the chief appraiser finds that contiguous lots totaling less than twenty acres are being used as a residence homestead, the taxpayer is entitled to an exemption on the entire property. Whether any particular group of contiguous lots would qualify as a "residence homestead" is a question of fact. 2009 Tex. Op. Att'y Gen. GA-0752, 2009 Tex. AG LEXIS 72.

A city may not grant a homestead exemption, approved by referendum in accordance with Texas Tax Code section 11.13(d) and (e), that would compromise its outstanding bond obligations. 1991 Tex. Op. Att'y Gen. DM-0031.

Homestead-Tax Exemption.

The owner's rental of a part of the residence to another disqualifies that part of the residence from the homestead-tax exemption under Section 11.13(k) of the Tax Code. Tex. Op. Att'y Gen. JC-0JC-0415 (2001).

Procedures.

If a federal or state judge, the spouse of a federal or state judge, or a peace officer is otherwise entitled to claim a homestead exemption under Tex. Tax Code Ann. § 11.13, he or she may comply with the requirements of Tex. Tax Code Ann. § 11.43(n) by producing a personal identification certificate issued by the Department of Public Safety and showing his or her residence address; the Legislature has prohibited chief appraisers from accepting alternative forms of identification from homestead exemption applicants. 2012 Tex. Op. Att'y Gen. GA-0974.

Residence Homestead Tax.

Neither the residence owned by the corporation nor the corporate stock owned by persons who live in cooperative housing is entitled to the residence homestead tax exemption provided by section 11.13 of the Tax Code and article VIII, section 1-b, of the Texas Constitution or to the protection afforded homesteads exempt from forced sale for debt. 1986 Tex. Op. Att'y Gen. JM-612.

Sole Surviving Family Member.

The unmarried adult daughter and her mother, while living together, constituted a family, with the daughter as its head. The death of the mother does not dissolve the homestead rights of the daughter. The fact that the daughter is the sole survivor of the family has no relevance. 1941 Tex. Op. Att'y Gen. O-3823.

Sec. 11.131. Residence Homestead of 100 Percent or Totally Disabled Veteran.

(a) In this section:

(1) "Disabled veteran" has the meaning assigned by Section 11.22.

(2) "Residence homestead" has the meaning assigned by Section 11.13.

(3) "Surviving spouse" means the individual who was married to a disabled veteran at the time of the veteran's death.

(b) A disabled veteran who receives from the United States Department of Veterans Affairs or its successor 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or of individual unemployability is entitled to an exemption from taxation of the total appraised value of the veteran's residence homestead.

(c) The surviving spouse of a disabled veteran who qualified for an exemption under Subsection (b) when the disabled veteran died, or of a disabled veteran who would have qualified for an exemption under that subsection if that subsection had been in effect on the date the disabled veteran died, is entitled to an exemption from taxation of the total appraised value of the same property to which the disabled veteran's exemption applied, or to which the disabled veteran's exemption would have applied if the exemption had been authorized on the date the disabled veteran died, if:

(1) the surviving spouse has not remarried since the death of the disabled veteran; and

(2) the property:

(A) was the residence homestead of the surviving spouse when the disabled veteran died; and

(B) remains the residence homestead of the surviving spouse.

(d) If a surviving spouse who qualifies for an exemption under Subsection (c) subsequently qualifies a different property as the surviving spouse's residence homestead, the surviving spouse is entitled to an exemption from taxation of the subsequently qualified homestead in an amount equal to the dollar amount of the exemption from taxation of the former homestead under Subsection (c) in the last year in which the surviving spouse received an exemption under that subsection for that homestead if the surviving spouse has not remarried since the death of the disabled veteran. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the former residence homestead was located a written certificate providing the information necessary to determine the amount of the exemption to which the surviving spouse is entitled on the subsequently qualified homestead.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1405 (H.B. 3613), § 1(a), effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1222 (S.B. 516), §§ 1, 2, effective January 1, 2012; am. Acts 2015, 84th Leg., ch. 702 (H.B. 992), § 1, effective January 1, 2016.

ATTORNEY GENERAL OPINIONS

Veterans' Benefits.

Effective January 1, 2012, Tex. Tax Code Ann. § 11.131(c) provides a residence homestead tax exemption to the surviving spouse of a fully disabled veteran who at the time of death qualified for an exemption under Tex. Tax Code Ann. § 11.131(b); the fact that the disabled veteran died in 2011, prior to the effective date of Tex. Tax Code Ann. § 11.131(c), does not deprive the surviving spouse of the exemption for the 2012 tax year. 2012 Tex. Op. Att'y Gen. GA-0918.

The homestead tax exemption in Tex. Tax Code Ann. § 11.131(b) for a fully disabled veteran who died in 2011 continues for the remainder of the 2011 tax year. 2012 Tex. Op. Att'y Gen. GA-0918.

Sec. 11.132. Donated Residence Homestead of Partially Disabled Veteran.

(a) In this section:

(1) "Charitable organization" means an organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code.

(2) "Disability rating" and "disabled veteran" have the meanings assigned by Section 11.22.

(3) "Residence homestead" has the meaning assigned by Section 11.13.

(4) "Surviving spouse" has the meaning assigned by Section 11.131.

(b) A disabled veteran who has a disability rating of less than 100 percent is entitled to an exemption from taxation of a percentage of the appraised value of the disabled veteran's residence homestead equal to the disabled veteran's disability rating if the residence homestead was donated to the disabled veteran by a charitable organization:

(1) at no cost to the disabled veteran; or

(2) at some cost to the disabled veteran in the form of a cash payment, a mortgage, or both in an aggregate amount that is not more than 50 percent of the good faith estimate of the market value of the residence homestead made by the charitable organization as of the date the donation is made.

(c) The surviving spouse of a disabled veteran who qualified for an exemption under Subsection (b) of a percentage of the appraised value of the disabled veteran's residence homestead when the disabled veteran died is entitled to an exemption from taxation of the same percentage of the appraised value of the same property to which the disabled veteran's exemption applied if:

(1) the surviving spouse has not remarried since the death of the disabled veteran; and

(2) the property:

(A) was the residence homestead of the surviving spouse when the disabled veteran died; and

(B) remains the residence homestead of the surviving spouse.

(d) If a surviving spouse who qualifies for an exemption under Subsection (c) subsequently qualifies a different property as the surviving spouse's residence homestead, the surviving spouse is entitled to an exemption from taxation of the subsequently qualified residence homestead in an amount equal to the dollar amount of the exemption from taxation of the former residence homestead under Subsection (c) in the last year in which the surviving spouse received

an exemption under that subsection for that residence homestead if the surviving spouse has not remarried since the death of the disabled veteran. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the former residence homestead was located a written certificate providing the information necessary to determine the amount of the exemption to which the surviving spouse is entitled on the subsequently qualified residence homestead.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 122 (H.B. 97), § 1, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 1131 (H.B. 150), § 1, effective January 1, 2018.

Sec. 11.133. Residence Homestead of Surviving Spouse of Member of Armed Services Killed in Action.

(a) In this section:

(1) "Residence homestead" has the meaning assigned by Section 11.13.

(2) "Surviving spouse" means the individual who was married to a member of the armed services of the United States at the time of the member's death.

(b) The surviving spouse of a member of the armed services of the United States who is killed in action is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the member of the armed services.

(c) A surviving spouse who receives an exemption under Subsection (b) for a residence homestead is entitled to receive an exemption from taxation of a property that the surviving spouse subsequently qualifies as the surviving spouse's residence homestead in an amount equal to the dollar amount of the exemption from taxation of the first property for which the surviving spouse received the exemption under Subsection (b) in the last year in which the surviving spouse received that exemption if the surviving spouse has not remarried since the death of the member of the armed services. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the first property for which the surviving spouse claimed the exemption was located a written certificate providing the information necessary to determine the amount of the exemption to which the surviving spouse is entitled on the subsequently qualified homestead.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 138 (S.B. 163), § 1, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(44), effective September 1, 2015 (renumbered from Sec. 11.132).

Sec. 11.134. Residence Homestead of Surviving Spouse of First Responder Killed in Line of Duty.

(a) In this section:

(1) "First responder" means an individual listed under Section 615.003, Government Code.

(2) "Residence homestead" has the meaning assigned by Section 11.13.

(3) "Surviving spouse" means the individual who was married to a first responder at the time of the first responder's death.

(b) The surviving spouse of a first responder who is killed or fatally injured in the line of duty is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead if the surviving spouse:

(1) is an eligible survivor for purposes of Chapter 615, Government Code, as determined by the Employees Retirement System of Texas under that chapter; and

(2) has not remarried since the death of the first responder.

(c) The exemption provided by this section applies regardless of the date of the first responder's death if the surviving spouse otherwise meets the qualifications of this section.

(d) A surviving spouse who receives an exemption under Subsection (b) for a residence homestead is entitled to receive an exemption from taxation of a property that the surviving spouse subsequently qualifies as the surviving spouse's residence homestead in an amount equal to the dollar amount of the exemption from taxation of the first property for which the surviving spouse received the exemption under Subsection (b) in the last year in which the surviving spouse received that exemption if the surviving spouse has not remarried since the death of the first responder. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the first property for which the surviving spouse claimed the exemption was located a written certificate providing the information necessary to determine the amount of the exemption to which the surviving spouse is entitled on the subsequently qualified homestead.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 511 (S.B. 15), § 1, effective January 1, 2018.

Sec. 11.135. Continuation of Residence Homestead Exemption While Replacement Structure Is Constructed; Sale of Property.

(a) If a qualified residential structure for which the owner receives an exemption under Section 11.13 is rendered uninhabitable or unusable by a casualty or by wind or water damage, the owner may continue to receive the exemption for the structure and the land and improvements used in the residential occupancy of the structure while the owner constructs a replacement qualified residential structure on the land if the owner does not establish a different principal residence for which the owner receives an exemption under Section 11.13 during that period and intends to return and

occupy the structure as the owner's principal residence. To continue to receive the exemption, the owner must begin active construction of the replacement qualified residential structure or other physical preparation of the site on which the structure is to be located not later than the first anniversary, or the fifth anniversary for a property described by Subsection (a-1)(1), of the date the owner ceases to occupy the former qualified residential structure as the owner's principal residence.

(a-1) An owner may not receive an exemption under Section 11.13 for property under the circumstances described by Subsection (a) for more than:

(1) five years if:

(A) the property is located in an area declared to be a disaster area by the governor following a disaster; and

(B) the residential structure located on the property is rendered uninhabitable or unusable as a result of the disaster; or

(2) two years if Subdivision (1) does not apply.

(b) For purposes of Subsection (a), the site of a replacement qualified residential structure is under physical preparation if the owner has engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the structure or has conducted an environmental or land use study relating to the construction of the structure.

(c) If an owner receives an exemption for property under Section 11.13 under the circumstances described by Subsection (a) and sells the property before the owner completes construction of a replacement qualified residential structure on the property, an additional tax is imposed on the property equal to the difference between the taxes imposed on the property for each of the years in which the owner received the exemption and the tax that would have been imposed had the owner not received the exemption in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(d) A tax lien attaches to property on the date a sale under the circumstances described by Subsection (c) occurs to secure payment of the additional tax and interest imposed by that subsection and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(e) A determination that a sale of property under the circumstances described by Subsection (c) has occurred is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the property as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes plus interest as soon as practicable. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the property.

(f) The sanctions provided by Subsection (c) do not apply if the sale is:

(1) for right-of-way; or

(2) to this state or a political subdivision of this state to be used for a public purpose.

(g) The comptroller shall adopt rules and forms to implement this section.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 359 (H.B. 1257), § 1(a), effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1417 (H.B. 770), § 2, effective January 1, 2010; am. Acts 2019, 86th Leg., ch. 422 (S.B. 443), § 1, effective June 4, 2019.

Sec. 11.14. Tangible Personal Property Not Producing Income.

(a) A person is entitled to an exemption from taxation of all tangible personal property, other than manufactured homes, that the person owns and that is not held or used for production of income. This subsection does not exempt from taxation a structure that a person owns which is substantially affixed to real estate and is used or occupied as a residential dwelling.

(b) In this section:

(1) "Manufactured home" has the meaning assigned by Section 11.432.

(2) "Structure" does not include a vehicle that:

(A) is a trailer-type unit designed primarily for use as temporary living quarters in connection with recreational, camping, travel, or seasonal use;

(B) is built on a single chassis mounted on wheels;

(C) has a gross trailer area in the set-up mode of 400 square feet or less; and

(D) is certified by the manufacturer as complying with American National Standards Institute Standard A119.5.

(c) The governing body of a taxing unit, by resolution or order, depending upon the method prescribed by law for official action by that governing body, may provide for taxation of tangible personal property exempted under Subsection (a). If a taxing unit provides for taxation of tangible personal property as provided by this subsection, the exemption prescribed by Subsection (a) does not apply to that unit.

(d) The central appraisal district for the county shall determine the cost of appraising tangible personal property required by a taxing unit under the provisions of Subsection (c) and shall assess those costs to the taxing unit or taxing units which provide for the taxation of tangible personal property.

(e) A political subdivision choosing to tax property otherwise made exempt by this section, pursuant to Article VIII, Section 1(e), of the Texas Constitution, may not do so until the governing body of the political subdivision has held a

public hearing on the matter, after having given notice of the hearing at the times and in the manner required by this subsection, and has found that the action will be in the public interest of all the residents of that political subdivision. At the hearing, all interested persons are entitled to speak and present evidence for or against taxing the property. Not later than the 30th day prior to the date of a hearing held under this subsection, notice of the hearing must be:

(1) published in a newspaper having general circulation in the political subdivision and in a section of the newspaper other than the advertisement section;

(2) not less than one-half of one page in size; and

(3) republished on not less than three separate days during the period beginning with the 10th day prior to the hearing and ending with the actual date of the hearing.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1987, 70th Leg., ch. 181 (S.B. 367), § 1, effective May 26, 1987; am. Acts 1989, 71st Leg., ch. 76 (H.B. 82), § 1, effective January 1, 1990; am. Acts 1991, 72nd Leg., ch. 391 (H.B. 2885), § 15, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.09, effective May 31, 1993; am. Acts 2001, 77th Leg., ch. 521 (H.B. 2076), § 1, effective January 1, 2002; am. Acts 2003, 78th Leg., ch. 5 (S.B. 510), § 1, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1216 (H.B. 1928), § 1, effective January 1, 2009.

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ADMINISTRATIVE LAW
Separation of Powers
Legislative Controls

General Overview. — Appraisal district's attempt to redefine "residential dwelling" while ignoring the legislative interpretation of the Texas Constitution that only "manufactured homes" were within that definition, in order to exclude property owners' vehicles from the exemption of that statute, was an unconstitutional usurpation of the legislature's function under Tex. Const. art. III, § 1. Under Tex. Tax Code Ann. § 11.14, the property owners' vehicles were "recreational vehicles" and not "manufactured homes." Rourk v. Cameron Appraisal Dist., 131 S.W.3d 285, 2004 Tex. App. LEXIS 2100 (Tex. App. Corpus Christi Mar. 4, 2004), rev'd, 194 S.W.3d 501, 2006 Tex. LEXIS 504 (Tex. 2006).

CIVIL PROCEDURE
Remedies
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Statutory Awards. — Trial court erred in finding that taxpayers were not entitled to attorney's fees, because the taxpayers had successfully protested the denial of a partial exemption under Tex. Tax Code Ann. 41.41(4) and were therefore entitled to mandatory attorney's fees under Tex. Tax Code Ann. 42.29. Boll v. Cameron Appraisal Dist., No. 13-11-00750-CV, 2013 Tex. App. LEXIS 8946 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 445 S.W.3d 397, 2013 Tex. App. LEXIS 10345 (Tex. App. Corpus Christi Aug. 15, 2013).

Taxpayers whose travel trailers and recreational vehicles were not improvements or real property but were tangible personal property exempt from taxation under Tex. Tax Code Ann. § 11.14, and who successfully protested the denial of the exemption under Tex. Tax. Code Ann. § 41.41(4), were entitled to mandatory attorney's fees under Tex. Tax. Code Ann. § 42.29. Rourk v. Cameron Appraisal Dist., No. 13-11-00751-CV, 2013 Tex. App. LEXIS 8947 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 443 S.W.3d 217, 2013 Tex. App. LEXIS 10348 (Tex. App. Corpus Christi Aug. 15, 2013).

GOVERNMENTS
Local Governments

Claims By & Against. — Because owners who asserted that an appraisal district's taxation of their trailer homes was contrary to law did not challenge the validity of any statute, name any officials as defendants, or identify any provision waiving immunity, sovereign immunity barred both their declaratory claims and their accompanying request for attorney's fees. Boll v. Cameron Appraisal Dist., 445 S.W.3d 397, 2013 Tex. App. LEXIS 10345 (Tex. App. Corpus Christi Aug. 15, 2013, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

Judicial Review. — Because owners who asserted that an appraisal district's taxation of their trailer homes was contrary to law did not challenge the validity of any statute, name any officials as defendants, or identify any provision waiving immunity, sovereign immunity barred both their declaratory claims and their accompanying request for attorney's fees. Boll v. Cameron Appraisal Dist., 445 S.W.3d 397, 2013 Tex. App. LEXIS 10345 (Tex. App. Corpus Christi Aug. 15, 2013, no pet.).

TAXPAYER PROTESTS. — Trial court erred in finding that taxpayers were not entitled to attorney's fees, because the taxpayers had successfully protested the denial of a partial exemption under Tex. Tax Code Ann. 41.41(4) and were therefore entitled to mandatory attorney's fees under Tex. Tax Code Ann. 42.29. Boll v. Cameron Appraisal Dist., No. 13-11-00750-CV, 2013 Tex. App. LEXIS 8946 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 445 S.W.3d 397, 2013 Tex. App. LEXIS 10345 (Tex. App. Corpus Christi Aug. 15, 2013).

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PERSONAL PROPERTY TAX
Exempt Property

General Overview. — Taxpayer group two satisfied the burden of proving that their recreational vehicles (RVs) were such

as defined by the law and were not manufactured homes, for purposes of Tex. Tax Code Ann. § 11.14(b); the RVs belonging to this group were tangible personal property and not manufactured homes and the trial court erred in finding that these RVs were not exempt personal property. Rourk v. Cameron Appraisal Dist., 305 S.W.3d 231, 2009 Tex. App. LEXIS 9053 (Tex. App. Corpus Christi Nov. 24, 2009, no pet.).

Only tangible personal property not exempt under Tex. Tax. Code Ann. § 11.14(a) is manufactured homes and property held for the production of income. Rourk v. Cameron Appraisal Dist., 305 S.W.3d 231, 2009 Tex. App. LEXIS 9053 (Tex. App. Corpus Christi Nov. 24, 2009, no pet.).

To affirm the trial court's judgment that the recreational vehicles (RVs) are not exempt personal property under Tex. Tax Code Ann. § 11.14(a), the court had to determine whether the RVs were constructed before June 15, 1976 and thus were mobile homes, or if they were made on or after June 15, 1976, whether the RVs were designed for use as temporary living quarters for recreational, camping, travel, or seasonal use. Rourk v. Cameron Appraisal Dist., 305 S.W.3d 231, 2009 Tex. App. LEXIS 9053 (Tex. App. Corpus Christi Nov. 24, 2009, no pet.).

Undisputed evidence showed that taxpayers only used their recreational vehicles (RVs) temporarily and seasonally; thus, if a taxpayer's RV was manufactured on or after June 15, 1976, then it did not meet the definition of the manufactured home exception to the Tex. Tax. Code Ann. § 11.14(a) tangible personal property exemption and was therefore exempt. Rourk v. Cameron Appraisal Dist., 305 S.W.3d 231, 2009 Tex. App. LEXIS 9053 (Tex. App. Corpus Christi Nov. 24, 2009, no pet.).

By failing to present evidence that their recreational vehicles (RVs) were not constructed before June 15, 1976, taxpayer group one failed to prove that their RVs were not mobile homes that were included in the definition of manufactured home used by reference in Tex. Tax Code Ann. § 11.14(b) and the trial court did not err in failing to exempt from taxation the RVs belonging to this group, for purposes of Tex. Const. art. VIII, § 1(b). Rourk v. Cameron Appraisal Dist., 305 S.W.3d 231, 2009 Tex. App. LEXIS 9053 (Tex. App. Corpus Christi Nov. 24, 2009, no pet.).

Even if an appraisal district had not waived its constitutional challenge to Tex. Tax Code Ann. § 11.14 by using the statute for the purpose of defeating property owners' claimed tax exemption, the statute was constitutional. Rourk v. Cameron Appraisal Dist., 131 S.W.3d 285, 2004 Tex. App. LEXIS 2100 (Tex. App. Corpus Christi Mar. 4, 2004), rev'd, 194 S.W.3d 501, 2006 Tex. LEXIS 504 (Tex. 2006).

Appraisal district's summary judgment proof did not prove that owners' vehicles were "manufactured homes" because there was no proof that they were not recreational vehicles, as defined by 24 C.F.R. § 3282.8(g), which were excluded from the definition of "manufactured homes" in Tex. Rev. Civ. Stat. Ann. art. 5221f, § 3(9). Such proof was essential to establish that the vehicles were not entitled to a tax exemption under Tex. Tax Code Ann. § 11.14(a). Rourk v. Cameron Appraisal Dist., 131 S.W.3d 285, 2004 Tex. App. LEXIS 2100 (Tex. App. Corpus Christi Mar. 4, 2004), rev'd, 194 S.W.3d 501, 2006 Tex. LEXIS 504 (Tex. 2006).

TANGIBLE PROPERTY

General Overview. — Only tangible personal property not exempt under Tex. Tax. Code Ann. § 11.14(a) is manufactured homes and property held for the production of income. Rourk v. Cameron Appraisal Dist., 305 S.W.3d 231, 2009 Tex. App. LEXIS 9053 (Tex. App. Corpus Christi Nov. 24, 2009, no pet.).

IMPOSITION OF TAX. — Nothing in the Texas Tax Code requires nonincome-producing tangible personal property to be rendered for taxation before the property is taxable; therefore, a taxpayer's assertion that his manufactured home was not subject to ad valorem taxes because it was not rendered for taxation and it was not income-producing was rejected; Tex. Tax Code Ann. § 11.01, Tex. Tax Code Ann. § 11.14 and Tex. Const. art. VIII, § 11 were contrary to that proposition. Firman v. Everman Indep. Sch. Dist., No. 2-06-392-CV, 2007 Tex. App. LEXIS 7101 (Tex. App. Fort Worth Aug. 31, 2007), reh'g denied, No. 2-06-392-CV, 2007 Tex. App. LEXIS 7870 (Tex. App. Fort Worth Sept. 27, 2007).

ATTORNEY GENERAL OPINIONS

Analysis

Boats.
Double Taxation.
Failure to Comply.

Boats.

The statutory amendments to section 11.14 of the Tax Code, which provide for a so-called "local option" exemption from ad valorem taxation for non-income-producing boats, apply to all boats in a taxing unit that had not certified its tax rolls as of the effective date of the enactment. 1988 Tex. Op. Att'y Gen. JM-0893.

Double Taxation.

Assessment of property taxes on travel trailers that constitute improvements to real property and are taxable as personalty is not, per se, impermissible double taxation. 1999 Tex. Op. Att'y Gen. JC-0150.

Failure to Comply.

Section 1.04(3)(B) of the Tax Code does not foreclose as a matter of law the possibility that a travel trailer attached to someone else's property is an improvement within the meaning of section 1.04(3)(A). A political subdivision's failure to comply with the procedural requirements of section 11.14 of the Tax Code may void an assessment of personal property taxes. 2000 Tex. Op. Att'y Gen. JC-0282.

Sec. 11.141. Precious Metal Held in Precious Metal Depository. [Proposed enactment by Acts 2019, 86th Leg., H.J.R. No. 95, contingent on Voter Approval]

(a) For purposes of this section:

(1) "Precious metal" has the meaning assigned by Section 2116.001, Government Code.

(2) "Precious metal depository" means a depository that:

(A) is primarily engaged in the business of providing precious metal storage to the general public; and

(B) maintains sufficient insurance to cover precious metal deposited in the depository.

(b) A person is entitled to an exemption from taxation of the precious metal that the person owns and that is held in a precious metal depository located in this state, regardless of whether the precious metal is held or used by the person for the production of income.

(c) Notwithstanding Section 11.14(c), the governing body of a taxing unit may not provide for the taxation of precious metal exempted from taxation under Subsection (b).

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 459 (H.B. 2859), § 1, effective 01/01/2020 if approved by voters.

Sec. 11.142. Travel Trailers [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 5 (S.B. 510), § 2, effective September 1, 2003.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 521 (H.B. 2076), § 2, effective January 1, 2002.

Sec. 11.145. Income-Producing Tangible Personal Property Having Value of Less Than $500.

(a) A person is entitled to an exemption from taxation of the tangible personal property the person owns that is held or used for the production of income if that property has a taxable value of less than $500.

(b) The exemption provided by Subsection (a) applies to each separate taxing unit in which a person holds or uses tangible personal property for the production of income, and, for the purposes of Subsection (a), all property in each taxing unit is aggregated to determine taxable value.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 296 (H.B. 366), § 1, effective January 1, 1996.

Sec. 11.146. Mineral Interest Having Value of Less Than $500.

(a) A person is entitled to an exemption from taxation of a mineral interest the person owns if the interest has a taxable value of less than $500.

(b) The exemption provided by Subsection (a) applies to each separate taxing unit in which a person owns a mineral interest and, for the purposes of Subsection (a), all mineral interests in each taxing unit are aggregated to determine value.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 296 (H.B. 366), § 1, effective January 1, 1996.

Sec. 11.15. Family Supplies.

A family is entitled to an exemption from taxation of its family supplies for home or farm use.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980.

Sec. 11.16. Farm Products.

(a) A producer is entitled to an exemption from taxation of the farm products that the producer produces and owns. A nursery product, as defined by Section 71.041, Agriculture Code, is a farm product for purposes of this section if it is in a growing state. An egg, as defined by Section 132.001, Agriculture Code, is a farm product for purposes of this section, regardless of whether the egg is packaged.

(b) Farm products in the hands of the producer are exempt.

(c) For purposes of this exemption, the following definitions apply:

(1) "Farm products" include livestock, poultry, and timber.

(2) "In the hands of the producer," for livestock, poultry, and eggs, means under the ownership of the person who is financially providing for the physical requirements of such livestock, poultry, and eggs on January 1 of the tax year and, for timber, means standing timber or timber that has been harvested and, on January 1 of the tax year, is located on the real property on which it was produced and is under the ownership of the person who owned the timber when it was standing.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., ch. 192 (H.B. 911), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., ch. 388 (H.B. 1436), § 3, effective September 1, 1981; am. Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 2, effective January 1, 2000; am. Acts 2015, 84th Leg., ch. 88 (H.B. 275), § 1, effective January 1, 2016.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Sales Tax

General Overview. — School district was not entitled to recover ad valorem taxes it assessed on grain in a cooperative marketing association's elevators because under the Tex. Tax Code Ann. § 11.16, farm products delivered by a producer-member to and held for sale by an association incorporated under the Cooperative Marketing Associations Act, though delivered pursuant to the usual marketing agreement for sale and delivery, remained farm products in the hands of the producer and were exempt from taxation Plainview Indep. Sch. Dist. v. Edmonson Wheat Growers, Inc., 681 S.W.2d 299, 1984 Tex. App. LEXIS 6742 (Tex. App. Amarillo 1984, no writ).

ATTORNEY GENERAL OPINIONS

Code Section Constitutional.

Section 11.16 of the Tax Code which exempts from ad valorem taxation farm products, including nursery products as defined by section 71.041 of the Agriculture Code, is constitutional. 1982 Tex. Op. Att'y Gen. MW-583.

Sec. 11.161. Implements of Husbandry. [Effective until January 1, 2020]

Machinery and equipment items that are used in the production of farm or ranch products or of timber, regardless of their primary design, are considered to be implements of husbandry and are exempt from ad valorem taxation.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 32, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 7, effective August 29, 1983; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 17.01, effective August 26, 1991; am. Acts

1999, 76th Leg., ch. 631 (S.B. 977), § 3, effective January 1, 2000; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), § 6, effective January 1, 2006.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
General Overview. — A property owner's winter protection structures were structures or fixtures that added value to property to which they were attached, and thus were not exempt from taxation as "implements of husbandry" under Tex. Tax Code Ann. § 11.161. Hawkins v. Van Zandt County Appraisal Dist., 834 S.W.2d 619, 1992 Tex. App. LEXIS 1997 (Tex. App. Eastland July 30, 1992, writ denied).

ATTORNEY GENERAL OPINIONS

Analysis

Interpretation.
Neither Fixtures nor Improvements.

Interpretation.
The Comptroller's interpretation of Tex. Tax Code Ann. § 11.161, that a cattle feedlot is engaged in the "production of farm or ranch products," is reasonable and does not contravene any statute. 2013 Tex. Op. Att'y Gen. GA-1015.

Neither Fixtures nor Improvements.
"Implements of husbandry" cannot as a matter of law include improvement to real property or fixtures; hence, barns, silos and sheds would not qualify. Items which are neither fixtures nor improvements to real property, such as tractors, cultivators, and trailers, could qualify, depending upon the fact situation in each case. 1982 Tex. Op. Att'y Gen. MW-451.

Sec. 11.161. Implements of Husbandry. [Effective January 1, 2020]

(a) Machinery and equipment items that are used in the production of farm or ranch products or of timber, regardless of their primary design, are considered to be implements of husbandry and are exempt from ad valorem taxation.

(b) For purposes of Subsection (a), a nursery stock weather protection unit, as defined by Section 71.041, Agriculture Code, is considered to be an implement of husbandry.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 32, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 7, effective August 29, 1983; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 17.01, effective August 26, 1991; am. Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 3, effective January 1, 2000; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), § 6, effective January 1, 2006; am. Acts 2019, 86th Leg., ch. 370 (H.B. 1526), § 1, effective January 1, 2020.

Sec. 11.17. Cemeteries.

A person is entitled to an exemption from taxation of the property he owns and uses exclusively for human burial and does not hold for profit.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property
General Overview. — A publicly dedicated cemetery property was exempt from ad valorem taxation under Tex. Tax Code Ann. § 11.17 even though the property was owned by a corporation organized to make a profit. Laurel Land Memorial Park v. Dallas Cent. Appraisal Dist., 911 S.W.2d 783, 1995 Tex. App. LEXIS 2645 (Tex. App. Dallas Oct. 20, 1995, writ denied).

ATTORNEY GENERAL OPINIONS

For-Profit Cemetery Lands.
Cemetery lands owned and held by corporations organized for profit though dedicated for cemetery purposes, but from which no interment rights have been sold, are subject to taxation, but property after it has been sold by a cemetery corporation, association, partnership or individual for burial purposes is exempt taxation whether interments have been made therein or not; this by virtue of Sec. 3 of Art. 7150 V.C.S. Such property is no longer held for profit. The exemption applies to streets, alleys and roadways in the cemeteries, for they are dedicated to a public use and are not held for sale or profit. Enforcement of the collection of the taxes against cemetery property that is subject to taxation may not disrupt the dedication or work an injury to others owning property in the cemetery used for burial purposes. 1957 Tex. Op. Att'y Gen. W-205.

Sec. 11.18. Charitable Organizations.

(a) An organization that qualifies as a charitable organization as provided by this section is entitled to an exemption from taxation of:

(1) the buildings and tangible personal property that:

(A) are owned by the charitable organization; and

(B) except as permitted by Subsection (b), are used exclusively by qualified charitable organizations; and

(2) the real property owned by the charitable organization consisting of:

(A) an incomplete improvement that:

(i) is under active construction or other physical preparation; and

(ii) is designed and intended to be used exclusively by qualified charitable organizations; and

(B) the land on which the incomplete improvement is located that will be reasonably necessary for the use of the improvement by qualified charitable organizations.

(b) Use of exempt property by persons who are not charitable organizations qualified as provided by this section does not result in the loss of an exemption authorized by this section if the use is incidental to use by qualified charitable organizations and limited to activities that benefit the beneficiaries of the charitable organizations that own or use the property.

(c) To qualify as a charitable organization for the purposes of this section, an organization, whether operated by an individual, or as a corporation, foundation, trust, or association, must meet the applicable requirements of Subsections (d), (e), (f), and (g).

(d) A charitable organization must be organized exclusively to perform religious, charitable, scientific, literary, or educational purposes and, except as permitted by Subsections (h) and (l), engage exclusively in performing one or more of the following charitable functions:

(1) providing medical care without regard to the beneficiaries' ability to pay, which in the case of a nonprofit hospital or hospital system means providing charity care and community benefits in accordance with Section 11.1801;

(2) providing support or relief to orphans, delinquent, dependent, or handicapped children in need of residential care, abused or battered spouses or children in need of temporary shelter, the impoverished, or victims of natural disaster without regard to the beneficiaries' ability to pay;

(3) providing support without regard to the beneficiaries' ability to pay to:

(A) elderly persons, including the provision of:

(i) recreational or social activities; and

(ii) facilities designed to address the special needs of elderly persons; or

(B) the handicapped, including training and employment:

(i) in the production of commodities; or

(ii) in the provision of services under 41 U.S.C. Sections 8501-8506;

(4) preserving a historical landmark or site;

(5) promoting or operating a museum, zoo, library, theater of the dramatic or performing arts, or symphony orchestra or choir;

(6) promoting or providing humane treatment of animals;

(7) acquiring, storing, transporting, selling, or distributing water for public use;

(8) answering fire alarms and extinguishing fires with no compensation or only nominal compensation to the members of the organization;

(9) promoting the athletic development of boys or girls under the age of 18 years;

(10) preserving or conserving wildlife;

(11) promoting educational development through loans or scholarships to students;

(12) providing halfway house services pursuant to a certification as a halfway house by the parole division of the Texas Department of Criminal Justice;

(13) providing permanent housing and related social, health care, and educational facilities for persons who are 62 years of age or older without regard to the residents" ability to pay;

(14) promoting or operating an art gallery, museum, or collection, in a permanent location or on tour, that is open to the public;

(15) providing for the organized solicitation and collection for distributions through gifts, grants, and agreements to nonprofit charitable, education, religious, and youth organizations that provide direct human, health, and welfare services;

(16) performing biomedical or scientific research or biomedical or scientific education for the benefit of the public;

(17) operating a television station that produces or broadcasts educational, cultural, or other public interest programming and that receives grants from the Corporation for Public Broadcasting under 47 U.S.C. Section 396, as amended;

(18) providing housing for low-income and moderate-income families, for unmarried individuals 62 years of age or older, for handicapped individuals, and for families displaced by urban renewal, through the use of trust assets that are irrevocably and, pursuant to a contract entered into before December 31, 1972, contractually dedicated on the sale or disposition of the housing to a charitable organization that performs charitable functions described by Subdivision (9);

(19) providing housing and related services to persons who are 62 years of age or older in a retirement community, if the retirement community provides independent living services, assisted living services, and nursing services to its residents on a single campus:

(A) without regard to the residents" ability to pay; or

(B) in which at least four percent of the retirement community's combined net resident revenue is provided in charitable care to its residents;

(20) providing housing on a cooperative basis to students of an institution of higher education if:

(A) the organization is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that code;

(B) membership in the organization is open to all students enrolled in the institution and is not limited to those chosen by current members of the organization;

(C) the organization is governed by its members; and

(D) the members of the organization share the responsibility for managing the housing;

(21) acquiring, holding, and transferring unimproved real property under an urban land bank demonstration program established under Chapter 379C, Local Government Code, as or on behalf of a land bank;

(22) acquiring, holding, and transferring unimproved real property under an urban land bank program established under Chapter 379E, Local Government Code, as or on behalf of a land bank;

(23) providing housing and related services to individuals who:

(A) are unaccompanied and homeless and have a disabling condition; and

(B) have been continuously homeless for a year or more or have had at least four episodes of homelessness in the preceding three years;

(24) operating a radio station that broadcasts educational, cultural, or other public interest programming, including classical music, and that in the preceding five years has received or been selected to receive one or more grants from the Corporation for Public Broadcasting under 47 U.S.C. Section 396, as amended; or

(25) providing, without regard to the beneficiaries' ability to pay, tax return preparation services and assistance with other financial matters.

(e) A charitable organization must be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain and, if the organization performs one or more of the charitable functions specified by Subsection (d) other than a function specified by Subdivision (1), (2), (8), (9), (12), (16), or (18), be organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(f) A charitable organization must:

(1) use its assets in performing the organization's charitable functions or the charitable functions of another charitable organization; and

(2) by charter, bylaw, or other regulation adopted by the organization to govern its affairs direct that on discontinuance of the organization by dissolution or otherwise:

(A) the assets are to be transferred to this state, the United States, or an educational, religious, charitable, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1986, as amended; or

(B) if required for the organization to qualify as a tax-exempt organization under Section 501(c)(12), Internal Revenue Code of 1986, as amended, the assets are to be transferred directly to the organization's members, each of whom, by application for an acceptance of membership in the organization, has agreed to immediately transfer those assets to this state or to an educational, religious, charitable, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1986, as amended, as designated in the bylaws, charter, or regulation adopted by the organization.

(g) A charitable organization that performs a charitable function specified by Subsection (d)(15) must:

(1) be affiliated with a state or national organization that authorizes, approves, or sanctions volunteer charitable fundraising organizations;

(2) qualify for exemption under Section 501(c)(3), Internal Revenue Code of 1986, as amended;

(3) be governed by a volunteer board of directors; and

(4) distribute contributions to at least five other associations to be used for general charitable purposes, with all recipients meeting the following criteria:

(A) be governed by a volunteer board of directors;

(B) qualify for exemption under Section 501(c)(3), Internal Revenue Code of 1986, as amended;

(C) receive a majority of annual revenue from private or corporate charitable gifts and government agencies; and

(D) provide services without regard to the ability of persons receiving the services to pay for the services.

(h) Performance of noncharitable functions by a charitable organization that owns or uses exempt property does not result in loss of an exemption authorized by this section if those other functions are incidental to the organization's charitable functions. The division of responsibilities between an organization that qualifies as a charitable organization under Subsection (c) and another organization will not disqualify the organizations or any property owned or used by either organization from receiving an exemption under this section if the collaboration furthers the provision of one or more of the charitable functions described in Subsection (d) and if the other organization:

(1) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code;

(2) meets the criteria for a charitable organization under Subsections (e) and (f); and

(3) is under common control with the charitable organization described in this subsection.

(i) In this section, "building" includes the land that is reasonably necessary for use of, access to, and ornamentation of the building.

(j) The exemption of an organization preserving or conserving wildlife is limited to land and improvements and may not exceed 1,000 acres in any one county.

(k) In connection with a nursing home or retirement community, for purposes of Subsection (d):

(1) "Assisted living services" means responsible adult supervision of or assistance with routine living functions of an individual in instances where the individual's condition necessitates that supervision or assistance.

(2) "Charity care," "government-sponsored indigent health care," and "net resident revenue" are determined in the same manner for a retirement community or nursing home as for a hospital under Section 11.1801(a)(2).

(3) "Nursing care services" includes services provided by nursing personnel, including patient observation, the promotion and maintenance of health, prevention of illness or disability, guidance and counseling to individuals and families, and referral of patients to physicians, other health care providers, or community resources if appropriate.

(4) "Retirement community" means a collection of various types of housing that are under common ownership and designed for habitation by individuals over the age of 62.

(5) "Single campus" means a facility designed to provide multiple levels of retirement housing that is geographically situated on a site at which all levels of housing are contiguous to each other on a single property.

(*l*) A charitable organization described by Subsection (d)(3) that provides support to elderly persons must engage primarily in performing charitable functions described by Subsection (d)(3), but may engage in other activities that support or are related to its charitable functions.

(m) A property may not be exempted under Subsection (a)(2) for more than three years.

(n) For purposes of Subsection (a)(2), an incomplete improvement is under physical preparation if the charitable organization has:

(1) engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the improvement; or

(2) conducted an environmental or land use study relating to the construction of the improvement.

(o) For purposes of Subsection (a)(2), real property acquired, held, and transferred by an organization that performs the function described by Subsection (d)(21) or (22) is considered to be used exclusively by the qualified charitable organization to perform that function.

(p) The exemption authorized by Subsection (d)(23) applies only to property that:

(1) is owned by a charitable organization that has been in existence for at least 12 years;

(2) is used to provide housing and related services to individuals described by that subsection; and

(3) is located on or consists of a single campus in a municipality with a population of more than 750,000 and less than 850,000 or within the extraterritorial jurisdiction of such a municipality.

(p-1) Notwithstanding Subsection (a)(1), the exemption authorized by Subsection (d)(23) applies to real property regardless of whether the real property is considered to constitute a building within the meaning of this section.

(q) Real property owned by a charitable organization and leased to an institution of higher education, as defined by Section 61.003, Education Code, is exempt from taxation to the same extent as the property would be exempt if the property were owned by the institution.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 33, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 412 (H.B. 845), § 1, effective January 1, 1984; am. Acts 1985, 69th Leg., ch. 960 (S.B. 809), § 1, effective January 1, 1986; am. Acts 1987, 70th Leg., ch. 430 (S.B. 1066), § 1, effective January 1, 1988; am. Acts 1991, 72nd Leg., ch. 407 (S.B. 670), § 1, effective January 1, 1992; am. Acts 1993, 73rd Leg., ch. 360 (S.B. 427), § 5, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 471 (S.B. 428), § 1, effective January 1, 1996; am. Acts 1995, 74th Leg., ch. 781 (S.B. 1190), § 4, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 715 (H.B. 137), § 1, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 7, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1411 (H.B. 2383), § 1, effective June 20, 1997; am. Acts 1999, 76th Leg., ch. 138 (H.B. 873), § 1, effective May 18, 1999; am. Acts 1999, 76th Leg., ch. 266 (H.B. 1978), § 1, effective January 1, 2000; am. Acts 1999, 76th Leg., ch. 924 (H.B. 2269), § 1, effective January 1, 2000; am. Acts 1999, 76th Leg., ch. 1443 (H.B. 2821), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 18.001(a), effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 1.01, effective June 18, 2003; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 2.01, effective January 1, 2006; am. Acts 2007, 80th Leg., ch. 1034 (H.B. 1742), § 13, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1341 (S.B. 1908), § 34, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), §§ 22.001, 22.002, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1246 (S.B. 2442), §§ 1, 2, effective January 1, 2010; am. Acts 2009, 81st Leg., ch. 1314 (H.B. 2628), §§ 1, 2, effective January 1, 2010; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), §§ 23.001, 27.001(55), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 113, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 849 (H.B. 294), § 1, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 1123 (S.B. 1345), § 1, effective January 1, 2018.

NOTES TO DECISIONS

Analysis

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Civil Procedure
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BUSINESS & CORPORATE LAW
Nonprofit Corporations & Organizations. — Limited partnership that owned an apartment complex was not entitled to an ad valorem property tax exemption under Tex. Tax Code Ann. §§ 11.18 and 11.182, notwithstanding that the entity that owned the partnership's general partner was a community housing development organization, because that entity did not hold equitable title to the property. Harris County Appraisal Dist. v. Primrose Houston 7 Hous., L.P., 238 S.W.3d 782, 2007 Tex. App. LEXIS 6551 (Tex. App. Houston 1st Dist. Aug. 16, 2007, no pet.).

CIVIL PROCEDURE
Appeals
Standards of Review
Substantial Evidence
Sufficiency of Evidence. — Land owner's conversations and attending of meetings in an attempt to prevent having his property rezoned as a historic cemetery constituted evidence of a land use plan under Tex. Tax Code Ann. § 11.18(m). Therefore, the owner, who planned a disabled veteran's center for the site, was entitled to a property tax exemption. Dallas Cent. Appraisal Dist. v. Friends of the Military, No. 05-08-00115-CV, 2009 Tex. App. LEXIS 5397 (Tex. App. Dallas July 15, 2009), reh'g denied, op. withdrawn, sub. op., vacated, 304 S.W.3d 556, 2009 Tex. App. LEXIS 9502 (Tex. App. Dallas Dec. 16, 2009).

EVIDENCE
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GOVERNMENTS
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Community Redevelopment. — Limited partnership that owned an apartment complex was not entitled to an ad valorem property tax exemption under Tex. Tax Code Ann. §§ 11.18 and 11.182, notwithstanding that the entity that owned the partnership's general partner was a community housing development organization, because that entity did not hold equitable title to the property. Harris County Appraisal Dist. v. Primrose Houston 7 Hous., L.P., 238 S.W.3d 782, 2007 Tex. App. LEXIS 6551 (Tex. App. Houston 1st Dist. Aug. 16, 2007, no pet.).

TAX LAW
Federal Income Tax Computation
General Overview. — Non-profit organization did not qualify for an exemption from property taxes under Tex. Tax Code Ann. § 11.18, because by the terms of an amendment to its articles, its purpose was "to provide other community services which are of benefit to the corporation's general membership,;" which purpose was violated the requirement of § 11.18 that the charitable organization "be organized exclusively to perform religious, charitable, scientific, literary or educational purposes." Military Highway Water Supply Corp. v. Boone, 688 S.W.2d 648, 1985 Tex. App. LEXIS 6181 (Tex. App. Corpus Christi Feb. 7, 1985, no writ).

STATE & LOCAL TAXES
Administration & Proceedings
General Overview. — A nursing home fell within the definition of a "public charity" of former Tex. Rev. Civ. Stat. Ann. art. 7150, § 7, and was thus tax-exempt, because it made no gain or profit, accomplished ends wholly benevolent, and benefited persons, indefinite in numbers and personalities, by preventing them, through absolute gratuity, from becoming burdens to society and to the state. State v. Alliance Village, Inc., 592 S.W.2d 687, 1979 Tex. App. LEXIS 4526 (Tex. Civ. App. Corpus Christi Dec. 28, 1979, no writ).

TAXPAYER PROTESTS. — Taxpayer could not assert inadequate notice under Tex. Tax Code Ann. § 11.43(c) of the removal of its Tex. Tax Code Ann. § 11.18(a)(1)-(2) charitable property tax exemption because it did not file a protest under Tex. Tax Code Ann. §§ 41.41(a)(9), 41.411(a) after being advised it could do so; Tex. Tax Code Ann. § 42.09(a)(1) makes the administrative protest procedures exclusive. Public, Inc. v. County of Galveston, 264 S.W.3d 338, 2008 Tex. App. LEXIS 9235 (Tex. App. Houston 14th Dist. July 10, 2008, no pet.).

PERSONAL PROPERTY TAX
Exempt Property
General Overview. — An application filed by a religious charitable organization for a charitable exemption under Tex. Tax Code Ann. §§ 11.18(d)(3), 11.18(d)(13) for its apartment property was denied where the organization's articles of incorporation did not ensure that only appropriate distributees would receive its assets. Texas VOA Elderly Hous., Inc. v. Montgomery County Appraisal Dist., 990 S.W.2d 938, 1999 Tex. App. LEXIS 3275 (Tex. App. Beaumont Apr. 29, 1999, no pet.).

Strict construction of Tex. Tax Code Ann. § 11.18, required plaintiff charitable organization's assets to be pledged to its charitable functions in order for plaintiff to keep its tax-exempt status in defendant county; it did not permit the assets to be pledged to or used by another organization. United Church of Christ Found. v. Harris County Appraisal Dist., No. 01-95-00807-CV, 1996 Tex. App. LEXIS 1507 (Tex. App. Houston 1st Dist. Apr. 18, 1996).

Where the articles of a non-profit housing corporation provided that upon dissolution the corporate assets were permitted to be conveyed to the U.S. Department of Housing and Urban Development, the articles were contrary to the requirements of Tex. Tax Code Ann. § 11.18(f), and the corporation was not entitled to a charitable exemption from local ad valorem taxes. Mission Palms Retirement Hous. v. Hidalgo County Appraisal Dist., 896 S.W.2d 819, 1995 Tex. App. LEXIS 557 (Tex. App. Corpus Christi Mar. 16, 1995, no writ).

Under Tex. Const. art. VIII, § 2(a), and Tex. Tax Code Ann. § 11.18, property owned and used by a charitable organization is not automatically entitled to a tax exemption without regard for the property's use or purpose; the statutory requirement concerning the property's use necessarily requires that the use be in furtherance of the organization's charitable purpose in order to qualify for tax exemption; the total operation may determine whether the organization meets the requirements of a "purely public charity," but the property itself, not the organization, is what qualifies for tax exemption. Baptist Memorials Geriatric Ctr. v. Tom Green County Appraisal Dist., 851 S.W.2d 938, 1993 Tex. App. LEXIS 979 (Tex. App. Austin Apr. 7, 1993, writ denied).

Non-profit water supply corporation was not entitled to exemption from ad valorem tax under Tex. Tax Code Ann. § 11.18 because they were organized solely to provide services to paying members and not to the community as a whole. North Alamo Water Supply Corp. v. Willacy County Appraisal Dist., 804 S.W.2d 894, 1991 Tex. LEXIS 18 (Tex. 1991).

In an action to collect ad valorem property taxes from a corporation, the lower court did not abuse its discretion when it assessed the taxes because an organization seeking an exemption must show, under Tex. Tax Code Ann. § 11.18, that its "charter, bylaw, or other regulation" pledged the organization's assets for use in performing charitable functions. Sharyland Water Supply Corp. v. Hidalgo County Appraisal Dist., 783 S.W.2d 297, 1989 Tex. App. LEXIS 3181 (Tex. App. Corpus Christi Dec. 21, 1989, writ denied), writ granted No. C-9525 (Tex. 1990), aff'd, 804 S.W.2d 894, 1991 Tex. LEXIS 18 (Tex. 1991).

Tex. Tax Code Ann. § 11.18 requires an organization seeking an exemption to show that its charter, bylaws, or other regulation pledges the organization's assets for use in performing charitable

functions North Alamo Water Supply Corp. v. Willacy County Appraisal Dist., 769 S.W.2d 690, 1989 Tex. App. LEXIS 897 (Tex. App. Corpus Christi Apr. 13, 1989, writ denied), writ granted No. C-8789 (Tex. 1990), aff'd, 804 S.W.2d 894, 1991 Tex. LEXIS 18 (Tex. 1991).

Lessor of land to a non-profit agency was not exempt from taxes under Tex. Tax. Code Ann. § 11.18 because lessor was neither organized exclusively to perform a charitable purpose nor did it engage exclusively in performing a charitable purpose listed in § 11.18. Central Appraisal Dist. v. Pecan Valley Facilities, Inc., 704 S.W.2d 86, 1985 Tex. App. LEXIS 12345 (Tex. App. Eastland Nov. 7, 1985, writ ref'd n.r.e.).

Symphony association was entitled as a matter of law to an exemption of its property from taxation under Tex. Tax Code Ann. § 11.18, as it was an organization which performed exclusively charitable, literary, or educational purposes and engaged exclusively in the promoting and operating of a symphony orchestra. Dallas Symphony Asso. v. Dallas County Appraisal Dist., 695 S.W.2d 595, 1985 Tex. App. LEXIS 7146 (Tex. App. Dallas June 7, 1985, writ ref'd n.r.e.).

Although appellee public utility was a non-profit water supply corporation, which received private gain from premiums received upon the sale of memberships, and was governed by by-laws that did not require upon dissolution that assets be transferred to a qualified charitable organization, it was not a charitable organization for tax purposes under Tex. Tax Code Ann. § 11.18. Willacy County Appraisal Dist. v. North Alamo Water Supply Corp., 676 S.W.2d 632, 1984 Tex. App. LEXIS 5749 (Tex. App. Corpus Christi June 28, 1984, writ ref'd n.r.e.).

Appellee organization did not qualify as a charitable organization under Tex. Prop. Tax. Code § 11.18 and therefore was not exempt from ad valorem taxes as an historical organization because it was originally organized as a social and philanthropic organization. Dallas v. Women's Auxiliary to Dallas County Medical Soc., 620 S.W.2d 695, 1981 Tex. App. LEXIS 3762 (Tex. Civ. App. Dallas June 2, 1981, writ ref'd n.r.e.).

Exemptions from taxation granted by former Tex. Rev. Civ. Stat. Ann. art. 7150, § 20 (now Tex. Tax. Code Ann. § 11.18) must have been read in the light of Tex. Const. art. VIII, § 2, since the Constitution expressly made null and void all exemptions attempted thereunder by the legislature not authorized by the Constitution. State v. American Legion Post No. 58, 611 S.W.2d 720, 1981 Tex. App. LEXIS 3214 (Tex. Civ. App. El Paso Jan. 28, 1981, no writ).

TANGIBLE PROPERTY

General Overview. — Non-profit organization, that applied for an exemption from ad valorem taxes on the ground that it was a charitable organization under Tex. Tax. Code Ann. § 11.18, could not appeal the denial of its application because the organization waived its right to appeal when it paid the taxes in full before the delinquency date. Sharyland Water Supply Corp. v. Hidalgo County Appraisal Dist., 776 S.W.2d 613, 1989 Tex. App. LEXIS 1699 (Tex. App. Corpus Christi June 29, 1989), op. withdrawn, sub. op., 783 S.W.2d 297, 1989 Tex. App. LEXIS 3181 (Tex. App. Corpus Christi Dec. 21, 1989).

REAL PROPERTY TAX

Exemptions. — Taxpayer failed to meet the requirements of Tex. Tax Code Ann. § 11.18(d)(12) for a property tax exemption because the halfway houses it operated on the properties were not certified by the Texas Department of Criminal Justice as required. Harvest Life Found. v. Harris County Appraisal Dist., No. 14-11-01038-CV, 2013 Tex. App. LEXIS 6906 (Tex. App. Houston 14th Dist. June 6, 2013).

Evidence that a charitable organization had worked to resolve a zoning issue was legally sufficient to show that it had conducted a land use study relating to the construction of an improvement, entitling it to a tax exemption for unimproved real property based on incomplete improvements under physical preparation. Dallas Cent. Appraisal Dist. v. Friends of the Military, 304 S.W.3d 556, 2009 Tex. App. LEXIS 9502 (Tex. App. Dallas Dec. 16, 2009, no pet.).

Land owner's conversations and attending of meetings in an attempt to prevent having his property rezoned as a historic cemetery constituted evidence of a land use plan under Tex. Tax Code Ann. § 11.18(m). Therefore, the owner, who planned a disabled veteran's center for the site, was entitled to a property tax exemption. Dallas Cent. Appraisal Dist. v. Friends of the Military, No. 05-08-00115-CV, 2009 Tex. App. LEXIS 5397 (Tex. App. Dallas July 15, 2009), reh'g denied, op. withdrawn, sub. op., vacated, 304 S.W.3d 556, 2009 Tex. App. LEXIS 9502 (Tex. App. Dallas Dec. 16, 2009).

Taxpayer could not assert inadequate notice under Tex. Tax Code Ann. § 11.43(c) of the removal of its Tex. Tax Code Ann. § 11.18(a)(1)-(2) charitable property tax exemption because it did not file a protest under Tex. Tax Code Ann. §§ 41.41(a)(9), 41.411(a) after being advised it could do so; Tex. Tax Code Ann. § 42.09(a)(1) makes the administrative protest procedures exclusive. Public, Inc. v. County of Galveston, 264 S.W.3d 338, 2008 Tex. App. LEXIS 9235 (Tex. App. Houston 14th Dist. July 10, 2008, no pet.).

ATTORNEY GENERAL OPINIONS

Analysis

Definition of Handicapped.
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Definition of Handicapped.

A non-profit corporation which provides employment training and assistance to ex-offenders does not as a matter of law fall within the ambit of section 11.18(c)(1)(C), Tax Code, and therefore, cannot be deemed exempt from ad valorem taxation as an institution "providing support to . . . the handicapped without regard to the beneficiaries' ability to pay." 1982 Tex. Op. Att'y Gen. MW-543.

Fundraising Support for Medical Services.

The Blue Bird Circle does not meet the statutory requirements to qualify as a charitable organization and, therefore, is not exempted from ad valorem taxation by section 11.18 of the Tax Code. 1984 Tex. Op. Att'y Gen. JM-269.

Meaning of Charitable Purpose.

A devise and bequest in trust to United Texas Drys, a non-profit Texas corporation, for use solely within the State of Texas in such manner as shall be consistent with stamping out alcoholic intemperance is exempt from inheritance taxes since the trust funds will be used for a charitable purpose within this State. 1962 Tex. Op. Att'y Gen. W-1402.

Qualified Institution.

For a charitable exemption to apply, both the constitutional and statutory requirements must be met. Under section 11.18 of the Tax Code, the charitable requirements are not met by an institution organized to perform any functions other than those charitable functions the statute sets out. 1980 Tex. Op. Att'y Gen. MW-288.

Taxation of Parking Lots.

Parking lots owned by a hospital operated as a purely public charity, and determined to be reasonably necessary in operating the hospital, and an essential, necessary and integral part of the hospital's function, may be accorded a tax exemption under Article VIII, Section 2, Constitution of Texas. The factual determination of what lots, if any, are reasonably necessary for the use of the hospital as an integral part of its function, is the duty of the local tax authorities. 1969 Tex. Op. Att'y Gen. M-375.

Sec. 11.1801. Charity Care and Community Benefits Requirements for Charitable Hospital.

(a) To qualify as a charitable organization under Section 11.18(d)(1), a nonprofit hospital or hospital system must provide charity care and community benefits as follows:

(1) charity care and government-sponsored indigent health care must be provided at a level that is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system;

(2) charity care and government-sponsored indigent health care must be provided in an amount equal to at least four percent of the hospital's or hospital system's net patient revenue;

(3) charity care and government-sponsored indigent health care must be provided in an amount equal to at least 100 percent of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax; or

(4) charity care and community benefits must be provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue.

(b) A nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current year or in either of the previous two fiscal years shall be considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and is considered to be in compliance with the standards in Subsection (a).

(c) A hospital operated on a nonprofit basis that is located in a county with a population of less than 58,000 and in which the entire county or the population of the entire county has been designated as a health professionals shortage area is considered to be in compliance with the standards in Subsection (a).

(d) A hospital providing health care services to inpatients or outpatients without receiving any payment for providing those services from any source, including the patient or person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other state or local indigent care program but excluding charitable donations, legacies, bequests, or grants or payments for research, is considered to be in compliance with the standards in Subsection (a).

(e) For purposes of complying with Subsection (a)(4), a hospital or hospital system may not change its existing fiscal year unless the hospital or hospital system changes its ownership or corporate structure as a result of a sale or merger.

(f) For purposes of this section, a hospital that complies with Subsection (a)(1) or that is considered to be in compliance with the standards in Subsection (a) under Subsection (b), (c), or (d) shall be excluded in determining a hospital system's compliance with the standards in Subsection (a)(2), (3), or (4).

(g) For purposes of this section, "charity care," "government-sponsored indigent health care," "health care organization," "hospital system," "net patient revenue," "nonprofit hospital," and "tax-exempt benefits" have the meanings assigned by Sections 311.031 and 311.042, Health and Safety Code. A determination of the amount of community benefits and charity care and government-sponsored indigent health care provided by a hospital or hospital system and the hospital's or hospital system's compliance with Section 311.045, Health and Safety Code, shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system.

(h) The providing of charity care and government-sponsored indigent health care in accordance with Subsection (a)(1) shall be guided by the prudent business judgment of the hospital, which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital, such as the hospital's volume of Medicare and Medicaid patients. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's decision along with other factors that may be unique to the hospital. The formulas in Subsections (a)(2), (3), and (4) shall also not be considered determinative of a reasonable amount of charity care and government-sponsored indigent health care.

(i) The requirements of this section shall not apply to the extent a hospital or hospital system demonstrates that reductions in the amount of community benefits, charity care, and government-sponsored indigent health care are necessary to maintain financial reserves at a level required by a bond covenant or are necessary to prevent the hospital or hospital system from endangering its ability to continue operations, or if the hospital or hospital system, as a result of a natural or other disaster, is required substantially to curtail its operations.

(j) In any fiscal year that a hospital or hospital system, through unintended miscalculation, fails to meet any of the standards in Subsection (a) or fails to be considered to be in compliance with the standards in Subsection (a) under Subsection (b), (c), or (d), the hospital or hospital system shall not lose its tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall from the previous fiscal year. A hospital or hospital system may apply this provision only once every five years.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 33, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 412 (H.B. 845), § 1, effective January 1, 1984; am. Acts 1985, 69th Leg., ch. 960 (S.B. 809), § 1, effective January 1, 1986; am. Acts 1987, 70th Leg., ch. 430 (S.B. 1066), § 1, effective January 1, 1988; am. Acts 1991, 72nd Leg., ch. 407 (S.B. 670), § 1, effective January 1, 1992; am. Acts 1993, 73rd Leg., ch. 360 (S.B. 427), § 5, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 471 (S.B. 428), § 1, effective January 1, 1996; am. Acts 1995, 74th Leg., ch. 781 (S.B. 1190), § 4, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 715 (H.B. 137), § 1, effective January 1, 1998; am. Acts

1997, 75th Leg., ch. 1039 (S.B. 841), § 7, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1411 (H.B. 2383), § 1, effective June 20, 1997; am. Acts 1999, 76th Leg., ch. 138 (H.B. 873), § 1, effective May 18, 1999; am. Acts 1999, 76th Leg., ch. 266 (H.B. 1978), § 1, effective January 1, 2000; am. Acts 1999, 76th Leg., ch. 924 (H.B. 2269), § 1, effective January 1, 2000; am. Acts 1999, 76th Leg., ch. 1443 (H.B. 2821), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 669 (H.B. 2810), § 118, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 18.001(a), effective September 1, 2001.

Sec. 11.181. Charitable Organizations Improving Property for Low-Income Housing.

(a) An organization is entitled to an exemption from taxation of improved or unimproved real property it owns if the organization:

(1) meets the requirements of a charitable organization provided by Sections 11.18(e) and (f);

(2) owns the property for the purpose of building or repairing housing on the property primarily with volunteer labor to sell without profit to an individual or family satisfying the organization's low-income and other eligibility requirements; and

(3) engages exclusively in the building, repair, and sale of housing as described by Subdivision (2), and related activities.

(b) Property may not be exempted under Subsection (a) after the fifth anniversary of the date the organization acquires the property. Property that received an exemption under Section 11.1825 and that was subsequently transferred by the organization described by that section that qualified for the exemption to an organization described by this section may not be exempted under Subsection (a) after the fifth anniversary of the date the transferring organization acquired the property.

(c) An organization entitled to an exemption under Subsection (a) is also entitled to an exemption from taxation of any building or tangible personal property the organization owns and uses in the administration of its acquisition, building, repair, or sale of property. To qualify for an exemption under this subsection, property must be used exclusively by the charitable organization, except that another individual or organization may use the property for activities incidental to the charitable organization's use that benefit the beneficiaries of the charitable organization.

(d) For the purposes of Subsection (e), the chief appraiser shall determine the market value of property exempted under Subsection (a) and shall record the market value in the appraisal records.

(e) If the organization that owns improved or unimproved real property that has been exempted under Subsection (a) sells the property to a person other than an individual or family satisfying the organization's low-income or other eligibility requirements, a penalty is imposed on the property equal to the amount of the taxes that would have been imposed on the property in each tax year that the property was exempted from taxation under Subsection (a), plus interest at an annual rate of 12 percent calculated from the dates on which the taxes would have become due.

(f) The charitable organization and the purchaser of the property from that organization are jointly and severally liable for the penalty and interest imposed under Subsection (e). A tax lien in favor of all taxing units for which the penalty is imposed attaches to the property to secure payment of the penalty and interest.

(g) The chief appraiser shall make an entry in the appraisal records for the property against which a penalty under Subsection (e) is imposed and shall deliver written notice of the imposition of the penalty and interest to the charitable organization and to the person who purchased the property from that organization.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 345 (H.B. 1096), § 1, effective January 1, 1994; am. Acts 2009, 81st Leg., ch. 1137 (H.B. 2555), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1309 (H.B. 3133), § 1, effective June 17, 2011.

Sec. 11.182. Community Housing Development Organizations Improving Property for Low-Income and Moderate-Income Housing: Property Previously Exempt.

(a) In this section:

(1) "Cash flow" means the amount of money generated by a housing project for a fiscal year less the disbursements for that fiscal year for operation and maintenance of the project, including:

(A) standard property maintenance;

(B) debt service;

(C) employee compensation;

(D) fees required by government agencies;

(E) expenses incurred in satisfaction of requirements of lenders, including reserve requirements;

(F) insurance; and

(G) other justifiable expenses related to the operation and maintenance of the project.

(2) "Community housing development organization" has the meaning assigned by 42 U.S.C. Section 12704.

(b) An organization is entitled to an exemption from taxation of improved or unimproved real property it owns if the organization:

(1) is organized as a community housing development organization;

(2) meets the requirements of a charitable organization provided by Sections 11.18(e) and (f);

(3) owns the property for the purpose of building or repairing housing on the property to sell without profit to a low-income or moderate-income individual or family satisfying the organization's eligibility requirements or to rent without profit to such an individual or family; and

(4) engages exclusively in the building, repair, and sale or rental of housing as described by Subdivision (3) and related activities.

(c) Property owned by the organization may not be exempted under Subsection (b) after the third anniversary of the date the organization acquires the property unless the organization is offering to rent or is renting the property without profit to a low-income or moderate-income individual or family satisfying the organization's eligibility requirements.

(d) A multifamily rental property consisting of 36 or more dwelling units owned by the organization that is exempted under Subsection (b) may not be exempted in a subsequent tax year unless in the preceding tax year the organization spent, for eligible persons in the county in which the property is located, an amount equal to at least 40 percent of the total amount of taxes that would have been imposed on the property in that year without the exemption on social, educational, or economic development services, capital improvement projects, or rent reduction. This subsection does not apply to property acquired by the organization using tax-exempt bond financing after January 1, 1997, and before December 31, 2001.

(e) In addition to meeting the applicable requirements of Subsections (b) and (c), to receive an exemption under Subsection (b) for improved real property that includes a housing project constructed after December 31, 2001, and financed with qualified 501(c)(3) bonds issued under Section 145 of the Internal Revenue Code of 1986, tax-exempt private activity bonds subject to volume cap, or low-income housing tax credits, the organization must:

(1) control 100 percent of the interest in the general partner if the project is owned by a limited partnership;

(2) comply with all rules of and laws administered by the Texas Department of Housing and Community Affairs applicable to community housing development organizations; and

(3) submit annually to the Texas Department of Housing and Community Affairs and to the governing body of each taxing unit for which the project receives an exemption for the housing project evidence demonstrating that the organization spent an amount equal to at least 90 percent of the project's cash flow in the preceding fiscal year as determined by the audit required by Subsection (g), for eligible persons in the county in which the property is located, on social, educational, or economic development services, capital improvement projects, or rent reduction.

(f) An organization entitled to an exemption under Subsection (b) is also entitled to an exemption from taxation of any building or tangible personal property the organization owns and uses in the administration of its acquisition, building, repair, sale, or rental of property. To qualify for an exemption under this subsection, property must be used exclusively by the organization, except that another person may use the property for activities incidental to the organization's use that benefit the beneficiaries of the organization.

(g) To receive an exemption under Subsection (b) or (f), an organization must annually:

(1) have an audit prepared by an independent auditor that includes a detailed report on the organization's sources and uses of funds; and

(2) deliver a copy of the audit to the Texas Department of Housing and Community Affairs and to the chief appraiser of the appraisal district in which the property subject to the exemption is located.

(h) Subsections (d) and (e)(3) do not apply to property owned by an organization if:

(1) the entity that provided the financing for the acquisition or construction of the property:

(A) requires the organization to make payments in lieu of taxes to the school district in which the property is located; or

(B) restricts the amount of rent the organization may charge for dwelling units on the property; or

(2) the organization has entered into an agreement with each taxing unit for which the property receives an exemption to spend in each tax year for the purposes provided by Subsection (d) or (e)(3) an amount equal to the total amount of taxes imposed on the property in the tax year preceding the year in which the organization acquired the property.

(i) If any property owned by an organization receiving an exemption under this section has been acquired or sold during the preceding year, such organization shall file by March 31 of the following year with the chief appraiser in the county in which the relevant property is located, on a form promulgated by the comptroller of public accounts, a list of such properties acquired or sold during the preceding year.

(j) An organization may not receive an exemption under Subsection (b) or (f) for property for a tax year unless the organization received an exemption under that subsection for the property for any part of the 2003 tax year.

(k) Notwithstanding Subsection (j) of this section and Sections 11.43(a) and (c), an exemption under Subsection (b) or (f) does not terminate because of a change in the ownership of the property if the property is sold at a foreclosure sale and, not later than the 30th day after the date of the sale, the owner of the property submits to the chief appraiser evidence that the property is owned by an organization that meets the requirements of Subsections (b)(1), (2), and (4). If the owner of the property submits the evidence required by this subsection, the exemption continues to apply to the property for the remainder of the current tax year and for subsequent tax years until the owner ceases to qualify the property for the exemption. This subsection does not prohibit the chief appraiser from requiring the owner to file a new application to confirm the owner's current qualification for the exemption as provided by Section 11.43(c).

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 715 (H.B. 137), § 2, effective January 1, 1998; am. Acts 2001, 77th Leg., ch. 842 (H.B. 1392), §§ 2, 4, effective June 14, 2001; am. Acts 2001, 77th Leg., ch. 1191 (H.B. 3383), § 1, effective January 1, 2002; am. Acts 2003, 78th Leg., ch. 1156 (H.B. 3546), §§ 1, 2, effective January 1, 2004; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(120), effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 505 (S.B. 426), § 1, effective June 15, 2007; am. Acts 2013, 83rd Leg., ch. 399 (S.B. 193), § 1, effective January 1, 2014.

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Nonprofit Corporations & Organizations. — Limited partnership that owned an apartment complex was not entitled to an ad valorem property tax exemption under Tex. Tax Code Ann. §§ 11.18 and 11.182, notwithstanding that the entity that owned the partnership's general partner was a community housing development organization, because that entity did not hold equitable title to the property. Harris County Appraisal Dist. v. Primrose Houston 7 Hous., L.P., 238 S.W.3d 782, 2007 Tex. App. LEXIS 6551 (Tex. App. Houston 1st Dist. Aug. 16, 2007, no pet.).

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Justiciability

Standing

General Overview. — Plea to the jurisdiction was properly granted to an appraisal district because a corporation, which was the sole member of a limited liability company (LLC), lacked standing to appeal a decision relating to an exemption because it was not the owner, as required by Tex. Tax Code Ann. § 42.01. However, the LLC had standing to sue as the owner; whether the LLC was a community housing development organization went to the merits of the case. CHC Honey Creek LLC v. Bexar Appraisal Dist., No. 04-11-00354-CV, 2012 Tex. App. LEXIS 3838 (Tex. App. San Antonio May 16, 2012).

APPEALS

Briefs. — In a dispute regarding the application of a tax exemption under Tex. Tax Code Ann. § 11.182, an argument regarding an equitable owner was waived because it was not raised in an opening appellate brief; rather, the argument was raised in a reply brief. Am. Hous. Found. v. Harris County Appraisal Dist., 283 S.W.3d 76, 2009 Tex. App. LEXIS 1895 (Tex. App. Houston 14th Dist. Mar. 19, 2009, no pet.).

CONSTITUTIONAL LAW

Congressional Duties & Powers

Spending & Taxation. — Limited partnership whose sole general partner was a community housing development organization (CHDO) was not entitled to an ad valorem property tax exemption because it was not itself a CHDO; Tex. Tax Code Ann. § 11.182(e)(1) did not provide an exemption under those circumstances, Tex. Const. art. VIII, § 2(a) restricts charitable property tax exemptions to property owned by charitable organizations, and the taxpayer could not be deemed the equitable owner of the property for purposes of Tex. Tax Code Ann. § 11.182(b)(3). Jim Wells County Appraisal Dist. v. Cameron Vill., Ltd., 238 S.W.3d 769, 2007 Tex. App. LEXIS 5615 (Tex. App. San Antonio July 18, 2007), abrogated in part, AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012).

GOVERNMENTS

Legislation

Effect & Operation

Prospective Operation. — The use of the word "includes" in Tex. Tax Code Ann. § 11.182(e) did not entitle taxpayers to an exemption for a building constructed before the operative date; Tex. Gov't Code Ann. § 311.005 did not require such an expansive reading of the word "includes," such a construction would be contrary to the requirement of Tex. Gov't Code Ann. § 311.011(a) that words be read in context and construed according to the rules of grammar and common usage, and under Tex. Gov't Code Ann. § 311.022, statutes are presumed to be prospective in their operation unless expressly made retrospective. Am. Hous. Found. v. Calhoun County Appraisal Dist., 198 S.W.3d 816, 2006 Tex. App. LEXIS 6629 (Tex. App. Corpus Christi July 27, 2006, no pet.).

INTERPRETATION. — The use of the word "includes" in Tex. Tax Code Ann. § 11.182(e) did not entitle taxpayers to an exemption for a building constructed before the operative date; Tex. Gov't Code Ann. § 311.005 did not require such an expansive reading of the word "includes," such a construction would be contrary to the requirement of Tex. Gov't Code Ann. § 311.011(a) that words be read in context and construed according to the rules of grammar and common usage, and under Tex. Gov't Code Ann. § 311.022, statutes are presumed to be prospective in their operation unless expressly made retrospective. Am. Hous. Found. v. Calhoun County Appraisal Dist., 198 S.W.3d 816, 2006 Tex. App. LEXIS 6629 (Tex. App. Corpus Christi July 27, 2006, no pet.).

PUBLIC IMPROVEMENTS

Community Redevelopment. — Limited partnership that owned an apartment complex was not entitled to an ad valorem property tax exemption under Tex. Tax Code Ann. §§ 11.18 and 11.182, notwithstanding that the entity that owned the partnership's general partner was a community housing development organization, because that entity did not hold equitable title to the property. Harris County Appraisal Dist. v. Primrose Houston 7 Hous., L.P., 238 S.W.3d 782, 2007 Tex. App. LEXIS 6551 (Tex. App. Houston 1st Dist. Aug. 16, 2007, no pet.).

PUBLIC HEALTH & WELFARE LAW

Housing & Public Buildings

Low Income Housing. — Community housing development organization (CHDO), which completely controlled a limited liability company, which owned and controlled a limited partnership, which owned the apartments, qualified for a tax exemption under this section's CHDO exemption as equitable title to the property was sufficient to qualify for the exemption; legal title was not required. Galveston Cent. Appraisal Dist. v. TRQ Captain's Landing, 423 S.W.3d 374, 2014 Tex. LEXIS 38 (Tex. 2014), reh'g denied, No. 07-0010, 2014 Tex. LEXIS 247 (Tex. Mar. 21, 2014).

Tex. Tax Code Ann. § 11.182(g) plainly conditions an exemption only on the preparation of an audit, something that must be done to receive an exemption, and the statute does not state that a

failure to meet its other requirements, that the audit be detailed, that it reflect both the sources and uses of funds, and that it be delivered both to Texas Department of Housing and Community Affairs and the chief appraiser, likewise results in the denial of an exemption. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Community housing development organization that meets certain statutory requirements is exempt from ad valorem taxation on property it owns; equitable title is sufficient. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Under Tex. Tax Code Ann. § 11.182(g), the failure to conduct an audit is understandably fatal to a claim for exemption, but deficiencies in the contents or delivery are matters that presumably may be corrected, which is not to say that the requirements are unimportant; Delivery of an applicant's audit to Texas Department of Housing and Community Affairs (TDHCA) is critical because that agency administers the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, 42 U.S.C.S. §§ 12701—12899i, funds and has the ability to analyze whether an organization is complying with federal requirements as well as the requirements for a state tax exemption, and the court does not disagree. Indeed, Tex. Tax Code Ann. § 11.182(g) makes delivery of the audit to TDHCA mandatory, but where, as here, the statute does not specify the consequences for noncompliance, the court has looked to its purpose for guidance. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Statute requires applicants' audits to be delivered to Texas Department of Housing and Community Affairs (TDHCA) so that chief appraisers will have the benefit of that agency's review, and if an appraisal district did not believe that review necessary in a particular case, it could grant an exemption based on its own review, and if it needed the review, the district could delay action on the application until the requirement has been met; but the statute does not authorize a district to deny an exemption for nondelivery of an audity to TDHCA, and the purpose of the statute is to provide a chief appraiser substantive information to use in processing an application for exemption. Withholding a ruling pending delivery of an audit to TDHCA serves the statute's purpose; denying an exemption does not. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

In one view, noncompliance with any requirement of Tex. Tax Code Ann. § 11.182(g) results in the denial of an exemption, and thus, an appraisal district could deny an exemption on the basis that an audit report was insufficiently detailed, if only in minor, even irrelevant, respects; this was essentially the same argument that the court rejected in case law concerning Tex. Prop. Code Ann. § 5.077 because it served to impede rather than further the statute's purpose, and the court applies the same reasoning here. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

District as not entitled to summary judgment that denied limited liability companies' requested tax exemption based on a lack of evidence of complying wiht the audit delivery requirement. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Tex. Tax Code Ann. § 11.182(e) provides that in certain instances, property owned by a limited partnership may be tax-exempt if 100 percent of its general partner is controlled by a community housing development organization (CHDO) meeting the requirements of § 11.182(b), and the meaning of "owned" is no clearer in § 11.182(e) than in § 11.182(b), but even assuming "owned" requires legal title, § 11.182(e) would still allow a CHDO an exemption for property to which it does not hold legal title, and may not completely control, to the extent limited partners may participate, for purposes of Tex. Bus. Orgs. Code Ann. § 153.102(a); the court was unconvinced that limited partnerships are the one exception to § 11.182(b)'s requirement of legal ownership by a CHDO and sees no reason to distinguish between a general partner's control of a limited partnership and other types of corporate control over related entities, such as a member's ownership of subsidiaries in this case. The stronger argument is that § 11.182(e) demonstrates that property may be tax-exempt even if a CHDO is only a participant in tiered ownership, and the purpose of § 11.182(e) is not to carve out an exception for non-CHDO limited partnerships but to limit exemptions for limited partnerships to those in which the general partner is wholly AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Tex. Tax Code Ann. § 11.182(e) informs the court's construction of § 11.182(b): both provide a tax exemption for the community housing development organization (CHDO)-controlled use of property for low- and moderate-income housing without profit, and equitable ownership, the present right to compel legal title, assures greater CHDO control under § 11.182(b) than required by § 11.182(e); this construction acknowledges the realities of the commercial housing industry, and tiered ownership allows greater flexibility for investors, encouraging the involvement of private funds in developing low-income housing, which was part of the purpose in creating the concept of CHDOs, for purposes of 42 U.S.C.S. § 12722. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Strictly construing Tex. Tax Code Ann. § 11.182(b) does not require the court to ignore § 11.182 (e) or the purpose of the exemption; any reservations the Legislature may eventually have had about the wisdom of § 11.182's exemption do not alter the meaning of the statutory text. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Federal tax law disregards the separate identity of some entities, as it did with a member and limited liability companies, and there is no reason why Tex. Tax Code Ann. § 11.182 should not do the same. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Court agrees with the reasoning in TRQ Captain's Landing v. Galveston Central Appraisal District, which is compelled by the text of Tex. Tax Code Ann. § 11.182 and consistent with its purpose; the dissent in that case argued that the majority would allow mere investors in an entity to benefit from a tax exemption on property the entity can control, but this is true only when the investors are community housing development organizations (CHDOs), and as long as a CHDO has equitable title to property, the court sees no reason to treat investors with a CHDO differently from investors in the CHDO. Indeed, CHDOs were created to draw private investments into public housing, and the court holds that a CHDO's equitable ownership of property qualifies for an exemption under § 11.182(b). AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Limited liability companies (LLCs) had a member, a community housing development organization (CHDO) and managers who were the governing authority under Tex. Bus. Orgs. Code Ann. § 101.251, but managers serve at the pleasure of the members under Tex. Bus. Orgs. Code Ann. § 101.304; the member in this case had control over the LLCs and equitable title to their property, which ownership satisfied the Tex. Tax Code Ann. § 11.182(b) requirement that exempt property be owned by a CHDO, and as the member and LLCs were treated as one entity for federal income tax exemption purposes, the ad valorem exemption was imputed to the AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Under the unambiguous language selected by the Texas Legislature, Tex. Tax Code Ann. § 11.182(e) applies only to improved real property upon which a housing project was constructed after December 31, 2001. If Tex. Tax Code Ann. § 11.182(e) applies, then an organization must satisfy additional requirements, but, if § 11.182(e) does not apply, no exemption under § 11.182(b) is thereby eliminated. Am. Hous. Found. v. Harris County Appraisal Dist., 283 S.W.3d 76, 2009 Tex. App. LEXIS 1895 (Tex. App. Houston 14th Dist. Mar. 19, 2009, no pet.).

Tex. Tax Code Ann. § 11.182 (e) imposes additional requirements that must be satisfied beyond the applicable requirements of Tex. Tax Code Ann. § 11.182 (b) and (c). In § 11.182(e), the Texas Legislature did not create a new exemption or expand the exemption that already existed under § 11.182(b). Am. Hous. Found. v. Harris County Appraisal Dist., 283 S.W.3d 76, 2009 Tex. App. LEXIS 1895 (Tex. App. Houston 14th Dist. Mar. 19, 2009, no pet.).

Summary judgment was properly granted to an appraisal district since a tax exemption under Tex. Tax Code Ann. § 11.182 was not granted; § 11.182(e) did not create a new exemption or expand the exemption under § 11.182(b). Also, § 11.182(e) did not apply because construction on an apartment complex was completed prior to December 21, 2001. Am. Hous. Found. v. Harris County Appraisal Dist., 283 S.W.3d 76, 2009 Tex. App. LEXIS 1895 (Tex. App. Houston 14th Dist. Mar. 19, 2009, no pet.).

Summary judgment for county appraisal district was proper because the district's evidence established that taxpayer did not operate its apartment complexes as a community housing development organization and did not rent exclusively to low- and moderate-income persons as required by Tex. Tax Code Ann. § 11.182 for an ad valorem tax exemption. Am. Heritage Apts., Inc. v. Bowie County Appraisal Dist., 196 S.W.3d 850, 2006 Tex. App. LEXIS 5457 (Tex. App. Texarkana June 27, 2006, no pet.).

REAL PROPERTY LAW
Deeds

Delivery. — Taxpayer was not entitled to an exemption under Tex. Tax Code Ann. § 11.182 because it did not own certain property before the end of 2003; the taxpayer had no equitable title in property where a deed was placed in escrow because the conditions authorizing the release of the deed were outside the control of the taxpayer. Hidalgo County Appraisal Dist. v. HIC Tex. I, L.L.C., No. 13-07-083-CV, 2009 Tex. App. LEXIS 1769 (Tex. App. Corpus Christi Mar. 12, 2009).

TAX LAW
State & Local Taxes
Administration & Proceedings

Judicial Review. — Plea to the jurisdiction was properly granted to an appraisal district because a corporation, which was the sole member of a limited liability company (LLC), lacked standing to appeal a decision relating to an exemption because it was not the owner, as required by Tex. Tax Code Ann. § 42.01. However, the LLC had standing to sue as the owner; whether the LLC was a community housing development organization went to the merits of the case. CHC Honey Creek LLC v. Bexar Appraisal Dist., No. 04-11-00354-CV, 2012 Tex. App. LEXIS 3838 (Tex. App. San Antonio May 16, 2012).

PERSONAL PROPERTY TAX
Exempt Property

General Overview. — Taxpayers were not entitled to a property tax exemption under Tex. Tax Code Ann. § 11.182 for apartment property because, although a subsidiary of a community housing development organization was a general partner in the organization that owned the apartments, it was not the legal owner of the property as required by § 11.182(b). Am. Hous. Found. v. Brazos County Appraisal Dist., No. 10-04-00149-CV, 2005 Tex. App. LEXIS 2828 (Tex. App. Waco Apr. 13, 2005), op. withdrawn, reh'g denied, No. 10-04-00149-CV, 2005 Tex. App. LEXIS 5160 (Tex. App. Waco June 22, 2005), sub. op., 166 S.W.3d 885, 2005 Tex. App. LEXIS 4879 (Tex. App. Waco June 22, 2005).

Tex. Tax Code Ann. § 11.182(e) does not apply unless all four requirements of § 11.182(b) are met. Thus, to be entitled to a tax exemption for improved real property that includes a housing project, the owner would first have to (1) be organized as a community housing development organization, and (2) own the property for the purpose of building or repairing housing to sell without profit to low-income or moderate-income individuals or families. Am. Hous. Found. v. Brazos County Appraisal Dist., No. 10-04-00149-CV, 2005 Tex. App. LEXIS 2828 (Tex. App. Waco Apr. 13, 2005), op. withdrawn, reh'g denied, No. 10-04-00149-CV, 2005 Tex. App. LEXIS 5160 (Tex. App. Waco June 22, 2005), sub. op., 166 S.W.3d 885, 2005 Tex. App. LEXIS 4879 (Tex. App. Waco June 22, 2005).

REQUIREMENTS FOR EXEMPT STATUS. — Summary judgment for county appraisal district was proper because the district's evidence established that taxpayer did not operate its apartment complexes as a community housing development organization and did not rent exclusively to low- and moderate-income persons as required by Tex. Tax Code Ann. § 11.182 for an ad valorem tax exemption. Am. Heritage Apts., Inc. v. Bowie County Appraisal Dist., 196 S.W.3d 850, 2006 Tex. App. LEXIS 5457 (Tex. App. Texarkana June 27, 2006, no pet.).

REAL PROPERTY TAX

General Overview. — Limited partnership whose sole general partner was a community housing development organization (CHDO) was not entitled to an ad valorem property tax exemption because it was not itself a CHDO; Tex. Tax Code Ann. § 11.182(e)(1) did not provide an exemption under those circumstances, Tex. Const. art. VIII, § 2(a) restricts charitable property tax exemptions to property owned by charitable organizations, and the taxpayer could not be deemed the equitable owner of the property for purposes of Tex. Tax Code Ann. § 11.182(b)(3). Jim Wells County Appraisal Dist. v. Cameron Vill., Ltd., 238 S.W.3d 769, 2007 Tex. App. LEXIS 5615 (Tex. App. San Antonio July 18, 2007), abrogated in part, AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012).

There is no ad valorem property tax exemption under Tex. Tax Code Ann. § 11.182(e)(1) for property owned by a limited partnership when a community housing development organization (CHDO) controls 100 percent of the interest in the general partner; rather, as provided in Tex. Tax Code Ann. § 11.182(b), the owner of the property must be a CHDO and a charitable organization. Jim Wells County Appraisal Dist. v. Cameron Vill., Ltd., 238 S.W.3d 769, 2007 Tex. App. LEXIS 5615 (Tex. App. San Antonio July 18, 2007), abrogated in part, AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012).

Community housing development organization that formed a subsidiary to acquire a limited partnership that owned apartments was entitled to an exemption from ad valorem taxes pursuant to Tex. Tax Code Ann. § 11.182(b) because it held equitable title to the apartments, although the limited partnership held legal title to the apartments; moreover, in the year of acquisition, it was entitled under Tex. Tax Code Ann. § 11.436(a) to an extension of the general filing deadline provided by Tex. Tax Code Ann. § 11.43(d). TRQ Captain's Landing L.P. v. Galveston Cent. Appraisal Dist., 212 S.W.3d 726, 2006 Tex. App. LEXIS 8724 (Tex. App. Houston 1st Dist. Oct. 5, 2006), reh'g denied, No. 01-05-00496-CV, 2006 Tex. App. LEXIS 11194 (Tex. App. Houston 1st Dist. Nov. 21, 2006), aff'd, 423 S.W.3d 374, 2014 Tex. LEXIS 38 (Tex. 2014).

Otherwise qualified equitable property owner may obtain an exemption from ad valorem taxes pursuant to Tex. Tax Code Ann. § 11.182(b). TRQ Captain's Landing L.P. v. Galveston Cent. Appraisal Dist., 212 S.W.3d 726, 2006 Tex. App. LEXIS 8724 (Tex. App. Houston 1st Dist. Oct. 5, 2006), reh'g denied, No. 01-05-00496-CV, 2006 Tex. App. LEXIS 11194 (Tex. App. Houston 1st Dist. Nov. 21, 2006), aff'd, 423 S.W.3d 374, 2014 Tex. LEXIS 38 (Tex. 2014).

Taxpayers were not entitled to receive a low-income housing exemption under Tex. Tax Code Ann. § 11.182(b) for an apartment complex that was built in 1996; the exemption applies only to housing projects constructed after December 31, 2001. Am. Hous. Found. v. Calhoun County Appraisal Dist., 198 S.W.3d 816, 2006 Tex. App. LEXIS 6629 (Tex. App. Corpus Christi July 27, 2006, no pet.).

The use of the word "includes" in Tex. Tax Code Ann. § 11.182(e) did not entitle taxpayers to an exemption for a building constructed before the operative date; Tex. Gov't Code Ann. § 311.005 did not require such an expansive reading of the word "includes," such a construction would be contrary to the requirement of Tex. Gov't Code Ann. § 311.011(a) that words be read in context and construed according to the rules of grammar and common usage, and under Tex. Gov't Code Ann. § 311.022, statutes are presumed to be prospective in their operation unless expressly made retrospective. Am. Hous. Found. v. Calhoun County Appraisal Dist., 198 S.W.3d 816, 2006 Tex. App. LEXIS 6629 (Tex. App. Corpus Christi July 27, 2006, no pet.).

ASSESSMENT & VALUATION

General Overview. — Summary judgment for county appraisal district was proper because the district's evidence established that taxpayer did not operate its apartment complexes as a community housing development organization and did not rent exclusively to low- and moderate-income persons as required by Tex. Tax Code Ann. § 11.182 for an ad valorem tax exemption. Am. Heritage Apts., Inc. v. Bowie County Appraisal Dist., 196 S.W.3d 850, 2006 Tex. App. LEXIS 5457 (Tex. App. Texarkana June 27, 2006, no pet.).

EXEMPTIONS. — Community housing development organization (CHDO), which completely controlled a limited liability company, which owned and controlled a limited partnership, which owned the apartments, qualified for a tax exemption under this section's CHDO exemption as equitable title to the property was sufficient to qualify for the exemption; legal title was not required. Galveston Cent. Appraisal Dist. v. TRQ Captain's Landing, 423 S.W.3d 374, 2014 Tex. LEXIS 38 (Tex. 2014), reh'g denied, No. 07-0010, 2014 Tex. LEXIS 247 (Tex. Mar. 21, 2014).

Tex. Tax Code Ann. § 11.182(g) plainly conditions an exemption only on the preparation of an audit, something that must be done to receive an exemption, and the statute does not state that a failure to meet its other requirements, that the audit be detailed, that it reflect both the sources and uses of funds, and that it be delivered both to Texas Department of Housing and Community Affairs and the chief appraiser, likewise results in the denial of an exemption. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Community housing development organization that meets certain statutory requirements is exempt from ad valorem taxation on property it owns; equitable title is sufficient. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Under Tex. Tax Code Ann. § 11.182(g), the failure to conduct an audit is understandably fatal to a claim for exemption, but deficiencies in the contents or delivery are matters that presumably may be corrected, which is not to say that the requirements are unimportant; Delivery of an applicant's audit to Texas Department of Housing and Community Affairs (TDHCA) is critical because that agency administers the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, 42 U.S.C.S. §§ 12701—12899i, funds and has the ability to analyze whether an organization is complying with federal requirements as well as the requirements for a state tax exemption, and the court does not disagree. Indeed, Tex. Tax Code Ann. § 11.182(g) makes delivery of the audit to TDHCA mandatory, but where, as here, the statute does not specify the consequences for noncompliance, the court has looked to its purpose for guidance. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Statute requires applicants' audits to be delivered to Texas Department of Housing and Community Affairs (TDHCA) so that chief appraisers will have the benefit of that agency's review, and if an appraisal district did not believe that review necessary in a particular case, it could grant an exemption based on its own review, and if it needed the review, the district could delay action on the application until the requirement has been met; but the statute does not authorize a district to deny an exemption for nondelivery of an audity to TDHCA, and the purpose of the statute is to provide a chief appraiser substantive information to use in processing an application for exemption. Withholding a ruling pending delivery of an audit to TDHCA serves the statute's purpose; denying an exemption does not. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

In one view, noncompliance with any requirement of Tex. Tax Code Ann. § 11.182(g) results in the denial of an exemption, and thus, an appraisal district could deny an exemption on the basis that an audit report was insufficiently detailed, if only in minor, even irrelevant, respects; this was essentially the same argument that the court rejected in case law concerning Tex. Prop. Code Ann. § 5.077 because it served to impede rather than further the statute's purpose, and the court applies the same reasoning here. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

District as not entitled to summary judgment that denied limited liability companies' requested tax exemption based on a lack of evidence of complying wiht the audit delivery requirement. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Tex. Tax Code Ann. § 11.182(e) provides that in certain instances, property owned by a limited partnership may be tax-exempt if 100 percent of its general partner is controlled by a community housing development organization (CHDO) meeting the requirements of § 11.182(b), and the meaning of "owned" is no clearer in § 11.182(e) than in § 11.182(b), but even assuming "owned" requires legal title, § 11.182(e) would still allow a CHDO an exemption for property to which it does not hold legal title, and may not completely control, to the extent limited partners may participate, for purposes of Tex. Bus. Orgs. Code Ann. § 153.102(a); the court was unconvinced that limited partnerships are the one exception to § 11.182(b)'s requirement of legal ownership by a CHDO and sees no reason to distinguish between a general partner's control of a limited partnership and other types of corporate control over related entities, such as a member's ownership of subsidiaries in this case. The stronger argument is that § 11.182(e) demonstrates that property may be tax-exempt even if a CHDO is only a participant in tiered ownership, and the purpose of § 11.182(e) is not to carve out an exception for non-CHDO limited partnerships but to limit exemptions for limited partnerships to those in which the general partner is wholly AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Tex. Tax Code Ann. § 11.182(e) informs the court's construction of § 11.182(b): both provide a tax exemption for the community housing development organization (CHDO)-controlled use of property for low- and moderate-income housing without profit, and equitable ownership, the present right to compel legal title, assures greater CHDO control under § 11.182(b) than required by § 11.182(e); this construction acknowledges the realities of the commercial housing industry, and tiered ownership allows greater flexibility for investors, encouraging the involvement of private funds in developing low-income housing, which was part of the purpose in creating the concept of CHDOs, for purposes of 42 U.S.C.S. § 12722. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Strictly construing Tex. Tax Code Ann. § 11.182(b) does not require the court to ignore § 11.182 (e) or the purpose of the exemption; any reservations the Legislature may eventually have had about the wisdom of § 11.182's exemption do not alter the meaning of the statutory text. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Federal tax law disregards the separate identity of some entities, as it did with a member and limited liability companies,

and there is no reason why Tex. Tax Code Ann. § 11.182 should not do the same. AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Court agrees with the reasoning in TRQ Captain's Landing v. Galveston Central Appraisal District, which is compelled by the text of Tex. Tax Code Ann. § 11.182 and consistent with its purpose; the dissent in that case argued that the majority would allow mere investors in an entity to benefit from a tax exemption on property the entity can control, but this is true only when the investors are community housing development organizations (CHDOs), and as long as a CHDO has equitable title to property, the court sees no reason to treat investors with a CHDO differently from investors in the CHDO. Indeed, CHDOs were created to draw private investments into public housing, and the court holds that a CHDO's equitable ownership of property qualifies for an exemption under § 11.182(b). AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Limited liability companies (LLCs) had a member, a community housing development organization (CHDO) and managers who were the governing authority under Tex. Bus. Orgs. Code Ann. § 101.251, but managers serve at the pleasure of the members under Tex. Bus. Orgs. Code Ann. § 101.304; the member in this case had control over the LLCs and equitable title to their property, which ownership satisfied the Tex. Tax Code Ann. § 11.182(b) requirement that exempt property be owned by a CHDO, and as the member and LLCs were treated as one entity for federal income tax exemption purposes, the ad valorem exemption was imputed to the AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012), reh'g denied, No. 10-0683, 2012 Tex. LEXIS 755 (Tex. Aug. 31, 2012).

Agreement was ambiguous relative to the date certain on which the subsidiary became the owner of the subject apartment complex; a fact issue existed regarding whether the subsidiary was entitled to a Tex. Tax Code Ann. § /Aa11.182 exemption on the apartment complex, and the trial court erred by granting the city's motion for summary judgment. Comunidad Balboa, LLC v. City of Nassau Bay, 352 S.W.3d 72, 2011 Tex. App. LEXIS 5537 (Tex. App. Houston 14th Dist. July 21, 2011, no pet.).

Owners were not entitled to summary judgment in their suit that they were entitled to an exemption from ad valorem taxes, because they failed to show compliance with Tex. Tax Code Ann. § 11.182(g). AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist., 366 S.W.3d 715, 2010 Tex. App. LEXIS 5872 (Tex. App. Waco July 21, 2010), rev'd, 410 S.W.3d 831, 2012 Tex. LEXIS 465 (Tex. 2012).

Under the unambiguous language selected by the Texas Legislature, Tex. Tax Code Ann. § 11.182(e) applies only to improved real property upon which a housing project was constructed after December 31, 2001. If Tex. Tax Code Ann. § 11.182(e) applies, then an organization must satisfy additional requirements, but, if § 11.182(e) does not apply, no exemption under § 11.182(b) is thereby eliminated. Am. Hous. Found. v. Harris County Appraisal Dist., 283 S.W.3d 76, 2009 Tex. App. LEXIS 1895 (Tex. App. Houston 14th Dist. Mar. 19, 2009, no pet.).

Tex. Tax Code Ann. § 11.182 (e) imposes additional requirements that must be satisfied beyond the applicable requirements of Tex. Tax Code Ann. § 11.182 (b) and (c). In § 11.182(e), the Texas Legislature did not create a new exemption or expand the exemption that already existed under § 11.182(b). Am. Hous. Found. v. Harris County Appraisal Dist., 283 S.W.3d 76, 2009 Tex. App. LEXIS 1895 (Tex. App. Houston 14th Dist. Mar. 19, 2009, no pet.).

In a dispute regarding the application of a tax exemption under Tex. Tax Code Ann. § 11.182, an argument regarding an equitable owner was waived because it was not raised in an opening appellate brief; rather, the argument was raised in a reply brief. Am. Hous. Found. v. Harris County Appraisal Dist., 283 S.W.3d 76, 2009 Tex. App. LEXIS 1895 (Tex. App. Houston 14th Dist. Mar. 19, 2009, no pet.).

Summary judgment was properly granted to an appraisal district since a tax exemption under Tex. Tax Code Ann. § 11.182 was not granted; § 11.182(e) did not create a new exemption or expand the exemption under § 11.182(b). Also, § 11.182(e) did not apply because construction on an apartment complex was completed prior to December 21, 2001. Am. Hous. Found. v. Harris County Appraisal Dist., 283 S.W.3d 76, 2009 Tex. App. LEXIS 1895 (Tex. App. Houston 14th Dist. Mar. 19, 2009, no pet.).

Taxpayer was not entitled to an exemption under Tex. Tax Code Ann. § 11.182 because it did not own certain property before the end of 2003; the taxpayer had no equitable title in property where a deed was placed in escrow because the conditions authorizing the release of the deed were outside the control of the taxpayer. Hidalgo County Appraisal Dist. v. HIC Tex. I, L.L.C., No. 13-07-083-CV, 2009 Tex. App. LEXIS 1769 (Tex. App. Corpus Christi Mar. 12, 2009).

ATTORNEY GENERAL OPINIONS

Qualifications.

To qualify for an exemption from taxation of its real property under section 11.182 of the Tax Code, a particular community housing development organization must first satisfy the requirements of article VIII, section 2(a) of the Texas Constitution. Then it must satisfy all the requirements of section 11.182 of the Tax Code: The organization must qualify as a community housing development organization under section 11.182 (b) of the Tax Code and "control 100 percent of the interest in the general partner if the project is owned by a limited partnership" assuming section 11.182(e) of the Tax Code applies; and it must satisfy the other requirements of section 11.182 that apply to the organization and its property. 2002 Tex. Op. Att'y Gen. JC-0576.

Sec. 11.1825. Organizations Constructing or Rehabilitating Low-Income Housing: Property Not Previously Exempt.

(a) An organization is entitled to an exemption from taxation of real property owned by the organization that the organization constructs or rehabilitates and uses to provide housing to individuals or families meeting the income eligibility requirements of this section.

(b) To receive an exemption under this section, an organization must meet the following requirements:

(1) for at least the preceding three years, the organization:

(A) has been exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that code;

(B) has met the requirements of a charitable organization provided by Sections 11.18(e) and (f); and

(C) has had as one of its purposes providing low-income housing;

(2) a majority of the members of the board of directors of the organization have their principal place of residence in this state;

(3) at least two of the positions on the board of directors of the organization must be reserved for and held by:

(A) an individual of low income as defined by Section 2306.004, Government Code, whose principal place of residence is located in this state;

(B) an individual whose residence is located in an economically disadvantaged census tract as defined by Section 783.009(b), Government Code, in this state; or

(C) a representative appointed by a neighborhood organization in this state that represents low-income households; and

(4) the organization must have a formal policy containing procedures for giving notice to and receiving advice from low-income households residing in the county in which a housing project is located regarding the design, siting, development, and management of affordable housing projects.

(c) Notwithstanding Subsection (b), an owner of real property that is not an organization described by that subsection is entitled to an exemption from taxation of property under this section if the property otherwise qualifies for the exemption and the owner is:

(1) a limited partnership of which an organization that meets the requirements of Subsection (b) controls 100 percent of the general partner interest; or

(2) an entity the parent of which is an organization that meets the requirements of Subsection (b).

(d) If the owner of the property is an entity described by Subsection (c), the entity must:

(1) be organized under the laws of this state; and

(2) have its principal place of business in this state.

(e) A reference in this section to an organization includes an entity described by Subsection (c).

(f) For property to be exempt under this section, the organization must own the property for the purpose of constructing or rehabilitating a housing project on the property and:

(1) renting the housing, regardless of whether the housing project consists of multifamily or single-family dwellings, to individuals or families whose median income is not more than 60 percent of the greater of:

(A) the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(B) the statewide area median family income, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(2) selling single-family dwellings to individuals or families whose median income is not more than the greater of:

(A) the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(B) the statewide area median family income, as adjusted for family size and as established by the United States Department of Housing and Urban Development.

(g) Property may not receive an exemption under this section unless at least 50 percent of the total square footage of the dwelling units in the housing project is reserved for individuals or families described by Subsection (f).

(h) The annual total of the monthly rent charged or to be charged for each dwelling unit in the project reserved for an individual or family described by Subsection (f) may not exceed 30 percent of the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development.

(i) Property owned for the purpose of constructing a housing project on the property is exempt under this section only if:

(1) the property is used to provide housing to individuals or families described by Subsection (f); or

(2) the housing project is under active construction or other physical preparation.

(j) For purposes of Subsection (i)(2), a housing project is under physical preparation if the organization has engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the project or has conducted an environmental or land use study relating to the construction of the project.

(k) An organization may not receive an exemption for a housing project constructed by the organization if the construction of the project was completed before January 1, 2004.

(*l*) If the property is owned for the purpose of rehabilitating a housing project on the property:

(1) the original construction of the housing project must have been completed at least 10 years before the date the organization began actual rehabilitation of the project;

(2) the person from whom the organization acquired the project must have owned the project for at least five years, if the organization is not the original owner of the project;

(3) the organization must provide to the chief appraiser and, if the project was financed with bonds, the issuer of the bonds a written statement prepared by a certified public accountant stating that the organization has spent on rehabilitation costs at least the greater of $5,000 or the amount required by the financial lender for each dwelling unit in the project; and

(4) the organization must maintain a reserve fund for replacements:

(A) in the amount required by the financial lender; or

(B) if the financial lender does not require a reserve fund for replacements, in an amount equal to $300 per unit per year.

(m) Beginning with the 2005 tax year, the amount of the reserve required by Subsection (*l*)(4)(B) is increased by an annual cost-of-living adjustment determined in the manner provided by Section 1(f)(3), Internal Revenue Code of 1986, as amended, substituting "calendar year 2004" for the calendar year specified in Section 1(f)(3)(B) of that code.

(n) A reserve must be established for each dwelling unit in the property, regardless of whether the unit is reserved for an individual or family described by Subsection (f). The reserve must be maintained on a continuing basis, with withdrawals permitted:

(1) only as authorized by the financial lender; or

(2) if the financial lender does not require a reserve fund for replacements, only to pay the cost of capital improvements needed for the property to maintain habitability under the Minimum Property Standards of the United States Department of Housing and Urban Development or the code of a municipality or county applicable to the property, whichever is more restrictive.

(o) For purposes of Subsection (n)(2), "capital improvement" means a property improvement that has a depreciable life of at least five years under generally accepted accounting principles, excluding typical "make ready" expenses such as expenses for plasterboard repair, interior painting, or floor coverings.

(p) If the organization acquires the property for the purpose of constructing or rehabilitating a housing project on the property, the organization must be renting or offering to rent the applicable square footage of dwelling units in the property to individuals or families described by Subsection (f) not later than the third anniversary of the date the organization acquires the property.

(p-1) Notwithstanding the other provisions of this section, the transfer of property from an organization described by this section to a nonprofit organization that claims an exemption for the property under Section 11.181(a) is a proper use of and purpose for owning the property under this section and does not affect the eligibility of the property for an exemption under this section.

(q) If property qualifies for an exemption under this section, the chief appraiser shall use the income method of appraisal as described by Section 23.012 to determine the appraised value of the property. The chief appraiser shall use that method regardless of whether the chief appraiser considers that method to be the most appropriate method of appraising the property. In appraising the property, the chief appraiser shall:

(1) consider the restrictions provided by this section on the income of the individuals or families to whom the dwelling units of the housing project may be rented and the amount of rent that may be charged for purposes of computing the actual rental income from the property or projecting future rental income; and

(2) use the same capitalization rate that the chief appraiser uses to appraise other rent-restricted properties.

(r) Not later than January 31 of each year, the appraisal district shall give public notice in the manner determined by the district, including posting on the district's website if applicable, of the capitalization rate to be used in that year to appraise property receiving an exemption under this section.

(s) Unless otherwise provided by the governing body of a taxing unit any part of which is located in a county with a population of at least 1.8 million under Subsection (x), for property described by Subsection (f)(1), the amount of the exemption under this section from taxation is 50 percent of the appraised value of the property.

(s-1) For property described by Subsection (f)(2), the amount of the exemption under this section from taxation is 100 percent of the appraised value of the property.

(t) Notwithstanding Section 11.43(c), an exemption under this section does not terminate because of a change in ownership of the property if:

(1) the property is foreclosed on for any reason and, not later than the 30th day after the date of the foreclosure sale, the owner of the property submits to the chief appraiser evidence that the property is owned by:

(A) an organization that meets the requirements of Subsection (b); or

(B) an entity that meets the requirements of Subsections (c) and (d); or

(2) in the case of property owned by an entity described by Subsections (c) and (d), the organization meeting the requirements of Subsection (b) that controls the general partner interest of or is the parent of the entity as described by Subsection (c) ceases to serve in that capacity and, not later than the 30th day after the date the cessation occurs, the owner of the property submits evidence to the chief appraiser that the organization has been succeeded in that capacity by another organization that meets the requirements of Subsection (b).

(u) The chief appraiser may extend the deadline provided by Subsection (t)(1) or (2), as applicable, for good cause shown.

(v) Notwithstanding any other provision of this section, an organization may not receive an exemption from taxation of property described by Subsection (f)(1) by a taxing unit any part of which is located in a county with a population of at least 1.8 million unless the exemption is approved by the governing body of the taxing unit in the manner provided by law for official action.

(w) To receive an exemption under this section from taxation by a taxing unit for which the approval of the governing body of the taxing unit is required by Subsection (v), an organization must submit to the governing body of the taxing unit a written request for approval of the exemption from taxation of the property described in the request.

(x) Not later than the 60th day after the date the governing body of the taxing unit receives a written request under Subsection (w) for an exemption under this section, the governing body shall:

(1) approve the exemption in the amount provided by Subsection (s);

(2) approve the exemption in a reasonable amount other than the amount provided by Subsection (s); or

(3) deny the exemption if the governing body determines that:

(A) the taxing unit cannot afford the loss of ad valorem tax revenue that would result from approving the exemption; or

(B) additional housing for individuals or families meeting the income eligibility requirements of this section is not needed in the territory of the taxing unit.

(y) Not later than the fifth day after the date the governing body of the taxing unit takes action under Subsection (x), the taxing unit shall issue a letter to the organization stating the governing body's action and, if the governing body denied the exemption, stating whether the denial was based on a determination under Subsection (x)(3)(A) or (B) and the basis for the determination. The taxing unit shall send a copy of the letter by regular mail to the chief appraiser of each appraisal district that appraises the property for the taxing unit. The governing body may charge the organization a fee not to exceed the administrative costs of processing the request of the organization, approving or denying the exemption, and issuing the letter required by this subsection. If the chief appraiser determines that the property qualifies for an exemption under this section and the governing body of the taxing unit approves the exemption, the chief appraiser shall grant the exemption in the amount approved by the governing body.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1156 (H.B. 3546), § 3, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1264 (H.B. 3191), § 1, effective January 1, 2008; am. Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 114, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1309 (H.B. 3133), § 2, effective June 17, 2011.

NOTES TO DECISIONS

Analysis

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General Overview. — Finding in favor of the taxpayer in a property tax dispute was inappropriate because Tex. Tax Code Ann. § 11.1825(a) was inapplicable since the apartment complex was not used to provide low-income housing to individuals or families meeting income eligibility requirements. Because § 11.1825 did not apply, it provided no support for the appraiser's addition of the 2.5 percent restriction premium to his market cap rate. Cent. Appraisal Dist. v. Western AH 406, Ltd., 372 S.W.3d 672, 2012 Tex. App. LEXIS 3299 (Tex. App. Eastland Apr. 26, 2012, no pet.).

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — Trial court erred in interpreting Tex. Tax Code Ann. § 11.1825 as meaning that without the exemption, the property would generate $100,000 in tax revenues and if a fifty percent exemption was granted to the owner, revenue would only be $50,000; summary judgment should have been rendered in favor of the school district as it was entitled to make the decision to deny the exemption. Dallas Indep. Sch. Dist. v. Outreach Hous. Corporation/Desoto I, Ltd., 251 S.W.3d 152, 2008 Tex. App. LEXIS 2146 (Tex. App. Dallas Mar. 25, 2008, no pet.).

ASSESSMENT & VALUATION

Valuation. — Finding in favor of the taxpayer in a property tax dispute was inappropriate because Tex. Tax Code Ann. § 11.1825(a) was inapplicable since the apartment complex was not used to provide low-income housing to individuals or families meeting income eligibility requirements. Because § 11.1825 did not apply, it provided no support for the appraiser's addition of the 2.5 percent restriction premium to his market cap rate. Cent. Appraisal Dist. v. Western AH 406, Ltd., 372 S.W.3d 672, 2012 Tex. App. LEXIS 3299 (Tex. App. Eastland Apr. 26, 2012, no pet.).

EXEMPTIONS. — Appraisal district argued that the organization and partnerships, which rented low or moderate-income housing, were not entitled to exemptions under Tex. Tax Code Ann. § 11.1825 because they did not meet the requirement under Tex. Const. art. VIII, § 2(a) that a qualifying organization had to be engaged primarily in public charitable functions, but the court agreed with the trial court, which focused its analysis on how the property was actually used, not the financial interest of the limited partner; the fact that the partnerships were financed by non-charitable entity investments in low-income housing tax credits did not render Tex. Tax Code Ann. § 11.1825 unconstitutional in this case. McLennan County Appraisal Dist. v. Am. Hous. Found., 343 S.W.3d 509, 2011 Tex. App. LEXIS 1708 (Tex. App. Waco Mar. 9, 2011), reh'g denied, No. 10-08-00416-CV, 2011 Tex. App. LEXIS 6317 (Tex. App. Waco May 11, 2011).

Tex. Const. art. VIII, § 2 requires only that institutions be primarily engaged in a public charitable function to qualify for an exemption from ad valorem taxes; the district did not dispute that the organizational structure of the partnerships met the requirements of Tex. Tax Code Ann. § 11.1825, and they were entitled to the exemption. McLennan County Appraisal Dist. v. Am. Hous. Found., 343 S.W.3d 509, 2011 Tex. App. LEXIS 1708 (Tex. App. Waco Mar. 9, 2011), reh'g denied, No. 10-08-00416-CV, 2011 Tex. App. LEXIS 6317 (Tex. App. Waco May 11, 2011).

Appraisal district was entitled to summary judgment in a property tax exemption dispute on the ground that no taxing units had approved the exemption requests; the evidence did not raise a fact issue as to the owner's argument that the district had waived the approval requirement in Tex. Tax Code Ann. § 11.1825(v) by not advising the owner of it. Brandywood Hous., Ltd. v. Harris County Appraisal Dist., No. 14-08-00404-CV, 2010 Tex. App. LEXIS 3287 (Tex. App. Houston 14th Dist. May 4, 2010).

Sec. 11.1826. Monitoring of Compliance with Low-Income and Moderate-Income Housing Exemptions.

(a) In this section, "department" means the Texas Department of Housing and Community Affairs.

(b) Property may not be exempted under Section 11.1825 for a tax year unless the organization owning or controlling the owner of the property:

(1) has an audit prepared by an independent auditor covering the organization's most recent fiscal year that:

(A) is conducted in accordance with generally accepted accounting principles; and

(B) includes an opinion on whether:

(i) the financial statements of the organization present fairly, in all material respects and in conformity with

generally accepted accounting principles, the financial position, changes in net assets, and cash flows of the organization; and

(ii) the organization has complied with all of the terms and conditions of the exemption under Section 11.1825; and

(2) delivers a copy of the audit in accordance with Subsection (c).

(c) Not later than the 180th day after the last day of the organization's most recent fiscal year, the organization must deliver a copy of the audit to the department and the chief appraiser of the appraisal district in which the property is located. The chief appraiser may extend the deadline for good cause shown.

(d) Notwithstanding any other provision of this section, if the property contains not more than 36 dwelling units, the organization may deliver to the department and the chief appraiser a detailed report and certification as an alternative to an audit.

(e) Property may not be exempted under Section 11.182 for a tax year unless the organization owning or controlling the owner of the property complies with this section, except that the audit required by this section must address compliance with the requirements of Section 11.182.

(f) All information submitted to the department or the chief appraiser under this section is subject to required disclosure, is excepted from required disclosure, or is confidential in accordance with Chapter 552, Government Code, or other law.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1156 (H.B. 3546), § 3, effective January 1, 2004; am. Acts 2013, 83rd Leg., ch. 399 (S.B. 193), § 2, effective January 1, 2014.

Sec. 11.1827. Community Land Trust.

(a) In this section, "community land trust" means a community land trust created or designated under Section 373B.002, Local Government Code.

(b) In addition to any other exemption to which the trust may be entitled, a community land trust is entitled to an exemption from taxation by a taxing unit of land owned by the trust, together with the housing units located on the land if they are owned by the trust, if:

(1) the trust:

(A) meets the requirements of a charitable organization provided by Sections 11.18(e) and (f);

(B) owns the land for the purpose of leasing the land and selling or leasing the housing units located on the land as provided by Chapter 373B, Local Government Code; and

(C) engages exclusively in the sale or lease of housing as described by Paragraph (B) and related activities, except that the trust may also engage in the development of low-income and moderate-income housing; and

(2) the exemption is adopted by the governing body of the taxing unit before July 1 in the manner provided by law for official action by the body.

(c) Property owned by a community land trust may not be exempted under Subsection (b) after the third anniversary of the date the trust acquires the property unless the trust is offering to sell or lease or is leasing the property as provided by Chapter 373B, Local Government Code.

(d) A community land trust entitled to an exemption from taxation by a taxing unit under Subsection (b) is also entitled to an exemption from taxation by the taxing unit of any real or tangible personal property the trust owns and uses in the administration of its acquisition, construction, repair, sale, or leasing of property. To qualify for an exemption under this subsection, property must be used exclusively by the trust, except that another person may use the property for activities incidental to the trust's use that benefit the beneficiaries of the trust.

(e) To receive an exemption under this section, a community land trust must annually have an audit prepared by an independent auditor. The audit must include:

(1) a detailed report on the trust's sources and uses of funds; and

(2) any other information required by the governing body of the municipality or county that created or designated the trust under Section 373B.002, Local Government Code.

(f) Not later than the 180th day after the last day of the community land trust's most recent fiscal year, the trust must deliver a copy of the audit required by Subsection (e) to:

(1) the governing body of the municipality or county or an entity designated by the governing body; and

(2) the chief appraiser of the appraisal district in which the property subject to the exemption is located.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 383 (S.B. 402), § 2, effective January 1, 2012.

Sec. 11.183. Association Providing Assistance to Ambulatory Health Care Centers.

(a) An association is entitled to an exemption from taxation of the property it owns and uses exclusively for the purposes for which the association is organized if the association:

(1) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code;

(2) complies with the criteria for a charitable organization under Sections 11.18(e) and (f);

(3) except as provided by Subsection (b), engages exclusively in providing assistance to ambulatory health care centers that provide medical care to individuals without regard to the individuals' ability to pay, including providing policy analysis, disseminating information, conducting continuing education, providing research, collecting and analyzing data, or providing technical assistance to the health care centers;

(4) is funded wholly or partly, or assists ambulatory health care centers that are funded wholly or partly, by a grant under Section 330, Public Health Service Act (42 U.S.C. Section 254b), and its subsequent amendments; and

(5) does not perform abortions or provide abortion referrals or provide assistance to ambulatory health care centers that perform abortions or provide abortion referrals.

(b) Use of the property by a person other than the association does not affect the eligibility of the property for an exemption authorized by this section if the use is incidental to use by the association and limited to activities that benefit:

(1) the ambulatory health care centers to which the association provides assistance; or

(2) the individuals to whom the health care centers provide medical care.

(c) Performance of noncharitable functions by the association does not affect the eligibility of the property for an exemption authorized by this section if those other functions are incidental to the association's charitable functions.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 675 (H.B. 541), § 1, effective January 1, 2000.

Sec. 11.184. Organizations Engaged Primarily in Performing Charitable Functions.

(a) In this section:

(1) "Local charitable organization" means an organization that:

(A) is a chapter, subsidiary, or branch of a statewide charitable organization; and

(B) with respect to its activities in this state, is engaged primarily in performing functions listed in Section 11.18(d).

(2) "Qualified charitable organization" means a statewide charitable organization or a local charitable organization.

(3) "Statewide charitable organization" means a statewide organization that, with respect to its activities in this state, is engaged primarily in performing functions listed in Section 11.18(d).

(b) [Repealed by Acts 2009, 81st Leg., ch. 1137 (H.B. 2555), § 2(b), effective January 1, 2010.]

(c) A qualified charitable organization is entitled to an exemption from taxation of:

(1) the buildings and other real property and the tangible personal property that:

(A) are owned by the organization; and

(B) except as permitted by Subsection (d), are used exclusively by the organization and other organizations eligible for an exemption from taxation under this section or Section 11.18; and

(2) the real property owned by the organization consisting of:

(A) an incomplete improvement that:

(i) is under active construction or other physical preparation; and

(ii) is designed and intended to be used exclusively by the organization and other organizations eligible for an exemption from taxation under this section or Section 11.18; and

(B) the land on which the incomplete improvement is located that will be reasonably necessary for the use of the improvement by the organization and other organizations eligible for an exemption from taxation under this section or Section 11.18.

(d) Use of exempt property by persons who are not charitable organizations eligible for an exemption from taxation under this section or Section 11.18 does not result in the loss of an exemption authorized by this section if the use is incidental to use by those charitable organizations and limited to activities that benefit the charitable organization that owns or uses the property.

(e) Before an organization may submit an application for an exemption under this section, the organization must apply to the comptroller for a determination of whether the organization is engaged primarily in performing functions listed in Section 11.18(d) and is eligible for an exemption under this section. In making the determination, the comptroller shall consider:

(1) whether the organization is recognized by the Internal Revenue Service as a tax-exempt organization under Section 501 of the Internal Revenue Code of 1986;

(2) whether the organization holds a letter of exemption issued by the comptroller certifying that the organization is entitled to issue an exemption certificate under Section 151.310;

(3) whether the charter or bylaws of the organization require charitable work or public service;

(4) the amount of monetary support contributed or in-kind charitable or public service performed by the organization in proportion to:

(A) the organization's operating expenses;

(B) the amount of dues received by the organization; and

(C) the taxes imposed on the organization's property during the preceding year if the property was taxed in that year or, if the property was exempt from taxation in that year, the taxes that would have been imposed on the property if it had not been exempt from taxation; and

(5) any other factor the comptroller considers relevant.

(f) Not later than the 30th day after the date the organization submits an application under Subsection (e), the comptroller may request that the organization provide additional information the comptroller determines necessary. Not later than the 90th day after the date the application is submitted or, if applicable, the date the additional information is provided, the comptroller shall issue a letter to the organization stating the comptroller's determination.

(g) The comptroller may:

(1) adopt rules to implement this section;

(2) prescribe the form of an application for a determination letter under this section; and

(3) charge an organization a fee not to exceed the administrative costs of processing a request, making a determination, and issuing a determination letter under this section.

(h) An organization applying for an exemption under this section shall submit with the application a copy of the determination letter issued by the comptroller under Subsection (f). The chief appraiser shall accept the copy of the letter as conclusive evidence as to whether the organization engages primarily in performing charitable functions and is eligible for an exemption under this section.

(i) A property may not be exempted under Subsection (c)(2) for more than three years.

(j) For purposes of Subsection (c)(2), an incomplete improvement is under physical preparation if the charitable organization has:

(1) engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the improvement; or

(2) conducted an environmental or land use study relating to the construction of the improvement.

(k) An exemption under this section expires at the end of the fifth tax year after the year in which the exemption is granted. To continue to receive an exemption under this section after that year, the organization must obtain a new determination letter and reapply for the exemption.

(*l*) Notwithstanding the other provisions of this section, a corporation that is not a qualified charitable organization is entitled to an exemption from taxation of property under this section if:

(1) the corporation is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(2) of that code;

(2) the corporation holds title to the property for, collects income from the property for, and turns over the entire amount of that income, less expenses, to a qualified charitable organization; and

(3) the qualified charitable organization would qualify for an exemption from taxation of the property under this section if the qualified charitable organization owned the property.

(m) Before a corporation described by Subsection (*l*) may submit an application for an exemption under this section, the qualified charitable organization for which the corporation holds title to the property must apply to the comptroller for the determination described by Subsection (e) with regard to the qualified charitable organization. The application for the determination must also include an application to the comptroller for a determination of whether the corporation meets the requirements of Subsections (*l*)(1) and (2). The corporation shall submit with the application for an exemption under this section a copy of the determination letter issued by the comptroller. The chief appraiser shall accept the copy of the letter as conclusive evidence of the matters described by Subsection (h) as well as of whether the corporation meets the requirements of Subsections (*l*)(1) and (2).

(n) Notwithstanding Subsection (k), in order for a corporation to continue to receive an exemption under Subsection (*l*) after the fifth tax year after the year in which the exemption is granted, the qualified charitable organization for which the corporation holds title to property must obtain a new determination letter and the corporation must reapply for the exemption.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1040 (H.B. 1689), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 1.02, effective June 18, 2003; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 2.02, effective January 1, 2006; am. Acts 2009, 81st Leg., ch. 1137 (H.B. 2555), § 2(a), (b), effective January 1, 2010.

Sec. 11.185. Colonia Model Subdivision Program.

(a) An organization is entitled to an exemption from taxation of unimproved real property it owns if the organization:

(1) meets the requirements of a charitable organization provided by Sections 11.18(e) and (f);

(2) purchased the property or is developing the property with proceeds of a loan made by the Texas Department of Housing and Community Affairs under the colonia model subdivision program under Subchapter GG, Chapter 2306, Government Code; and

(3) owns the property for the purpose of developing a model colonia subdivision.

(b) Property may not be exempted under Subsection (a) after the fifth anniversary of the date the organization acquires the property.

(c) An organization entitled to an exemption under Subsection (a) is also entitled to an exemption from taxation of any building or tangible personal property the organization owns and uses in the administration of its acquisition, building, repair, or sale of property. To qualify for an exemption under this subsection, property must be used exclusively by the charitable organization, except that another individual or organization may use the property for activities incidental to the charitable organization's use that benefit the beneficiaries of the charitable organization.

(d) For the purposes of Subsection (e), the chief appraiser shall determine the market value of property exempted under Subsection (a) and shall record the market value in the appraisal records.

(e) If the organization that owns improved or unimproved real property that has been exempted under Subsection (a) sells the property to a person other than a person described by Section 2306.786(b)(1), Government Code, a penalty is imposed on the property equal to the amount of the taxes that would have been imposed on the property in each tax year that the property was exempted from taxation under Subsection (a), plus interest at an annual rate of 12 percent computed from the dates on which the taxes would have become due.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1367 (S.B. 322), § 2.14, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(121), effective September 1, 2003 (renumbered from Sec. 11.184).

Sec. 11.19. Youth Spiritual, Mental, and Physical Development Associations.

(a) An association that qualifies as a youth development association as provided by Subsection (d) is entitled to an exemption from taxation of:

(1) the tangible property that:

(A) is owned by the association;

(B) except as permitted by Subsection (b), is used exclusively by qualified youth development associations; and

(C) is reasonably necessary for the operation of the association; and

(2) the real property owned by the youth development association consisting of:

(A) an incomplete improvement that:

(i) is under active construction or other physical preparation; and

(ii) is designed and intended to be used exclusively by qualified youth development associations when complete; and

(B) the land on which the incomplete improvement is located that will be reasonably necessary for the use of the improvement by qualified youth development associations.

(b) Use of exempt tangible property by persons who are not youth development associations qualified as provided by Subsection (d) of this section does not result in the loss of an exemption under this section if the use is incidental to use by qualified associations and benefits the individuals the associations serve.

(c) An association that qualifies as a youth development association as provided by Subsection (d) of this section is entitled to an exemption from taxation of those endowment funds the association owns that are used exclusively for the support of the association and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(d) To qualify as a youth development association for the purposes of this section, an association must:

(1) be organized and operated primarily for the purpose of promoting the threefold spiritual, mental, and physical development of boys, girls, young men, or young women;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain;

(3) operate in conjunction with a state or national organization that is organized and operated for the same purpose as the association;

(4) use its assets in performing the association's youth development functions or the youth development functions of another youth development association; and

(5) by charter, bylaw, or other regulation adopted by the association to govern its affairs direct that on discontinuance of the association by dissolution or otherwise the assets are to be transferred to this state, the United States, or a charitable, educational, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.

(e) A property may not be exempted under Subsection (a)(2) for more than three years.

(f) For purposes of Subsection (a)(2), an incomplete improvement is under physical preparation if the youth development association has:

(1) engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the improvement; or

(2) conducted an environmental or land use study relating to the construction of the improvement.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 34, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 8, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1411 (H.B. 2383), § 2, effective June 20, 1997; am. Acts 1999, 76th Leg., ch. 138 (H.B. 873), § 2, effective May 18, 1999; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 1.03, effective June 18, 2003; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 2.03, effective January 1, 2006.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property

General Overview. — Group was not entitled to tax exemption under Tex. Tax Code Ann. sec. 11.19 and 11.20 where it produced no evidence to show it met the requirements set forth in the statutes. Christian Group, Inc. v. Colorado County Cent. Appraisal Dist., No. 01-90-00886-CV, 1991 Tex. App. LEXIS 1808 (Tex. App. Houston 1st Dist. July 18, 1991).

Youth camp could not claim a tax exemption because it failed to meet the requirements of Tex. Tax. Code Ann. § 11.19(d)(4) which specifically required the youth camp to apply for the exemption where the existence of exemption depended on nature and character of the use of the land. Youth Camps, Inc. v. Comfort Independent School Dist., 705 S.W.2d 333, 1986 Tex. App. LEXIS 12443 (Tex. App. San Antonio Feb. 12, 1986, no writ).

Property was exempt under former Tex. Rev. Civ. Stat. Ann. art. 7150, § 2a if: 1) the property was used exclusively in conducting an association, 2) the property was reasonably necessary in conducting such association, 3) such association was engaged in the joint and threefold religious, educational and physical development of boys and girls, young men and young women, 4) such association was operated under a state or national organization which was engaged in the joint and threefold religious, educational and physical development of boys and girls, young men and young women, and 5) the property was not leased or otherwise used with a view to profit other than for the purpose of maintaining the buildings and association; those ultimate issues must have been proved to gain tax exemption. Texas Conference Asso. of Seventh-Day Adventists v. Leander Independent School Dist., 669 S.W.2d 353, 1984 Tex. App. LEXIS 5148 (Tex. App. Austin Mar. 7, 1984, writ ref'd n.r.e.), aff'd in part and rev'd in part, 679 S.W.2d 487, 1984 Tex. LEXIS 416 (Tex. 1984).

Former Tex. Rev. Civ. Stat. Ann. art. 7150, § 2a did not refer to a primary purpose of an association; it only required that the organization engage in the threefold religious, educational and physical development of boys, girls, young men, and young women. Texas Conference Asso. of Seventh-Day Adventists v. Leander Independent School Dist., 669 S.W.2d 353, 1984 Tex. App. LEXIS 5148 (Tex. App. Austin Mar. 7, 1984, writ ref'd n.r.e.), aff'd in part and rev'd in part, 679 S.W.2d 487, 1984 Tex. LEXIS 416 (Tex. 1984).

Association must prove the essential element in establishing tax exemption under Tex. Tax Code Ann. § 11.19 that the association engages primarily in promoting the threefold spiritual, mental, and physical development of boys, girls, young men, or young women; the addition of the word "primarily" serves to restrict the constitutionally exemptable class of property, and thus does not offend Tex. Const. art. VIII, § 2. Texas Conference Asso. of Seventh-Day Adventists v. Leander Independent School Dist., 669 S.W.2d 353, 1984 Tex. App. LEXIS 5148 (Tex. App. Austin Mar. 7, 1984, writ ref'd n.r.e.), aff'd in part and rev'd in part, 679 S.W.2d 487, 1984 Tex. LEXIS 416 (Tex. 1984).

Sec. 11.20. Religious Organizations.

(a) An organization that qualifies as a religious organization as provided by Subsection (c) is entitled to an exemption from taxation of:

(1) the real property that is owned by the religious organization, is used primarily as a place of regular religious worship, and is reasonably necessary for engaging in religious worship;

(2) the tangible personal property that is owned by the religious organization and is reasonably necessary for engaging in worship at the place of worship specified in Subdivision (1);

(3) the real property that is owned by the religious organization and is reasonably necessary for use as a residence (but not more than one acre of land for each residence) if the property:

(A) is used exclusively as a residence for those individuals whose principal occupation is to serve in the clergy of the religious organization; and

(B) produces no revenue for the religious organization;

(4) the tangible personal property that is owned by the religious organization and is reasonably necessary for use of the residence specified by Subdivision (3);

(5) the real property owned by the religious organization consisting of:

(A) an incomplete improvement that is under active construction or other physical preparation and that is designed and intended to be used by the religious organization as a place of regular religious worship when complete; and

(B) the land on which the incomplete improvement is located that will be reasonably necessary for the religious organization's use of the improvement as a place of regular religious worship;

(6) the land that the religious organization owns for the purpose of expansion of the religious organization's place of regular religious worship or construction of a new place of regular religious worship if:

(A) the religious organization qualifies other property, including a portion of the same tract or parcel of land, owned by the organization for an exemption under Subdivision (1) or (5); and

(B) the land produces no revenue for the religious organization; and

(7) the real property owned by the religious organization that is leased to another person and used by that person for the operation of a school that qualifies as a school under Section 11.21(d).

(b) An organization that qualifies as a religious organization as provided by Subsection (c) of this section is entitled to an exemption from taxation of those endowment funds the organization owns that are used exclusively for the support of the religious organization and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(c) To qualify as a religious organization for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) be organized and operated primarily for the purpose of engaging in religious worship or promoting the spiritual development or well-being of individuals;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain;

(3) use its assets in performing the organization's religious functions or the religious functions of another religious organization; and

(4) by charter, bylaw, or other regulation adopted by the organization to govern its affairs direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state, the United States, or a charitable, educational, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.

(d) Use of property that qualifies for the exemption prescribed by Subsection (a)(1) or (2) or by Subsection (h)(1) for occasional secular purposes other than religious worship does not result in loss of the exemption if the primary use of the property is for religious worship and all income from the other use is devoted exclusively to the maintenance and development of the property as a place of religious worship.

(e) For the purposes of this section, "religious worship" means individual or group ceremony or meditation, education, and fellowship, the purpose of which is to manifest or develop reverence, homage, and commitment in behalf of a religious faith.

(f) A property may not be exempted under Subsection (a)(5) for more than three years.

(g) For purposes of Subsection (a)(5), an incomplete improvement is under physical preparation if the religious organization has engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the improvement or has conducted an environmental or land use study relating to the construction of the improvement.

(h) Property owned by this state or a political subdivision of this state, including a leasehold or other possessory interest in the property, that is held or occupied by an organization that qualifies as a religious organization as provided by Subsection (c) is entitled to an exemption from taxation if the property:

(1) is used by the organization primarily as a place of regular religious worship and is reasonably necessary for engaging in religious worship; or

(2) meets the qualifications for an exemption under Subsection (a)(5).

(i) For purposes of the exemption provided by Subsection (h), the religious organization may apply for the exemption and take other action relating to the exemption as if the organization owned the property.

(j) A tract of land that is contiguous to the tract of land on which the religious organization's place of regular religious worship is located may not be exempted under Subsection (a)(6) for more than six years. A tract of land that is not contiguous to the tract of land on which the religious organization's place of regular religious worship is located may not be exempted under Subsection (a)(6) for more than three years. For purposes of this subsection, a tract of land is considered to be contiguous with another tract of land if the tracts are divided only by a road, railroad track, river, or stream.

(k) For purposes of Subsection (a)(6), an application or statement accompanying an application for the exemption stating that the land is owned for the purposes described by Subsection (a)(6) and signed by an authorized officer of the organization is sufficient to establish that the land is owned for those purposes.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 35, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 640 (H.B. 2213), § 1, effective January 1, 1988; am. Acts 1995, 74th Leg., ch. 458 (H.B. 2613), § 1, effective June 9, 1995; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 9, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1411 (H.B. 2383), § 3, effective June 20, 1997; am. Acts 1999, 76th Leg., ch. 138 (H.B. 873), § 3, effective May 18, 1999; am. Acts 2003, 78th Leg., ch. 123 (H.B. 2383), § 1, effective January 1, 2004; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 1.04, effective June 18, 2003; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 2.04, effective January 1, 2006; am. Acts 2003, 78th Leg., ch. 1052 (H.B. 1278), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(80), effective September 1, 2005.

NOTES TO DECISIONS

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GOVERNMENTS
Legislation

Interpretation. — Property owner that rented land to a church for use as a church was not entitled to a religious exemption from property tax under Tex. Const. art. VIII, § 2(a) and Tex. Tax. Code Ann. § 11.20(a)(1) because the Texas Constitution permitted, rather than prescribed, the exemption and because in such a situation the legislature was permitted to limit that exemption as it pleased. Falls v. Harris County Appraisal Dist., No. 14-01-00369-CV, 2002 Tex. App. LEXIS 2944 (Tex. App. Houston 14th Dist. Apr. 25, 2002).

TAX LAW
State & Local Taxes
Administration & Proceedings

Judicial Review. — Where the evidence showed that another entity owned property and a trustee was not liable for taxes on this property, he had no standing to bring an action challenging the denial of an exemption under Tex. Tax Code Ann. § 11.20. Therefore, a dismissal for lack of subject matter jurisdiction was warranted. Bernard Dolenz Life Estate v. Dallas Cent. Appraisal

Dist. & Appraisal Review Bd., 293 S.W.3d 920, 2009 Tex. App. LEXIS 6313 (Tex. App. Dallas Aug. 13, 2009, no pet.).

TAXPAYER PROTESTS. — Where the evidence showed that another entity owned property and a trustee was not liable for taxes on this property, he had no standing to bring an action challenging the denial of an exemption under Tex. Tax Code Ann. § 11.20. Therefore, a dismissal for lack of subject matter jurisdiction was warranted. Bernard Dolenz Life Estate v. Dallas Cent. Appraisal Dist. & Appraisal Review Bd., 293 S.W.3d 920, 2009 Tex. App. LEXIS 6313 (Tex. App. Dallas Aug. 13, 2009, no pet.).

PERSONAL PROPERTY TAX

Exempt Property

General Overview. — Church-owned parking lots were tax exempt when church proved that the lots were primarily used for religious purposes. First Baptist Church v. Bexar County Appraisal Review Bd., 833 S.W.2d 108, 1992 Tex. LEXIS 72 (Tex. 1992).

In a tax collection action brought by plaintiff appraisal review board, defendant church was not entitled to a tax exemption for church property leased to an adjacent business for extra parking during business hours because the actual use of the property was not primarily for a religious purpose as required by Tex. Prop. Tax Code Ann. § 11.20. Bexar County Appraisal Review Bd. v. First Baptist Church, 800 S.W.2d 892, 1990 Tex. App. LEXIS 3155 (Tex. App. San Antonio Oct. 10, 1990), writ granted No. D-0689 (Tex. 1991), rev'd, 833 S.W.2d 108, 1992 Tex. LEXIS 72 (Tex. 1992), op. withdrawn, sub. op., 846 S.W.2d 554, 1993 Tex. App. LEXIS 538 (Tex. App. San Antonio Jan. 20, 1993).

Church leased parking lots to a commercial operator, while retaining parking rights for members of the congregation, and claimed a tax exemption under Tex. Tax Code Ann. § 11.20(a)(1); a jury verdict denying a tax exemption for income the church received was upheld; to qualify for an exemption under Tex. Tax Code Ann. § 11.20(a)(1), a party must prove that the real property in issue was owned by a religious organization, used primarily as a place of regular religious worship, and reasonably necessary for engaging in religious worship. University Christian Church v. Austin, 789 S.W.2d 361, 1990 Tex. App. LEXIS 988 (Tex. App. Austin Apr. 25, 1990, no writ).

Church was exempt under Tex. Tax Code Ann. § 11.20(a)(1) from ad valorem taxes on its parking lots which it leased to a commercial parking lot company because the primary purpose of the church property was for religious worship. University Christian Church v. Austin, 724 S.W.2d 94, 1986 Tex. App. LEXIS 9447 (Tex. App. Austin Dec. 10, 1986), writ granted No. C-6294 (Tex. 1987), rev'd, 768 S.W.2d 718, 1988 Tex. LEXIS 126 (Tex. 1988).

Religious organization's claim to tax exemption for the entire tract on which its tabernacle, parsonage, and administrative building sat failed under the exemption granted, by Tex. Tax Code Ann. § 11.20, only for actual places of religious worship and dwelling places for the ministry; the court distinguished between places used for religious purposes and places of actual worship. General Asso. Branch Davidian Seventh Day Adventist v. McLennan County Appraisal Dist., 715 S.W.2d 391, 1986 Tex. App. LEXIS 8048 (Tex. App. Waco July 17, 1986, no writ).

Lower court's ruling that land owned by a church group was fully exempt from property taxes because it was used primarily as or a place of regular religious worship under Tex. Tax Code Ann. § 11.20(a)(1) was in error due to the lower court's failure to include both statutory prongs of the statutory test requiring "regular use" and "primary use." Earle v. Program Centers of Grace Union Presbytery, Inc., 670 S.W.2d 777, 1984 Tex. App. LEXIS 5532 (Tex. App. Fort Worth May 23, 1984, no writ).

Definition of religious worship found in Tex. Tax Code Ann. § 11.20 did not expand the exemption set forth in Tex. Const. art. VIII, § 2(a) beyond its intended limits. Kerrville Indep. Sch. Dist. v. Southwest Tex. Encampment Assoc., 673 S.W.2d 256, 1984 Tex. App. LEXIS 5376 (Tex. App. San Antonio 1984, no writ).

Evidence that members of appellant church used particular property to prepare material for use in its radio and television ministries, participated in group ceremonies, meditation, education, and fellowship, the purpose of which was to advance the church's religion as contemplated by Tex. Tax Code Ann. § 11.20(e), exempted the church from an assessment of property tax. Highland Church of Christ v. Powell, 644 S.W.2d 177, 1982 Tex. App. LEXIS 5527 (Tex. App. Eastland Dec. 16, 1982, writ ref'd n.r.e.).

Trial court erred in denying a church a tax exemption for 30 percent of the building because that portion of the building that was used primarily as a place of regular religious worship was exempt from the ad valorem taxation under the definition of "religious worship" contained in Tex. Tax Code Ann. § 11.20(e). Highland Church of Christ v. Powell, 633 S.W.2d 324, 1981 Tex. App. LEXIS 4664 (Tex. App. Eastland Jan. 28, 1982), writ granted No. C-1144 (Tex. 1982), rev'd, 640 S.W.2d 235, 1982 Tex. LEXIS 366 (Tex. 1982).

ATTORNEY GENERAL OPINIONS

Analysis

Dwelling for Minister of Music.
Exclusive Use of Church Property.

Dwelling for Minister of Music.

A dwelling furnished by a church for its minister of music, in addition to one furnished for its minister, may qualify for tax exempt status if music is part of the ministry of the church. 1974 Tex. Op. Att'y Gen. H-399 (Affirmed by Court Decision See Appendix item #6).

Exclusive Use of Church Property.

We do not think that the fact that the Chancery is not used exclusively as a dwelling place by the Chancellor would preclude exemption. It seems clear that the Legislature intended that the living quarters for the ministry of a church were to be exempt; so we cannot see that if a parsonage were attached to a church it would lose its exempt status as not being used "exclusively" as a dwelling because of the church, or that the church would lose its exemption as an actual place of religious worship because of the parsonage. 1967 Tex. Op. Att'y Gen. M-21.

Sec. 11.201. Additional Tax on Sale of Certain Religious Organization Property.

(a) If land is sold or otherwise transferred to another person in a year in which the land receives an exemption under Section 11.20(a)(6), an additional tax is imposed on the land equal to the tax that would have been imposed on the land had the land been taxed for each of the five years preceding the year in which the sale or transfer occurs in which the land received an exemption under that subsection, plus interest at an annual rate of seven percent calculated from the dates on which the taxes would have become due.

(b) A tax lien attaches to the land on the date the sale or transfer occurs to secure payment of the tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the tax is imposed.

(c) If only part of a parcel of land that is exempted under Section 11.20(a)(6) is sold or transferred, the tax applies only to that part of the parcel and equals the taxes that would have been imposed had that part been taxed.

(d) The assessor for each taxing unit shall prepare and deliver a bill for the additional taxes plus interest as soon as practicable after the sale or transfer occurs. The taxes and interest are due and become delinquent and incur penalties

and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(e) The sanctions provided by Subsection (a) do not apply if the sale or transfer occurs as a result of:

(1) a sale for right-of-way;

(2) a condemnation;

(3) a transfer of property to the state or a political subdivision of the state to be used for a public purpose; or

(4) a transfer of property to a religious organization that qualifies the property for an exemption under Section 11.20 for the tax year in which the transfer occurs.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1052 (H.B. 1278), § 2, effective January 1, 2004.

Sec. 11.21. Schools.

(a) A person is entitled to an exemption from taxation of:

(1) the buildings and tangible personal property that the person owns and that are used for a school that is qualified as provided by Subsection (d) if:

(A) the school is operated exclusively by the person owning the property;

(B) except as permitted by Subsection (b), the buildings and tangible personal property are used exclusively for educational functions; and

(C) the buildings and tangible personal property are reasonably necessary for the operation of the school; and

(2) the real property owned by the person consisting of:

(A) an incomplete improvement that:

(i) is under active construction or other physical preparation; and

(ii) is designed and intended to be used for a school that is qualified as provided by Subsection (d); and

(B) the land on which the incomplete improvement is located that will be reasonably necessary for the use of the improvement for a school that is qualified as provided by Subsection (d).

(b) Use of exempt tangible property for functions other than educational functions does not result in loss of an exemption authorized by this section if those other functions are incidental to use of the property for educational functions and benefit the students or faculty of the school.

(c) A person who operates a school that is qualified as provided by Subsection (d) of this section is entitled to an exemption from taxation of those endowment funds he owns that are used exclusively for the support of the school and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(d) To qualify as a school for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) be organized and operated primarily for the purpose of engaging in educational functions;

(2) normally maintain a regular faculty and curriculum and normally have a regularly organized body of students in attendance at the place where its educational functions are carried on;

(3) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain and, if the organization is a corporation, be organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act;

(4) use its assets in performing the organization's educational functions or the educational functions of another educational organization; and

(5) by charter, bylaw, or other regulation adopted by the organization to govern its affairs direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state, the United States, or an educational, charitable, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.

(e) In this section, "building" includes the land that is reasonably necessary for use of, access to, and ornamentation of the building.

(f) Notwithstanding Subsection (a), a person is entitled to an exemption from taxation of the buildings and tangible personal property the person acquires for use for a school that meets each requirement of Subsection (d) if:

(1) the person authorizes the former owner to continue to use the property pending the use of the property for a school; and

(2) the former owner would be entitled to an exemption from taxation of the property if the former owner continued to own the property.

(g) A property may not be exempted under Subsection (a)(2) for more than three years.

(h) For purposes of Subsection (a)(2), an incomplete improvement is under physical preparation if the person has:

(1) engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the improvement; or

(2) conducted an environmental or land use study relating to the construction of the improvement.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 36, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 10, effective January 1, 1998; am. Acts

1997, 75th Leg., ch. 1293 (S.B. 344), § 1, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1411 (H.B. 2383), § 4, effective June 20, 1997; am. Acts 1999, 76th Leg., ch. 138 (H.B. 873), § 4, effective May 18, 1999; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 1.05, effective June 18, 2003; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 2.05, effective January 1, 2006.

NOTES TO DECISIONS

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Tax Law
•State & Local Taxes
••Personal Property Tax
•••Exempt Property
••••General Overview
••••Requirements for Exempt Status

TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property

General Overview. — For-profit school's Tex. Const. art. VIII, § /Aa2(a)'s challenge to Tex. Tax Code Ann. § /Aa11.21(d)(3) and (5) were not meritorious; the Legislature could restrict the statutory exemption authorized by the constitution and the school acknowledged it did not meet the statutory requirements as a qualifying school and was not entitled to the tax exemption. Ultrasound Tech. Servs. v. Dallas Cent. Appraisal Dist., 357 S.W.3d 174, 2011 Tex. App. LEXIS 10192 (Tex. App. Dallas Dec. 30, 2011, no pet.).

A non-profit child development center that cared for infants, toddlers, two-, three-, and four-year olds, and provided after school programs for the school aged children, did not meet the requirements of Tex. Tax Code Ann. § 11.21(a)(2) to qualify for tax-exempt status because it was required to maintain a day care center license due to the age of the children enrolled in its programs, and because custodial care required for that age children was substantial; the center's educational functions were secondary to its custodial functions and it was not operated exclusively for educational functions. Circle C Child Dev. Ctr., Inc. v. Travis Cent. Appraisal Dist., 981 S.W.2d 483, 1998 Tex. App. LEXIS 7327 (Tex. App. Austin Nov. 30, 1998, no pet.).

University house used as the residence of the president was not exempt from property taxes given the use of the house was not for educational purposes; the appeals court held the house should have been subject to property tax and not given an exemption. Bexar Appraisal Dist. v. Incarnate Word College, 824 S.W.2d 295, 1992 Tex. App. LEXIS 689 (Tex. App. San Antonio Jan. 29, 1992, writ denied).

Appellee church's use of undeveloped acreage was reasonably necessary for the operation of its school, in that the acreage was used as part of the students' formal instruction in art, biology, geology, archaeology, and recreation and athletic purposes, and the land was exempt from appellant board's tax assessment under Tex. Tax Prop. Code Ann. § 11.21. Board of Appraisal Review v. Protestant Episcopal Church Council, 676 S.W.2d 616, 1984 Tex. App. LEXIS 5689 (Tex. App. Austin June 20, 1984, pet. dism'd w.o.j.).

REQUIREMENTS FOR EXEMPT STATUS. — For-profit school's Tex. Const. art. VIII, § /Aa2(a)'s challenge to Tex. Tax Code Ann. § /Aa11.21(d)(3) and (5) were not meritorious; the Legislature could restrict the statutory exemption authorized by the constitution and the school acknowledged it did not meet the statutory requirements as a qualifying school and was not entitled to the tax exemption. Ultrasound Tech. Servs. v. Dallas Cent. Appraisal Dist., 357 S.W.3d 174, 2011 Tex. App. LEXIS 10192 (Tex. App. Dallas Dec. 30, 2011, no pet.).

Sec. 11.22. Disabled Veterans.

(a) A disabled veteran is entitled to an exemption from taxation of a portion of the assessed value of a property the veteran owns and designates as provided by Subsection (f) in accordance with the following schedule:

an exemption of up to:	for a disability rating of at least:	but less than:
$5,000 of the assessed value	10%	30%
7,500	30	50
10,000	50	70
12,000	70 and over	

(b) A disabled veteran is entitled to an exemption from taxation of $12,000 of the assessed value of a property the veteran owns and designates as provided by Subsection (f) of this section if the veteran:

(1) is 65 years of age or older and has a disability rating of at least 10 percent;

(2) is totally blind in one or both eyes; or

(3) has lost the use of one or more limbs.

(c) If a disabled veteran who is entitled to an exemption by Subsection (a) or (b) of this section dies, the veteran's surviving spouse is entitled to an exemption from taxation of a portion of the assessed value of a property the spouse owns and designates as provided by Subsection (f) of this section. The amount of the exemption is the amount of the veteran's exemption at time of death. The spouse is entitled to an exemption by this subsection only for as long as the spouse remains unmarried. If the spouse does not survive the veteran, each of the veteran's surviving children who is younger than 18 years of age and unmarried is entitled to an exemption from taxation of a portion of the assessed value of a property the child owns and designates as provided by Subsection (f) of this section. The amount of exemption for each eligible child is computed by dividing the amount of the veteran's exemption at time of death by the number of eligible children.

(d) If an individual dies while on active duty as a member of the armed services of the United States:

(1) the individual's surviving spouse is entitled to an exemption from taxation of $5,000 of the assessed value of the property the spouse owns and designates as provided by Subsection (f) of this section; and

(2) each of the individual's surviving children who is younger than 18 years of age and unmarried is entitled to an exemption from taxation of a portion of the assessed value of a property the child owns and designates as provided

by Subsection (f) of this section, the amount of exemption for each eligible child to be computed by dividing $5,000 by the number of eligible children.

(e) An individual who qualifies for more than one exemption authorized by this section is entitled to aggregate the amounts of the exemptions, except that:

(1) a disabled veteran who qualifies for more than one exemption authorized by Subsections (a) and (b) of this section is entitled to only one exemption but may choose the greatest exemption for which he qualifies; and

(2) an individual who receives an exemption as a surviving spouse of a disabled veteran as provided by Subsection (c) of this section may not receive an exemption as a surviving child as provided by Subsection (c) or (d) of this section.

(f) An individual may receive an exemption to which he is entitled by this section against only one property, which must be the same for every taxing unit in which the individual claims the exemption. If an individual is entitled by Subsection (e) of this section to aggregate the amounts of more than one exemption, he must take the entire aggregated amount against the same property. An individual must designate on his exemption application form the property against which he takes an exemption under this section.

(g) An individual is not entitled to an exemption by this section unless he is a resident of this state.

(h) In this section:

(1) "Child" includes an adopted child or a child born out of wedlock whose paternity has been admitted or has been established in a legal action.

(2) "Disability rating" means a veteran's percentage of disability as certified by the Veterans' Administration or its successor or the branch of the armed services in which the veteran served.

(3) "Disabled veteran" means a veteran of the armed services of the United States who is classified as disabled by the Veterans' Administration or its successor or the branch of the armed services in which the veteran served and whose disability is service-connected.

(4) "Surviving spouse" means the individual who was married to a disabled veteran or member of the armed services at the time of the veteran's or member's death.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 18.002, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 1405 (H.B. 3613), § 1(b), effective June 19, 2009.

NOTES TO DECISIONS

Analysis

Constitutional Law
•Substantive Due Process
••Scope of Protection
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Governments
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Tax Law
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•••Exemptions

CONSTITUTIONAL LAW
Substantive Due Process

Scope of Protection. — In a case in which an appraisal district removed the disabled veteran tax exemption from property that married taxpayers owned after discovering that the husband, a 100 percent permanently disabled United States Army veteran, was no longer a Texas resident, there was no due process violation because the husband did not have a constitutionally protected right in the disabled veteran tax exemption. Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699, 2012 Tex. App. LEXIS 3837 (Tex. App. San Antonio May 16, 2012, no pet.).

EQUAL PROTECTION

Scope of Protection. — Tex. Tax Code Ann. § 11.22(g)'s residency requirement is rationally related to a legitimate governmental purpose. Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699, 2012 Tex. App. LEXIS 3837 (Tex. App. San Antonio May 16, 2012, no pet.).

GOVERNMENTS
State & Territorial Governments

Legislatures. — Texas Legislature had authority to impose Tex. Tax Code Ann. § 11.22(g)'s residency requirement. In enacting § 11.22, the legislature acted within the discretion given to it by the constitution because it did not broaden or enlarge the tax exemption, but, instead, it limited the exemption to a subset of disabled veterans, which were those who live in Texas. Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699, 2012 Tex. App. LEXIS 3837 (Tex. App. San Antonio May 16, 2012, no pet.).

TAX LAW
State & Local Taxes
Real Property Tax

Exemptions. — In order to be entitled to receive the disabled veteran tax exemption, a disabled veteran must meet Tex. Tax Code Ann. § 11.22(g)'s Texas residency requirement. Accordingly, an appraisal district's removal of the disabled veteran tax exemption from property that married taxpayers owned after discovering that the husband, a 100 percent permanently disabled United States Army veteran, was no longer a Texas resident was proper. Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699, 2012 Tex. App. LEXIS 3837 (Tex. App. San Antonio May 16, 2012, no pet.).

Texas Legislature had authority to impose Tex. Tax Code Ann. § 11.22(g)'s residency requirement. In enacting § 11.22, the legislature acted within the discretion given to it by the constitution because it did not broaden or enlarge the tax exemption, but, instead, it limited the exemption to a subset of disabled veterans, which were those who live in Texas. Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699, 2012 Tex. App. LEXIS 3837 (Tex. App. San Antonio May 16, 2012, no pet.).

Tex. Tax Code Ann. § 11.22(g)'s residency requirement is rationally related to a legitimate governmental purpose. Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699, 2012 Tex. App. LEXIS 3837 (Tex. App. San Antonio May 16, 2012, no pet.).

In a case in which an appraisal district removed the disabled veteran tax exemption from property that married taxpayers owned after discovering that the husband, a 100 percent permanently disabled United States Army veteran, was no longer a Texas resident, there was no due process violation because the husband did not have a constitutionally protected right in the disabled veteran tax exemption. Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699, 2012 Tex. App. LEXIS 3837 (Tex. App. San Antonio May 16, 2012, no pet.).

In a case in which the disabled veteran tax exemption was removed from property that married taxpayers owned after

discovering that the husband, a 100 percent permanently disabled United States Army veteran, was no longer a Texas resident, the chief appraiser had legal authority to remove the tax exemption from the taxpayers' property, and he correctly concluded that, as a nonresident of Texas, the husband was not entitled to the disabled veteran tax exemption. Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699, 2012 Tex. App. LEXIS 3837 (Tex. App. San Antonio May 16, 2012, no pet.).

ATTORNEY GENERAL OPINIONS

Property Tax Exemptions.

Tax appraisal districts must use the schedule of disability ratings and corresponding maximum property tax exemption amounts for disabled veterans provided in article VIII, section 2(b) of the Texas Constitution instead of those set out in Tax Code section 11.22(a). 2008 Tex. Op. Att'y Gen. GA-0676.

Sec. 11.23. Miscellaneous Exemptions.

(a) Veteran's Organizations. A nonprofit organization that is composed primarily of members or former members of the armed forces of the United States or its allies and that is chartered or incorporated by the United States Congress is entitled to an exemption from taxation of each of the buildings (including the land that is reasonably necessary for use of, access to, and ornamentation of the buildings) and other property owned and primarily used by that organization if the property is not used to produce revenue or held for gain. Occasional renting of the post or chapter property for other nonprofit activities does not result in loss of the exemption provided by this subsection if the rental proceeds are used solely for the maintenance and improvement of the property. For purposes of this subsection, an organization is a nonprofit organization if it is organized and operated in a way that does not result in the accrual of distributable profits, realization of private gain from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain.

(b) Federation of Women's Clubs. The Texas Federation of Women's Clubs is entitled to an exemption from taxation of the tangible property it owns if the property is not held for gain.

(c) Nature Conservancy of Texas. The Nature Conservancy of Texas, Incorporated, is entitled to an exemption from taxation of the tangible property it owns if the property is not held for gain, as long as the organization is a nonprofit corporation as defined by the Texas Non-Profit Corporation Act.

(d) Congress of Parents and Teachers. The Texas Congress of Parents and Teachers is entitled to an exemption from taxation for state and county purposes of the buildings (including the land that is reasonably necessary for use of, access to, and ornamentation of the buildings) it owns and uses as its state headquarters.

(e) Private Enterprise Demonstration Associations. An association that engages exclusively in conducting nonprofit educational programs designed to demonstrate the American private enterprise system to children and young people and that operates under a state or national organization that is organized and operated for the same purpose is entitled to an exemption from taxation of the tangible property that it owns and uses exclusively if it is reasonably necessary for the association's operation.

(f) Bison, Buffalo, and Cattalo. A person is entitled to an exemption from taxation of the bison, buffalo, and cattalo he owns that are not held for gain and that are used in experimental breeding with cattle for the purpose of producing an improved strain of meat animal or kept in parks to preserve the species.

(g) Theater Schools. A corporation that is organized to promote the teaching and study of the dramatic arts is entitled to an exemption from taxation of the property it owns and uses in the operation of a school for the dramatic arts if:

(1) the corporation is organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act;

(2) the corporation is not self-sustaining in any fiscal year from income other than gifts, grants, or donations;

(3) the corporation is exempt from federal income taxes;

(4) the school maintains a theater-school program with regular classes for at least four grades, formal textbooks and curriculum, an enrollment of 150 or more students during each of at least two semesters every calendar year, and a faculty substantially all of whom hold degrees in theater arts from an accredited school of higher education;

(5) the school offers apprenticeship or other practical training in theater management and operation for college students or offers similar training for playwrights, actors, and production personnel; and

(6) more than one-half of each season's theatrical productions for which admission is charged have significant literary merit of the character that contributes to the educational programs of secondary schools and schools of higher education.

(h) County Fair Associations. A county fair association organized to hold agricultural fairs and encourage agricultural pursuits is entitled to an exemption from taxation of the land and buildings that it owns and uses to hold agricultural fairs. An association that holds a license issued after January 1, 2001, under Subtitle A-1, Title 13, Occupations Code (Texas Racing Act), to conduct a horse race meeting or a greyhound race meeting with pari-mutuel wagering is not entitled to an exemption under this subsection. Land or a building used to conduct a horse race meeting or a greyhound race meeting with pari-mutuel wagering under a license issued after January 1, 2001, under that subtitle may not be exempted under this subsection. To qualify for an exemption under this subsection, a county fair association must:

(1) be a nonprofit corporation governed by Chapter 22, Business Organizations Code;

(2) be exempt from federal income taxes as an organization described by Section 501(c)(3), (4), or (5), Internal Revenue Code of 1986;

(3) qualify for an exemption from the franchise tax under Section 171.060; and

(4) meet the requirements of a charitable organization provided by Sections 11.18(e) and (f), for which purpose the functions for which the association is organized are considered to be charitable functions.

(i) Community Service Clubs. An association that qualifies as a community service club is entitled to an exemption from taxation of the tangible property the club owns that qualifies under Article VIII, Section 2, of the constitution and that is not used for profit or held for gain. To qualify as a community service club for the purposes of this subsection, an association must:

(1) be organized to promote and must engage primarily in promoting:

(A) the religious, educational, and physical development of boys, girls, young men, or young women;

(B) the development of the concepts of patriotism and love of country; and

(C) the development of interest in community, national, and international affairs;

(2) be affiliated with a state or national organization of similar purpose;

(3) be open to membership without regard to race, religion, or national origin; and

(4) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain.

(j) Medical Center Development. All real and personal property owned by a nonprofit corporation, as defined in the Texas Non-Profit Corporation Act, and held for use in the development of a medical center area or areas in which the nonprofit corporation has donated land for a state medical, dental, or nursing school, and for other hospital, medical, and educational uses and uses reasonably related thereto, during the time remaining property is held for the development to completion of the medical center and not leased or otherwise used with a view to profit, is exempt from all ad valorem taxation as though the property were, during that time, owned and held by the state for health and educational purposes.

(j-1) Medical Center Development in Populous Counties. In a county with a population of 3.3 million or more, all real and personal property owned by a nonprofit corporation, as that term is defined by Section 22.001, Business Organizations Code, organized exclusively for benevolent, charitable, and educational purposes, and held for use in the development or operation of a medical center area or areas in which the nonprofit corporation has donated land for a state medical, dental, or nursing school, for other hospital, medical, educational, research, or nonprofit uses and uses reasonably related to those uses, for auxiliary uses to support those benevolent, charitable, and educational functions, including the invention, development, and dissemination of materials, tools, technologies, processes, and similar means for translating and applying medical and scientific research for practical applications to advance public health, or for governmental or public purposes, including the relief of traffic congestion, is exempt from all ad valorem taxation. In connection with the application or enforcement of a deed restriction or a covenant related to the property, a use or purpose described in this subsection shall also be considered to be a hospital, medical, or educational use, or a use that is reasonably related to a hospital, medical, or educational use. This subsection may not be construed to exempt from taxation any interest in real or personal property, including a leasehold or other possessory interest, of a for-profit lessee of property for which a nonprofit corporation is entitled to an exemption from taxation under this subsection.

(k) Scientific Research Corporations. A nonprofit corporation as defined in the Texas Non-Profit Corporation Act is entitled to an exemption from taxation of the property it owns and uses in scientific research and educational activities for the benefit of one or more colleges and universities. Use of property exempted by this subsection for purposes other than scientific research and education does not result in loss of the exemption if those other functions are incidental to use of the property for scientific research and education activities and benefit the scientific research corporation and the colleges or universities that it supports.

(*l*) Incomplete Improvements. A person described by Subsection (a)—(e), (g), or (i)—(k) is entitled to an exemption from taxation of the real property owned by the person consisting of an incomplete improvement that is under active construction or other physical preparation and that is designed and intended to be used by the person for a purpose described by that subsection when complete and the land on which the incomplete improvement is located that will be reasonably necessary for the person's use of the improvement for that purpose. A property may not be exempted under this subsection for more than three years. For purposes of this subsection, an incomplete improvement is under physical preparation if the person has:

(1) engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the improvement; or

(2) conducted an environmental or land use study relating to the construction of the improvement.

(m) National Hispanic Institute. The National Hispanic Institute is entitled to an exemption from taxation of the real and tangible personal property it owns as long as the organization is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 37, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 430 (S.B. 1066), § 2, effective January 1, 1988; am. Acts 1987, 70th Leg., ch. 640 (H.B. 2213), § 5, effective August 31, 1987; am. Acts 1991, 72nd Leg., ch. 162 (H.B. 30), § 1, effective August 26, 1991; am. Acts 1997, 75th Leg., ch. 954 (H.B. 1145), § 2, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 138 (H.B. 873), § 5, effective May 18, 1999; am. Acts 2001, 77th Leg., ch. 815 (H.B. 824), § 1, effective January 1, 2002; am. Acts 2003, 78th Leg., 3rd C.S., ch. 3 (H.B. 7), § 20.01, effective January 11, 2004; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 1.06, effective June 18, 2003; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 2.06, effective January 1, 2006; am. Acts 2015, 84th Leg., ch. 1119 (H.B. 3623), § 1,

effective January 1, 2016; am. Acts 2017, 85th Leg., ch. 280 (H.B. 2999), § 1, effective January 1, 2018; am. Acts 2017, 85th Leg., ch. 280 (H.B. 2999), § 1, effective January 1, 2018; am. Acts 2017, 85th Leg., ch. 963 (S.B. 1969), § 2.11, effective April 1, 2019.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property

General Overview. — Research institute was not entitled to summary judgment on the issue of whether it was exempt from taxation, because it failed to meet its burden of proving that it was a purely public charity to qualify under Tex. Const. art. VIII, § 2 or that it was a nonprofit corporation pursuant to Tex. Tax. Code Ann. § 11.23. Dallas County Appraisal Dist. v. Institute for Aerobics Research, 766 S.W.2d 318, 1989 Tex. App. LEXIS 640 (Tex. App. Dallas Jan. 31, 1989, writ denied).

ATTORNEY GENERAL OPINIONS

Analysis

Mexican Consulate.
Tax Exemption for Specific Private Entity.

Mexican Consulate.

We are of the opinion that property situated in this State, which is owned and used by the Republic of Mexico for governmental purposes, whether real or personal, is not subject to ad valorem taxes by this State or any political subdivision thereof. 1943 Tex. Op. Att'y Gen. W-5031.

Tax Exemption for Specific Private Entity.

Section 11.23(c) of the Tax Code, which provides for a tax exemption for the tangible property of a specific, private entity by name, is not a general law authorized by article VIII, section 2 of the Texas Constitution and is a special law in violation of article III, section 56. 1997 Tex. Op. Att'y Gen. DM-0432.

Sec. 11.231. Nonprofit Community Business Organization Providing Economic Development Services to Local Community.

(a) In this section, "nonprofit community business organization" means an organization that meets the following requirements:

(1) the organization has been in existence for at least the preceding five years;

(2) the organization:

(A) is a nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or a nonprofit corporation formed under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code;

(B) is a nonprofit organization described by Section 501(c)(6), Internal Revenue Code of 1986; and

(C) is not a statewide organization;

(3) for at least the preceding three years, the organization has maintained a dues-paying membership of at least 50 members; and

(4) the organization:

(A) has a board of directors elected by the members;

(B) does not compensate members of the board of directors for service on the board;

(C) with respect to its activities in this state, is engaged primarily in performing functions listed in Subsection (d);

(D) is primarily supported by membership dues and other income from activities substantially related to its primary functions; and

(E) is not, has not formed, and does not financially support a political committee as defined by Section 251.001, Election Code.

(a-1) In addition to an organization described by Subsection (a), in this section, "nonprofit community business organization" also means a Type A corporation governed by Chapter 504, Local Government Code, and a Type B corporation governed by Chapter 505, Local Government Code.

(b) An association that qualifies as a nonprofit community business organization as provided by this section is entitled to an exemption from taxation of:

(1) the buildings and tangible personal property that:

(A) are owned by the nonprofit community business organization; and

(B) except as permitted by Subsection (c), are used exclusively by qualified nonprofit community business organizations to perform their primary functions; and

(2) the real property owned by the nonprofit community business organization consisting of:

(A) an incomplete improvement that:

(i) is under active construction or other physical preparation; and

(ii) is designed and intended to be used exclusively by qualified nonprofit community business organizations; and

(B) the land on which the incomplete improvement is located that will be reasonably necessary for the use of the improvement by qualified nonprofit community business organizations.

(c) Use of exempt property by persons who are not nonprofit community business organizations qualified as provided by this section does not result in the loss of an exemption authorized by this section if the use is incidental to use by

qualified nonprofit community business organizations and limited to activities that benefit the beneficiaries of the nonprofit community business organizations that own or use the property.

(d) To qualify for an exemption under this section, a nonprofit community business organization must be engaged primarily in performing one or more of the following functions in the local community:

(1) promoting the common economic interests of commercial enterprises;

(2) improving the business conditions of one or more types of business; or

(3) otherwise providing services to aid in economic development.

(e) In this section, "building" includes the land that is reasonably necessary for use of, access to, and ornamentation of the building.

(f) A property may not be exempted under Subsection (b)(2) for more than three years.

(g) For purposes of Subsection (b)(2), an incomplete improvement is under physical preparation if the nonprofit community business organization has:

(1) engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the improvement; or

(2) conducted an environmental or land use study relating to the construction of the improvement.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1417 (H.B. 770), § 3, effective January 1, 2010; am. Acts 2015, 84th Leg., ch. 1255 (H.B. 1905), § 20(a), effective January 1, 2016.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax

Exemptions. — "Charitable purpose" was a subset of "charitable function" and Tex. Tax Code Ann. § 11.231 did not violate Tex. Const. art. VIII, § 2(a); the realtor association proved its qualifications for exemption under the statute and met the requirements for exemption under the constitution. Brazos County Appraisal Dist. v. Bryan-College Station Reg'l Ass'n of Realtors, 419 S.W.3d 462, 2013 Tex. App. LEXIS 4929 (Tex. App. Waco Apr. 18, 2013), reh'g denied, No. 10-11-00438-CV, 2013 Tex. App. LEXIS 15545 (Tex. App. Waco May 22, 2013).

ATTORNEY GENERAL OPINIONS

Exemptions.

Under Tex. Tax Code Ann. § 11.231, an entity that is engaged primarily in performing one of the section's listed economic development functions, as determined by the chief tax appraiser, is a "nonprofit community business organization" that qualifies for the property tax exemption. 2011 Tex. Op. Att'y Gen. GA-0890.

Sec. 11.24. Historic Sites.

[Effective until January 1, 2020] The governing body of a taxing unit by official action of the body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of a structure or archeological site and the land necessary for access to and use of the structure or archeological site, if the structure or archeological site is:

(1) **[Effective until January 1, 2020]** designated as a Recorded Texas Historic Landmark under Chapter 442, Government Code, or a state archeological landmark under Chapter 191, Natural Resources Code, by the Texas Historical Commission; or

(2) **[Effective until January 1, 2020]** designated as a historically or archeologically significant site in need of tax relief to encourage its preservation pursuant to an ordinance or other law adopted by the governing body of the unit.

(a) **[Effective January 1, 2020]** The governing body of a taxing unit by official action of the body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of a structure or archeological site and the land necessary for access to and use of the structure or archeological site, if the structure or archeological site is:

(1) **[Effective January 1, 2020]** designated as a Recorded Texas Historic Landmark under Chapter 442, Government Code, or a state archeological landmark under Chapter 191, Natural Resources Code, by the Texas Historical Commission; or

(2) **[Effective January 1, 2020]** designated as a historically or archeologically significant site in need of tax relief to encourage its preservation pursuant to an ordinance or other law adopted by the governing body of the taxing unit.

(b) **[Effective January 1, 2020]** The governing body of a taxing unit may not repeal or reduce the amount of an exemption granted under Subsection (a) for a property that otherwise qualifies for the exemption unless:

(1) **[Effective January 1, 2020]** the owner of the property consents to the repeal or reduction; or

(2) **[Effective January 1, 2020]** the taxing unit provides written notice of the repeal or reduction to the owner not later than five years before the date the governing body repeals or reduces the exemption.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1995, 74th Leg., ch. 109 (S.B. 365), § 21, effective August 30, 1995; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 25, effective January 1, 2020.

Sec. 11.25. Marine Cargo Containers Used Exclusively in International Commerce.

(a) A person is entitled to an exemption from taxation of a marine cargo container and the equipment related to the container that the person owns if:

(1) the person is:
(A) a citizen of a foreign country; or
(B) an entity organized under the laws of a foreign country; and
(2) the container is:
(A) based, registered, and subject to taxation in a foreign country; and
(B) used exclusively in international commerce.
(b) In this section, "marine cargo container":
(1) means a container that may be:
(A) used to transport goods by ship;
(B) readily handled;
(C) transferred from one mode of transport to another without reloading; and
(D) used repeatedly; and
(2) includes a container that is fully or partially enclosed so as to serve as a compartment for goods, has an open top suitable for loading goods into the container, or consists of a flat rack suitable for securing goods onto the container.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 726 (H.B. 479), § 1, effective September 1, 1997.

Sec. 11.251. Tangible Personal Property Exempt.

(a) In this section, "freeport goods" means property that under Article VIII, Section 1-j, of the Texas Constitution is not taxable.

(b) A person is entitled to an exemption from taxation by a taxing unit of the appraised value of that portion of the person's inventory or property consisting of freeport goods as determined under this section for the taxing unit.

(c) The exemption provided by Subsection (b) is subtracted from the market value of the inventory or property determined under Section 23.12 to determine the taxable value of the inventory or property for the taxing unit.

(d) Except as provided by Subsections (f) and (g), the chief appraiser shall determine the appraised value of freeport goods under this subsection. The chief appraiser shall determine the percentage of the market value of inventory or property owned by the property owner in the preceding calendar year that was contributed by freeport goods. The chief appraiser shall apply that percentage to the market value of the property owner's inventory or property for the current year to determine the appraised value of freeport goods for the current year.

(e) In determining the market value of freeport goods that in the preceding year were assembled, manufactured, repaired, maintained, processed, or fabricated in this state or used by the person who acquired or imported the property in the repair or maintenance of aircraft operated by a certificated air carrier, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the freeport goods but were not themselves freeport goods or that were not transported outside the state before the expiration of 175 days, or, if applicable, the greater number of days adopted by the taxing unit as authorized by Subsection (*l*), after they were brought into this state by the property owner or acquired by the property owner in this state. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held in this state by the property owner during the preceding year in determining whether the component parts were transported out of this state before the expiration of 175 days or, if applicable, the greater number of days adopted by the taxing unit as authorized by Subsection (*l*).

(f) If the property owner was not engaged in transporting freeport goods out of this state for the entire preceding year, the chief appraiser shall calculate the percentage of cost described in Subsection (d) for the portion of the year in which the property owner was engaged in transporting freeport goods out of this state.

(g) If the property owner or the chief appraiser demonstrates that the method provided by Subsection (d) significantly understates or overstates the market value of the property qualified for an exemption under Subsection (b) in the current year, the chief appraiser shall determine the market value of the freeport goods to be exempt by determining, according to the property owner's records and any other available information, the market value of those freeport goods owned by the property owner on January 1 of the current year, excluding the cost of equipment, machinery, or materials that entered into and became component parts of the freeport goods but were not themselves freeport goods or that were not transported outside the state before the expiration of 175 days, or, if applicable, the greater number of days adopted by the taxing unit as authorized by Subsection (*l*), after they were brought into this state by the property owner or acquired by the property owner in this state.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner or a person designated in writing by the importer of record to provide copies of inventory or property records in order to determine the amount and value of freeport goods. If the property owner or designated person fails to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner or before the date the appraisal review board approves the appraisal records under Section 41.12, whichever is later, the property owner forfeits the right to claim or receive the exemption for that year. If the property owner or designated person delivers the information requested in the notice before the date the appraisal review board approves the appraisal records but not before the 31st day after the date the notice is delivered to the property owner and the exemption is allowed, the property owner is liable to each taxing unit for a penalty in an amount

equal to 10 percent of the difference between the amount of tax imposed by the taxing unit on the inventory or property and the amount that would otherwise have been imposed. The chief appraiser shall make an entry on the appraisal records for the inventory or property indicating the property owner's liability for the penalty and shall deliver a written notice of imposition of the penalty, explaining the reason for its imposition, to the property owner. The assessor for a taxing unit that taxes the inventory or property shall add the amount of the penalty to the property owner's tax bill, and the tax collector for the unit shall collect the penalty at the time and in the manner the collector collects the tax. The amount of the penalty constitutes a lien against the inventory or property against which the penalty is imposed, as if it were a tax, and accrues penalty and interest in the same manner as a delinquent tax.

(i) The exemption provided by Subsection (b) does not apply to a taxing unit that takes action to tax the property under Article VIII, Section 1-j, Subsection (b), of the Texas Constitution.

(j) Petroleum products as set forth in Article VIII, Section 1-j, of the Texas Constitution shall mean liquid and gaseous materials that are the immediate derivatives of the refining of oil or natural gas.

(k) Property that meets the requirements of Article VIII, Sections 1-j(a)(1) and (2), of the Texas Constitution and that is transported outside of this state not later than 175 days, or, if applicable, the greater number of days adopted by the taxing unit as authorized by Subsection (*l*), after the date the person who owns it on January 1 acquired it or imported it into this state is freeport goods regardless of whether the person who owns it on January 1 is the person who transports it outside of this state.

(*l*) The governing body of a taxing unit, in the manner provided by law for official action, may extend the date by which freeport goods that are aircraft parts must be transported outside the state to a date not later than the 730th day after the date the person acquired or imported the property in this state. An extension adopted by official action under this subsection applies only to the exemption from ad valorem taxation by the taxing unit adopting the extension and applies to:

(1) the tax year:

(A) in which the extension is adopted if officially adopted before June 1 of a tax year; or

(B) immediately following the tax year in which the extension is adopted if officially adopted on or after June 1 of a tax year; and

(2) each tax year following the year of adoption of the extension.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 534 (H.B. 2959), § 1, effective January 1, 1990; am. Acts 1991, 72nd Leg., ch. 504 (H.B. 1859), § 1, effective June 13, 1991; am. Acts 1993, 73rd Leg., ch. 779 (S.B. 1487), § 1, effective January 1, 1994; am. Acts 2001, 77th Leg., ch. 125 (S.B. 862), § 1, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 1402 (H.B. 3121), § 1, effective January 1, 2014.

NOTES TO DECISIONS

Analysis

Tax Law
•State & Local Taxes
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TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Tex. Tax Code Ann. § 11.251(h) is constitutional as applied to a taxpayer denied an ad valorem tax exemption of its freeport goods since the tax payer did not provide the county appraisal district (district) with additional information that district requested within the 30-day period as required by § 11.251(h). Motorola, Inc. v. Tarrant County Appraisal Dist., 980 S.W.2d 899, 1998 Tex. App. LEXIS 6564 (Tex. App. Fort Worth Oct. 22, 1998, no pet.).

PERSONAL PROPERTY TAX
Exempt Property

General Overview. — Taxpayer's failure to complete a Tex. Tax Code Ann. § 11.251 exemption application was not fatal to its claim for property tax immunity because the legislative intent of the free-port goods exemption was to promote economic development in the state;the taxpayer applied for the exemption in the same manner that it had in the past, prior to the deadline, and there was no indication that the taxpayer intentionally withheld information or failed to respond to any request for records. Harris County Appraisal Dist. v. Virginia Indon. Co., 871 S.W.2d 864, 1994 Tex. App. LEXIS 260 (Tex. App. Houston 14th Dist. Feb. 10, 1994), rev'd, 910 S.W.2d 905, 1995 Tex. LEXIS 151 (Tex. 1995).

LIMITATIONS. — Manufacturer's motor oil, grease, and gear oil were eligible for the freeport goods property tax exemption because they were not "petroleum products" excluded from the exemption; the term "immediate derivatives" as used in the definition of "petroleum products" means substances or products derived directly from the refining of oil or natural gas, not new or different products manufactured from immediate derivatives after completion of the refining process. Ashland Inc. v. Harris County Appraisal Dist., 437 S.W.3d 50, 2014 Tex. App. LEXIS 6389 (Tex. App. Houston 14th Dist. June 12, 2014, no pet.).

TANGIBLE PROPERTY
Imposition of Tax. — Supplier's aircraft shipment to the Army Depot was not entitled to the freeport exemption under Tex. Const. art. VIII, § 1-j(a)(1)-(3) and Tex. Tax Code Ann. § 11.251, because the supplier's inventory shipped to the Army Depot, geographically located within the State of Texas, was not transported outside the State under the plain language of the freeport exemption, when the freeport exemption's phrase "outside the State" did not include the Army Depot, located wholly within the boundaries of the State of Texas. Aviall Servs. v. Tarrant Appraisal Dist., 300 S.W.3d 441, 2009 Tex. App. LEXIS 8342 (Tex. App. Fort Worth Oct. 29, 2009, no pet.).

VALUE ADDED TAX. — Supplier's aircraft shipment to the Army Depot was not entitled to the freeport exemption under Tex. Const. art. VIII, § 1-j(a)(1)-(3) and Tex. Tax Code Ann. § 11.251, because the supplier's inventory shipped to the Army Depot, geographically located within the State of Texas, was not transported outside the State under the plain language of the freeport exemption, when the freeport exemption's phrase "outside the State" did not include the Army Depot, located wholly within the

boundaries of the State of Texas. Aviall Servs. v. Tarrant Appraisal Dist., 300 S.W.3d 441, 2009 Tex. App. LEXIS 8342 (Tex. App. Fort Worth Oct. 29, 2009, no pet.).

Sec. 11.252. Motor Vehicles Leased for Use Other than Production of Income.

(a) The owner of a motor vehicle that is subject to a lease is entitled to an exemption from taxation of the vehicle if:

(1) the lessee does not hold the vehicle for the production of income; and

(2) the vehicle is used primarily for activities that do not involve the production of income.

(b) For purposes of this section, a motor vehicle is presumed to be used primarily for activities that do not involve the production of income if:

(1) 50 percent or more of the miles the motor vehicle is driven in a year are for non-income producing purposes;

(2) the motor vehicle is leased to this state or a political subdivision of this state; or

(3) the motor vehicle:

(A) is leased to an organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code; and

(B) would be exempt from taxation if the vehicle were owned by the organization.

(c) The comptroller by rule shall establish exemption application requirements and appropriate procedures to determine whether a motor vehicle subject to a lease qualifies for an exemption under Subsection (a).

(d) In connection with the requirements and procedures under Subsection (c), the comptroller by rule shall adopt a form to be completed by the lessee of a motor vehicle for which the owner of the vehicle may apply for an exemption under Subsection (a). The form shall require a lessee who is an individual to provide the lessee's name, address, and driver's license or personal identification certificate number. The form shall require a lessee that is an entity described by Subsection (b) to provide the lessee's name, address, and, if applicable, federal tax identification number. The form shall require a lessee who is an individual, or the authorized representative of a lessee that is an entity described by Subsection (b), to certify under oath that the lessee does not hold the vehicle for the production of income and that the vehicle is used primarily for activities that do not involve the production of income. The comptroller shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making a false statement on the form.

(e) The owner of a motor vehicle that is subject to a lease shall maintain the form, an electronic image of the form, or a certified copy of the form completed by the lessee of the vehicle and make the form, electronic image, or certified copy available for inspection and copying by the chief appraiser of the applicable appraisal district at all reasonable times. If the owner does not maintain a completed form, electronic image of the completed form, or certified copy of the completed form relating to the vehicle, the owner:

(1) must render the vehicle for taxation in the applicable rendition statement or property report filed by the owner under Chapter 22; and

(2) may not file an application for an exemption under Subsection (a) for the vehicle.

(f) The governing body of a municipality by ordinance adopted before January 1, 2002, may provide for the taxation of leased motor vehicles otherwise exempted under Subsection (a). If the governing body of a municipality provides for the taxation of leased motor vehicles under this subsection, the exemption provided by Subsection (a) does not apply to that municipality.

(g) [Repealed by Acts 2003, 78th Leg., ch. 866 (S.B. 658), § 1, effective June 20, 2003.]

(h) In this section:

(1) "Lease" has the meaning assigned by Section 152.001(6).

(2) "Motor vehicle" means a passenger car or truck with a shipping weight of not more than 9,000 pounds.

(i) In addition to the requirements of Subsections (c) and (d), the comptroller by rule shall prescribe a property report form to be completed by the lessor describing the leased motor vehicles that the lessor owns. The property report form shall require the lessor to list each leased vehicle the lessor owns on January 1, to provide the year, make, model, and vehicle identification number of each leased vehicle, and to provide the name of the lessee, the address at which the vehicle is kept, and an indication of whether the lessee has designated the vehicle as not held for the production and not used for the production of income.

(j) The lessor shall provide the chief appraiser with the completed property report form adopted by the comptroller in the manner provided by Subchapter B, Chapter 22.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1406 (S.B. 248), § 1, effective January 1, 2002; am. Acts 2003, 78th Leg., ch. 866 (S.B. 658), § 1, effective June 20, 2003; am. Acts 2019, 86th Leg., ch. 570 (S.B. 58), §§ 1, 2, effective September 1, 2019.

ATTORNEY GENERAL OPINIONS

Vehicle Lease.

Where a manufacturer of motor vehicles leases vehicles which it has produced to its own employees within this State, retaining title, with no option to purchase in the lessees, then no retail sales or use tax is due upon such lease. 1960 Tex. Op. Att'y Gen. W-801.

Sec. 11.253. Tangible Personal Property in Transit.

(a) In this section:

(1) "Dealer's motor vehicle inventory," "dealer's vessel and outboard motor inventory," "dealer's heavy equipment inventory," and "retail manufactured housing inventory" have the meanings assigned by Subchapter B, Chapter 23.

(2) "Goods-in-transit" means tangible personal property that:

(A) is acquired in or imported into this state to be forwarded to another location in this state or outside this state;

(B) is stored under a contract of bailment by a public warehouse operator at one or more public warehouse facilities in this state that are not in any way owned or controlled by the owner of the personal property for the account of the person who acquired or imported the property;

(C) is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and

(D) does not include oil, natural gas, petroleum products, aircraft, dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment inventory, or retail manufactured housing inventory.

(3) "Location" means a physical address.

(4) "Petroleum product" means a liquid or gaseous material that is an immediate derivative of the refining of oil or natural gas.

(5) "Bailee" and "warehouse" have the meanings assigned by Section 7.102, Business & Commerce Code.

(6) "Public warehouse operator" means a person that:

(A) is both a bailee and a warehouse; and

(B) stores under a contract of bailment, at one or more public warehouse facilities, tangible personal property that is owned by other persons solely for the account of those persons and not for the operator's account.

(b) A person is entitled to an exemption from taxation of the appraised value of that portion of the person's property that consists of goods-in-transit.

(c) The exemption provided by Subsection (b) is subtracted from the market value of the property determined under Section 23.01 or 23.12, as applicable, to determine the taxable value of the property.

(d) Except as provided by Subsections (f) and (g), the chief appraiser shall determine the appraised value of goods-in-transit under this subsection. The chief appraiser shall determine the percentage of the market value of tangible personal property owned by the property owner and used for the production of income in the preceding calendar year that was contributed by goods-in-transit. For the first year in which the exemption applies to a taxing unit, the chief appraiser shall determine that percentage as if the exemption applied in the preceding year. The chief appraiser shall apply that percentage to the market value of the property owner's tangible personal property used for the production of income for the current year to determine the appraised value of goods-in-transit for the current year.

(e) In determining the market value of goods-in-transit that in the preceding year were stored in this state, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held by the owner of the component parts during the preceding year at a location in this state that was not owned by or under the control of the owner of the component parts in determining whether the component parts were transported to another location in this state or outside this state before the expiration of 175 days.

(f) If the property owner was not engaged in transporting goods-in-transit to another location in this state or outside this state for the entire preceding year, the chief appraiser shall calculate the percentage of the market value described in Subsection (d) for the portion of the year in which the property owner was engaged in transporting goods-in-transit to another location in this state or outside this state.

(g) If the property owner or the chief appraiser demonstrates that the method provided by Subsection (d) significantly understates or overstates the market value of the property qualified for an exemption under Subsection (b) in the current year, the chief appraiser shall determine the market value of the goods-in-transit to be exempt by determining, according to the property owner's records and any other available information, the market value of those goods-in-transit owned by the property owner on January 1 of the current year, excluding the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner to provide copies of property records so the chief appraiser can determine the amount and value of goods-in-transit and that the location in this state where the goods-in-transit were detained for storage was not owned by or under the control of the owner of the goods-in-transit. If the property owner fails to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner, the property owner forfeits the right to claim or receive the exemption for that year.

(i) Property that meets the requirements of this section constitutes goods-in-transit regardless of whether the person who owns the property on January 1 is the person who transports the property to another location in this state or outside this state.

(j) The governing body of a taxing unit, in the manner required for official action by the governing body, may provide for the taxation of goods-in-transit exempt under Subsection (b) and not exempt under other law. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Before acting to tax the exempt property, the governing body of the taxing unit must conduct a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution. If the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this subsection, the exemption prescribed by Subsection (b) does not apply to that unit. The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit, or otherwise determines that the exemption prescribed by Subsection (b) will apply to that taxing unit.

(j-1) Notwithstanding Subsection (j) or official action that was taken under that subsection before October 1, 2011, to tax goods-in-transit exempt under Subsection (b) and not exempt under other law, a taxing unit may not tax such goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes action on or after October 1, 2011, in the manner required for official action by the governing body, to provide for the taxation of the goods-in-transit. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Before acting to tax the exempt property, the governing body of the taxing unit must conduct a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution. If the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this subsection, the exemption prescribed by Subsection (b) does not apply to that unit. The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit or otherwise determines that the exemption prescribed by Subsection (b) will apply to that taxing unit.

(j-2) Notwithstanding Subsection (j-1), if under Subsection (j) the governing body of a taxing unit, before October 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the taxing unit, the tax officials of the taxing unit may continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created.

(k) A property owner who receives the exemption from taxation provided by Subsection (b) is not eligible to receive the exemption from taxation provided by Section 11.251 for the same property.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 830 (H.B. 621), § 1, effective January 1, 2008; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 48.01, effective January 1, 2012; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 48.02, effective October 1, 2011.

Sec. 11.254. Motor Vehicle Used for Production of Income and for Personal Activities.

(a) Except as provided by Subsection (c), an individual is entitled to an exemption from taxation of one motor vehicle owned by the individual that is used in the course of the individual's occupation or profession and is also used for personal activities of the owner that do not involve the production of income.

(b) In this section, "motor vehicle" means a passenger car or light truck as those terms are defined by Section 502.001, Transportation Code.

(c) A person who has been granted or applied for an exemption under this section may not apply for another exemption under this section until after the application or exemption has been denied.

(d) This section does not apply to a motor vehicle used to transport passengers for hire.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 842 (H.B. 1022), § 1, effective November 6, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 27.001(86), effective September 1, 2009 (renumbered from Sec. 11.253); am. Acts 2009, 81st Leg., ch. 706 (H.B. 2814), § 2, effective January 1, 2010 (renumbered from Sec. 11.253).

ATTORNEY GENERAL OPINIONS

Tax on Dealer's Personal Vehicle.

An automobile devoted wholly or partially to the personal use of a dealer, a dealer's employees or their respective families, Vehicle Sales and Use Tax, or to someone other than the dealer is subject to the Motor Vehicle Sales and Use Tax. 1973 Tex. Op. Att'y Gen. H-173.

Sec. 11.26. Limitation of School Tax on Homesteads of Elderly or Disabled.

(a) The tax officials shall appraise the property to which this section applies and calculate taxes as on other property, but if the tax so calculated exceeds the limitation imposed by this section, the tax imposed is the amount of the tax as limited by this section, except as otherwise provided by this section. A school district may not increase the total annual amount of ad valorem tax it imposes on the residence homestead of an individual 65 years of age or older or on the residence homestead of an individual who is disabled, as defined by Section 11.13, above the amount of the tax it imposed in the first tax year in which the individual qualified that residence homestead for the applicable exemption provided by Section 11.13(c) for an individual who is 65 years of age or older or is disabled. If the individual qualified that residence homestead for the exemption after the beginning of that first year and the residence homestead remains eligible for the same exemption for the next year, and if the school district taxes imposed on the residence homestead in the next year are less than the amount of taxes imposed in that first year, a school district may not subsequently increase the total annual amount of ad valorem taxes it imposes on the residence homestead above the amount it

imposed in the year immediately following the first year for which the individual qualified that residence homestead for the same exemption, except as provided by Subsection (b). If the first tax year the individual qualified the residence homestead for the exemption provided by Section 11.13(c) for individuals 65 years of age or older or disabled was a tax year before the 2015 tax year, the amount of the limitation provided by this section is the amount of tax the school district imposed for the 2014 tax year less an amount equal to the amount determined by multiplying $10,000 times the tax rate of the school district for the 2015 tax year, plus any 2015 tax attributable to improvements made in 2014, other than improvements made to comply with governmental regulations or repairs.

(a-1) Notwithstanding the other provisions of this section, if in the 2007 tax year an individual qualifies for a limitation on tax increases provided by this section on the individual's residence homestead and the first tax year the individual or the individual's spouse qualified for an exemption under Section 11.13(c) for the same homestead was the 2006 tax year, the amount of the limitation provided by this section on the homestead in the 2007 tax year is equal to the amount computed by:

(1) multiplying the amount of tax the school district imposed on the homestead in the 2006 tax year by a fraction the numerator of which is the tax rate of the district for the 2007 tax year and the denominator of which is the tax rate of the district for the 2006 tax year; and

(2) adding any tax imposed in the 2007 tax year attributable to improvements made in the 2006 tax year as provided by Subsection (b) to the lesser of the amount computed under Subdivision (1) or the amount of tax the district imposed on the homestead in the 2006 tax year.

(a-2) Notwithstanding the other provisions of this section, if in the 2007 tax year an individual qualifies for a limitation on tax increases provided by this section on the individual's residence homestead and the first tax year the individual or the individual's spouse qualified for an exemption under Section 11.13(c) for the same homestead was a tax year before the 2006 tax year, the amount of the limitation provided by this section on the homestead in the 2007 tax year is equal to the amount computed by:

(1) multiplying the amount of tax the school district imposed on the homestead in the 2005 tax year by a fraction the numerator of which is the tax rate of the district for the 2006 tax year and the denominator of which is the tax rate of the district for the 2005 tax year;

(2) adding any tax imposed in the 2006 tax year attributable to improvements made in the 2005 tax year as provided by Subsection (b) to the lesser of the amount computed under Subdivision (1) or the amount of tax the district imposed on the homestead in the 2005 tax year;

(3) multiplying the amount computed under Subdivision (2) by a fraction the numerator of which is the tax rate of the district for the 2007 tax year and the denominator of which is the tax rate of the district for the 2006 tax year; and

(4) adding to the lesser of the amount computed under Subdivision (2) or (3) any tax imposed in the 2007 tax year attributable to improvements made in the 2006 tax year, as provided by Subsection (b).

(a-3) Except as provided by Subsection (b), a limitation on tax increases provided by this section on a residence homestead computed under Subsection (a-1) or (a-2) continues to apply to the homestead in subsequent tax years until the limitation expires.

(b) If an individual makes improvements to the individual's residence homestead, other than improvements required to comply with governmental requirements or repairs, the school district may increase the tax on the homestead in the first year the value of the homestead is increased on the appraisal roll because of the enhancement of value by the improvements. The amount of the tax increase is determined by applying the current tax rate to the difference in the assessed value of the homestead with the improvements and the assessed value it would have had without the improvements. A limitation imposed by this section then applies to the increased amount of tax until more improvements, if any, are made.

(c) The limitation on tax increases required by this section expires if on January 1:

(1) none of the owners of the structure who qualify for the exemption and who owned the structure when the limitation first took effect is using the structure as a residence homestead; or

(2) none of the owners of the structure qualifies for the exemption.

(d) If the appraisal roll provides for taxation of appraised value for a prior year because a residence homestead exemption for individuals 65 years of age or older or for disabled individuals was erroneously allowed, the tax assessor shall add, as back taxes due as provided by Section 26.09(d), the positive difference if any between the tax that should have been imposed for that year and the tax that was imposed because of the provisions of this section.

(e) For each school district in an appraisal district, the chief appraiser shall determine the portion of the appraised value of residence homesteads of individuals on which school district taxes are not imposed in a tax year because of the limitation on tax increases imposed by this section. That portion is calculated by determining the taxable value that, if multiplied by the tax rate adopted by the school district for the tax year, would produce an amount equal to the amount of tax that would have been imposed by the school district on those residence homesteads if the limitation on tax increases imposed by this section were not in effect, but that was not imposed because of that limitation. The chief appraiser shall determine that taxable value and certify it to the comptroller as soon as practicable for each tax year.

(f) The limitation on tax increases required by this section does not expire because the owner of an interest in the structure conveys the interest to a qualifying trust as defined by Section 11.13(j) if the owner or the owner's spouse is a trustor of the trust and is entitled to occupy the structure.

(g) Except as provided by Subsection (b), if an individual who receives a limitation on tax increases imposed by this section, including a surviving spouse who receives a limitation under Subsection (i), subsequently qualifies a different residence homestead for the same exemption under Section 11.13, a school district may not impose ad valorem taxes on the subsequently qualified homestead in a year in an amount that exceeds the amount of taxes the school district would have imposed on the subsequently qualified homestead in the first year in which the individual receives that same exemption for the subsequently qualified homestead had the limitation on tax increases imposed by this section not been in effect, multiplied by a fraction the numerator of which is the total amount of school district taxes imposed on the former homestead in the last year in which the individual received that same exemption for the former homestead and the denominator of which is the total amount of school district taxes that would have been imposed on the former homestead in the last year in which the individual received that same exemption for the former homestead had the limitation on tax increases imposed by this section not been in effect.

(h) An individual who receives a limitation on tax increases under this section, including a surviving spouse who receives a limitation under Subsection (i), and who subsequently qualifies a different residence homestead for an exemption under Section 11.13, or an agent of the individual, is entitled to receive from the chief appraiser of the appraisal district in which the former homestead was located a written certificate providing the information necessary to determine whether the individual may qualify for that same limitation on the subsequently qualified homestead under Subsection (g) and to calculate the amount of taxes the school district may impose on the subsequently qualified homestead.

(i) **[Effective until January 1, 2020]** If an individual who qualifies for the exemption provided by Section 11.13(c) for an individual 65 years of age or older dies, the surviving spouse of the individual is entitled to the limitation applicable to the residence homestead of the individual if:

(1) the surviving spouse is 55 years of age or older when the individual dies; and

(2) the residence homestead of the individual:

(A) is the residence homestead of the surviving spouse on the date that the individual dies; and

(B) remains the residence homestead of the surviving spouse.

(i) **[Effective January 1, 2020]** If an individual who qualifies for the exemption provided by Section 11.13(c) dies, the surviving spouse of the individual is entitled to the limitation applicable to the residence homestead of the individual if:

(1) the surviving spouse is 55 years of age or older when the individual dies; and

(2) the residence homestead of the individual:

(A) is the residence homestead of the surviving spouse on the date that the individual dies; and

(B) remains the residence homestead of the surviving spouse.

(i-1) **[Effective January 1, 2020]** A limitation under Subsection (i) applicable to the residence homestead of the surviving spouse of an individual who was disabled and who died before January 1, 2020, is calculated as if the surviving spouse was entitled to the limitation when the individual died.

(j) If an individual who qualifies for an exemption provided by Section 11.13(c) for an individual 65 years of age or older dies in the first year in which the individual qualified for the exemption and the individual first qualified for the exemption after the beginning of that year, except as provided by Subsection (k), the amount to which the surviving spouse's school district taxes are limited under Subsection (i) is the amount of school district taxes imposed on the residence homestead in that year determined as if the individual qualifying for the exemption had lived for the entire year.

(k) If in the first tax year after the year in which an individual dies in the circumstances described by Subsection (j) the amount of school district taxes imposed on the residence homestead of the surviving spouse is less than the amount of school district taxes imposed in the preceding year as limited by Subsection (j), in a subsequent tax year the surviving spouse's school district taxes on that residence homestead are limited to the amount of taxes imposed by the district in that first tax year after the year in which the individual dies.

(*l*) For the purpose of calculating a limitation on ad valorem tax increases by a school district under this section, an individual who qualified a residence homestead before January 1, 2003, for an exemption under Section 11.13(c) for a disabled individual is considered to have first qualified the homestead for that exemption on January 1, 2003.

(m) For the purpose of qualifying under Subsection (g) for the limitation on ad valorem taxes on a subsequently qualified homestead imposed by a school district, the residence homestead of a disabled individual may be considered to be a subsequently qualified homestead only if the disabled individual qualified the former homestead for an exemption under Section 11.13(c) for a disabled individual for a tax year beginning on or after January 1, 2003.

(n) Notwithstanding Subsection (c), the limitation on tax increases required by this section does not expire if the owner of the structure qualifies for an exemption under Section 11.13 under the circumstances described by Section 11.135(a).

(o) Notwithstanding Subsections (a), (a-3), and (b), an improvement to property that would otherwise constitute an improvement under Subsection (b) is not treated as an improvement under that subsection if the improvement is a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by wind or water damage. For purposes of appraising the property in the tax year in which the structure would have constituted an improvement under Subsection (b), the replacement structure is considered to be an improvement under that subsection only if:

(1) the square footage of the replacement structure exceeds that of the replaced structure as that structure existed before the casualty or damage occurred; or

(2) the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure.

(p) An heir property owner who qualifies heir property as the owner's residence homestead under this chapter is considered the sole owner of the property for the purposes of this section.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 38, effective January 1, 1982; am. Acts 1984, 68th Leg., 2nd C.S., ch. 28 (H.B. 72), part F, art. II, § 16, effective September 1, 1984; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 10, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 854 (H.B. 2813), § 2, effective January 1, 1994; am. Acts 1997, 75th Leg., ch. 592 (H.B. 4), § 2.02, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), §§ 11—14, effective August 9, 1997; am. Acts 1997, 75th Leg., ch. 1059 (S.B. 1437), § 3, effective June 19, 1997; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 16.01, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 2, effective January 1, 2000; am. Acts 2001, 77th Leg., ch. 193 (H.B. 506), § 1, effective January 1, 2002; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 18.003, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 411 (H.B. 217), §§ 1, 2, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 19 (H.B. 5), § 1, effective May 12, 2007; am. Acts 2009, 81st Leg., ch. 359 (H.B. 1257), § 1(b), effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1417 (H.B. 770), § 4, effective January 1, 2010; am. Acts 2015, 84th Leg., ch. 465 (S.B. 1), § 2, effective November 3, 2015; am. Acts 2019, 86th Leg., ch. 663 (S.B. 1943), § 4, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1284 (H.B. 1313), § 1, effective January 1, 2020.

ATTORNEY GENERAL OPINIONS

Valuation of Repairs from Disaster.

For purposes of section 23.23 of the Tax Code, which caps the market value of a residence homestead's appraised value, the term "new improvement" includes repairs made following a natural disaster because the repairs are not "ordinary maintenance." Enhancements that increase a homestead's market value are new improvements for purposes of section 23.23(a)(2), and their value must be included in the calculation of a homestead's capped appraised value. For purposes of section 11.26(b) of the Tax Code, which permits a school district to increase the tax on a senior's residence homestead if the homestead has been improved, an appraiser must determine whether a homestead damaged by a natural disaster has been repaired or improved. 2003 Tex. Op. Att'y Gen. GA-0091.

Sec. 11.261. Limitation of County, Municipal, or Junior College District Tax on Homesteads of Disabled and Elderly.

(a) This section applies only to a county, municipality, or junior college district that has established a limitation on the total amount of taxes that may be imposed by the county, municipality, or junior college district on the residence homestead of a disabled individual or an individual 65 years of age or older under Section 1-b(h), Article VIII, Texas Constitution.

(b) The tax officials shall appraise the property to which the limitation applies and calculate taxes as on other property, but if the tax so calculated exceeds the limitation provided by this section, the tax imposed is the amount of the tax as limited by this section, except as otherwise provided by this section. The county, municipality, or junior college district may not increase the total annual amount of ad valorem taxes the county, municipality, or junior college district imposes on the residence homestead of a disabled individual or an individual 65 years of age or older above the amount of the taxes the county, municipality, or junior college district imposed on the residence homestead in the first tax year, other than a tax year preceding the tax year in which the county, municipality, or junior college district established the limitation described by Subsection (a), in which the individual qualified that residence homestead for the exemption provided by Section 11.13(c) for a disabled individual or an individual 65 years of age or older. If the individual qualified that residence homestead for the exemption after the beginning of that first year and the residence homestead remains eligible for the exemption for the next year, and if the county, municipal, or junior college district taxes imposed on the residence homestead in the next year are less than the amount of taxes imposed in that first year, a county, municipality, or junior college district may not subsequently increase the total annual amount of ad valorem taxes it imposes on the residence homestead above the amount it imposed on the residence homestead in the year immediately following the first year, other than a tax year preceding the tax year in which the county, municipality, or junior college district established the limitation described by Subsection (a), for which the individual qualified that residence homestead for the exemption.

(c) If an individual makes improvements to the individual's residence homestead, other than repairs and other than improvements required to comply with governmental requirements, the county, municipality, or junior college district may increase the amount of taxes on the homestead in the first year the value of the homestead is increased on the appraisal roll because of the enhancement of value by the improvements. The amount of the tax increase is determined by applying the current tax rate to the difference between the appraised value of the homestead with the improvements and the appraised value it would have had without the improvements. A limitation provided by this section then applies to the increased amount of county, municipal, or junior college district taxes on the residence homestead until more improvements, if any, are made.

(d) A limitation on county, municipal, or junior college district tax increases provided by this section expires if on January 1:

(1) none of the owners of the structure who qualify for the exemption provided by Section 11.13(c) for a disabled individual or an individual 65 years of age or older and who owned the structure when the limitation provided by this section first took effect is using the structure as a residence homestead; or

(2) none of the owners of the structure qualifies for the exemption provided by Section 11.13(c) for a disabled individual or an individual 65 years of age or older.

(e) If the appraisal roll provides for taxation of appraised value for a prior year because a residence homestead exemption for disabled individuals or individuals 65 years of age or older was erroneously allowed, the tax assessor for the applicable county, municipality, or junior college district shall add, as back taxes due as provided by Section 26.09(d), the positive difference, if any, between the tax that should have been imposed for that year and the tax that was imposed because of the provisions of this section.

(f) A limitation on tax increases provided by this section does not expire because the owner of an interest in the structure conveys the interest to a qualifying trust as defined by Section 11.13(j) if the owner or the owner's spouse is a trustor of the trust and is entitled to occupy the structure.

(g) Except as provided by Subsection (c), if an individual who receives a limitation on county, municipal, or junior college district tax increases provided by this section subsequently qualifies a different residence homestead in the same county, municipality, or junior college district for an exemption under Section 11.13, the county, municipality, or junior college district may not impose ad valorem taxes on the subsequently qualified homestead in a year in an amount that exceeds the amount of taxes the county, municipality, or junior college district would have imposed on the subsequently qualified homestead in the first year in which the individual receives that exemption for the subsequently qualified homestead had the limitation on tax increases provided by this section not been in effect, multiplied by a fraction the numerator of which is the total amount of taxes the county, municipality, or junior college district imposed on the former homestead in the last year in which the individual received that exemption for the former homestead and the denominator of which is the total amount of taxes the county, municipality, or junior college district would have imposed on the former homestead in the last year in which the individual received that exemption for the former homestead had the limitation on tax increases provided by this section not been in effect.

(h) An individual who receives a limitation on county, municipal, or junior college district tax increases under this section and who subsequently qualifies a different residence homestead in the same county, municipality, or junior college district for an exemption under Section 11.13, or an agent of the individual, is entitled to receive from the chief appraiser of the appraisal district in which the former homestead was located a written certificate providing the information necessary to determine whether the individual may qualify for a limitation on the subsequently qualified homestead under Subsection (g) and to calculate the amount of taxes the county, municipality, or junior college district may impose on the subsequently qualified homestead.

(i) If an individual who qualifies for a limitation on county, municipal, or junior college district tax increases under this section dies, the surviving spouse of the individual is entitled to the limitation on taxes imposed by the county, municipality, or junior college district on the residence homestead of the individual if:

(1) the surviving spouse is disabled or is 55 years of age or older when the individual dies; and

(2) the residence homestead of the individual:

(A) is the residence homestead of the surviving spouse on the date that the individual dies; and

(B) remains the residence homestead of the surviving spouse.

(j) If an individual who is 65 years of age or older and qualifies for a limitation on county, municipal, or junior college district tax increases for the elderly under this section dies in the first year in which the individual qualified for the limitation and the individual first qualified for the limitation after the beginning of that year, except as provided by Subsection (k), the amount to which the surviving spouse's county, municipal, or junior college district taxes are limited under Subsection (i) is the amount of taxes imposed by the county, municipality, or junior college district, as applicable, on the residence homestead in that year determined as if the individual qualifying for the exemption had lived for the entire year.

(k) If in the first tax year after the year in which an individual who is 65 years of age or older dies under the circumstances described by Subsection (j) the amount of taxes imposed by a county, municipality, or junior college district on the residence homestead of the surviving spouse is less than the amount of taxes imposed by the county, municipality, or junior college district in the preceding year as limited by Subsection (j), in a subsequent tax year the surviving spouse's taxes imposed by the county, municipality, or junior college district on that residence homestead are limited to the amount of taxes imposed by the county, municipality, or junior college district in that first tax year after the year in which the individual dies.

(*l*) Notwithstanding Subsection (d), a limitation on county, municipal, or junior college district tax increases provided by this section does not expire if the owner of the structure qualifies for an exemption under Section 11.13 under the circumstances described by Section 11.135(a).

(m) Notwithstanding Subsections (b) and (c), an improvement to property that would otherwise constitute an improvement under Subsection (c) is not treated as an improvement under that subsection if the improvement is a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by wind or water damage. For purposes of appraising the property in the tax year in which the structure would have constituted an improvement under Subsection (c), the replacement structure is considered to be an improvement under that subsection only if:

(1) the square footage of the replacement structure exceeds that of the replaced structure as that structure existed before the casualty or damage occurred; or

(2) the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure.

(n) An heir property owner who qualifies heir property as the owner's residence homestead under this chapter is considered the sole owner of the property for the purposes of this section.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 396 (H.B. 136), § 1, effective January 1, 2004; am. Acts 2009, 81st Leg., ch. 359 (H.B. 1257), § 1(c), effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1417 (H.B. 770), § 5, effective January 1, 2010; am. Acts 2019, 86th Leg., ch. 663 (S.B. 1943), § 5, effective September 1, 2019.

Sec. 11.27. Solar and Wind-Powered Energy Devices.

(a) A person is entitled to an exemption from taxation of the amount of appraised value of his property that arises from the installation or construction of a solar or wind-powered energy device that is primarily for production and distribution of energy for on-site use.

(b) The comptroller, with the assistance of the Texas Energy and Natural Resources Advisory Council, or its successor, shall develop guidelines to assist local officials in the administration of this section.

(c) In this section:

(1) "Solar energy device" means an apparatus designed or adapted to convert the radiant energy from the sun, including energy imparted to plants through photosynthesis employing the bioconversion processes of anaerobic digestion, gasification, pyrolysis, or fermentation, but not including direct combustion, into thermal, mechanical, or electrical energy; to store the converted energy, either in the form to which originally converted or another form; or to distribute radiant solar energy or the energy to which the radiant solar energy is converted.

(2) "Wind-powered energy device" means an apparatus designed or adapted to convert the energy available in the wind into thermal, mechanical, or electrical energy; to store the converted energy, either in the form to which originally converted or another form; or to distribute the converted energy.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 39, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 11, effective September 1, 1991.

Sec. 11.271. Offshore Drilling Equipment Not in Use.

(a) In this section:

(1) "Environmental protection agency of the United States" includes:

(A) the United States Department of the Interior and any agency, bureau, or other entity established in that department, including the Bureau of Safety and Environmental Enforcement and the Bureau of Ocean Energy Management, Regulation and Enforcement; and

(B) any other department, agency, bureau, or entity of the United States that prescribes rules or regulations described by Subdivision (2)(A).

(2) "Offshore spill response containment system" means a marine or mobile containment system that:

(A) is designed and used or intended to be used solely to implement a response plan that meets or exceeds rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the control, reduction, or monitoring of air, water, or land pollution in the event of a blowout or loss of control of an offshore well drilled or used for the exploration for or production of oil or gas;

(B) has a design capability to respond to a blowout or loss of control of an offshore well drilled or used for the exploration for or production of oil or gas that is drilled in more than 5,000 feet of water;

(C) is used or intended to be used solely to respond to a blowout or loss of control of an offshore well drilled or used for the exploration for or production of oil or gas without regard to the depth of the water in which the well is drilled; and

(D) except for any monitoring function for which the system may be used, is used or intended to be used as a temporary measure to address fugitive oil, gas, sulfur, or other minerals after a leak has occurred and is not used or intended to be used after the leak has been contained as a continuing means of producing oil, gas, sulfur, or other minerals.

(3) "Rules or regulations adopted by any environmental protection agency of the United States" includes 30 C.F.R. Part 254 and any corresponding provision or provisions of succeeding, similar, substitute, proposed, or final federal regulations.

(b) An owner or lessee of a marine or mobile drilling unit designed for offshore drilling of oil or gas wells is entitled to an exemption from taxation of the drilling unit if the drilling unit:

(1) is being stored in a county bordering on the Gulf of Mexico or on a bay or other body of water immediately adjacent to the Gulf of Mexico;

(2) is not being stored for the sole purpose of repair or maintenance; and

(3) is not being used to drill a well at the location at which it is being stored.

(c) A person is entitled to an exemption from taxation of the personal property the person owns or leases that is used, constructed, acquired, stored, or installed solely as part of an offshore spill response containment system, or that is used solely for the development, improvement, storage, deployment, repair, maintenance, or testing of such a system, if the system is being stored while not in use in a county bordering on the Gulf of Mexico or on a bay or other body of water immediately adjacent to the Gulf of Mexico. Property described by this subsection and not used for any other purpose

is considered to be property used wholly as an integral part of mobile or marine drilling equipment designed for offshore drilling of oil or gas wells.

(d) Subsection (c) does not apply to personal property used, wholly or partly, for the exploration for or production of oil, gas, sulfur, or other minerals, including the equipment, piping, casing, and other components of an oil or gas well. For purposes of this subsection, the offshore capture of fugitive oil, gas, sulfur, or other minerals that is entirely incidental to the property's temporary use as an offshore spill response containment system is not considered to be production of those substances.

(e) Subsection (c) does not apply to personal property that was used, constructed, acquired, stored, or installed in this state on or before January 1, 2013.

(f) To qualify for an exemption under Subsection (c), the person owning or leasing the property must be an entity formed primarily for the purpose of designing, developing, modifying, enhancing, assembling, operating, deploying, and maintaining an offshore spill response containment system. A person may not qualify for the exemption by providing services to or for an offshore spill response containment system that the person does not own or lease.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 805 (H.B. 2082), § 1, effective January 1, 1988; am. Acts 2013, 83rd Leg., ch. 942 (H.B. 1712), § 1, effective June 14, 2013.

Sec. 11.28. Property Exempted from City Taxation by Agreement.

The owner of property to which an agreement made under the Property Redevelopment and Tax Abatement Act (Chapter 312 of this code) applies is entitled to exemption from taxation by an incorporated city or town or other taxing unit of all or part of the value of the property as provided by the agreement.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 5 (S.B. 17), § 7, effective November 1, 1981; am. Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 2, effective September 1, 1987.

Sec. 11.29. Intracoastal Waterway Dredge Disposal Site.

(a) A person is entitled to an exemption from taxation of land that the person owns and that has been dedicated by recorded donated easement dedicating said land as a disposal site for depositing and discharging materials dredged from the main channel of the Gulf Intracoastal Waterway by or under the direction of the state or federal government.

(b) An exemption granted under this section terminates when the land ceases to be used as an active dredge material disposal site described by Subsection (a) of this section and is no longer dedicated for that purpose.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 428 (S.B. 982), § 1, effective January 1, 1988.

ATTORNEY GENERAL OPINIONS

Constitutional Issue.

Tex. Tax Code Ann. § 11.29 is void insofar as it would apply to property required to be taxed by Tex. Const. art. VIII, § 1(b). 1994 Tex. Op. Att'y Gen. DM-0301.

Sec. 11.30. Nonprofit Water Supply or Wastewater Service Corporation.

(a) A corporation organized under Chapter 67, Water Code, that provides in the bylaws of the corporation that on dissolution of the corporation the assets of the corporation remaining after discharge of the corporation's indebtedness shall be transferred to an entity that provides a water supply or wastewater service, or both, that is exempt from ad valorem taxation is entitled to an exemption from taxation of:

(1) property that the corporation owns and that is reasonably necessary for and used in the operation of the corporation:

(A) to acquire, treat, store, transport, sell, or distribute water; or

(B) to provide wastewater service; and

(2) the real property owned by the corporation consisting of:

(A) an incomplete improvement that:

(i) is under active construction or other physical preparation; and

(ii) is designed and intended to be used in the operation of the corporation for a purpose described by Subdivision (1) when complete; and

(B) the land on which the incomplete improvement is located that will be reasonably necessary for the use of the improvement in the operation of the corporation for a purpose described by Subdivision (1).

(b) A property may not be exempted under Subsection (a)(2) for more than three years.

(c) For purposes of Subsection (a)(2), an incomplete improvement is under physical preparation if the corporation has:

(1) engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the improvement; or

(2) conducted an environmental or land use study relating to the construction of the improvement.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 306 (S.B. 325), § 1, effective January 1, 1992; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 18.46, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 138 (H.B. 873), § 6, effective May 18, 1999; am. Acts 2003,

78th Leg., ch. 288 (H.B. 2416), § 1.07, effective June 18, 2003; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 2.07, effective January 1, 2006.

Sec. 11.31. Pollution Control Property.

(a) A person is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution. Property used for residential purposes, or for recreational, park, or scenic uses as defined by Section 23.81, is ineligible for an exemption under this section.

(b) In this section, "facility, device, or method for the control of air, water, or land pollution" means land that is acquired after January 1, 1994, or any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution. This section does not apply to a motor vehicle.

(c) In applying for an exemption under this section, a person seeking the exemption shall present in a permit application or permit exemption request to the executive director of the Texas Commission on Environmental Quality information detailing:

(1) the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution;

(2) the estimated cost of the pollution control facility, device, or method; and

(3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is pollution control property.

If the installation includes property that is not used wholly for the control of air, water, or land pollution, the person seeking the exemption shall also present such financial or other data as the executive director requires by rule for the determination of the proportion of the installation that is pollution control property.

(d) Following submission of the information required by Subsection (c), the executive director of the Texas Commission on Environmental Quality shall determine if the facility, device, or method is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. As soon as practicable, the executive director shall send notice by regular mail or by electronic means to the chief appraiser of the appraisal district for the county in which the property is located that the person has applied for a determination under this subsection. The executive director shall issue a letter to the person stating the executive director's determination of whether the facility, device, or method is used wholly or partly to control pollution and, if applicable, the proportion of the property that is pollution control property. The executive director shall send a copy of the letter by regular mail or by electronic means to the chief appraiser of the appraisal district for the county in which the property is located.

(e) Not later than the 20th day after the date of receipt of the letter issued by the executive director, the person seeking the exemption or the chief appraiser may appeal the executive director's determination to the Texas Commission on Environmental Quality. The commission shall consider the appeal at the next regularly scheduled meeting of the commission for which adequate notice may be given. The person seeking the determination and the chief appraiser may testify at the meeting. The commission may remand the matter to the executive director for a new determination or deny the appeal and affirm the executive director's determination. On issuance of a new determination, the executive director shall issue a letter to the person seeking the determination and provide a copy to the chief appraiser as provided by Subsection (d). A new determination of the executive director may be appealed to the commission in the manner provided by this subsection. A proceeding under this subsection is not a contested case for purposes of Chapter 2001, Government Code.

(e-1) The executive director shall issue a determination letter required by Subsection (d) to the person seeking the exemption, and the commission shall take final action on the initial appeal under Subsection (e) if an appeal is made, not later than the first anniversary of the date the executive director declares the application to be administratively complete.

(f) The commission may charge a person seeking a determination that property is pollution control property an additional fee not to exceed its administrative costs for processing the information, making the determination, and issuing the letter required by this section.

(g) The commission shall adopt rules to implement this section. Rules adopted under this section must:

(1) establish specific standards for considering applications for determinations;

(2) be sufficiently specific to ensure that determinations are equal and uniform; and

(3) allow for determinations that distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution from the proportion of property that is used to produce goods or services.

(g-1) The standards and methods for making a determination under this section that are established in the rules adopted under Subsection (g) apply uniformly to all applications for determinations under this section, including applications relating to facilities, devices, or methods for the control of air, water, or land pollution included on a list adopted by the Texas Commission on Environmental Quality under Subsection (k).

(h) The executive director may not make a determination that property is pollution control property unless the property meets the standards established under rules adopted under this section.

(i) A person seeking an exemption under this section shall provide to the chief appraiser a copy of the letter issued by the executive director of the Texas Commission on Environmental Quality under Subsection (d) determining that the facility, device, or method is used wholly or partly as pollution control property. The chief appraiser shall accept a final determination by the executive director as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property.

(j) This section does not apply to a facility, device, or method for the control of air, water, or land pollution that was subject to a tax abatement agreement executed before January 1, 1994.

(k) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:

(1) coal cleaning or refining facilities;

(2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification fluidized bed combustion combined cycle systems;

(3) ultra-supercritical pulverized coal boilers;

(4) flue gas recirculation components;

(5) syngas purification systems and gas-cleanup units;

(6) enhanced heat recovery systems;

(7) exhaust heat recovery boilers;

(8) heat recovery steam generators;

(9) superheaters and evaporators;

(10) enhanced steam turbine systems;

(11) methanation;

(12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;

(13) biomass cofiring storage, distribution, and firing systems;

(14) coal cleaning or drying processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;

(15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;

(16) if the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;

(17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and

(18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

(*l*) The Texas Commission on Environmental Quality by rule shall update the list adopted under Subsection (k) at least once every three years. An item may be removed from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.

(m) Notwithstanding the other provisions of this section, if the facility, device, or method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director of the Texas Commission on Environmental Quality, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

(n) The Texas Commission on Environmental Quality shall establish a permanent advisory committee consisting of representatives of industry, appraisal districts, taxing units, and environmental groups, as well as members who are not representatives of any of those entities but have substantial technical expertise in pollution control technology and environmental engineering, to advise the commission regarding the implementation of this section. At least one member of the advisory committee must be a representative of a school district or junior college district in which property is located that is or previously was subject to an exemption under this section. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 285 (H.B. 1920), § 1, effective January 1, 1994; am. Acts 2001, 77th Leg., ch. 881 (H.B. 3121), § 1, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 1277 (H.B. 3732), § 4, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 943 (H.B. 3206), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 962 (H.B. 3544), §§ 2, 3, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1006 (H.B. 2280), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 964 (H.B. 1897), § 1, effective September 1, 2013.

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As an agreement between a taxpayer and an appraisal district that the property qualified for the pollution-control exemption in the particular tax years was final and binding, the district was prevented from removing the exemption. Bastrop Cent. Appraisal Dist. v. Acme Brick Co., 428 S.W.3d 911, 2014 Tex. App. LEXIS 4001 (Tex. App. Austin Apr. 11, 2014, no pet.).

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Trial court's finding that removal of a taxpayer's Tex. Tax Code Ann. § 11.31 pollution control exemption by a county appraisal district's chief appraiser was void because the district failed to give the proper statutory notice required by Tex. Tax Code Ann. § 11.43(h) was error because the district had jurisdiction for the chief appraiser to cancel the pollution exemption. The taxpayer waived its claim of lack of notice under Tex. Tax Code Ann. § 11.43(h) by filing its protest of the loss of the exemption pursuant to Tex. Tax Code Ann. § 41.41(9) and voluntarily appearing before the appraisal review board, which afforded it due process. Harris County Appraisal Dist. v. Pasadena Prop., LP, 197 S.W.3d 402, 2006 Tex. App. LEXIS 5077 (Tex. App. Eastland June 15, 2006, no pet.).

Chief appraiser's failure to provide the notice to a taxpayer required by Tex. Tax Code Ann. § 11.43(h) makes his cancellation of the Tex. Tax Code Ann. § 11.31 ad valorem exemption voidable, not void, because a taxpayer must be afforded an opportunity to protest the cancellation. Harris County Appraisal Dist. v. Pasadena Prop., LP, 197 S.W.3d 402, 2006 Tex. App. LEXIS 5077 (Tex. App. Eastland June 15, 2006, no pet.).

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tion by a county appraisal district's chief appraiser was void because the district failed to give the proper statutory notice required by Tex. Tax Code Ann. § 11.43(h) was error because the district had jurisdiction for the chief appraiser to cancel the pollution exemption. The taxpayer waived its claim of lack of notice under Tex. Tax Code Ann. § 11.43(h) by filing its protest of the loss of the exemption pursuant to Tex. Tax Code Ann. § 41.41(9) and voluntarily appearing before the appraisal review board, which afforded it due process. Harris County Appraisal Dist. v. Pasadena Prop., LP, 197 S.W.3d 402, 2006 Tex. App. LEXIS 5077 (Tex. App. Eastland June 15, 2006, no pet.).

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EXEMPTIONS. — Agreement reached between a taxpayer and an appraisal district regarding entitlement to a pollution-control exemption was final because it concerned a statutorily defined matter regarding the parties' agreement to the property value based on the granted exemption. Bastrop Cent. Appraisal Dist. v. Acme Brick Co., 428 S.W.3d 911, 2014 Tex. App. LEXIS 4001 (Tex. App. Austin Apr. 11, 2014, no pet.).

As an agreement between a taxpayer and an appraisal district that the property qualified for the pollution-control exemption in the particular tax years was final and binding, the district was prevented from removing the exemption. Bastrop Cent. Appraisal Dist. v. Acme Brick Co., 428 S.W.3d 911, 2014 Tex. App. LEXIS 4001 (Tex. App. Austin Apr. 11, 2014, no pet.).

Texas Commission on Environmental Quality did not act arbitrarily or capriciously in denying a real property tax exemption to a property owner because a brine-pond system did not qualify as 100% pollution-control property under Tex. Tax Code Ann. § 11.31(g); in fact, the owner conceded that the system was part of its production facilities. Mont Belvieu Caverns, LLC v. Tex. Comm'n on Envtl. Quality, 382 S.W.3d 472, 2012 Tex. App. LEXIS 6458 (Tex. App. Austin Aug. 3, 2012, no pet.).

While a property owner argued, with respect to the denial of a pollution control property tax exemption under Tex. Tax Code Ann. § 11.31 (Supp. 2011), that an application of an equipment and categories list (ECL) based on new 2008 rules in lieu of an existing predetermined equipment list (PDL) was unconstitutionally retroactive under Tex. Const. art. I, § 16, appellant did not have a vested right in the procedure used to determine the applicability of a tax exemption. Mont Belvieu Caverns, LLC v. Tex. Comm'n on Envtl. Quality, 382 S.W.3d 472, 2012 Tex. App. LEXIS 6458 (Tex. App. Austin Aug. 3, 2012, no pet.).

Trial court, having previously found that the taxpayer was entitled to a full exemption under Tex. Tax Code Ann. § 11.31, was authorized under Tex. Tax Code Ann. § 42.24(3) to enter any orders necessary to carry out the earlier, unappealed judgment; because the record showed that the district did not comply with the earlier judgment by refunding the taxpayer under Tex. Tax Code Ann. § 42.43(a) the amount it paid under protest, the order directing the district to pay a sanction was not arbitrary or unreasonable. Travis Cent. Appraisal Dist. v. Wells Fargo Bank, No. 03-09-00013-CV, 2010 Tex. App. LEXIS 1921 (Tex. App. Austin Mar. 19, 2010).

Trial court based its sanctions order on its understanding that the summary judgment order required the district to downwardly adjust the property tax valuation for the property, for purposes of Tex. Tax Code Ann. § 11.31, which the district did not do; although the district did not agree with the trial court's summary judgment ruling, the district did not appeal that ruling and was not free to ignore that ruling, such that the trial court was entitled to exercise its inherent power to compel compliance with the order. Travis Cent. Appraisal Dist. v. Wells Fargo Bank, No. 03-09-00013-CV, 2010 Tex. App. LEXIS 1921 (Tex. App. Austin Mar. 19, 2010).

For purposes of Tex. Tax Code Ann. § 42.24(3), the trial court, having determined that the taxpayer was entitled to a full exemption for purposes of Tex. Const. art. VIII, § 1-l and Tex. Tax Code Ann. § 11.31 as urged, was authorized to enter any orders necessary to carry out the earlier, unappealed judgment; because the record established that the district did not comply with the earlier judgment by refunding, under Tex. Tax Code Ann. § 42.43(a), the taxpayer the amount it had paid under protest, the order directing the district to pay that amount as a sanction was neither arbitrary nor unreasonable. Although the district disagreed with the trial court's prior ruling, the district did not perfect an appeal from that ruling and the trial court was entitled to compel compliance with its prior order. Travis Cent. Appraisal Dist. v. Wells Fargo Bank Minn., N.A., No. 03-09-00013-CV, 2010 Tex. App. LEXIS 427 (Tex. App. Austin Jan. 26, 2010), op. withdrawn, sub. op., No. 03-09-00013-CV, 2010 Tex. App. LEXIS 1921 (Tex. App. Austin Mar. 19, 2010).

Where the Texas Commission on Environmental Quality issued a positive use determination finding that portions of an applicant's commercial property was used to control pollution and was entitled to a pollution control exemption under Tex. Tax Code Ann. § 11.31, but the Appraisal Review Board disapproved the exemption, the applicant's procedural due process rights were not violated because it participated in the hearing process. Towers at Sunnyvale, LLC v. Dallas Cent. Appraisal Dist., No. 3:08-CV-0735-K, 2009 U.S. Dist. LEXIS 87380 (N.D. Tex. Sept. 23, 2009).

Where the Texas Commission on Environmental Quality issued a positive use determination finding that portions of an applicant's commercial property was used to control pollution and was entitled to a pollution control exemption under Tex. Tax Code Ann. § 11.31, but the Appraisal Review Board disapproved the exemption, the applicant's substatntive due process rights were not violated because it had no vested, protected property interest in the use determination. Towers at Sunnyvale, LLC v. Dallas Cent. Appraisal Dist., No. 3:08-CV-0735-K, 2009 U.S. Dist. LEXIS 87380 (N.D. Tex. Sept. 23, 2009).

ATTORNEY GENERAL OPINIONS

Analysis

Pollution-Control Tax Credits.
Rule Making Authority.

Pollution-Control Tax Credits.

Add-on pollution-control devices and methods of production that limit pollution at new facilities are entitled to a tax exemption under section 11.31 of the Tax Code. The Texas Natural Resource Conservation Commission must administer the tax exemption to grant exemptions to only that portion of property that actually controls pollution. 2001 Tex. Op. Att'y Gen. JC-0372.

Rule Making Authority.

Neither section 11.31(k) nor section 26.045(f) of the Tax Code restricts the rule-making authority of the Texas Commission on Environmental Quality to only those pollution control facilities, devices, or methods associated with advanced clean energy projects. 2007 Tex. Op. Att'y Gen. GA-0587.

Sec. 11.311. Landfill-Generated Gas Conversion Facilities.

(a) [Repealed by Acts 2015, 84th Leg., ch. 1244 (H.B. 994), § 1, effective January 1, 2016.]

(b) A person is entitled to an exemption from taxation of tangible personal property the person owns that is located on or in close proximity to a landfill and is used to:

(1) collect gas generated by the landfill;

(2) compress and transport the gas;

(3) process the gas so that it may be:
(A) delivered into a natural gas pipeline; or
(B) used as a transportation fuel in methane-powered on-road or off-road vehicles or equipment; and
(4) deliver the gas:
(A) into a natural gas pipeline; or
(B) to a methane fueling station.

(c) Property described by this section is considered to be property used as a facility, device, or method for the control of air, water, or land pollution.

(d) [Repealed by Acts 2015, 84th Leg., ch. 1244 (H.B. 994), § 1, effective January 1, 2016.]

(e) Property described by Subsection (b) shall be appraised as tangible personal property for ad valorem tax purposes, regardless of whether the property is affixed to or incorporated into real property.

(f) This section may not be construed to exempt from taxation tangible personal property located on or in close proximity to a landfill that is not used in the manner prescribed by Subsection (b).

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 964 (H.B. 1897), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1244 (H.B. 994), §§ 1, 2, 3, effective January 1, 2016.

Sec. 11.315. Energy Storage System in Nonattainment Area.

(a) In this section, "energy storage system" means a device capable of storing energy to be discharged at a later time, including a chemical, mechanical, or thermal storage device.

(b) A person is entitled to an exemption from taxation by a taxing unit of an energy storage system owned by the person if:
(1) the exemption is adopted by the governing body of the taxing unit in the manner provided by law for official action by the governing body; and
(2) the energy storage system:
(A) is used, constructed, acquired, or installed wholly or partly to meet or exceed 40 C.F.R. Section 50.11 or any other rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air pollution;
(B) is located in:
(i) an area designated as a nonattainment area within the meaning of Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407); and
(ii) a municipality with a population of at least 100,000 adjacent to a municipality with a population of more than two million;
(C) has a capacity of at least 10 megawatts; and
(D) is installed on or after January 1, 2014.

(c) Once authorized, an exemption adopted under this section may be repealed by the governing body of a taxing unit in the manner provided by law for official action by the governing body.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1030 (H.B. 2712), § 1, effective January 1, 2014.

Sec. 11.32. Certain Water Conservation Initiatives.

The governing body of a taxing unit by official action of the governing body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of property on which approved water conservation initiatives, desalination projects, or brush control initiatives have been implemented. For purposes of this section, approved water conservation, desalination, and brush control initiatives shall be designated pursuant to an ordinance or other law adopted by the governing unit.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1010 (S.B. 1), § 5.11, effective November 4, 1997; am. Acts 2001, 77th Leg., ch. 966 (S.B. 2), § 4.24, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1234 (S.B. 312), § 38, effective September 1, 2001.

Sec. 11.33. Raw Cocoa and Green Coffee Held in Harris County.

(a) A person is entitled to an exemption from taxation of raw cocoa and green coffee that the person holds in Harris County.

(b) An exemption granted under this section, once allowed, need not be claimed in subsequent years, and the exemption applies to all raw cocoa and green coffee the person holds until the cocoa's or the coffee's qualification for the exemption changes. The chief appraiser may, however, require a person who holds raw cocoa or green coffee for which an exemption in a prior year has been granted to file a new application to confirm the cocoa's or the coffee's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 961 (S.B. 1574), § 1, effective January 1, 2002.

Sec. 11.34. Limitation of Taxes on Real Property in Designated Areas of Certain Municipalities.

(a) This section applies only to a municipality having a population of less than 10,000.

(b) Acting under the authority of Section 1-o, Article VIII, Texas Constitution, the governing body of a municipality, by official action, may call an election in the municipality to permit the voters of the municipality to determine whether to authorize the governing body to enter into an agreement with an owner of real property in or adjacent to an area in the municipality that has been approved for funding under the programs administered by the Department of Agriculture as described by Section 1-o, Article VIII, Texas Constitution, under which the parties agree that the ad valorem taxes imposed by any political subdivision on the owner's real property may not be increased for the first five tax years after the tax year in which the agreement is entered into, subject to the terms and conditions provided by the agreement.

(c) If the authority to limit tax increases under this section is approved by the voters and the governing body of the municipality enters into an agreement to limit tax increases under this section, the tax officials shall appraise the property to which the limitation applies and calculate taxes as on other property, but if the tax so calculated exceeds the limitation, the tax imposed is the amount of the tax as limited by this section, except as provided by Subsections (f) and (g).

(d) An agreement to limit tax increases under this section must be entered into before December 31 of the tax year in which the election was held.

(e) A taxing unit may not increase the total annual amount of ad valorem taxes the taxing unit imposes on the property above the amount of the taxes the taxing unit imposed on the property in the tax year in which the governing body of the municipality entered into an agreement to limit tax increases under this section.

(f) Subject to Subsection (g), an agreement to limit tax increases under this section expires on the earlier of:

(1) January 1 of the sixth tax year following the tax year in which the agreement was entered into; or

(2) January 1 of the first tax year in which the owner of the property when the agreement was entered into ceases to own the property.

(g) If property subject to an agreement to limit tax increases under this section is owned by two or more persons, the limitation expires on January 1 of the first tax year following the year in which the ownership of at least a 50 percent interest in the property is sold or otherwise transferred.

(h) Notwithstanding Subsection (a), if the population of a municipality to which this section applies when the municipality enters into an agreement to limit taxes under this section subsequently increases to 10,000 or more, the validity of the agreement is not affected by that change in population, and the agreement does not expire because of that change.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 464 (S.B. 252), § 1, effective June 19, 2009.

Sec. 11.35. Temporary Exemption for Qualified Property Damaged by Disaster. [Contingently enacted]

(a) In this section, "qualified property" means property that:

(1) consists of:

(A) tangible personal property used for the production of income;

(B) an improvement to real property; or

(C) a manufactured home as that term is defined by Section 1201.003, Occupations Code, that is used as a dwelling, regardless of whether the owner of the manufactured home elects to treat the manufactured home as real property under Section 1201.2055, Occupations Code;

(2) is located in an area declared by the governor to be a disaster area following a disaster;

(3) is at least 15 percent damaged by the disaster, as determined by the chief appraiser under this section; and

(4) for property described by Subdivision (1)(A), is the subject of a rendition statement or property report filed by the property owner under Section 22.01 that demonstrates that the property had taxable situs in the disaster area for the tax year in which the disaster occurred.

(b) A person is entitled to an exemption from taxation by a taxing unit of a portion of the appraised value of qualified property that the person owns in an amount determined under Subsection (h).

(c) Notwithstanding Subsection (b), if the governor first declares territory in a taxing unit to be a disaster area as a result of a disaster on or after the date a taxing unit adopts a tax rate for the tax year in which the declaration is issued, a person is not entitled to the exemption for that tax year unless the governing body of the taxing unit adopts the exemption in the manner provided by law for official action by the body.

(d) An exemption adopted by the governing body of a taxing unit under Subsection (c) must:

(1) specify the disaster to which the exemption pertains; and

(2) be adopted not later than the 60th day after the date the governor first declares territory in the taxing unit to be a disaster area as a result of the disaster.

(e) A taxing unit the governing body of which adopts an exemption under Subsection (c) shall, not later than the seventh day after the date the governing body adopts the exemption, notify the chief appraiser of each appraisal district in which the taxing unit participates, the assessor for the taxing unit, and the comptroller of the adoption of the exemption.

(f) On receipt of an application for the exemption authorized by this section, the chief appraiser shall determine whether any item of qualified property that is the subject of the application is at least 15 percent damaged by the disaster and assign to each such item of qualified property a damage assessment rating of Level I, Level II, Level III,

or Level IV, as appropriate, as provided by Subsection (g). In determining the appropriate damage assessment rating, the chief appraiser may rely on information provided by a county emergency management authority, the Federal Emergency Management Agency, or any other source the chief appraiser considers appropriate.

(g) The chief appraiser shall assign to an item of qualified property:

(1) a Level I damage assessment rating if the property is at least 15 percent, but less than 30 percent, damaged, meaning that the property suffered minimal damage and may continue to be used as intended;

(2) a Level II damage assessment rating if the property is at least 30 percent, but less than 60 percent, damaged, which, for qualified property described by Subsection (a)(1)(B) or (C), means that the property has suffered only nonstructural damage, including nonstructural damage to the roof, walls, foundation, or mechanical components, and the waterline, if any, is less than 18 inches above the floor;

(3) a Level III damage assessment rating if the property is at least 60 percent damaged but is not a total loss, which, for qualified property described by Subsection (a)(1)(B) or (C), means that the property has suffered significant structural damage requiring extensive repair due to the failure or partial failure of structural elements, wall elements, or the foundation, or the waterline is at least 18 inches above the floor; or

(4) a Level IV damage assessment rating if the property is a total loss, meaning that repair of the property is not feasible.

(h) Subject to Subsection (i), the amount of the exemption authorized by this section for an item of qualified property is determined by multiplying the appraised value, determined for the tax year in which the disaster occurred, of the property by:

(1) 15 percent, if the property is assigned a Level I damage assessment rating;

(2) 30 percent, if the property is assigned a Level II damage assessment rating;

(3) 60 percent, if the property is assigned a Level III damage assessment rating; or

(4) 100 percent, if the property is assigned a Level IV damage assessment rating.

(i) If a person qualifies for the exemption authorized by this section after the beginning of the tax year, the amount of the exemption is calculated by multiplying the amount determined under Subsection (h) by a fraction, the denominator of which is 365 and the numerator of which is the number of days remaining in the tax year after the day on which the governor first declares the area in which the person's qualified property is located to be a disaster area, including the day on which the governor makes the declaration.

(j) If a person qualifies for the exemption authorized by this section after the amount of the tax due on the qualified property is calculated and the effect of the qualification is to reduce the amount of the tax due on the property, the assessor for each applicable taxing unit shall recalculate the amount of the tax due on the property and correct the tax roll. If the tax bill has been mailed and the tax on the property has not been paid, the assessor shall mail a corrected tax bill to the person in whose name the property is listed on the tax roll or to the person's authorized agent. If the tax on the property has been paid, the tax collector for the taxing unit shall refund to the person who paid the tax the amount by which the payment exceeded the tax due. No interest is due on an amount refunded under this subsection.

(k) The exemption authorized by this section expires as to an item of qualified property on January 1 of the first tax year in which the property is reappraised under Section 25.18.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1034 (H.B. 492), § 1.

Secs. 11.35 to 11.40. [Reserved for expansion].

Subchapter C

Administration of Exemptions

Sec. 11.41. Partial Ownership of Exempt Property.

(a) If a person who qualifies for an exemption as provided by this chapter is not the sole owner of the property to which the exemption applies, the exemption shall be multiplied by a fraction, the numerator of which is the value of the property interest the person owns and the denominator of which is the value of the property.

(b) In the application of this section, community ownership by a person who qualifies for the exemption and the person's spouse is treated as if the person owns the community interest of the person's spouse.

(c) An heir property owner who qualifies heir property as the owner's residence homestead under this chapter is considered the sole owner of the property for the purposes of this section.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 194 (H.B. 1773), § 2, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 15, effective January 1, 1998; am. Acts 2019, 86th Leg., ch. 663 (S.B. 1943), § 6, effective September 1, 2019.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax

Exemptions. — School tax homestead exemptions under Tex. Const. art. VIII, § 1-b and Tex. Tax Code Ann. § 11.13(b) were subject to proration based on a taxpayer's partial ownership in accordance with Tex. Tax Code Ann. § 11.41(a), which restricts the amount of exemptions to which a property owner is entitled to the percentage of ownership interest in the property. Martinez v. Dallas Cent. Appraisal Dist., 339 S.W.3d 184, 2011 Tex. App. LEXIS 2031 (Tex. App. Dallas Mar. 22, 2011, no pet.).

Sec. 11.42. Exemption Qualification Date.

(a) Except as provided by Subsections (b) and (c) and by Sections 11.421, 11.422, 11.434, 11.435, and 11.436, eligibility for and amount of an exemption authorized by this chapter for any tax year are determined by a claimant's qualifications on January 1. A person who does not qualify for an exemption on January 1 of any year may not receive the exemption that year.

(b) **[2 Versions: Effective unless and until Acts 2019, 86th Leg., H.J.R. No. 95 is approved by the voters and the ballot certified]** An exemption authorized by Section 11.11 is effective immediately on qualification for the exemption.

(b) **[2 Versions: Proposed Amendment by Acts 2019, 86th Leg., H.J.R. No. 95, contingent on Voter Approval]** An exemption authorized by Section 11.11 or 11.141 is effective immediately on qualification for the exemption.

(c) An exemption authorized by Section 11.13(c) or (d), 11.132, 11.133, or 11.134 is effective as of January 1 of the tax year in which the person qualifies for the exemption and applies to the entire tax year.

(d) A person who acquires property after January 1 of a tax year may receive an exemption authorized by Section 11.17, 11.18, 11.19, 11.20, 11.21, 11.23, 11.231, or 11.30 for the applicable portion of that tax year immediately on qualification for the exemption.

(e) **[2 Versions: Effective unless and until Acts 2019, 86th Leg., H.J.R. No. 34 is approved by the voters and the ballot certified]** A person who qualifies for an exemption under Section 11.131 after January 1 of a tax year may receive the exemption for the applicable portion of that tax year immediately on qualification for the exemption.

(e) **[2 Versions: Proposed Amendment by Acts 2019, 86th Leg., H.J.R. No. 34, contingent on Voter Approval]** A person who qualifies for an exemption under Section 11.131 or 11.35 after January 1 of a tax year may receive the exemption for the applicable portion of that tax year immediately on qualification for the exemption.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 640 (H.B. 2213), § 2, effective August 31, 1987; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 6.1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 345 (H.B. 1096), § 2, effective January 1, 1994; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 16, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1059 (S.B. 1437), § 1, effective June 19, 1997; am. Acts 1997, 75th Leg., ch. 1155 (S.B. 95), § 1, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 3, effective January 1, 2000; am. Acts 2003, 78th Leg., ch. 411 (H.B. 217), § 3, effective January 1, 2004; am. Acts 2009, 81st Leg., ch. 1417 (H.B. 770), § 6, effective January 1, 2010; am. Acts 2011, 82nd Leg., ch. 597 (S.B. 201), § 1, effective January 1, 2012; am. Acts 2013, 83rd Leg., ch. 122 (H.B. 97), § 2, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 138 (S.B. 163), § 2, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.002(25), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 511 (S.B. 15), § 2, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 459 (H.B. 2859), § 2, effective January 1, 2020; am. Acts 2019, 86th Leg., ch. 1034 (H.B. 492), § 2, effective January 1, 2020.

ATTORNEY GENERAL OPINIONS

Amendment.

Section 312.208 of the Tax Code, permitting amendment of tax abatement agreements, does not modify the rule established by section 11.42(a) of the Tax Code that a "person who does not qualify for an exemption on January 1 of any year may not receive the exemption that year." In addition, a retroactive amendment of a tax abatement agreement that extinguishes an existing tax liability violates article III, section 55 of the Texas Constitution. 2004 Tex. Op. Att'y Gen. GA-134.

Sec. 11.421. Qualification of Religious Organization.

(a) If the chief appraiser denies a timely filed application for an exemption under Section 11.20 for an organization that otherwise qualified for the exemption on January 1 of the year but that did not satisfy the requirements of Subsection (c)(4) of that section on that date, the organization is eligible for the exemption for the tax year if the organization:

(1) satisfies the requirements of Section 11.20(c)(4) before the later of:

(A) June 1 of the year to which the exemption applies; or

(B) the 60th day after the date the chief appraiser notifies the organization of its failure to comply with those requirements; and

(2) within the time provided by Subdivision (1) files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the organization has complied with the requirements of Section 11.20(c)(4).

(b) If the chief appraiser cancels an exemption for a religious organization under Section 11.20 that was erroneously allowed in a tax year because he determines that the organization did not satisfy the requirements of Section 11.20(c)(4) on January 1 of that year, the organization is eligible for the exemption for that tax year if the organization:

(1) was otherwise qualified for the exemption;

(2) satisfies the requirements of Section 11.20(c)(4) on or before the 60th day after the date the chief appraiser notifies the organization of the cancellation; and

(3) within the time provided by Subdivision (2) files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the organization has complied with the requirements of Section 11.20(c)(4).

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 640 (H.B. 2213), § 3, effective August 31, 1987; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 17, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1411 (H.B. 2383), § 5, effective June 20, 1997.

Sec. 11.422. Qualifications of a School.

(a) If the chief appraiser denies a timely filed application for an exemption under Section 11.21 for a school that otherwise qualified for the exemption on January 1 of the year but that did not satisfy the requirements of Subsection (d)(5) of that section on that date, the school is eligible for the exemption for the tax year if the school:

(1) satisfies the requirements of Section 11.21(d)(5) before the later of:

(A) July 1 of the year for which the exemption applies; or

(B) the 60th day after the date the chief appraiser notifies the school of its failure to comply with those requirements; and

(2) within the time provided by Subdivision (1), files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the school has complied with the requirements of Section 11.21(d)(5).

(b) If the chief appraiser cancels an exemption for a school under Section 11.21 that was erroneously allowed in a tax year because the appraiser determines that the school did not satisfy the requirements of Section 11.21(d)(5) on January 1 of that year, the school is eligible for the exemption for that tax year if the school:

(1) was otherwise qualified for the exemption;

(2) satisfies the requirements of Section 11.21(d)(5) on or before the 30th day after the date the chief appraiser notifies the school of the cancellation; and

(3) in the time provided in Subdivision (2) files with the chief appraiser a new completed application stating that the school has complied with the requirements of Section 11.21(d)(5).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 6.2, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 17, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1411 (H.B. 2383), § 5, effective June 20, 1997.

Sec. 11.423. Qualification of Charitable Organization or Youth Association.

(a) If the chief appraiser denies a timely filed application for an exemption under Section 11.18 or 11.19 for an organization or association that otherwise qualified for the exemption on January 1 of the year but that did not satisfy the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate, on that date, the organization or association is eligible for the exemption for the tax year if the organization or association:

(1) satisfies the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate, before the later of:

(A) June 1 of the year to which the exemption applies; or

(B) the 60th day after the date the chief appraiser notifies the organization or association of its failure to comply with those requirements; and

(2) within the time provided by Subdivision (1) files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the organization or association has complied with the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate.

(b) If the chief appraiser cancels an exemption for an organization or association under Section 11.18 or 11.19 that was erroneously allowed in a tax year because the chief appraiser determines that the organization or association did not satisfy the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate, on January 1 of that year, the organization or association is eligible for the exemption for that tax year if the organization or association:

(1) was otherwise qualified for the exemption;

(2) satisfies the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate, on or before the 60th day after the date the chief appraiser notifies the organization or association of the cancellation; and

(3) within the time provided by Subdivision (2) files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the organization or association has complied with the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 18, effective January 1, 1998; Enacted by Acts 1997, 75th Leg., ch. 1411 (H.B. 2383), § 6, effective June 20, 1997.

ATTORNEY GENERAL OPINIONS

Non-Profit Retirement Home.

Under the stated facts, Wesleyan Home qualifies as an institution of purely public charity, and its property which is used exclusively by it and is reasonably necessary in conducting its business is exempt from ad valorem taxation. 1964 Tex. Op. Att'y Gen. C-209.

Sec. 11.424. Conflict Between Governing Regulation of Nonprofit Organization, Association, or Entity and Contract with United States.

To the extent of a conflict between a provision in a contract entered into by an organization, association, or entity with the United States and a provision in the charter, a bylaw, or other regulation adopted by the organization or entity to govern its affairs in compliance with Section 11.18(f)(2), 11.19(d)(5), 11.20(c)(4), or 11.21(d)(5), the existence of the contract or the organization's compliance with the contract does not affect the eligibility of the organization, association, or entity to receive an exemption under the applicable section of this code, and the organization, association, or entity may comply with the provision in the contract instead of the conflicting provision in the charter, bylaw, or other regulation.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 18, effective January 1, 1998; Enacted by Acts 1997, 75th Leg., ch. 1411 (H.B. 2383), § 6, effective June 20, 1997.

Sec. 11.43. Application for Exemption.

(a) **[2 Versions: Effective unless and until Acts 2019, 86th Leg., H.J.R. No. 95 is approved by the voters and the ballot certified]** To receive an exemption, a person claiming the exemption, other than an exemption authorized by Section 11.11, 11.12, 11.14, 11.145, 11.146, 11.15, 11.16, 11.161, or 11.25 of this code, must apply for the exemption. To apply for an exemption, a person must file an exemption application form with the chief appraiser for each appraisal district in which the property subject to the claimed exemption has situs.

(a) **[2 Versions: Proposed Amendment by Acts 2019, 86th Leg., H.J.R. No. 95, contingent on Voter Approval]** To receive an exemption, a person claiming the exemption, other than an exemption authorized by Section 11.11, 11.12, 11.14, 11.141, 11.145, 11.146, 11.15, 11.16, 11.161, or 11.25, must apply for the exemption. To apply for an exemption, a person must file an exemption application form with the chief appraiser for each appraisal district in which the property subject to the claimed exemption has situs.

(b) Except as provided by Subsection (c) and by Sections 11.184 and 11.437, a person required to apply for an exemption must apply each year the person claims entitlement to the exemption.

(c) **[2 Versions: Effective unless and until Acts 2019, 86th Leg., H.J.R. No. 34 is approved by the voters and the ballot certified]** An exemption provided by Section 11.13, 11.131, 11.132, 11.133, 11.17, 11.18, 11.182, 11.1827, 11.183, 11.19, 11.20, 11.21, 11.22, 11.23(a), (h), (j), (j-1), or (m), 11.231, 11.254, 11.27, 11.271, 11.29, 11.30, 11.31, or 11.315, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e), the exemption applies to the property until it changes ownership or the person's qualification for the exemption changes. However, except as provided by Subsection (r), the chief appraiser may require a person allowed one of the exemptions in a prior year to file a new application to confirm the person's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption. If the person previously allowed the exemption is 65 years of age or older, the chief appraiser may not cancel the exemption due to the person's failure to file the new application unless the chief appraiser complies with the requirements of Subsection (q), if applicable.

(c) **[2 Versions: Proposed Amendment by Acts 2019, 86th Leg., H.J.R. No. 34, contingent on Voter Approval]** An exemption provided by Section 11.13, 11.131, 11.132, 11.133, 11.134, 11.17, 11.18, 11.182, 11.1827, 11.183, 11.19, 11.20, 11.21, 11.22, 11.23(a), (h), (j), (j-1), or (m), 11.231, 11.254, 11.27, 11.271, 11.29, 11.30, 11.31, 11.315, or 11.35, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e), the exemption applies to the property until it changes ownership or the person's qualification for the exemption changes. However, except as provided by Subsection (r), the chief appraiser may require a person allowed one of the exemptions in a prior year to file a new application to confirm the person's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption. If the person previously allowed the exemption is 65 years of age or older, the chief appraiser may not cancel the exemption due to the person's failure to file the new application unless the chief appraiser complies with the requirements of Subsection (q), if applicable.

(d) To receive an exemption the eligibility for which is determined by the claimant's qualifications on January 1 of the tax year, a person required to claim an exemption must file a completed exemption application form before May 1 and must furnish the information required by the form. A person who after January 1 of a tax year acquires property that qualifies for an exemption covered by Section 11.42(d) must apply for the exemption for the applicable portion of that tax year before the first anniversary of the date the person acquires the property. For good cause shown the chief appraiser may extend the deadline for filing an exemption application by written order for a single period not to exceed 60 days.

(e) Except as provided by Section 11.422, 11.431, 11.433, 11.434, 11.435, or 11.439, or 11.4391, if a person required to apply for an exemption in a given year fails to file timely a completed application form, the person may not receive the exemption for that year.

(f) The comptroller, in prescribing the contents of the application form for each kind of exemption, shall ensure that the form requires an applicant to furnish the information necessary to determine the validity of the exemption claim. The form must require an applicant to provide the applicant's name and driver's license number, personal identification certificate number, or social security account number. If the applicant is a charitable organization with a federal tax

identification number, the form must allow the applicant to provide the organization's federal tax identification number in lieu of a driver's license number, personal identification certificate number, or social security account number. The comptroller shall include on the forms a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The comptroller shall include, on application forms for exemptions that do not have to be claimed annually, a statement explaining that the application need not be made annually and that if the exemption is allowed, the applicant has a duty to notify the chief appraiser when the applicant's entitlement to the exemption ends. In this subsection:

(1) "Driver's license" has the meaning assigned that term by Section 521.001, Transportation Code.

(2) "Personal identification certificate" means a certificate issued by the Department of Public Safety under Subchapter E, Chapter 521, Transportation Code.

(g) A person who receives an exemption that is not required to be claimed annually shall notify the appraisal office in writing before May 1 after his entitlement to the exemption ends.

(h) If the chief appraiser learns of any reason indicating that an exemption previously allowed should be canceled, the chief appraiser shall investigate. Subject to Subsection (q), if the chief appraiser determines that the property should not be exempt, the chief appraiser shall cancel the exemption and deliver written notice of the cancellation within five days after the date the exemption is canceled.

(i) If the chief appraiser discovers that an exemption that is not required to be claimed annually has been erroneously allowed in any one of the five preceding years, the chief appraiser shall add the property or appraised value that was erroneously exempted for each year to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation. If an exemption that was erroneously allowed did not apply to all taxing units in which the property was located, the chief appraiser shall note on the appraisal records, for each prior year, the taxing units that gave the exemption and are entitled to impose taxes on the property or value that escaped taxation.

(j) **[Effective until January 1, 2021]** In addition to the items required by Subsection (f), an application for a residence homestead exemption prescribed by the comptroller and authorized by Section 11.13 must:

(1) list each owner of the residence homestead and the interest of each owner;

(2) state that the applicant does not claim an exemption under that section on another residence homestead in this state or claim a residence homestead exemption on a residence homestead outside this state;

(3) state that each fact contained in the application is true;

(4) include a copy of the applicant's driver's license or state-issued personal identification certificate unless the applicant:

(A) is a resident of a facility that provides services related to health, infirmity, or aging; or

(B) is certified for participation in the address confidentiality program administered by the attorney general under Subchapter B, Chapter 58, Code of Criminal Procedure;

(5) state that the applicant has read and understands the notice of the penalties required by Subsection (f); and

(6) be signed by the applicant.

(j) **[Effective January 1, 2021]** In addition to the items required by Subsection (f), an application for a residence homestead exemption prescribed by the comptroller and authorized by Section 11.13 must:

(1) list each owner of the residence homestead and the interest of each owner;

(2) state that the applicant does not claim an exemption under that section on another residence homestead in this state or claim a residence homestead exemption on a residence homestead outside this state;

(3) state that each fact contained in the application is true;

(4) include a copy of the applicant's driver's license or state-issued personal identification certificate unless the applicant:

(A) is a resident of a facility that provides services related to health, infirmity, or aging; or

(B) is certified for participation in the address confidentiality program administered by the attorney general under Subchapter C, Chapter 56, Code of Criminal Procedure;

(5) state that the applicant has read and understands the notice of the penalties required by Subsection (f); and

(6) be signed by the applicant.

(k) A person who qualifies for an exemption authorized by Section 11.13(c) or (d) or 11.132 must apply for the exemption no later than the first anniversary of the date the person qualified for the exemption.

(*l*) The form for an application under Section 11.13 must include a space for the applicant to state the applicant's date of birth. Failure to provide the date of birth does not affect the applicant's eligibility for an exemption under that section, other than an exemption under Section 11.13(c) or (d) for an individual 65 years of age or older.

(m) Notwithstanding Subsections (a) and (k), a person who receives an exemption under Section 11.13, other than an exemption under Section 11.13(c) or (d) for an individual 65 years of age or older, in a tax year is entitled to receive an exemption under Section 11.13(c) or (d) for an individual 65 years of age or older in the next tax year on the same property without applying for the exemption if the person becomes 65 years of age in that next year as shown by:

(1) information in the records of the appraisal district that was provided to the appraisal district by the individual in an application for an exemption under Section 11.13 on the property or in correspondence relating to the property; or

(2) the information provided by the Texas Department of Public Safety to the appraisal district under Section 521.049, Transportation Code.

(m-1) Subsection (m) does not apply if the chief appraiser determines that the individual is no longer entitled to any exemption under Section 11.13 on the property.

(n) Except as provided by Subsection (p), a chief appraiser may not allow an applicant an exemption provided by Section 11.13 if the applicant is required under Subsection (j) to provide a copy of the applicant's driver's license or state-issued personal identification certificate unless the address listed on the driver's license or state-issued personal identification certificate provided by the applicant corresponds to the address of the property for which the exemption is claimed.

(o) The application form for a residence homestead exemption must require an applicant who is not specifically identified on a deed or other appropriate instrument recorded in the real property records of the county in which the property is located as an owner of the residence homestead, including an heir property owner, to provide:

(1) an affidavit establishing the applicant's ownership of an interest in the property;

(2) a copy of the death certificate of the prior owner of the property, if the applicant is an heir property owner;

(3) a copy of the most recent utility bill for the property, if the applicant is an heir property owner; and

(4) a citation of any court record relating to the applicant's ownership of the property if available.

(o-1) The application form for a residence homestead exemption may not require an heir property owner to provide a copy of an instrument recorded in the real property records of the county in which the property is located.

(o-2) The application form for a residence homestead exemption must require:

(1) an applicant who is an heir property owner to state that the property for which the application is submitted is heir property; and

(2) each owner of an interest in heir property who occupies the property as the owner's principal residence, other than the applicant, to provide an affidavit that authorizes the submission of the application.

(p) A chief appraiser may waive the requirement provided by Subsection (n) that the address of the property for which the exemption is claimed correspond to the address listed on the driver's license or state-issued personal identification certificate provided by the applicant under Subsection (j) if the applicant:

(1) is an active duty member of the armed services of the United States or the spouse of an active duty member and the applicant includes with the application a copy of the applicant's or spouse's military identification card and a copy of a utility bill for the property subject to the claimed exemption in the applicant's or spouse's name; or

(2) holds a driver's license issued under Section 521.121(c) or 521.1211, Transportation Code, and includes with the application a copy of the application for that license provided to the Texas Department of Transportation.

(q) A chief appraiser may not cancel an exemption under Section 11.13 that is received by an individual who is 65 years of age or older without first providing written notice of the cancellation to the individual receiving the exemption. The notice must include a form on which the individual may indicate whether the individual is qualified to receive the exemption and a self-addressed postage prepaid envelope with instructions for returning the form to the chief appraiser. The chief appraiser shall consider the individual's response on the form in determining whether to continue to allow the exemption. If the chief appraiser does not receive a response on or before the 60th day after the date the notice is mailed, the chief appraiser may cancel the exemption on or after the 30th day after the expiration of the 60-day period, but only after making a reasonable effort to locate the individual and determine whether the individual is qualified to receive the exemption. For purposes of this subsection, sending an additional notice of cancellation that includes, in bold font equal to or greater in size than the surrounding text, the date on which the chief appraiser is authorized to cancel the exemption to the individual receiving the exemption immediately after the expiration of the 60-day period by first class mail in an envelope on which is written, in all capital letters, "RETURN SERVICE REQUESTED," or another appropriate statement directing the United States Postal Service to return the notice if it is not deliverable as addressed, or providing the additional notice in another manner that the chief appraiser determines is appropriate, constitutes a reasonable effort on the part of the chief appraiser. This subsection does not apply to an exemption under Section 11.13(c) or (d) for an individual 65 years of age or older that is canceled because the chief appraiser determines that the individual receiving the exemption no longer owns the property subject to the exemption.

(r) The chief appraiser may not require a person allowed an exemption under Section 11.131 to file a new application to determine the person's current qualification for the exemption if the person has a permanent total disability determined by the United States Department of Veterans Affairs under 38 C.F.R. Section 4.15.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), §§ 40, 41, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 574 (S.B. 738), § 1, effective January 1, 1984; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 8, effective August 29, 1983; am. Acts 1987, 70th Leg., ch. 428 (S.B. 982), § 2, effective January 1, 1988; am. Acts 1987, 70th Leg., ch. 791 (H.B. 954), § 1, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 76 (H.B. 82), § 2, effective January 1, 1990; am. Acts 1990, 71st Leg., 6th C.S., ch. 8 (H.B. 36), § 2, effective September 6, 1990; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 262), § 12, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 306 (S.B. 325), § 2, effective January 1, 1992; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 6.5, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 198 (H.B. 71), § 3, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 285 (H.B. 1920), § 2, effective January 1, 1994; am. Acts 1993, 73rd Leg., ch. 779 (S.B. 1487), § 2, effective January 1, 1994; am. Acts 1995, 74th Leg., ch. 296 (H.B. 366), § 2, effective January 1, 1996; am. Acts 1995, 74th Leg., ch. 381 (H.B. 1434), § 1, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 194 (H.B. 1773), § 3, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 726 (H.B. 479), § 2, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 19, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1059 (S.B. 1437), § 4, effective June 19, 1997; am. Acts 1997, 75th Leg., ch. 1155 (S.B. 95), § 2, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), §§ 16.02, 16.03, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 675 (H.B. 541), § 2, effective January 1, 2000; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), §§ 4, 5, effective January 1, 2000; am. Acts 2001, 77th Leg., ch. 125 (S.B. 862), § 2, effective September 1, 2001; am. Acts 2001, 77th

Leg., ch. 213 (H.B. 16), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 842 (H.B. 1392), § 1, effective June 14, 2001; am. Acts 2001, 77th Leg., ch. 1040 (H.B. 1689), § 2, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 18.004, effective September 1, 2001; am. Acts 2003, 78th Leg., 3rd C.S., ch. 3 (S.B. 330), § 20.02, effective January 11, 2004; am. Acts 2003, 78th Leg., ch. 407 (H.B. 179), § 1, effective January 1, 2004; am. Acts 2003, 78th Leg., ch. 411 (H.B. 217), § 4, effective January 1, 2004; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 3(39), effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 15.001(a), effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 3, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 766 (H.B. 3514), § 2, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 706 (H.B. 2814), § 1, effective January 1, 2010; am. Acts 2009, 81st Leg., ch. 1405 (H.B. 3613), § 1(c), effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1417 (H.B. 770), § 7, effective January 1, 2010; am. Acts 2011, 82nd Leg., ch. 221 (H.B. 252), § 1, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 383 (S.B. 402), § 3, effective January 1, 2012; am. Acts 2011, 82nd Leg., ch. 712 (H.B. 645), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 122 (H.B. 97), § 3, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 138 (S.B. 163), § 3, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 298 (H.B. 1287), § 1, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 942 (H.B. 1712), § 2, effective June 14, 2013; am. Acts 2013, 83rd Leg., ch. 1030 (H.B. 2712), § 2, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 373 (S.B. 918), § 1, effective January 1, 2016; am. Acts 2015, 84th Leg., ch. 390 (H.B. 706), § 1, effective January 1, 2016; am. Acts 2015, 84th Leg., ch. 531 (H.B. 1463), § 2, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1119 (H.B. 3623), § 2, effective January 1, 2016; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.002(26), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 130 (H.B. 1101), § 1, effective January 1, 2018; am. Acts 2017, 85th Leg., ch. 511 (S.B. 15), § 3, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 1034 (H.B. 492), § 3, effective January 1, 2020; am. Acts 2019, 86th Leg., ch. 459 (H.B. 2859), § 3, effective January 1, 2020; am. Acts 2019, 86th Leg., ch. 663 (S.B. 1943), § 7, effective September 1, 2019.

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ADMINISTRATIVE LAW
Judicial Review
Reviewability

Exhaustion of Remedies. — Trial court's judgment dismissing the company's suit for want of jurisdiction was affirmed where (1) the company presented no evidence of the date that the 1999 tax appraisal records were approved as required by Tex. Tax Code Ann. § 41.12(a)(4); (2) even if Tex. Tax. Code Ann. § 11.439 was procedural and controlled pending litigation, the company failed to establish its entitlement to relief; and (3) under Tex. Tax. Code Ann. §§ 41.41(a)(9), 41.44, 41.45, 42.01(1)(A), 42.21(a), 42.09, the company did not exhaust its administrative remedies and was not entitled to judicial review; the company did not assert that the cover letter attached to its late application for a freeport exemption under Tex. Tax Code Ann. § 11.43(d), (e) was a request for extension of time and that the letter stated good cause for the tardy filing. Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

BANKRUPTCY LAW
Exemptions
State Law

General Overview. — Where debtors left their residence because it was being foreclosed upon and returned to their prior residence, which they still owned, debtors could claim a homestead exemption in the prior residence pursuant to Tex. Const. art. XVI, § 50, and Tex. Prop. Code Ann. §§ 41.001(a), (b), 41.002(a), despite the fact that debtors had formally applied for exemption of the second residence. The prior residence qualified as homestead property because debtors no longer owned the second residence and any exemption associated with the second residence was no longer applicable and did not conflict with their claim of exemption as to the prior residence. In re Durban, No. 04-46088-DML-7, 2004 Bankr. LEXIS 2032 (Bankr. N.D. Tex. Dec. 21, 2004).

CIVIL PROCEDURE
Justiciability
Exhaustion of Remedies

Exceptions. — Taxpayers did not have to exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a) in challenging the validity of notices for omitted city tax bills, which purported to be under the authority of Tex. Tax Code Ann. § 25.21, because an exception applied for governmental actions taken without statutory authority. Section 25.21 provides no remedy for omitted taxing units, which have a separate definition from property in Tex. Tax Code Ann. § 1.04; the county's supplemental appraisal records did not specify the omitted years under Tex. Tax Code Ann. § 25.23(a)(10); and Tex. Tax Code Ann. § 11.43(i) was inapplicable because no exemption was involved. Brennan v. City of Willow Park, No. 02-11-00265-CV, 2012 Tex. App. LEXIS 4943 (Tex. App. Fort Worth June 21, 2012), op. withdrawn, sub. op., 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012).

DISMISSALS
Involuntary Dismissals

General Overview. — Court affirmed dismissal of taxpayer's action to set aside a tax sale of property pursuant to a judgment

for delinquent ad valorem taxes where taxpayer's argument that one of the three properties was tax exempt pursuant to Tex. Tax Code Ann. § 11.43 was an improper attempt to collaterally attack an earlier judgment. Day v. Knox County Appraisal Dist., No. 11-04-00269-CV, 2006 Tex. App. LEXIS 2497 (Tex. App. Eastland Mar. 30, 2006).

APPEALS

Briefs. — Landowners did not address in their reply brief, Tex. R. App. P. 38, whether, under Tex. Tax Code Ann. § 11.43, their tract could simultaneously receive a homestead exemption and an agricultural use designation; because the landowners did not address the issue, they could not show reversible error. Hodge v. Dallas Cent. Appraisal Dist., No. 05-06-01418-CV, 2007 Tex. App. LEXIS 9085 (Tex. App. Dallas Nov. 19, 2007).

CONSTITUTIONAL LAW
Bill of Rights
Fundamental Rights
Procedural Due Process

General Overview. — Notice requirement of Tex. Tax Code Ann. § 11.43(h) is mandatory, but failure to satisfy it does not deprive courts of subject matter jurisdiction. The key issue is whether a taxpayer is afforded due process so that the taxpayer has an opportunity to protest a cancellation of its ad valorem exemption, and if a taxpayer is given an opportunity to be heard before an appraisal board at some state of the proceedings, then the requirements of due process are satisfied. Harris County Appraisal Dist. v. Pasadena Prop., LP, 197 S.W.3d 402, 2006 Tex. App. LEXIS 5077 (Tex. App. Eastland June 15, 2006, no pet.).

SCOPE OF PROTECTION. — Appraisal district's inaction on an untimely application for an open-space agricultural appraisal did not violate an energy company's due process rights; the energy company should have notified the appraisal district that it was no longer using the land at issue for a public purpose beginning in 1999. It could have filed at that time for the open-space agricultural appraisal, and then used the procedures set forth for protests. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

PUBLIC HEALTH & WELFARE LAW
Housing & Public Buildings

Low Income Housing. — Community housing development organization's (CHDO) application for a CHDO exemption was timely, even though the application was not filed until December of the year at issue, on the day the CHDO's limited liability company (LLC) acquired a limited partnership (LP), which owned the apartments, as the relevant occurrence was the LLC's acquisition of the LP, not the LP's acquisition of the apartments years earlier; the application was made within 30 days of the date the CHDO acquired equitable title to the apartments. Galveston Cent. Appraisal Dist. v. TRQ Captain's Landing, 423 S.W.3d 374, 2014 Tex. LEXIS 38 (Tex. 2014), reh'g denied, No. 07-0010, 2014 Tex. LEXIS 247 (Tex. Mar. 21, 2014).

REAL PROPERTY LAW
Nonmortgage Liens

Tax Liens. — Dallas Central Appraisal District had a nondiscretionary duty to do a back appraisal to remove an erroneously claimed exemption on realty after the previous owner's death, and the realty was subject to a lien for any additional taxes owed after the back appraisal, Tex. Const. art. VIII, § 15, Tex. Tax Code Ann. § 11.43, and Tex. Tax Code Ann. § 32.01 mandated those results. Dallas Cent. Appraisal Dist. v. Wang, 82 S.W.3d 697, 2002 Tex. App. LEXIS 4549 (Tex. App. Dallas June 26, 2002, no pet.).

Back appraisal and imposition of a retroactive lien on the realty of the landowners not personally liable for the back taxes might have been an arbitrary use of Dallas Central Appraisal District's power; however, as the landowners had raised neither any procedural nor any substantive due-process challenges, the appellate court would not consider issues raised by such challenges in resolving the case. Dallas Cent. Appraisal Dist. v. Wang, 82 S.W.3d 697, 2002 Tex. App. LEXIS 4549 (Tex. App. Dallas June 26, 2002, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Exemption from ad valorem property tax, once granted, extends through subsequent tax years without need for the exempt taxpayer to file a new application; the only exception to this automatic extension of an exemption is where the chief appraiser requires a new application to confirm the taxpaying entity's current qualifications for the exemption; if the chief appraiser decides to require a new application, he must deliver to the taxpayer a written notice that a new application is required, accompanied by an appropriate application form; if the chief appraiser does not deliver the written notice to the exempt taxpayer, then he failed to satisfy the statutory requirements under which he could exercise his authority to require the exempt taxpayer to file a new application for exemption, and the exempt taxpayer's exemption continued, without refiling, throughout the subsequent tax years. Inwood Dad's Club v. Aldine Indep. Sch. Dist., 882 S.W.2d 532, 1994 Tex. App. LEXIS 2048 (Tex. App. Houston 1st Dist. Aug. 18, 1994, no writ).

Tex. Tax Code Ann. § 11.43(c) is predominantly a mandatory provision, which states that the exemption will continue until either of two conditions occurs: (1) change of ownership, or (2) change of qualification (i.e., charitable use of the property, in this case); if the appraiser chooses to exercise his authority to require the taxpayer to confirm his qualifications, then he must send written notice to that effect, along with a new application form. Inwood Dad's Club v. Aldine Indep. Sch. Dist., 882 S.W.2d 532, 1994 Tex. App. LEXIS 2048 (Tex. App. Houston 1st Dist. Aug. 18, 1994, no writ).

Where charitable entity had been granted exemption status, it had a statutory right to rely on that exemption continuing indefinitely and could claim its exemption status as a defense in a suit to collect delinquent taxes. Inwood Dad's Club v. Aldine Indep. Sch. Dist., 882 S.W.2d 532, 1994 Tex. App. LEXIS 2048 (Tex. App. Houston 1st Dist. Aug. 18, 1994, no writ).

JUDICIAL REVIEW. — Taxpayers did not have to exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a) in challenging the validity of notices for omitted city tax bills, which purported to be under the authority of Tex. Tax Code Ann. § 25.21, because an exception applied for governmental actions taken without statutory authority. Section 25.21 provides no remedy for omitted taxing units, which have a separate definition from property in Tex. Tax Code Ann. § 1.04; the county's supplemental appraisal records did not specify the omitted years under Tex. Tax Code Ann. § 25.23(a)(10); and Tex. Tax Code Ann. § 11.43(i) was inapplicable because no exemption was involved. Brennan v. City of Willow Park, No. 02-11-00265-CV, 2012 Tex. App. LEXIS 4943 (Tex. App. Fort Worth June 21, 2012), op. withdrawn, sub. op., 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Trial court's finding that removal of a taxpayer's Tex. Tax Code Ann. § 11.31 pollution control exemption by a county appraisal district's chief appraiser was void because the district failed to give the proper statutory notice required by Tex. Tax Code Ann. § 11.43(h) was error because the district had jurisdiction for the chief appraiser to cancel the pollution exemption. The taxpayer waived its claim of lack of notice under Tex. Tax Code Ann. § 11.43(h) by filing its protest of the loss of the exemption pursuant to Tex. Tax Code Ann. § 41.41(9) and voluntarily appearing before the appraisal review board, which afforded it due process. Harris County Appraisal Dist. v. Pasadena Prop., LP, 197 S.W.3d 402, 2006 Tex. App. LEXIS 5077 (Tex. App. Eastland June 15, 2006, no pet.).

Notice requirement of Tex. Tax Code Ann. § 11.43(h) is mandatory, but failure to satisfy it does not deprive courts of subject matter jurisdiction. The key issue is whether a taxpayer is afforded due process so that the taxpayer has an opportunity to protest a cancellation of its ad valorem exemption, and if a taxpayer is given an opportunity to be heard before an appraisal board at some state of the proceedings, then the requirements of due process are satisfied. Harris County Appraisal Dist. v. Pasadena Prop., LP, 197 S.W.3d 402, 2006 Tex. App. LEXIS 5077 (Tex. App. Eastland June 15, 2006, no pet.).

TAXPAYER PROTESTS. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

Trial court lacked jurisdiction to impose sanctions against an appraisal district pursuant its order relating to a taxpayer's pollution-control exemption in one tax year because the sanctions were for later years as to which the taxpayer failed to utilize the exclusive remedies in the tax code for protesting the assessments. Tex. Tax Code Ann. § 11.43(c) did not change the result. Travis Cent. Appraisal Dist. v. Wells Fargo Bank Minn., N.A., 382 S.W.3d 636, 2012 Tex. App. LEXIS 8636 (Tex. App. Austin Oct. 12, 2012, no pet.).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Taxpayer could not assert inadequate notice under Tex. Tax Code Ann. § 11.43(c) of the removal of its Tex. Tax Code Ann. § 11.18(a)(1)-(2) charitable property tax exemption because it did not file a protest under Tex. Tax Code Ann. §§ 41.41(a)(9), 41.411(a) after being advised it could do so; Tex. Tax Code Ann. § 42.09(a)(1) makes the administrative protest procedures exclusive. Public, Inc. v. County of Galveston, 264 S.W.3d 338, 2008 Tex. App. LEXIS 9235 (Tex. App. Houston 14th Dist. July 10, 2008, no pet.).

Trial court's finding that removal of a taxpayer's Tex. Tax Code Ann. § 11.31 pollution control exemption by a county appraisal district's chief appraiser was void because the district failed to give the proper statutory notice required by Tex. Tax Code Ann. § 11.43(h) was error because the district had jurisdiction for the chief appraiser to cancel the pollution exemption. The taxpayer waived its claim of lack of notice under Tex. Tax Code Ann. § 11.43(h) by filing its protest of the loss of the exemption pursuant to Tex. Tax Code Ann. § 41.41(9) and voluntarily appearing before the appraisal review board, which afforded it due process. Harris County Appraisal Dist. v. Pasadena Prop., LP, 197 S.W.3d 402, 2006 Tex. App. LEXIS 5077 (Tex. App. Eastland June 15, 2006, no pet.).

Notice requirement of Tex. Tax Code Ann. § 11.43(h) is mandatory, but failure to satisfy it does not deprive courts of subject matter jurisdiction. The key issue is whether a taxpayer is afforded due process so that the taxpayer has an opportunity to protest a cancellation of its ad valorem exemption, and if a taxpayer is given an opportunity to be heard before an appraisal board at some state of the proceedings, then the requirements of due process are satisfied. Harris County Appraisal Dist. v. Pasadena Prop., LP, 197 S.W.3d 402, 2006 Tex. App. LEXIS 5077 (Tex. App. Eastland June 15, 2006, no pet.).

Chief appraiser's failure to provide the notice to a taxpayer required by Tex. Tax Code Ann. § 11.43(h) makes his cancellation of the Tex. Tax Code Ann. § 11.31 ad valorem exemption voidable, not void, because a taxpayer must be afforded an opportunity to protest the cancellation. Harris County Appraisal Dist. v. Pasadena Prop., LP, 197 S.W.3d 402, 2006 Tex. App. LEXIS 5077 (Tex. App. Eastland June 15, 2006, no pet.).

PERSONAL PROPERTY TAX

Exempt Property

General Overview. — Tax Code imposes a tax lien on real property based on a back-appraisal to remove the erroneously claimed exemptions regardless of whether the property was sold by the party who benefits from the exemptions, and the Constitution does not prohibit such a lien. Dallas Cent. Appraisal Dist. v. Wang, 82 S.W.3d 697, 2002 Tex. App. LEXIS 4549 (Tex. App. Dallas June 26, 2002, no pet.).

The dismissal of a taxpayer's action was reversed where the taxpayer filed an action against school districts and a tax assessor seeking a declaratory judgment that under the parties' tax abatement contract, the taxpayer was entitled to an abatement of ad valorem taxes and injunctive relief, and the chief appraiser failed to give sufficient notice of cancellation under Tex. Tax Code Ann. § 11.43(h); the taxpayer was not barred from bringing a suit where the chief appraiser cancelled a partial exemption and failed to give notice of the cancellation within five days after the cancellation, the chief appraiser had a duty to state the reasons for the cancellation of an abatement of taxes agreement, and the notice failed to identify the property or reasons for cancellation Fina Oil & Chem. Co. v. Port Neches I.S.D., 861 S.W.2d 3, 1993 Tex. App. LEXIS 2330 (Tex. App. Beaumont June 17, 1993, writ denied).

Once an organization is allowed an exemption, it need not claim it in subsequent years. Christian Group, Inc. v. Colorado County Cent. Appraisal Dist., No. 01-90-00886-CV, 1991 Tex. App. LEXIS 1808 (Tex. App. Houston 1st Dist. July 18, 1991).

LIMITATIONS. — In case law, taxpayers had notice of an exemption removal under Tex. Tax Code Ann. § 11.43(i) and the penalty for failure to file a timely application for the exemption was the removal of the exemption to which they were not entitled; this differed from the instant case, where the only requirement the taxpayer failed to perform, filing a rendition under Tex. Tax Code Ann. § 22.01, did not result in the imposition of taxes without due process or the removal of any exemption to which the taxpayer was entitled. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

REAL PROPERTY TAX

General Overview. — Community housing development organization that formed a subsidiary to acquire a limited partnership

that owned apartments was entitled to an exemption from ad valorem taxes pursuant to Tex. Tax Code Ann. § 11.182(b) because it held equitable title to the apartments, although the limited partnership held legal title to the apartments; moreover, in the year of acquisition, it was entitled under Tex. Tax Code Ann. § 11.436(a) to an extension of the general filing deadline provided by Tex. Tax Code Ann. § 11.43(d). TRQ Captain's Landing L.P. v. Galveston Cent. Appraisal Dist., 212 S.W.3d 726, 2006 Tex. App. LEXIS 8724 (Tex. App. Houston 1st Dist. Oct. 5, 2006), reh'g denied, No. 01-05-00496-CV, 2006 Tex. App. LEXIS 11194 (Tex. App. Houston 1st Dist. Nov. 21, 2006), aff'd, 423 S.W.3d 374, 2014 Tex. LEXIS 38 (Tex. 2014).

Tax Code imposes a tax lien on real property based on a back-appraisal to remove the erroneously claimed exemptions regardless of whether the property was sold by the party who benefits from the exemptions, and the Constitution does not prohibit such a lien. Dallas Cent. Appraisal Dist. v. Wang, 82 S.W.3d 697, 2002 Tex. App. LEXIS 4549 (Tex. App. Dallas June 26, 2002, no pet.).

Appraiser was required to back-appraise and assess taxes upon the discovery of property erroneously exempted for the past five years under Tex. Tax Code Ann. § 11.43(i) and petitioners were entitled to challenge a refusal to back-appraise under Tex. Tax Code Ann. §§ 11.43(i) and 25.21. Atascosa County v. Atascosa County Appraisal Dist., 990 S.W.2d 255, 1999 Tex. LEXIS 34 (Tex. 1999).

ASSESSMENT & VALUATION

General Overview. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

Trial court's finding that removal of a taxpayer's Tex. Tax Code Ann. § 11.31 pollution control exemption by a county appraisal district's chief appraiser was void because the district failed to give the proper statutory notice required by Tex. Tax Code Ann. § 11.43(h) was error because the district had jurisdiction for the chief appraiser to cancel the pollution exemption. The taxpayer waived its claim of lack of notice under Tex. Tax Code Ann. § 11.43(h) by filing its protest of the loss of the exemption pursuant to Tex. Tax Code Ann. § 41.41(9) and voluntarily appearing before the appraisal review board, which afforded it due process. Harris County Appraisal Dist. v. Pasadena Prop., LP, 197 S.W.3d 402, 2006 Tex. App. LEXIS 5077 (Tex. App. Eastland June 15, 2006, no pet.).

Chief appraiser's failure to provide the notice to a taxpayer required by Tex. Tax Code Ann. § 11.43(h) makes his cancellation of the Tex. Tax Code Ann. § 11.31 ad valorem exemption voidable, not void, because a taxpayer must be afforded an opportunity to protest the cancellation. Harris County Appraisal Dist. v. Pasadena Prop., LP, 197 S.W.3d 402, 2006 Tex. App. LEXIS 5077 (Tex. App. Eastland June 15, 2006, no pet.).

Tex. Tax Code Ann. § 11.43(i) did not state an exception to the duty to back appraise property that was no longer owned by the party that benefitted from an exemption claimed while he owned it and was alive, and the appellate court stated that it could not create one. Dallas Cent. Appraisal Dist. v. Wang, 82 S.W.3d 697, 2002 Tex. App. LEXIS 4549 (Tex. App. Dallas June 26, 2002, no pet.).

VALUATION. — Appraisal district's inaction on an untimely application for an open-space agricultural appraisal did not violate an energy company's due process rights; the energy company should have notified the appraisal district that it was no longer using the land at issue for a public purpose beginning in 1999. It could have filed at that time for the open-space agricultural appraisal, and then used the procedures set forth for protests. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

Landowners did not address in their reply brief, Tex. R. App. P. 38, whether, under Tex. Tax Code Ann. § 11.43, their tract could simultaneously receive a homestead exemption and an agricultural use designation; because the landowners did not address the issue, they could not show reversible error. Hodge v. Dallas Cent. Appraisal Dist., No. 05-06-01418-CV, 2007 Tex. App. LEXIS 9085 (Tex. App. Dallas Nov. 19, 2007).

EXEMPTIONS. — Community housing development organization's (CHDO) application for a CHDO exemption was timely, even though the application was not filed until December of the year at issue, on the day the CHDO's limited liability company (LLC) acquired a limited partnership (LP), which owned the apartments, as the relevant occurrence was the LLC's acquisition of the LP, not the LP's acquisition of the apartments years earlier; the application was made within 30 days of the date the CHDO acquired equitable title to the apartments. Galveston Cent. Appraisal Dist. v. TRQ Captain's Landing, 423 S.W.3d 374, 2014 Tex. LEXIS 38 (Tex. 2014), reh'g denied, No. 07-0010, 2014 Tex. LEXIS 247 (Tex. Mar. 21, 2014).

In a case in which the disabled veteran tax exemption was removed from property that married taxpayers owned after discovering that the husband, a 100 percent permanently disabled United States Army veteran, was no longer a Texas resident, the chief appraiser had legal authority to remove the tax exemption from the taxpayers' property, and he correctly concluded that, as a nonresident of Texas, the husband was not entitled to the disabled veteran tax exemption. Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699, 2012 Tex. App. LEXIS 3837 (Tex. App. San Antonio May 16, 2012, no pet.).

Taxpayer could not assert inadequate notice under Tex. Tax Code Ann. § 11.43(c) of the removal of its Tex. Tax Code Ann. § 11.18(a)(1)-(2) charitable property tax exemption because it did not file a protest under Tex. Tax Code Ann. §§ 41.41(a)(9), 41.411(a) after being advised it could do so; Tex. Tax Code Ann. § 42.09(a)(1) makes the administrative protest procedures exclusive. Public, Inc. v. County of Galveston, 264 S.W.3d 338, 2008 Tex. App. LEXIS 9235 (Tex. App. Houston 14th Dist. July 10, 2008, no pet.).

ATTORNEY GENERAL OPINIONS

Analysis

Exemptions.
Filing Requirements.
Procedures.
Required Documentation.

Exemptions.

There is no federal authority that would exempt military personnel from compliance with the documentation requirements of Tex. Tax Code Ann. § 11.43(j)(4). 2012 Tex. Op. Att'y Gen. GA-0924.

Filing Requirements.

The Texas Legislature has prohibited a chief appraiser from granting a homestead exemption to an individual that does not possess a driver's license or a state-issued identification certificate, Tex. Tax Code Ann. § 11.43(j)(4); further, a chief appraiser may not grant a residence homestead exemption based on an expired driver's license, state-issued identification certificate or vehicle registration receipt. 2012 Tex. Op. Att'y Gen. GA-0924.

Procedures.

If a federal or state judge, the spouse of a federal or state judge, or a peace officer is otherwise entitled to claim a homestead exemption under Tex. Tax Code Ann. § 11.13, he or she may comply with the requirements of Tex. Tax Code Ann. § 11.43(n) by producing a personal identification certificate issued by the Department of Public Safety and showing his or her residence address; the Legislature has prohibited chief appraisers from

accepting alternative forms of identification from homestead exemption applicants. 2012 Tex. Op. Att'y Gen. GA-0974.

Required Documentation.

Only a driver's license, personal identification certificate or vehicle registration receipt issued by the State of Texas may be used to meet the requirements of Tex. Tax Code Ann. § 11.43(j)(4). 2012 Tex. Op. Att'y Gen. GA-0924.

Sec. 11.431. Late Application for Homestead Exemption.

(a) The chief appraiser shall accept and approve or deny an application for a residence homestead exemption, including an exemption under Section 11.131 or 11.132 for the residence homestead of a disabled veteran or the surviving spouse of a disabled veteran, an exemption under Section 11.133 for the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed in action, or an exemption under Section 11.134 for the residence homestead of the surviving spouse of a first responder who is killed or fatally injured in the line of duty, after the deadline for filing it has passed if it is filed not later than two years after the delinquency date for the taxes on the homestead.

(b) If a late application is approved after approval of the appraisal records by the appraisal review board, the chief appraiser shall notify the collector for each unit in which the residence is located not later than the 30th day after the date the late application is approved. The collector shall deduct from the person's tax bill the amount of tax imposed on the exempted amount if the tax has not been paid. If the tax has been paid, the collector shall refund to the person who was the owner of the property on the date the tax was paid the amount of tax imposed on the exempted amount. The collector shall pay the refund not later than the 60th day after the date the chief appraiser notifies the collector of the approval of the exemption. A person is not required to apply for a refund under this subsection to receive the refund.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 42, effective January 1, 1982; am. Acts 2003, 78th Leg., ch. 650 (H.B. 2147), § 1, effective June 20, 2003; am. Acts 2009, 81st Leg., ch. 1405 (H.B. 3613), § 1(d), effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1222 (S.B. 516), § 3, effective January 1, 2012; am. Acts 2013, 83rd Leg., ch. 122 (H.B. 97), § 4, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 138 (S.B. 163), § 4, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 481 (S.B. 1760), § 4, effective January 1, 2016; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.002(27), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 239 (H.B. 626), § 1, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 511 (S.B. 15), § 4, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 448 (S.B. 1856), § 2, effective September 1, 2019.

NOTES TO DECISIONS

Analysis

Bankruptcy Law
•Exemptions
••State Law
•••General Overview
Real Property Law
•Homestead Exemptions
Tax Law
•State & Local Taxes
••Administration & Proceedings
•••General Overview

BANKRUPTCY LAW
Exemptions
State Law

General Overview. — Where debtors left their residence because it was being foreclosed upon and returned to their prior residence, which they still owned, debtors could claim a homestead exemption in the prior residence pursuant to Tex. Const. art. XVI, § 50, and Tex. Prop. Code Ann. §§ 41.001(a), (b), 41.002(a), despite the fact that debtors had formally applied for exemption of the second residence. The prior residence qualified as homestead property because debtors no longer owned the second residence and any exemption associated with the second residence was no longer applicable and did not conflict with their claim of exemption as to the prior residence. In re Durban, No. 04-46088-DML-7, 2004 Bankr. LEXIS 2032 (Bankr. N.D. Tex. Dec. 21, 2004).

REAL PROPERTY LAW

Homestead Exemptions. — Taxpayers were not eligible for a homestead exemption because they did not apply for the exemption within one year of paying taxes on the homestead. Dallas Cent. Appraisal Dist. v. Brown, 19 S.W.3d 878, 2000 Tex. App. LEXIS 3639 (Tex. App. Dallas June 1, 2000, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Tex. Tax Code Ann. § 11.431(a) requires the chief appraiser to accept and approve or deny applications for residence homestead exemptions. Dallas County Appraisal Dist. v. Funds Recovery, 887 S.W.2d 465, 1994 Tex. App. LEXIS 2924 (Tex. App. Dallas Aug. 31, 1994, writ denied).

Sec. 11.432. Homestead Exemption for Manufactured Home.

(a) Except as provided by Subsection (a-1), for a manufactured home to qualify as a residence homestead under Section 11.13, the application for exemption required by Section 11.43 must be accompanied by:

(1) a copy of the statement of ownership for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, showing that the individual applying for the exemption is the owner of the manufactured home;

(2) a copy of the sales purchase agreement or other applicable contract or agreement or the payment receipt showing that the applicant is the purchaser of the manufactured home; or

(3) a sworn affidavit by the applicant stating that:

(A) the applicant is the owner of the manufactured home;

(B) the seller of the manufactured home did not provide the applicant with the applicable contract or agreement; and

(C) the applicant could not locate the seller after making a good faith effort.

(a-1) An appraisal district may rely upon the computer records of the Texas Department of Housing and Community Affairs to verify an applicant's ownership of a manufactured home. An applicant is not required to submit an accompanying document described by Subsection (a) if the appraisal district verifies the applicant's ownership under this subsection.

(b) The land on which a manufactured home is located qualifies as a residence homestead under Section 11.13 only if:

(1) the land is owned by one or more individuals, including the applicant;

(2) the applicant occupies the manufactured home as the applicant's principal residence; and

(3) the applicant demonstrates ownership of the manufactured home under Subsection (a) or the appraisal district determines the applicant's ownership under Subsection (a-1).

(c) The owner of land that qualifies as a residence homestead under this section is entitled to obtain the homestead exemptions provided by Section 11.13 and any other benefit granted under this title to the owner of a residence homestead regardless of whether the applicant has elected to treat the manufactured home as real property or personal property and regardless of whether the manufactured home is listed on the tax rolls with the real property to which it is attached or listed on the tax rolls separately.

(d) In this section, "manufactured home" has the meaning assigned by Section 1201.003, Occupations Code.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 846 (S.B. 1267), § 14, effective September 1, 1985; am. Acts 1989, 71st Leg., ch. 1039 (H.B. 863), § 4.02, effective September 1, 1989; am. Acts 1993, 73rd Leg., ch. 274 (H.B. 563), § 12, effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 338 (S.B. 521), § 44, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 863 (H.B. 1460), § 70, effective January 1, 2008; am. Acts 2011, 82nd Leg., ch. 221 (H.B. 252), § 2(a), effective January 1, 2012; am. Acts 2017, 85th Leg., ch. 408 (H.B. 2019), § 80, effective September 1, 2017.

Sec. 11.433. Late Application for Religious Organization Exemption.

(a) The chief appraiser shall accept and approve or deny an application for a religious organization exemption under Section 11.20 after the filing deadline provided by Section 11.43 if the application is filed not later than December 31 of the fifth year after the year in which the taxes for which the exemption is claimed were imposed.

(b) The chief appraiser may not approve a late application for an exemption filed under this section if the taxes imposed on the property for the year for which the exemption is claimed are paid before the application is filed.

(c) If a late application is approved after approval of the appraisal records for the year for which the exemption is granted, the chief appraiser shall notify the collector for each taxing unit in which the property was taxable in the year for which the exemption is granted. The collector shall deduct from the organization's tax bill the amount of tax imposed on the property for that year if the tax has not been paid and any unpaid penalties and accrued interest relating to that tax. The collector may not refund taxes, penalties, or interest paid on the property for which an exemption is granted under this section.

(d) The chief appraiser may grant an exemption for property pursuant to an application filed under this section only if the property otherwise qualified for the exemption under the law in effect on January 1 of the tax year for which the exemption is claimed.

(e) [Repealed by Acts 1999, 76th Leg., ch. 449 (S.B. 1254), § 5, effective June 18, 1999; Acts 1999, 76th Leg., ch. 817 (H.B. 1604), § 4, effective September 1, 1999.]

HISTORY: Enacted by Acts 1990, 71st Leg., 6th C.S., ch. 8 (H.B. 36), § 1, effective September 6, 1990; am. Acts 1993, 73rd Leg., ch. 971 (H.B. 835), § 1, effective June 19, 1993; am. Acts 1997, 75th Leg., ch. 170 (H.B. 197), § 1, effective May 21, 1997; am. Acts 1999, 76th Leg., ch. 449 (S.B. 1254), §§ 1, 5, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 817 (H.B. 1604), § 4, effective September 1, 1999.

NOTES TO DECISIONS

GOVERNMENTS
State & Territorial Governments

Legislatures. — Tex. Tax Code Ann. § 11.433, providing for a late application for a religious exemption from property taxes, did not violate Tex. Const. art. III, § 55 because the statute did not extinguish an obligation to the state and was not a retroactive law. Corpus Christi People's Baptist Church v. Nueces County Appraisal Dist., 904 S.W.2d 621, 1995 Tex. LEXIS 70 (Tex. 1995).

Sec. 11.434. Late Application for a School Exemption.

(a) The chief appraiser shall accept or deny an application for a school exemption under Section 11.21 after the filing deadline provided by Section 11.43 if the application is filed not later than December 31 of the fifth year after the year in which the taxes for which the exemption is claimed were imposed.

(b) The chief appraiser may not approve a late application for an exemption filed under this section if the taxes imposed on the property for the year for which the exemption is claimed are paid before the application is filed.

(c) If a late application is approved after approval of the appraisal records for the year for which the exemption is granted, the chief appraiser shall notify the collector for each taxing unit in which the property was taxable in the year for which the exemption is granted. The collector shall deduct from the school's tax bill the amount of tax imposed on the property for that year if the tax has not been paid and any unpaid penalties and accrued interest relating to that tax. The collector may not refund taxes, penalties, or interest paid on the property for which an exemption is granted under this section.

(d) [Repealed by Acts 1999, 76th Leg., ch. 449 (S.B. 1254), § 5, effective June 18, 1999.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 6.3, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 1411 (H.B. 2383), § 7, effective June 20, 1997; am. Acts 1999, 76th Leg., ch. 449 (S.B. 1254), §§ 2, 5, effective June 18, 1999.

Sec. 11.435. Late Application for Charitable Organization Exemption.

(a) The chief appraiser shall accept and approve or deny an application for a charitable organization exemption under Section 11.18 after the filing deadline provided by Section 11.43 if the application is filed not later than December 31 of the fifth year after the year in which the taxes for which the exemption is claimed were imposed.

(b) The chief appraiser may not approve a late application for an exemption filed under this section if the taxes imposed on the property for the year for which the exemption is claimed are paid before the application is filed.

(c) If a late application is approved after approval of the appraisal records for the year for which the exemption is granted, the chief appraiser shall notify the collector for each taxing unit in which the property was taxable in the year for which the exemption is granted. The collector shall deduct from the organization's tax bill the amount of tax imposed on the property for that year if the tax has not been paid and any unpaid penalties and accrued interest relating to that tax. The collector may not refund taxes, penalties, or interest paid on the property for which an exemption is granted under this section.

(d) The chief appraiser may grant an exemption for property pursuant to an application filed under this section only if the property otherwise qualified for the exemption under the law in effect on January 1 of the tax year for which the exemption is claimed.

(e) [Repealed by Acts 1999, 76th Leg., ch. 449 (S.B. 1254), § 5, effective June 18, 1999.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 6.4, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 170 (H.B. 197), § 2, effective May 21, 1997; am. Acts 1999, 76th Leg., ch. 449 (S.B. 1254), §§ 3, 5, effective June 18, 1999.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Where the appellate court set aside the summary judgment granted to the county taxing authority on its denial of the tax exemption sought by the housing development corporation because the housing development corporation had not exhausted its administrative remedies, the appellate court could not grant the relief sought by the housing development corporation on the alternative ground that it was entitled to the exemption because it was a charitable organization; the summary judgment record was devoid of any evidence that it met the criteria listed for a charitable organization. Found. of Hope, Inc. v. San Patricio County Appraisal Dist., No. 13-02-083-CV, 2003 Tex. App. LEXIS 7922 (Tex. App. Corpus Christi Sept. 11, 2003).

Sec. 11.436. Application for Exemption of Certain Property Used for Low-Income Housing.

(a) An organization that acquires property that qualifies for an exemption under Section 11.181(a) or 11.1825 may apply for the exemption for the year of acquisition not later than the 30th day after the date the organization acquires the property, and the deadline provided by Section 11.43(d) does not apply to the application for that year.

(b) If the application is granted, the exemption for that year applies only to the portion of the year in which the property qualifies for the exemption, as provided by Section 26.111. If the application is granted after approval of the appraisal records by the appraisal review board, the chief appraiser shall notify the collector for each taxing unit in which the property is located. The collector shall calculate the amount of tax due on the property in that year as provided by Section 26.111 and shall refund any amount paid in excess of that amount.

(c) To facilitate the financing associated with the acquisition of a property, an organization, before acquiring the property, may request from the chief appraiser of the appraisal district established for the county in which the property is located a preliminary determination of whether the property would qualify for an exemption under Section 11.1825 if acquired by the organization. The request must include the information that would be included in an application for an exemption for the property under Section 11.1825. Not later than the 45th day after the date a request is submitted under this subsection, the chief appraiser shall issue a written preliminary determination for the property included in the request. A preliminary determination does not affect the granting of an exemption under Section 11.1825.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 345 (H.B. 1096), § 3, effective January 1, 1994; am. Acts 1997, 75th Leg., ch. 715 (H.B. 137), § 3, effective January 1, 1998; am. Acts 2001, 77th Leg., ch. 842 (H.B. 1392), § 3, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1156 (H.B. 3546), § 4, effective January 1, 2004.

NOTES TO DECISIONS

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•Housing & Public Buildings
••Low Income Housing
Tax Law
•State & Local Taxes
••Real Property Tax
•••Exemptions

PUBLIC HEALTH & WELFARE LAW
Housing & Public Buildings

Low Income Housing. — Community housing development organization's (CHDO) application for a CHDO exemption was timely, even though the application was not filed until December of the year at issue, on the day the CHDO's limited liability company (LLC) acquired a limited partnership (LP), which owned the apartments, as the relevant occurrence was the LLC's acquisition of the LP, not the LP's acquisition of the apartments years earlier; the application was made within 30 days of the date the CHDO acquired equitable title to the apartments. Galveston Cent. Appraisal Dist. v. TRQ Captain's Landing, 423 S.W.3d 374, 2014 Tex. LEXIS 38 (Tex. 2014), reh'g denied, No. 07-0010, 2014 Tex. LEXIS 247 (Tex. Mar. 21, 2014).

TAX LAW
State & Local Taxes
Real Property Tax

Exemptions. — Community housing development organization's (CHDO) application for a CHDO exemption was timely, even though the application was not filed until December of the year at issue, on the day the CHDO's limited liability company (LLC) acquired a limited partnership (LP), which owned the apartments, as the relevant occurrence was the LLC's acquisition of the LP, not the LP's acquisition of the apartments years earlier; the application was made within 30 days of the date the CHDO acquired equitable title to the apartments. Galveston Cent. Appraisal Dist. v. TRQ Captain's Landing, 423 S.W.3d 374, 2014 Tex. LEXIS 38 (Tex. 2014), reh'g denied, No. 07-0010, 2014 Tex. LEXIS 247 (Tex. Mar. 21, 2014).

Sec. 11.437. Exemption for Cotton Stored in Warehouse.

(a) A person who operates a warehouse used primarily for the storage of cotton for transportation outside of this state may apply for an exemption under Section 11.251 for cotton stored in the warehouse on behalf of all the owners of the cotton. An exemption granted under this section applies to all cotton stored in the warehouse that is eligible to be exempt under Section 11.251. Cotton that is stored in a warehouse covered by an exemption granted under this section and that is transported outside of this state is presumed to have been transported outside of this state within the time permitted by Article VIII, Section 1-j, of the Texas Constitution for cotton to qualify for an exemption under that section.

(b) An exemption granted under this section, once allowed, need not be claimed in subsequent years, and except as provided by Section 11.43(e), the exemption applies to cotton stored in the warehouse until the warehouse changes ownership or the cotton's qualification for the exemption changes. The chief appraiser may, however, require a person who operates a warehouse for which an exemption for cotton has been granted in a prior year to file a new application to confirm the cotton's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 779 (S.B. 1487), § 3, effective January 1, 1994; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(45), effective September 1, 1995 (renumbered from Sec. 11.436).

Sec. 11.438. Late Application for Veteran's Organization Exemption.

(a) The chief appraiser shall accept and approve or deny an application for a veteran's organization exemption under Section 11.23(a) after the filing deadline provided by Section 11.43 if the application is filed not later than December 31 of the fifth year after the year in which the taxes for which the exemption is claimed were imposed.

(b) If the taxes and related penalties and interest imposed on the property for the year for which the exemption is claimed are paid before an application is filed under this section, the chief appraiser may approve the late application for an exemption only on a showing that the taxes, penalties, and interest were paid under protest.

(c) If a late application is approved after approval of the appraisal records for a year for which the exemption is granted, the chief appraiser shall notify the collector for each taxing unit in which the property was taxable in that year. The collector shall deduct from the organization's tax bill the amount of tax imposed on the property for that year and any penalties and interest relating to that tax if the tax and related penalties and interest have not been paid. If the tax and related penalties and interest on the property for a tax year for which an exemption is granted under this section were paid under protest, the organization is eligible for a refund of the tax, penalties, and interest paid as provided by Section 31.11. The deadline prescribed by Section 31.11(c) for applying for a refund does not apply to a refund under this section.

(d) [Repealed by Acts 1999, 76th Leg., ch. 449 (S.B. 1254), § 5, effective June 18, 1999.]

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1328 (S.B. 1438), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 449 (S.B. 1254), §§ 4, 5, effective June 18, 1999; am. Acts 2009, 81st Leg., ch. 494 (S.B. 798), § 2, effective January 1, 2010.

Sec. 11.439. Late Application for Disabled Veterans Exemption.

(a) The chief appraiser shall accept and approve or deny an application for an exemption under Section 11.22 after the filing deadline provided by Section 11.43 if the application is filed not later than five years after the delinquency date for the taxes on the property.

(b) If a late application is approved after approval of the appraisal records for the year for which the exemption is granted, the chief appraiser shall notify the collector for each taxing unit in which the property was taxable in that year

not later than the 30th day after the date the late application is approved. The collector shall correct the taxing unit's tax roll to reflect the amount of tax imposed on the property after applying the exemption and shall deduct from the person's tax bill the amount of tax imposed on the exempted portion of the property for that year. If the tax and any related penalties and interest have been paid, the collector shall pay to the person who was the owner of the property on the date the tax was paid a refund of the tax imposed on the exempted portion of the property and the corresponding portion of any related penalties and interest paid. The collector shall pay the refund not later than the 60th day after the date the chief appraiser notifies the collector of the approval of the exemption.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 213 (H.B. 16), § 2, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), § 7, effective September 1, 2005; am. Acts 2017, 85th Leg., ch. 239 (H.B. 626), § 2, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 448 (S.B. 1856), § 3, effective September 1, 2019.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property

General Overview. — In an appeal regarding a tax exemption, as the company did not submit to the county appraisal review board that it requested an extension of time, the company failed to exhaust its administrative remedies and was not entitled to judicial review; further, the company failed to present evidence necessary to establish its entitlement to relief under Tex. Tax Code Ann. § 11.439. Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

Sec. 11.4391. Late Application for Freeport Exemption.

(a) **[Effective until January 1, 2020]** The chief appraiser shall accept and approve or deny an application for an exemption for freeport goods under Section 11.251 after the deadline for filing it has passed if it is filed not later than June 15.

(a) **[Effective January 1, 2020]** The chief appraiser shall accept and approve or deny an application for an exemption for freeport goods under Section 11.251 after the deadline for filing it has passed if it is filed on or before the later of:

(1) June 15; or

(2) if applicable, the 60th day after the date on which the chief appraiser delivers notice to the property owner under Section 22.22.

(b) If the application is approved, the property owner is liable to each taxing unit for a penalty in an amount equal to 10 percent of the difference between the amount of tax imposed by the taxing unit on the inventory or property, a portion of which consists of freeport goods, and the amount that would otherwise have been imposed.

(c) The chief appraiser shall make an entry on the appraisal records for the inventory or property indicating the property owner's liability for the penalty and shall deliver a written notice of imposition of the penalty, explaining the reason for its imposition, to the property owner.

(d) The tax assessor for a taxing unit that taxes the inventory or property shall add the amount of the penalty to the property owner's tax bill, and the tax collector for the unit shall collect the penalty at the time and in the manner the collector collects the tax. The amount of the penalty constitutes a lien against the inventory or property against which the penalty is imposed, as if it were a tax, and accrues penalty and interest in the same manner as a delinquent tax.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 125 (S.B. 862), § 3, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(122), effective September 1, 2003 (renumbered from Sec. 11.439); am. Acts 2017, 85th Leg., ch. 357 (H.B. 2228), § 1, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 26, effective January 1, 2020.

Sec. 11.4391. Late Application for Freeport Exemption.

HISTORY:

Sec. 11.44. Notice of Application Requirements.

(a) Before February 1 of each year, the chief appraiser shall deliver an appropriate exemption application form to each person who in the preceding year was allowed an exemption that must be applied for annually. He shall include a brief explanation of the requirements of Section 11.43 of this code.

(b) Each year the chief appraiser for each appraisal district shall publicize, in a manner reasonably designed to notify all residents of the district, the requirements of Section 11.43 of this code and the availability of application forms.

(c) The comptroller shall prescribe by rule the content of the explanation required by Subsection (a) of this section, and shall require that each exemption application form be printed and prepared:

(1) as a separate form from any other form; or

(2) on the front of the form if the form also provides for other information.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 43, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 13, effective September 1, 1991.

Sec. 11.45. Action on Exemption Applications.

(a) The chief appraiser shall determine separately each applicant's right to an exemption. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

(1) approve the application and allow the exemption;

(2) modify the exemption applied for and allow the exemption as modified;

(3) disapprove the application and request additional information from the applicant in support of the claim; or

(4) deny the application.

(b) If the chief appraiser requests additional information from an applicant, the applicant must furnish it within 30 days after the date of the request or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing the information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for exemption filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser modifies or denies an exemption, he shall deliver a written notice of the modification or denial to the applicant within five days after the date he makes the determination. He shall include with the notice a brief explanation of the procedures for protesting his action.

(e) **[Proposed Amendment by Acts 2019, 86th Leg., H.J.R. No. 34, Contingent on Voter Approval]** If the chief appraiser approves, modifies, or denies an application for an exemption under Section 11.35, the chief appraiser shall deliver a written notice of the approval, modification, or denial to the applicant not later than the fifth day after the date the chief appraiser makes the determination. The notice must include the damage assessment rating assigned by the chief appraiser to each item of qualified property that is the subject of the application and a brief explanation of the procedures for protesting the chief appraiser's determination. The notice required under this subsection is in lieu of any notice that would otherwise be required under Subsection (d).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 44, effective January 1, 1982; am. Acts 2019, 86th Leg., ch. 1034 (H.B. 492), § 4.

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TAX LAW
Federal Estate & Gift Taxes
Deductions

Charitable Deductions (IRC secs. 2055, 2522, 2524). — Where appellant submitted its request for tax exempt status to the county appraisal district and the chief appraiser held approval or disapproval in abeyance pending outcome of the court suit in progress, failure of the county to act on the application was not a denial of its request, Tex. Tax Code Ann. § 11.45. Moody House, Inc. v. Galveston County, 687 S.W.2d 433, 1985 Tex. App. LEXIS 6225 (Tex. App. Houston 14th Dist. Feb. 14, 1985, writ ref'd n.r.e.).

STATE & LOCAL TAXES
Administration & Proceedings

Taxpayer Protests. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

REAL PROPERTY TAX
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General Overview. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

EXEMPTIONS. — In a case in which the disabled veteran tax exemption was removed from property that married taxpayers owned after discovering that the husband, a 100 percent permanently disabled United States Army veteran, was no longer a Texas resident, the chief appraiser had legal authority to remove the tax exemption from the taxpayers' property, and he correctly concluded that, as a nonresident of Texas, the husband was not entitled to the disabled veteran tax exemption. Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699, 2012 Tex. App. LEXIS 3837 (Tex. App. San Antonio May 16, 2012, no pet.).

Sec. 11.46. Compilation of Partial Exemptions.

Each year the chief appraiser shall compile and make available to the public a list showing for each taxing unit in the district the number of each kind of partial exemption allowed in that tax year and the total assessed value of each taxing unit that is exempted by each kind of partial exemption.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 45, effective January 1, 1982.

Sec. 11.47. Mail Survey of Residence Homesteads.

(a) Between December 1 and December 31 of any year, the appraisal office may mail a card to each person who was allowed, in that year, one or more residence homestead exemptions that are not required to be claimed annually. The appraisal office shall include on the card the description of the property and the kind and amount of residence homestead exemptions allowed for the property according to the appraisal office records.

(b) The appraisal office shall include on each card mailed as authorized by this section a direction to the postal authorities not to forward it to any other address and to return it to the appraisal office if the addressee is no longer at the address to which the card was mailed.

(c) The appraisal office shall investigate each residence homestead exemption allowed a person whose card is returned undelivered.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 46, effective January 1, 1982.

Sec. 11.48. Confidential Information.

(a) A driver's license number, personal identification certificate number, or social security account number provided in an application for an exemption filed with a chief appraiser is confidential and not open to public inspection. The information may not be disclosed to anyone other than an employee or agent of the appraisal district who appraises property or performs appraisal services for the appraisal district, except as authorized by Subsection (b).

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the application or to the person's representative authorized in writing to receive the information;

(3) to the comptroller and the comptroller's employees authorized by the comptroller in writing to receive the information or to an assessor or a chief appraiser if requested in writing;

(4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the application is a party; or

(5) if and to the extent the information is required to be included in a public document or record that the appraisal district is required by law to prepare or maintain.

(c) A person who legally has access to an application for an exemption or who legally obtains the information from the application made confidential by this section commits an offense if the person knowingly:

(1) permits inspection of the confidential information by a person not authorized by Subsection (b) to inspect the information; or

(2) discloses the confidential information to a person not authorized by Subsection (b) to receive the information.

(d) An offense under Subsection (c) is a Class B misdemeanor.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 436 (H.B. 500), § 1, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1118 (H.B. 3532), § 1, effective September 1, 2015.

Sec. 11.49. Legal Title Not Affected.

(a) The grant or denial of an application by an heir property owner for a residence homestead exemption under this chapter does not affect the legal title of the property subject to the application and does not operate to transfer title to that property.

(b) An appraisal district, chief appraiser, appraisal review board, or county assessor-collector may not be made a party to a proceeding to adjudicate ownership of property described by Subsection (a) except as prescribed by this title.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 663 (S.B. 1943), § 8, effective September 1, 2019.

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[Reserved for expansion]

SUBTITLE D

APPRAISAL AND ASSESSMENT

CHAPTER 21

Taxable Situs

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21.021.	Vessels and Other Watercraft.	21.04.	Railroad Rolling Stock.
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21.055.	Business Aircraft.
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21.21.	Definition [Repealed].
21.22.	Record of Movement [Repealed].
21.23.	Record of Movement [Repealed].
21.24.	Penalty for Failure to Record or Report Movement [Repealed].
21.25.	Exemption [Repealed].

Sec. 21.01. Real Property.

Real property is taxable by a taxing unit if located in the unit on January 1, except as provided by Chapter 49, Education Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.10, effective May 31, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.74, effective September 1, 1997; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.089, effective September 1, 2019.

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ENERGY & UTILITIES LAW
Oil, Gas & Mineral Interests

General Overview. — Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. Devon Energy Prod., L.P. v. Hockley County Appraisal Dist., 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

EVIDENCE
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General Overview. — Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. Devon Energy Prod., L.P. v. Hockley County Appraisal Dist., 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. Devon Energy Prod., L.P. v. Hockley County Appraisal Dist., 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

Tex. Tax Code Ann. § 21.01 provides that real property is taxable by a taxing unit if located in the unit on January 1. Oake v. Collin County, 692 S.W.2d 454, 1985 Tex. LEXIS 869 (Tex. 1985).

ASSESSMENT & VALUATION

General Overview. — County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

ASSESSMENT METHODS & TIMING. — Evidence supported the trial court's judgment because it showed that the property was located in Texas and was therefore subject to taxation; the government entities were "taxing units" and therefore had the authority to impose taxes on the landowner's real property. Haley v. Harris County, No. 14-11-01051-CV, 2012 Tex. App. LEXIS 8694 (Tex. App. Houston 14th Dist. Oct. 18, 2012).

ATTORNEY GENERAL OPINIONS

Location of Property to be Taxed.

A school district is entitled to assess ad valorem taxes against royalty interests in a pooled gas unit based upon the location of the real property to which the royalty interests appertain as opposed to the location of the well. 1998 Tex. Op. Att'y Gen. DM-0490.

Sec. 21.02. Tangible Personal Property Generally.

(a) Except as provided by Subsections (b) and (e) and by Sections 21.021, 21.04, and 21.05, tangible personal property is taxable by a taxing unit if:

(1) it is located in the unit on January 1 for more than a temporary period;

(2) it normally is located in the unit, even though it is outside the unit on January 1, if it is outside the unit only temporarily;

(3) it normally is returned to the unit between uses elsewhere and is not located in any one place for more than a temporary period; or

(4) the owner resides (for property not used for business purposes) or maintains the owner's principal place of business in this state (for property used for business purposes) in the unit and the property is taxable in this state but does not have a taxable situs pursuant to Subdivisions (1) through (3) of this subsection.

(b) Tangible personal property having taxable situs at the same location as real property detached from a school district and annexed by another school district under Chapter 49, Education Code, is taxable in the tax year in which the detachment and annexation occurs by the same school district by which the real property is taxable in that tax year under Chapter 49, Education Code. For purposes of this subsection and Chapter 49, Education Code, tangible personal property has taxable situs at the same location as real property detached and annexed under Chapter 49, Education Code, if the detachment and annexation of the real property, had it occurred before January 1 of the tax year, would have changed the taxable situs of the tangible personal property determined as provided by Subsection (a) from the school district from which the real property was detached to the school district to which the real property was annexed.

(c) Tangible personal property has taxable situs in a school district that is the result of a consolidation under Chapter 49, Education Code, in the year in which the consolidation occurs if the property would have had taxable situs in the consolidated district in that year had the consolidation occurred before January 1 of that year.

(d) A motor vehicle does not have taxable situs in a taxing unit under Subsection (a)(1) if, on January 1, the vehicle:

(1) has been located for less than 60 days at a place of business of a person who holds a wholesale motor vehicle auction general distinguishing number issued by the Texas Department of Motor Vehicles under Chapter 503, Transportation Code, for that place of business; and

(2) is offered for resale.

(e) In this subsection, "portable drilling rig" includes equipment associated with the drilling rig. A portable drilling rig designed for land-based oil or gas drilling or exploration operations is taxable by each taxing unit in which the rig is located on January 1 if the rig was located in the appraisal district that appraises property for the unit for the preceding 365 consecutive days. If the drilling rig was not located in the appraisal district where it is located on January 1 for the preceding 365 days, it is taxable by each taxing unit in which the owner's principal place of business in this state is located on January 1, unless the owner renders the rig under Chapter 22 to the appraisal district in which the rig is located on January 1, in which event the rig is taxable by each taxing unit in which the rig is located on January 1. If an owner elects to render any portable drilling rig to the appraisal district in which the rig is located on January 1 when the rig otherwise would be taxable at the owner's principal place of business in this state, all the owner's portable drilling rigs are taxable by the taxing units in which each rig is located on January 1. Notwithstanding any other provision of this subsection, if the owner of a portable drilling rig does not have a place of business in this state, the rig is taxable by each taxing unit in which the rig is located on January 1.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 353 (H.B. 1748), § 2, effective January 1, 1984; am. Acts 1989, 71st Leg., ch. 534 (H.B. 2959), § 5, effective August 28, 1989; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.11, effective May 31, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.75, effective September 1, 1997; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), § 8, effective September 1, 2005; am. Acts 2006, 79th Leg., 3rd C.S., ch. 1 (H.B. 3), § 1(a), effective January 1, 2007; am. Acts 2007, 80th Leg., ch. 911 (H.B. 2982), § 1, effective January 1, 2008; am. Acts 2009, 81st Leg., ch. 933 (H.B. 3097), § 3K.01, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.090, effective September 1, 2019.

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BUSINESS & CORPORATE LAW
Foreign Businesses

General Overview. — Under Tex. Tax Code Ann. § 21.02(4), out-of-state trucking company was subject to tax in the county where its Texas operations were based. Melton Truck Lines v. Gregg County Appraisal Dist., 864 S.W.2d 137, 1993 Tex. App. LEXIS 2688 (Tex. App. Texarkana Oct. 5, 1993, no writ).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

Because it is the chief appraiser who determines the market value of taxable personal property and who calculates the portion of the fair market value of an aircraft that fairly reflects its use in Texas, and because these calculations must generally be done within the time required for the chief appraiser to prepare the appraisal records, supporting information must be submitted by the taxpayer seeking allocation under Tex. Tax Code Ann. § 21.02(a) along with the rendition. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

In a taxpayer's action to contest the appraisal of an aircraft used for business purposes both inside and outside the State of Texas, Tex. Tax Code Ann. § 25.25(c) did not authorize the trial court to correct county appraisal rolls to reflect business usage of the aircraft outside of Texas. A & S Air Serv. v. Denton Cent. Appraisal Dist., 99 S.W.3d 340, 2003 Tex. App. LEXIS 1397 (Tex. App. Fort Worth Feb. 13, 2003, no pet.).

INCOME TAX
Corporations & Unincorporated Associations

General Overview. — Levying of different admission taxes on various places of amusement did not violate Tex. Const. art. VIII, §§ 1, 2, because classifying ballrooms as taxable at one rate and skating rinks as taxable at a different rate did not result in unequal treatment of taxpayers or invalidate Tex. Tax Code Ann. art. 21.02 §§ (2), (4); the state had constitutional authority to divide various categories of businesses, such as amusements, for taxing purposes according to the particular activities the businesses engaged in. Bullock v. Texas Skating Asso., 583 S.W.2d 888, 1979 Tex. App. LEXIS 3796 (Tex. Civ. App. Austin June 13, 1979, writ ref'd n.r.e.).

NATURAL RESOURCES TAX

Limitations. — Tax on oil involved in interstate transit was not permitted under Tex. Tax Code Ann. § 21.02(a)(4) because a trial court made no findings of fact on this issue, and an appraisal district did not request that the trial court make a finding regarding a principal place of business. Moreover, the evidence did not indicate that a certain county was the principal place of business in Texas for several oil companies. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

Tax on oil involved in interstate transit was not permitted under Tex. Tax Code Ann. § 21.02(a)(1) because it had no taxable situs in a county; the evidence presented was sufficient to show that the oil was merely transported through the county and was only temporarily located there. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

PERSONAL PROPERTY TAX

General Overview. — Under Tex. Tax Code Ann. § 21.02(4), where foreign trucking company had its principal place of business in Texas, but was domiciled in another state, its trucks were subject to local tax in the county of the place of business. Melton Truck Lines v. Gregg County Appraisal Dist., 864 S.W.2d 137, 1993 Tex. App. LEXIS 2688 (Tex. App. Texarkana Oct. 5, 1993, no writ).

INTANGIBLE PROPERTY

Imposition of Tax. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

TANGIBLE PROPERTY

General Overview. — Mobile oil drilling rigs that constantly moved from one job site to another were not subject to tangible personal property tax under Tex. Tax Code Ann. § 21.02(a)(1) in the county where they were located on January 1 of the tax year because the rigs were there only temporarily; instead, they were taxable at the owners' principal place of business. Patterson-UTI Drilling Co. LP, LLLP v. Webb County Appraisal Dist., 182 S.W.3d 14, 169 Oil & Gas Rep. 83, 2005 Tex. App. LEXIS 8193 (Tex. App. San Antonio Oct. 5, 2005, no pet.).

Trial court properly upheld taxes imposed on corporation for its oil located in taxing county under Tex. Tax Code Ann. § 21.02(4) because the oil was located in taxing county for more than a temporary period, large quantities of oil were held in the county at all times and because the county provided protection to the oil and bore a substantial risk of significant financial injury in the event of a mishap. Exxon Corp. v. San Patricio County Appraisal Dist., 822 S.W.2d 269, 118 Oil & Gas Rep. 199, 1991 Tex. App. LEXIS 3170 (Tex. App. Corpus Christi Dec. 19, 1991, writ denied).

IMPOSITION OF TAX. — Tax on oil involved in interstate transit was not permitted under Tex. Tax Code Ann. § 21.02(a)(4) because a trial court made no findings of fact on this issue, and an appraisal district did not request that the trial court make a finding regarding a principal place of business. Moreover, the evidence did not indicate that a certain county was the principal place of business in Texas for several oil companies. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

Tax on oil involved in interstate transit was not permitted under Tex. Tax Code Ann. § 21.02(a)(1) because it had no taxable situs in a county; the evidence presented was sufficient to show that the oil was merely transported through the county and was only temporarily located there. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

REAL PROPERTY TAX

General Overview. — Under Tex. Tax Code Ann. §§ 21.02, 26.14, and former Tex. Rev. Civ. Stat. Ann. art. 1026, art. 1027 (now see Tex. Tax Code Ann. § 302.001), ad valorem property taxes assessed upon land need not be prorated on the basis of the number of days out of the tax year that the property was within

the corporate limits of the city, when that property was disannexed from within the corporate limits of a city. Heath v. King, 705 S.W.2d 812, 1986 Tex. App. LEXIS 12393 (Tex. App. Dallas Feb. 13, 1986, no writ).

ATTORNEY GENERAL OPINIONS

Ad Valorem Tax on Aircraft.

Aircraft of a commercial airline are taxable on an ad valorem basis when such aircraft are based in the county where the company is domiciled even though the aircraft fly in interstate commerce. Whether or not such aircraft are taxable at their full is to be determined on a case-by-case basis. 1960 Tex. Op. Att'y Gen. W-818.

Sec. 21.021. Vessels and Other Watercraft.

(a) A vessel or other watercraft used as an instrumentality of commerce (as defined in Section 21.031(b) of this code) is taxable pursuant to Section 21.02 of this code.

(b) A special-purpose vessel or other watercraft not used as an instrumentality of commerce (as defined in Section 21.031(b) of this code) is deemed to be located on January 1 for more than a temporary period for purposes of Section 21.02 of this code in the taxing unit in which it was physically located during the year preceding the tax year. If the vessel or watercraft was physically located in more than one taxing unit during the year preceding the tax year, it is deemed to be located for more than a temporary period for purposes of Section 21.02 of this code in the taxing unit in which it was physically located for the longest period during the year preceding the tax year or for 30 days, whichever is longer. If a vessel or other watercraft is not deemed to be located in any taxing unit on January 1 for more than a temporary period pursuant to this subsection, the property is taxable as provided by Subdivisions (2) through (4) of Section 21.02 of this code.

(c) This section applies solely to a determination of taxable situs and does not apply to a determination of jurisdiction to tax under Section 11.01 of this code.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 353 (H.B. 1748), § 3, effective January 1, 1984.

Sec. 21.03. Interstate Allocation.

(a) If personal property that is taxable by a taxing unit is used continually outside this state, whether regularly or irregularly, the appraisal office shall allocate to this state the portion of the total market value of the property that fairly reflects its use in this state.

(b) The comptroller shall adopt rules:

(1) identifying the kinds of property subject to this section; and

(2) establishing formulas for calculating the proportion of total market value to be allocated to this state.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 14, effective September 1, 1991.

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TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Although the corporation met applicable deadlines for each tax year, and was potentially eligible for allocation of the market value of its airplanes under Tex. Tax Code Ann. § 21.03, appraisal districts were allowed a level of certainty when setting the tax roll, and impacted local government decisions on whether or not a change in tax rates was warranted; there were time limits attached to valuation protests. WB Summit Props. v. Midland Cent. Appraisal Dist., 122 S.W.3d 374, 2003 Tex. App. LEXIS 10045 (Tex. App. El Paso Nov. 26, 2003, no pet.).

Tex. Tax Code Ann. § 21.055(a)-(b) implies that a corporation seeking allocation for its business aircraft under Tex. Tax Code Ann. § 21.03(a) must provide information showing entitlement to allocation at the time of rendition. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

By failing to timely file a protest as required by Tex. Tax Code Ann. § 41.41, an aviation company waived its right to allocation of the market value of its aircraft under Tex. Tax. Code Ann. § 21.03 to reflect its use in Texas during a period from which the appraisal district appraised the aircraft for tax purposes. Kellair Aviation Co. v. Travis Cent. Appraisal Dist., 99 S.W.3d 704, 2003 Tex. App. LEXIS 1085 (Tex. App. Austin Feb. 6, 2003, no pet.).

PERSONAL PROPERTY TAX
Exempt Property

General Overview. — Tex. Tax Code Ann. §§ 21.03(a) and 21.031(a) which exempted from taxation 70 percent of the value of shrimp boats because they were out of Texas for 70 percent of the time were unconstitutional because such exemptions were not authorized by either Tex. Const. art. VIII, §§ 1 or 2 or by federal law. Aransas County Appraisal Review Bd. v. Texas Gulf Shrimp Co., 707 S.W.2d 186, 1986 Tex. App. LEXIS 12282 (Tex. App. Corpus Christi Feb. 27, 1986, writ ref'd n.r.e.).

TANGIBLE PROPERTY

General Overview. — Finding in favor of the Harris County Appraisal District was proper where the Tax Code did not permit a change in the appraisal roll for interstate allocation for an aircraft belonging to the corporation and where the corporation had to show entitlement to interstate allocation. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88,

2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

IMPOSITION OF TAX. — Taxpayer waived its right to allocation by failing to file any allocation information contemporaneously with a rendition statement. The taxpayer's August 22, 2006 letter did not constitute a rendition statement because it was untimely filed and no allocation information was filed with the letter. Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741, 2009 Tex. App. LEXIS 2097 (Tex. App. Houston 1st Dist. Mar. 26, 2009, no pet.).

Sec. 21.031. Allocation of Taxable Value of Vessels and Other Watercraft Used Outside This State.

(a) If a vessel or other watercraft that is taxable by a taxing unit is used continually outside this state, whether regularly or irregularly, the appraisal office shall allocate to this state the portion of the total market value of the vessel or watercraft that fairly reflects its use in this state. The appraisal office shall not allocate to this state the portion of the total market value of the vessel or watercraft that fairly reflects its use in another state or country, in international waters, or beyond the Gulfward boundary of this state.

(b) The appraisal office shall make the allocation as follows:

(1) The allocable portion of the total fair market value of a vessel or other watercraft used as an instrumentality of commerce that is taxable in this state is determined by multiplying the total fair market value by a fraction, the numerator of which is the number of miles the vessel or watercraft was operated in this state during the year preceding the tax year and the denominator of which is the total number of miles the vessel or watercraft was operated during the year preceding the tax year. For purposes of this section, "vessel or other watercraft used as an instrumentality of commerce" means a vessel or other watercraft that is primarily employed in the transportation of cargo, passengers, or equipment, and that is economically employed when it is moving from point to point as a means of transportation.

(2) The allocable portion of the total fair market value of a special-purpose vessel or other watercraft not used as an instrumentality of commerce is determined by multiplying the total fair market value by a fraction, the numerator of which is the number of days the vessel or watercraft was physically located in this state during the year preceding the tax year and the denominator of which is 365. For purposes of this section, "special-purpose vessel or other watercraft not used as an instrumentality of commerce" means a vessel or other watercraft that:

(A) is designed to be transient and customarily is moved from location to location on a more or less regular basis;

(B) is economically employed when operated in a localized area or in a fixed place; and

(C) is not primarily employed to transport cargo, passengers, and equipment but rather to perform some specialized function or operation not requiring constant movement from point to point.

(c) A vessel or other watercraft used as an instrumentality of commerce or a special-purpose vessel or other watercraft not used as an instrumentality of commerce that is used outside this state and is in this state solely to be converted, repaired, stored, or inspected is presumed to be in interstate, international, or foreign commerce and not located in this state for longer than a temporary period for purposes of Sections 11.01 and 21.02.

(d) If the allocation provisions of this section do not fairly reflect the use of a vessel or other watercraft in this state, an alternate allocation formula shall be utilized if the property owner or appraisal office demonstrates that:

(1) the allocation formula specified in this section is arbitrary and unreasonable as applied to the vessel or watercraft; and

(2) the formula or indication of use proposed by the property owner or appraisal office more fairly reflects the vessel or watercraft's use in this state than that specified in this section.

(e) To receive an allocation of value under this section, a property owner must apply for the allocation on a form that substantially complies with the form prescribed by the comptroller. The application must be filed with the chief appraiser for the district in which the property to which the application applies is taxable before the approval of the appraisal records by the appraisal review board as provided by Section 41.12 of this code.

(f) The comptroller shall promulgate forms and may adopt rules consistent with the provisions of this section.

(g) A vessel or other watercraft to be used as an instrumentality of commerce or a special-purpose vessel or other watercraft not to be used as an instrumentality of commerce that is under construction in this state is presumed to be in interstate, international, or foreign commerce and not located in this state for longer than a temporary period for purposes of Sections 11.01 and 21.02.

(h) Tangible personal property in this state is presumed to be in interstate, international, or foreign commerce and not located in this state for longer than a temporary period for purposes of Sections 11.01 and 21.02 if the owner demonstrates to the chief appraiser that the owner intends to incorporate the property in or attach the property to an identified vessel or other watercraft described by Subsection (c) or (g).

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 353 (H.B. 1748), § 3, effective January 1, 1984; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 15, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 117 (H.B. 1100), § 1, effective January 1, 2002.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property

General Overview. — Tex. Tax Code Ann. §§ 21.03(a) and 21.031(a) which exempted from taxation 70 percent of the value of shrimp boats because they were out of Texas for 70 percent of the time were unconstitutional because such exemptions were not authorized by either Tex. Const. art. VIII, §§ 1 or 2 or by federal law. Aransas County Appraisal Review Bd. v. Texas

Gulf Shrimp Co., 707 S.W.2d 186, 1986 Tex. App. LEXIS 12282 (Tex. App. Corpus Christi Feb. 27, 1986, writ ref'd n.r.e.).

Sec. 21.04. Railroad Rolling Stock.

(a) A portion of the total market value of railroad rolling stock that is appraised as provided by Subchapter B of Chapter 24 of this code is taxable by each county in which the railroad operates.

(b) The portion of the total market value that is taxable by a county is determined by the provisions of Subchapter B of Chapter 24 of this code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 9, effective August 29, 1983.

Sec. 21.05. Commercial Aircraft.

(a) If a commercial aircraft that is taxable by a taxing unit is used both in this state and outside this state, the appraisal office shall allocate to this state the portion of the fair market value of the aircraft that fairly reflects its use in this state. The appraisal office shall not allocate to this state the portion of the total market value of the aircraft that fairly reflects its use beyond the boundaries of this state.

(b) The allocable portion of the total fair market value of a commercial aircraft that is taxable in this state is presumed to be the fair market value of the aircraft multiplied by a fraction, the numerator of which is the product of 1.5 and the number of revenue departures by the aircraft from Texas during the year preceding the tax year, and the denominator of which is the greater of (1) 8,760, or (2) the numerator.

(c) During the time in which any commercial aircraft is removed from air transportation service for repair, storage, or inspection, such aircraft is presumed to be in interstate, international, or foreign commerce and not located in this state for longer than a temporary period for purposes of Section 11.01 of this code.

(d) A certificated air carrier shall designate the tax situs of commercial aircraft that land in Texas as either the carrier's principal office in Texas or that Texas airport from which the carrier has the highest number of Texas departures.

(e) For purposes of this subchapter, a commercial aircraft shall mean an instrumentality of air commerce that is:

(1) primarily engaged in the transportation of cargo, passengers, or equipment for others for consideration;

(2) economically employed when it is moving from point to point as a means of transportation; and

(3) operated by a certificated air carrier. A certificated air carrier is one engaged in interstate or intrastate commerce under authority of the U.S. Department of Transportation.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 534 (H.B. 2959), § 6, effective August 28, 1989.

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CIVIL PROCEDURE
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General Overview. — Trial court that tried a case on an agreed statement of facts pursuant to Tex. R. Civ. P. 263 was found to have properly allocated the value of a taxpayer's aircraft as a business aircraft under Tex. Tax Code Ann. § 21.055 instead of as a commercial aircraft under Tex. Tax Code Ann. 21.05 because the record did not show that the aircraft's operator, the taxpayer's lessee, was a certified air carrier. SLW Aviation v. Harris County Appraisal Dist., 105 S.W.3d 99, 2003 Tex. App. LEXIS 2727 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

CONSTITUTIONAL LAW
Substantive Due Process

Scope of Protection. — Appraisal district's claim that Tex. Tax Code Ann. § 21.05, which allows a taxing authority to allocate the portion of the fair market value of an aircraft that fairly reflects its use in Texas, was, as applied, arbitrary and capricious in violation of Tex. Const. art. VIII was without merit; for the commercial aircraft to which is applies, Tex. Tax Code Ann. § 21.05(a) establishes that property taxes on these aircraft must be based on the portion of their fair market value that fairly reflects their use in Texas, and this is the statutory method for establishing the value of these aircraft for property-tax purposes. Tex-Air Helicopters, Inc. v. Galveston County Appraisal Review Bd., 76 S.W.3d 575, 2002 Tex. App. LEXIS 2075 (Tex. App. Houston 14th Dist. Mar. 21, 2002, no pet.).

EVIDENCE
Procedural Considerations
Burdens of Proof

General Overview. — Appraisal district's claim that Tex. Tax Code Ann. § 21.05, which allows a taxing authority to allocate the portion of the fair market value of an aircraft that fairly reflects its use in Texas, exempted three helicopters from taxation in violation of the null and void clause of the Texas

Constitution, Tex. Const. art. VIII, § 2(a), was without merit because the appraisal district did not prove that Texas was the only possible tax situs for these helicopters and as such did not carry its burden of proof that, as applied, Tex. Tax Code Ann. § 21.05 violated the null and void clause. Tex-Air Helicopters, Inc. v. Galveston County Appraisal Review Bd., 76 S.W.3d 575, 2002 Tex. App. LEXIS 2075 (Tex. App. Houston 14th Dist. Mar. 21, 2002, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Judgment rendered in favor of the taxpayer ordering the Harris County (Texas) Appraisal District to correct the appraisal rolls to take into account interstate allocation for two aircraft owned by the taxpayer was reversed because the taxpayer did not provide information showing entitlement to allocation at the time of rendition to be entitled to allocation under the Tax Code, and the appraisal roll could not be corrected for interstate allocation under Tex. Tax Code Ann. § 25.25(c)(3). Harris County Appraisal Dist. & Harris County Appraisal Review Bd. v. JW Charter, Inc., No. 01-02-00063-CV, 2003 Tex. App. LEXIS 2728 (Tex. App. Houston 1st Dist. Mar. 27, 2003).

Allocating the value of the taxpayer's aircraft under Tex. Tax Code Ann. § 21.055 was affirmed because the appraisal roll could not be corrected under Tex. Tax Code Ann. § 25.25(c)(3) for interstate allocation, and the taxpayer's failure to timely submit allocation documentation precluded allocation for tax years 1996, 1997, and 1998 under Tex. Tax Code Ann. § 21.05 or any other section, and for tax year 1999, the aircraft was not a commercial aircraft under Tex. Tax Code Ann. § 21.05, as the record did not show that the aircraft's operator, the taxpayer's lessee, was a certificated air carrier. SLW Aviation v. Harris County Appraisal Dist., 105 S.W.3d 99, 2003 Tex. App. LEXIS 2727 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Appraisal district did not rebut the presumption of Tex. Tax Code Ann. § 21.05(b) that its formula equaled the taxable value of the aircraft under the legal standard in § 21.05(a) by introducing evidence that would have supported a finding that the formula did not represent the portion of the fair market value that fairly reflected the helicopters' use in Texas; as a result, the trial court correctly used the formula in § 21.05(b) to calculate the allocations in § 21.05(a). Tex-Air Helicopters, Inc. v. Galveston County Appraisal Review Bd., 76 S.W.3d 575, 2002 Tex. App. LEXIS 2075 (Tex. App. Houston 14th Dist. Mar. 21, 2002, no pet.).

Tex. Tax Code Ann. § 21.05 was not a facially unconstitutional, unauthorized tax exemption in violation of Tex. Const. art. VIII, § 2, because the United States Constitution required apportionment for property that acquired a tax situs outside the taxing authority, nor was § 21.05 unconstitutional as applied because the facts surrounding helicopters owned by air transporter established a tax situs in Louisiana even though the helicopters were not taxed there. Appraisal Review Bd. v. Tex-Air Helicopters, 970 S.W.2d 530, 1998 Tex. LEXIS 90 (Tex. 1998).

PERSONAL PROPERTY TAX
Tangible Property

General Overview. — Finding in favor of the Harris County Appraisal District was proper where the Tax Code did not permit a change in the appraisal roll for interstate allocation for an aircraft belonging to the corporation and where the corporation had to show entitlement to interstate allocation. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Tex. Tax Code Ann. § 21.05, which allows a taxing authority to allocate the portion of the fair market value of an aircraft that fairly reflects its use in Texas, is not an unconstitutional tax exemption on its face. Tex-Air Helicopters, Inc. v. Galveston County Appraisal Review Bd., 76 S.W.3d 575, 2002 Tex. App. LEXIS 2075 (Tex. App. Houston 14th Dist. Mar. 21, 2002, no pet.).

Tex. Tax Code Ann. § 21.05 allocation is a manner of determining value rather than a law exempting property from taxation under Tex. Const. art. VIII, § 2(a). Tex-Air Helicopters, Inc. v. Galveston County Appraisal Review Bd., 76 S.W.3d 575, 2002 Tex. App. LEXIS 2075 (Tex. App. Houston 14th Dist. Mar. 21, 2002, no pet.).

Tex. Tax Code Ann. § 21.05(b), which allows a taxing authority to allocate the portion of the fair market value of an aircraft that fairly reflects its use in Texas, is a manner of determining value rather than a law exempting property from taxation under Tex. Const. art. VIII, § 2(a). Tex-Air Helicopters, Inc. v. Galveston County Appraisal Review Bd., 76 S.W.3d 575, 2002 Tex. App. LEXIS 2075 (Tex. App. Houston 14th Dist. Mar. 21, 2002, no pet.).

Tax appraisal district, in assessing the property tax value of helicopters that transported personnel and materials to Outer Continental Shelf platforms, did not meet its burden of proving Tex. Tax Code Ann. § 21.05 was an unconstitutional tax exemption in violation of the null-and-void clause; the district did not prove Texas was the only jurisdiction that could have taxed the helicopters; the district did not prove that § 21.05 was a statute exempting property from taxation in violation of Tex. Const. art. VIII, as opposed to a method for valuing property; the district did not rebut the presumption the § 21.05(b) formula represented the portion of the fair market value of the helicopters that fairly reflected their use in Texas; and the district did not prove application of the § 21.05(b) formula was so arbitrary and capricious that it violated Tex. Const. art. VIII Tex-Air Helicopters, Inc. v. Galveston County Appraisal Review Bd., 76 S.W.3d 575, 2002 Tex. App. LEXIS 2075 (Tex. App. Houston 14th Dist. Mar. 21, 2002, no pet.).

Airplane stored in Texas for 1997 was a commercial aircraft subject to ad valorem taxation in the county where it was located, if it was determined that in the preceding tax year the airplane was primarily engaged in the transportation of cargo, passengers, or equipment for others for consideration; was economically employed when it was moving from point to point as a means of transportation; and was operated by a certificated air carrier. Fairchild Aircraft, Inc. v. Bexar Appraisal Dist., 47 S.W.3d 577, 2001 Tex. App. LEXIS 434 (Tex. App. San Antonio Jan. 24, 2001, no pet.).

Whether aircraft was primarily engaged in the transportation of cargo, passengers, and equipment for others for consideration, whether the aircraft was economically employed when it was moving from point to point as a means of transportation, and whether the aircraft was operated by a certificated air carrier in the year preceding January 1st of the applicable tax year determined whether company's aircraft qualified as a commercial aircraft for tax purposes, the storage of the aircraft for repairs during a portion of the taxable year did not prevent the aircraft from being characterized as a commercial aircraft, and Tex. Tax Code Ann. § 21.05(c) was not an unconstitutional exemption because it merely provided the method for determining the aircraft's taxable situs. First Aircraft Leasing, Ltd. v. Bexar Appraisal Dist., 48 S.W.3d 218, 2001 Tex. App. LEXIS 432 (Tex. App. San Antonio Jan. 24, 2001, no pet.).

REAL PROPERTY TAX

General Overview. — Statute allowing taxes to be based upon property's use was a valid valuation statute and not an unconstitutional exemption from taxation. Tex-Air Helicopters v. Appraisal Review Bd., 940 S.W.2d 299, 1997 Tex. App. LEXIS 486 (Tex. App. Houston 14th Dist. Feb. 6, 1997), writ granted No. 97-0404 (Tex. 1997), aff'd, 970 S.W.2d 530, 1998 Tex. LEXIS 90 (Tex. 1998).

Sec. 21.055. Business Aircraft.

(a) If an aircraft is used for a business purpose of the owner, is taxable by a taxing unit, and is used continually outside this state, whether regularly or irregularly, the appraisal office shall allocate to this state the portion of the fair market value of the aircraft that fairly reflects its use in this state. The appraisal office shall not allocate to this state the portion of the total market value of the aircraft that fairly reflects its use beyond the boundaries of this state.

(b) The allocable portion of the total fair market value of an aircraft described by Subsection (a) is presumed to be

the fair market value of the aircraft multiplied by a fraction, the numerator of which is the number of departures by the aircraft from a location in this state during the year preceding the tax year and the denominator of which is the total number of departures by the aircraft from all locations during the year preceding the tax year.

(c) This section does not apply to a commercial aircraft as defined by Section 21.05.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 970 (H.B. 2574), § 1, effective June 18, 1999; Enacted by Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 7, effective September 1, 1999.

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CIVIL PROCEDURE
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General Overview. — Trial court that tried a case on an agreed statement of facts pursuant to Tex. R. Civ. P. 263 was found to have properly allocated the value of a taxpayer's aircraft as a business aircraft under Tex. Tax Code Ann. § 21.055 instead of as a commercial aircraft under Tex. Tax Code Ann. 21.05 because the record did not show that the aircraft's operator, the taxpayer's lessee, was a certified air carrier. SLW Aviation v. Harris County Appraisal Dist., 105 S.W.3d 99, 2003 Tex. App. LEXIS 2727 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

APPEALS
Reviewability

General Overview. — Trial court did not err in concluding that Tex. Tax Code Ann. § 25.25(c)(3) could not be used to obtain an interstate allocation of value for business personal property and that Tex. Tax Code Ann. § 21.055 could not be used as the measure to allocate the value of business aircraft used continuously outside of Texas for the tax year 1998; where the appellate court held that Tex. Tax Code Ann. § 25.25(c)(3) did not provide for such an allocation, it did not reach the leasing business's second issue pursuant to Tex. R. App. P. 47.1. CIT Leasing Corp. v. Tarrant Appraisal Review Bd., No. 2-02-294-CV, 2003 Tex. App. LEXIS 6217 (Tex. App. Fort Worth July 17, 2003).

EVIDENCE
Procedural Considerations

Rulings on Evidence. — Airplane owner did not meet its burden of establishing that it was entitled to property tax allocation, regardless of excluded evidence of flight logs; although the excluded evidence showed departures from Texas, it did not establish the purpose of these trips or how much time the aircraft spent outside Texas. A/K Serv., LLC v. Harris County Appraisal Dist., No. 01-08-00169-CV, 2008 Tex. App. LEXIS 8566 (Tex. App. Houston 1st Dist. Nov. 13, 2008).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Because it is the chief appraiser who determines the market value of taxable personal property and who calculates the portion of the fair market value of an aircraft that fairly reflects its use in Texas, and because these calculations must generally be done within the time required for the chief appraiser to prepare the appraisal records, supporting information must be submitted by the taxpayer seeking allocation under Tex. Tax Code Ann. § 21.02(a) along with the rendition. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Tex. Tax Code Ann. § 21.055(a)-(b) implies that a corporation seeking allocation for its business aircraft under Tex. Tax Code Ann. § 21.03(a) must provide information showing entitlement to allocation at the time of rendition. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Allocating the value of the taxpayer's aircraft under Tex. Tax Code Ann. § 21.055 was affirmed because the appraisal roll could not be corrected under Tex. Tax Code Ann. § 25.25(c)(3) for interstate allocation, and the taxpayer's failure to timely submit allocation documentation precluded allocation for tax years 1996, 1997, and 1998 under Tex. Tax Code Ann. § 21.05 or any other section, and for tax year 1999, the aircraft was not a commercial aircraft under Tex. Tax Code Ann. § 21.05, as the record did not show that the aircraft's operator, the taxpayer's lessee, was a certificated air carrier. SLW Aviation v. Harris County Appraisal Dist., 105 S.W.3d 99, 2003 Tex. App. LEXIS 2727 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

PERSONAL PROPERTY TAX
Tangible Property

General Overview. — Determination of whether a taxpayer's aircraft was a commercial aircraft under Tex. Tax Code Ann. 21.05 instead of a business aircraft under Tex. Tax Code Ann. § 21.055 rested upon a determination as to whether the aircraft's operator, the taxpayer's lessee, was a certified air carrier. SLW Aviation v. Harris County Appraisal Dist., 105 S.W.3d 99, 2003 Tex. App. LEXIS 2727 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

IMPOSITION OF TAX. — Tex. Tax Code Ann. § 21.055 implicitly provided that taxpayers had to timely render their aircraft before they could receive an allocation entitlement, and Tex. Tax Code Ann. § 22.28 was enacted to encourage timely filings; the taxpayer rendered its property after the statutory deadline for tax years 2005 and 2006 and waived its right to interstate allocation. Sturgis Air One, L.L.C. v. Harris County Appraisal Dist., 351 S.W.3d 381, 2011 Tex. App. LEXIS 2107 (Tex. App. Houston 14th Dist. Mar. 24, 2011, no pet.).

Aircraft was subject to ad valorem taxation for the year 2002 under Tex. Tax Code Ann. § 11.01(c)(3) due to nine or ten departures from Texas and servicing in the state in 2001; the word "continually" meant the property was present in the state, though not necessarily exclusively, for some period of the tax year. An aircraft could have been used continually outside of Texas and still have been used in Texas. Alaska Flight Servs., LLC v. Dallas Cent. Appraisal Dist., 261 S.W.3d 884, 2008 Tex. App. LEXIS 6504 (Tex. App. Dallas Aug. 26, 2008, no pet.).

LIMITATIONS. — Airplane owner did not meet its burden of establishing that it was entitled to property tax allocation,

regardless of excluded evidence of flight logs; although the excluded evidence showed departures from Texas, it did not establish the purpose of these trips or how much time the aircraft spent outside Texas. A/K Serv., LLC v. Harris County Appraisal Dist., No. 01-08-00169-CV, 2008 Tex. App. LEXIS 8566 (Tex. App. Houston 1st Dist. Nov. 13, 2008).

TRANSPORTATION LAW
Air Transportation
General Overview. — Aircraft was subject to ad valorem taxation for the year 2002 under Tex. Tax Code Ann. § 11.01(c)(3) due to nine or ten departures from Texas and servicing in the state in 2001; the word "continually" meant the property was present in the state, though not necessarily exclusively, for some period of the tax year. An aircraft could have been used continually outside of Texas and still have been used in Texas. Alaska Flight Servs., LLC v. Dallas Cent. Appraisal Dist., 261 S.W.3d 884, 2008 Tex. App. LEXIS 6504 (Tex. App. Dallas Aug. 26, 2008, no pet.).

Sec. 21.06. Intangible Property Generally.

(a) Except as provided by Sections 21.07 through 21.09 of this code, intangible property is taxable by a taxing unit if the owner of the property resides in the unit on January 1, unless the property normally is used in this state for business purposes outside the unit. In that event, the intangible property is taxable by each taxing unit in which the property normally is used for business purposes.

(b) Depositing intangible property with an agency of the state pursuant to a law requiring or authorizing the deposit is not using it for a business purpose at the depository.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 21.07. Intangibles of Certain Transportation Businesses.

(a) A portion of the total intangible value of a transportation business whose intangibles are appraised as provided by Subchapter A of Chapter 24 of this code is taxable by each county in which the business operates.

(b) The portion of the total value that is taxable as provided by Subsection (a) of this section is determined by the provisions of Subchapter A of Chapter 24 of this code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 10, effective August 29, 1983.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Intangible Property
General Overview. — A tax assessed by a county and State against intangible assets of a foreign corporation under former Tex. Rev. Civ. Stat. Ann. art. 7105 did not constitute an undue burden on interstate commerce in violation of U.S. Const. art. I, § 8 because the county and State provided and maintained the public highway system that the foreign corporation travelled on to conduct its business. Denver-Albuquerque Motor Transport, Inc. v. State, 584 S.W.2d 738, 1979 Tex. App. LEXIS 3916 (Tex. Civ. App. Amarillo July 13, 1979, no writ).

Sec. 21.08. Intangibles of Certain Financial Institutions.

(a) The taxable situs of intangible property owned by an insurance company incorporated under the laws of this state is determined as provided by Article 4.01, Insurance Code.

(b) The taxable situs of intangible property owned by a savings and loan association is determined as provided by Section 89.003, Finance Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 7.89, effective September 1, 1999.

Sec. 21.09. Allocation Application.

(a) To receive an allocation authorized by Section 21.03, 21.031, 21.05, or 21.055, a person claiming the allocation must apply for the allocation. To apply for an allocation, a person must file an allocation application form with the chief appraiser in the appraisal district in which the property subject to the claimed allocation has taxable situs.

(b) **[Effective until January 1, 2020]** A person claiming an allocation must apply for the allocation each year the person claims the allocation. A person claiming an allocation must file a completed allocation application form before April 1 and must provide the information required by the form. If the property was not on the appraisal roll in the preceding year, the deadline for filing the allocation application form is extended to the 30th day after the date of receipt of the notice of appraised value required by Section 25.19(a)(3). For good cause shown, the chief appraiser shall extend the deadline for filing an allocation application form by written order for a period not to exceed 30 days.

(b) **[Effective January 1, 2020]** A person claiming an allocation must apply for the allocation each year the person claims the allocation. A person claiming an allocation must file a completed allocation application form before May 1 and must provide the information required by the form. If the property was not on the appraisal roll in the preceding year, the deadline for filing the allocation application form is extended to the 30th day after the date of receipt of the notice of appraised value required by Section 25.19(a)(3). For good cause shown, the chief appraiser shall extend the deadline for filing an allocation application form by written order for a period not to exceed 30 days.

(c) The comptroller shall prescribe the contents of the allocation application form and shall ensure that the form requires an applicant to provide the information necessary to determine the validity of the allocation claim.

(d) If the chief appraiser learns of any reason indicating that an allocation previously allowed should be canceled, the chief appraiser shall investigate. If the chief appraiser determines that the property is not entitled to an allocation, the chief appraiser shall cancel the allocation and deliver written notice of the cancellation not later than the fifth day after the date the chief appraiser makes the cancellation. A person may protest the cancellation of an allocation.

(e) The filing of a rendition under Chapter 22 is not a condition of qualification for an allocation.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 10, effective June 14, 2013; am. Acts 2017, 85th Leg., ch. 357 (H.B. 2228), § 2, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 785 (H.B. 1815), § 1, effective January 1, 2020.

Sec. 21.10. Late Application for Allocation.

(a) The chief appraiser shall accept and approve or deny an application for an allocation under Section 21.09 after the deadline for filing the application has passed if the application is filed before the date the appraisal review board approves the appraisal records.

(b) If the application is approved, the property owner is liable to each taxing unit for a penalty in an amount equal to 10 percent of the difference between the amount of tax imposed by the taxing unit on the property without the allocation and the amount of tax imposed on the property with the allocation.

(c) The chief appraiser shall make an entry on the appraisal records for the property indicating the property owner's liability for the penalty and shall deliver a written notice of imposition of the penalty, explaining the reason for its imposition, to the property owner.

(d) The tax assessor for a taxing unit that taxes the property shall add the amount of the penalty to the property owner's tax bill, and the tax collector for the unit shall collect the penalty at the time and in the manner the collector collects the tax. The amount of the penalty constitutes a lien against the property against which the penalty is imposed, as if the penalty were a tax, and accrues penalty and interest in the same manner as a delinquent tax.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 10, effective June 14, 2013.

Secs. 21.11 to 21.20. [Reserved for expansion].

Sec. 21.21. Definition [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 978 (H.B. 785), § 25(3), effective September 1, 1995.

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 823 (H.B. 1155), § 2, effective September 1, 1981; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 16, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 13, effective September 1, 1993.

Sec. 21.22. Record of Movement [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 978 (H.B. 785), § 25(3), effective September 1, 1995.

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 823 (H.B. 1155), § 2, effective September 1, 1981; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 16, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 13, effective September 1, 1993.

Sec. 21.23. Record of Movement [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 978 (H.B. 785), § 25(3), effective September 1, 1995.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 47, effective August 14, 1981; am. Acts 1981, 67th Leg., ch. 823 (H.B. 1155), § 2, effective September 1, 1981; am. Acts 1983, 68th Leg., ch. 868 (H.B. 1308), § 1, effective September 1, 1983.

Sec. 21.24. Penalty for Failure to Record or Report Movement [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 978 (H.B. 785), § 25(3), effective September 1, 1995.

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 823 (H.B. 1155), § 2, effective September 1, 1981; am. Acts 1983, 68th Leg., ch. 868 (H.B. 1308), § 2, effective September 1, 1983.

Sec. 21.25. Exemption [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 978 (H.B. 785), § 25(3), effective September 1, 1995.

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 823 (H.B. 1155), § 2, effective September 1, 1981; am. Acts 1989, 71st Leg., ch. 1039 (H.B. 863), § 4.03, effective September 1, 1989.

CHAPTER 22

Renditions and Other Reports

Subchapter A. Information from Taxpayer

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22.01.	Rendition Generally.
22.02.	Rendition of Property Losing Exemption During Tax Year or for Which Exemption Application Is Denied.
22.03.	Report of Decreased Value.
22.04.	Report by Bailee, Lessee, or Other Possessor.
22.05.	Rendition by Railroad.
22.06.	Rendition by Bank [Repealed].
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Subchapter B. Requirements and Procedures

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22.21.	Publicizing Requirements.
22.22.	Method for Requiring Rendition or Report.
22.23.	Filing Date.
22.24.	Rendition and Report Forms.
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22.28.	Penalty For Delinquent Report; Penalty Collection Procedures.
22.29.	Penalty for Fraud or Intent to Evade Tax.
22.30.	Waiver of Penalty.
22.31 to 22.40.	[Reserved].

Subchapter C. Other Reports

22.41.	Report of Political Subdivision Actions Affecting Real Property Values.

Subchapter A

Information from Taxpayer

Sec. 22.01. Rendition Generally.

(a) Except as provided by Chapter 24, a person shall render for taxation all tangible personal property used for the production of income that the person owns or that the person manages and controls as a fiduciary on January 1. A rendition statement shall contain:

(1) the name and address of the property owner;

(2) a description of the property by type or category;

(3) if the property is inventory, a description of each type of inventory and a general estimate of the quantity of each type of inventory;

(4) the physical location or taxable situs of the property; and

(5) the property owner's good faith estimate of the market value of the property or, at the option of the property owner, the historical cost when new and the year of acquisition of the property.

(b) When required by the chief appraiser, a person shall render for taxation any other taxable property that he owns or that he manages and controls as a fiduciary on January 1.

(c) A person may render for taxation any property that he owns or that he manages and controls as a fiduciary on January 1, although he is not required to render it by Subsection (a) or (b) of this section.

(c-1) In this section:

(1) "Secured party" has the meaning assigned by Section 9.102, Business & Commerce Code.

(2) "Security interest" has the meaning assigned by Section 1.201, Business & Commerce Code.

(c-2) With the consent of the property owner, a secured party may render for taxation any property of the property owner in which the secured party has a security interest on January 1, although the secured party is not required to render the property by Subsection (a) or (b). This subsection applies only to property that has a historical cost when new of more than $50,000.

(d) A fiduciary who renders property shall indicate his fiduciary capacity and shall state the name and address of the owner.

(d-1) A secured party who renders property under Subsection (c-2) shall indicate the party's status as a secured party and shall state the name and address of the property owner. A secured party is not liable for inaccurate information included on the rendition statement if the property owner supplied the information or for failure to timely file the rendition statement if the property owner failed to promptly cooperate with the secured party. A secured party may rely on information provided by the property owner with respect to:

(1) the accuracy of information in the rendition statement;

(2) the appraisal district in which the rendition statement must be filed; and

(3) compliance with any provisions of this chapter that require the property owner to supply additional information.

(e) Notwithstanding Subsections (a) and (b), a person is not required to render for taxation cotton that:

(1) the person manages and controls as a fiduciary;

(2) is stored in a warehouse for which an exemption for cotton has been granted under Section 11.437; and

(3) the person intends to transport outside of the state within the time permitted by Article VIII, Section 1-j, of the Texas Constitution for cotton to qualify for an exemption under that section.

(f) Notwithstanding Subsections (a) and (b), a rendition statement of a person who owns tangible personal property used for the production of income located in the appraisal district that, in the owner's opinion, has an aggregate value of less than $20,000 is required to contain only:

(1) the name and address of the property owner;
(2) a general description of the property by type or category; and
(3) the physical location or taxable situs of the property.

(g) A person's good faith estimate of the market value of the property under Subsection (a)(5) is solely for the purpose of compliance with the requirement to render tangible personal property and is inadmissible in any subsequent protest, hearing, appeal, suit, or other proceeding under this title involving the property, except for:
(1) a proceeding to determine whether the person complied with this section;
(2) a proceeding under Section 22.29(b); or
(3) a protest under Section 41.41.

(h) If the property that is the subject of the rendition is regulated by the Public Utility Commission of Texas, the Railroad Commission of Texas, the federal Surface Transportation Board, or the Federal Energy Regulatory Commission, the owner of the property is considered to have complied with the requirements of this section if the owner provides to the chief appraiser, on written request of the chief appraiser, a copy of the annual regulatory report covering the property and sufficient information to enable the chief appraiser to allocate the value of the property among the appropriate taxing units for which the appraisal district appraises property.

(i) Subsection (a) does not apply to a property owner whose property is subject to appraisal by a third party retained by the appraisal district if the property owner provides information substantially equivalent to that required by Subsection (a) regarding the property directly to the third party appraiser.

(j) Subsection (a) does not apply to property that is exempt from taxation.

(k) Notwithstanding Subsections (a) and (b), an individual who has been granted or has applied for an exemption from taxation under Section 11.254 for a motor vehicle the individual owns is not required to render the motor vehicle for taxation.

(*l*) If the information contained in the most recent rendition statement filed by a person in a prior tax year is accurate with respect to the current tax year, the person may comply with the requirements of Subsection (a) by filing a rendition statement on a form prescribed or approved by the comptroller under Section 22.24(c) on which the person has checked the appropriate box to affirm that the information continues to be complete and accurate.

(m) Notwithstanding Subsections (a) and (b), a person is not required to render for taxation personal property appraised under Section 23.24.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 48, effective January 1, 1982; am. Acts 1993, 73rd Leg., ch. 779 (S.B. 1487), § 4, effective January 1, 1994; am. Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 3, effective January 1, 2004; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 15.001(b), effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 941 (H.B. 809), § 1, effective January 1, 2006; am. Acts 2007, 80th Leg., ch. 602 (H.B. 264), § 1, effective January 1, 2008; am. Acts 2007, 80th Leg., ch. 842 (H.B. 1022), § 2, effective November 6, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 27.002(33), effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 706 (H.B. 2814), § 3, effective January 1, 2010; am. Acts 2011, 82nd Leg., ch. 234 (H.B. 533), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 1215 (S.B. 1508), § 1, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 11, effective January 1, 2014.

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GOVERNMENTS
Legislation

Interpretation. — Because the rendition provisions in Tex. Tax Code Ann. § 22.01(a) and (b) (a person "shall" render for taxation) were construed as mandatory, rather than directory as maintained by taxpayers, a tax appraisal district could judicially compel non-rendering taxpayers, through injunction, to mandatorily render their income producing personal property for taxation. Robinson v. Budget Rent-A-Car Sys., 51 S.W.3d 425, 2001 Tex. App. LEXIS 3951 (Tex. App. Houston 1st Dist. June 14, 2001, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

ASSESSMENTS. — Appraisal district could add omitted personal property that had been disclosed in an amnesty rendition after the assessment date, and it did not act retroactively because it began adding the property in the same tax year. Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 2014 Tex. App. LEXIS 3030 (Tex. App. El Paso Mar. 19, 2014, no pet.).

COLLECTION. — Because a trust still retained the full acres on the record date for purposes of property tax assessments in 1997, the entire tax bill for that year was to be mailed to the trust under

Tex. Tax Code Ann. §§ 22.01, 25.02, 32.07. Old Farms Owners Ass'n v. Houston Indep. Sch. Dist., 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

PERSONAL PROPERTY TAX
Intangible Property

Imposition of Tax. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

TANGIBLE PROPERTY

General Overview. — Nothing in the Tax Code indicates that failure to render property under Tex. Tax Code Ann. § 22.01 constitutes a forfeiture of the right to due process; there is no authority cited for the argument that a property owner's failure to render property constitutes a waiver of the property owner's constitutional right to due process, and in the absence of any supporting authority, the court declines to hold that the notice and hearing requirements of the Tax Code are contingent on the filing of a rendition statement. Thus, taxing entities' argument that a taxpayer waived its right to due process by failing to render certain radio towers was without merit. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

In case law, taxpayers had notice of an exemption removal under Tex. Tax Code Ann. § 11.43(i) and the penalty for failure to file a timely application for the exemption was the removal of the exemption to which they were not entitled; this differed from the instant case, where the only requirement the taxpayer failed to perform, filing a rendition under Tex. Tax Code Ann. § 22.01, did not result in the imposition of taxes without due process or the removal of any exemption to which the taxpayer was entitled. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

There is no authority cited in support of an argument that a property owner forfeits its right to due process by not recording its ownership of the subject property, and if the evidence established that a taxpayer affirmatively attempted to hide its ownership of the property and avoid paying taxes, an argument could be made that the taxpayer intentionally relinquished its constitutional right to due process; in this case, there was no evidence that a taxpayer attempted to hide its ownership of the radio towers, and instead the evidence established that the taxpayer made a diligent effort to record its interest in the property but was unsuccessful due to a software problem, such that the court refused to hold that the taxpayer forfeited or waived its right to due process. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Finding in favor of the Harris County Appraisal District was proper where the Tax Code did not permit a change in the appraisal roll for interstate allocation for an aircraft belonging to the corporation, and where the corporation had to show entitlement to interstate allocation. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

IMPOSITION OF TAX. — Taxpayer waived its right to allocation by failing to file any allocation information contemporaneously with a rendition statement. The taxpayer's August 22, 2006 letter did not constitute a rendition statement because it was untimely filed and no allocation information was filed with the letter. Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741, 2009 Tex. App. LEXIS 2097 (Tex. App. Houston 1st Dist. Mar. 26, 2009, no pet.).

Nothing in the Texas Tax Code requires nonincome-producing tangible personal property to be rendered for taxation before the property is taxable; therefore, a taxpayer's assertion that his manufactured home was not subject to ad valorem taxes because it was not rendered for taxation and it was not income-producing was rejected; Tex. Tax Code Ann. § 11.01, Tex. Tax Code Ann. § 11.14 and Tex. Const. art. VIII, § 11 were contrary to that proposition. Firman v. Everman Indep. Sch. Dist., No. 2-06-392-CV, 2007 Tex. App. LEXIS 7101 (Tex. App. Fort Worth Aug. 31, 2007), reh'g denied, No. 2-06-392-CV, 2007 Tex. App. LEXIS 7870 (Tex. App. Fort Worth Sept. 27, 2007).

REAL PROPERTY TAX
Assessment & Valuation

Valuation. — In appellee's action for nuisance and trespass, the trial court did not err under Tex. Tax Code Ann. § 22.01(a)(5) in excluding evidence of the appraised value of appellee's property; appellee moved at trial that appellant's exhibit was a printout from a web site with numerous handwritten writings that had not been property authenticated. Pasquinelli Portrait Homes-Durango Ridge LP v. Securlock at Bedford, Ltd., No. 02-11-00392-CV, 2013 Tex. App. LEXIS 3990 (Tex. App. Fort Worth Mar. 28, 2013), app. dismissed, op. withdrawn, No. 02-11-00392-CV, 2013 Tex. App. LEXIS 9898 (Tex. App. Fort Worth Aug. 8, 2013).

ATTORNEY GENERAL OPINIONS

Analysis

Personal Property Tax.
Subpoena Power.

Personal Property Tax.

Section 22.01(k) of the Tax Code, exempts cars and light trucks that are used in the course of the owner's occupation or profession as well as for personal purposes from rendition for taxation, but that legislation did not establish that such personal property is exempt from taxation. 2006 Tex. Op. Att'y Gen. GA-0484.

Subpoena Power.

An appraisal district has no authority to issue subpoenas duces tecum; an appraisal review board has no authority to issue subpoenas duces tecum when no board proceeding has been instituted. 1988 Tex. Op. Att'y Gen. JM-981.

Sec. 22.02. Rendition of Property Losing Exemption During Tax Year or for Which Exemption Application Is Denied.

(a) If an exemption applicable to a property on January 1 terminates during the tax year, the person who owns or acquires the property on the date applicability of the exemption terminates shall render the property for taxation within 30 days after the date of termination.

(b) If the chief appraiser denies an application for an exemption for property described by Section 22.01(a), the person who owns the property on the date the application is denied shall render the property for taxation in the manner provided by Section 22.01 within 30 days after the date of denial.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 4, effective January 1, 2004.

Sec. 22.03. Report of Decreased Value.

(a) A person who believes the appraised value of his property decreased during the preceding tax year for any reason other than normal depreciation may file an information report describing the property involved and stating the nature and cause of the decrease.

(b) Except as provided by Subsection (d) of this section, before determining the appraised value of property that is the subject of a completed and timely filed report as provided by Subsection (a) of this section, the chief appraiser must view the property to verify any reported change in appraised value and its cause and nature. The person who views the property shall note on the back of the property owner's report his name, the date he viewed the property, and his determination of any decrease in appraised value and its cause and nature.

(c) The chief appraiser shall deliver a written notice to the property owner of the determination made as provided by Subsection (b) of this section.

(d) Before determining the appraised value of oil and gas property that is the subject of a completed and timely filed report as provided by Subsection (a) of this section, the chief appraiser must review the appraisal of the property to verify any reported change in appraised value and its cause and nature. The person who reviews the appraisal of the property shall note on the back of the property owner's report his name, the date he reviewed the appraisal of the property, and his determination of any decrease in appraised value and its cause and nature.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 49, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 315 (S.B. 67), §§ 1, 2, effective January 1, 1986.

Sec. 22.04. Report by Bailee, Lessee, or Other Possessor.

(a) When required by the chief appraiser, a person shall file a report listing the name and address of each owner of property that is in his possession or under his management on January 1 by bailment, lease, consignment, or other arrangement.

(b) When required by the chief appraiser, a person who leases or otherwise provides space to another for storage of personal property shall file an information report stating the name and address of each person to whom he leased or otherwise provided storage space on January 1.

(c) This section does not apply to a warehouse for which an exemption for cotton has been granted under Section 11.437.

(d) This section does not apply to a motor vehicle that on January 1 is located at a place of business of a person who holds a wholesale motor vehicle auction general distinguishing number issued by the Texas Department of Motor Vehicles under Chapter 503, Transportation Code, for that place of business, and that:

(1) has not acquired taxable situs under Section 21.02(a)(1) in a taxing unit that participates in the appraisal district because the vehicle is described by Section 21.02(d);

(2) is offered for sale by a dealer who holds a dealer's general distinguishing number issued by the Texas Department of Motor Vehicles under Chapter 503, Transportation Code, and whose inventory of motor vehicles is subject to taxation in the manner provided by Sections 23.121 and 23.122; or

(3) is collateral possessed by a lienholder and offered for sale in foreclosure of a security interest.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 50, effective January 1, 1982; am. Acts 1993, 73rd Leg., ch. 779 (S.B. 1487), § 5, effective January 1, 1994; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 15.001(c), effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), § 9, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 933 (H.B. 3097), § 3K.02, effective September 1, 2009.

Sec. 22.05. Rendition by Railroad.

(a) In addition to other reports required by Chapter 24 of this code, a railroad corporation shall render the property the railroad corporation owns or possesses as of January 1.

(b) The rendition shall:

(1) list all real property other than the property covered by Subdivision (2) of this subsection;

(2) list the number of miles of railroad together with the market value per mile, which value shall include right-of-way, roadbed, superstructure, and all buildings and improvements used in the operation of the railroad; and

(3) list all personal property as required by Section 22.01 of this code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 51, effective January 1, 1982.

Sec. 22.06. Rendition by Bank [Repealed].

Repealed by Acts 1984, 68th Leg., 2nd C.S., ch. 31 (H.B. 122), Art. 3, part A, § 2, effective January 1, 1985.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 22.07. Inspection of Property.

(a) The chief appraiser or his authorized representative may enter the premises of a business, trade, or profession and inspect the property to determine the existence and market value of tangible personal property used for the production of income and having a taxable situs in the district.

(b) An inspection under this section must be during normal business hours or at a time mutually agreeable to the chief appraiser or his representative and the person in control of the premises.

(c) The chief appraiser may request, either in writing or by electronic means, that the property owner provide a statement containing supporting information indicating how the value rendered under Section 22.01(a)(5) was determined. The statement must:

(1) summarize information sufficient to identify the property, including:

(A) the physical and economic characteristics relevant to the opinion of value, if appropriate; and

(B) the source of the information used;

(2) state the effective date of the opinion of value; and

(3) explain the basis of the value rendered. If the property owner is a business with 50 employees or less, the property owner may base the estimate of value on the depreciation schedules used for federal income tax purposes.

(d) The property owner shall deliver the statement to the chief appraiser, either in writing or by electronic means, not later than the 21st day after the date the chief appraiser's request is received. The owner's statement is solely for informational purposes and is not admissible in evidence in any subsequent protest, suit, appeal, or other proceeding under this title involving the property other than:

(1) a proceeding to determine whether the property owner has complied with this section;

(2) a proceeding under Section 22.29(b); or

(3) a protest under Section 41.41.

(e) A statement provided under this section is confidential information and may not be disclosed, except as provided by Section 22.27.

(f) Failure to comply with this section in a timely manner is considered to be a failure to timely render under Section 22.01 and penalties as described in Section 22.28 shall be applied by the chief appraiser.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 52, effective January 1, 1982; am. Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 5, effective January 1, 2004.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation

General Overview. — Because Tex. Tax Code Ann. § 22.07 gave a chief appraiser for a county appraisal district the authority to enter the premises of a business to inspect the property, to determine the existence and market value of tangible personal property used for production of income, and because that was the nature of the appraiser's entry upon the business' property, damages could not be sustained against appraiser. Hawkins v. Groom, 893 S.W.2d 123, 1995 Tex. App. LEXIS 45 (Tex. App. Eastland Jan. 12, 1995, no writ).

Secs. 22.08 to 22.20. [Reserved for expansion].

Subchapter B

Requirements and Procedures

Sec. 22.21. Publicizing Requirements.

Each year the comptroller and each chief appraiser shall publicize in a manner reasonably designed to notify all property owners the requirements of the law relating to filing rendition statements and property reports and of the availability of forms.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 53, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 17, effective September 1, 1991.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Tangible Property

Imposition of Tax. — Taxpayer waived its right to allocation by failing to file any allocation information contemporaneously with a rendition statement. The taxpayer's August 22, 2006 letter did not constitute a rendition statement because it was untimely filed and no allocation information was filed with the letter. Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741, 2009 Tex. App. LEXIS 2097 (Tex. App. Houston 1st Dist. Mar. 26, 2009, no pet.).

Sec. 22.22. Method for Requiring Rendition or Report.

The chief appraiser may require a rendition statement or property report he is authorized to require by this chapter

by delivering written notice that the statement or report is required to the person responsible for filing it. He shall attach to the notice a copy of the appropriate form.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 53, effective January 1, 1982.

Sec. 22.23. Filing Date.

(a) Rendition statements and property reports must be delivered to the chief appraiser after January 1 and not later than April 15, except as provided by Section 22.02.

(b) On written request by the property owner, the chief appraiser shall extend a deadline for filing a rendition statement or property report to May 15. The chief appraiser may further extend the deadline an additional 15 days upon good cause shown in writing by the property owner.

(c) **[Effective until January 1, 2020]** Notwithstanding Subsections (a) and (b), rendition statements and property reports for property located in an appraisal district in which one or more taxing units exempt property under Section 11.251 must be delivered to the chief appraiser not later than April 1. On written request by the property owner, the chief appraiser shall extend the deadline provided by this subsection for filing a rendition statement or property report to May 1. The chief appraiser may further extend the deadline an additional 15 days for good cause shown in writing by the property owner.

(c) **[Effective January 1, 2020]** [Repealed.]

(d) **[Effective until January 1, 2020]** Notwithstanding any other provision of this section, rendition statements and property reports for property regulated by the Public Utility Commission of Texas, the Railroad Commission of Texas, the federal Surface Transportation Board, or the Federal Energy Regulatory Commission must be delivered to the chief appraiser not later than April 30, except as provided by Section 22.02. The chief appraiser may extend the filing deadline 15 days for good cause shown in writing by the property owner.

(d) **[Effective January 1, 2020]** Notwithstanding any other provision of this section, rendition statements and property reports required to be filed by a property owner regulated by the Public Utility Commission of Texas, the Railroad Commission of Texas, the federal Surface Transportation Board, or the Federal Energy Regulatory Commission must be delivered to the chief appraiser not later than April 30, except as provided by Section 22.02. On written request by the property owner, the chief appraiser shall extend the filing deadline to May 15. The chief appraiser may further extend the deadline an additional 15 days for good cause shown in writing by the property owner.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 53, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 312 (H.B. 2301), § 1, effective June 7, 1985; am. Acts 1987, 70th Leg., ch. 185 (S.B. 618), § 1, effective January 1, 1988; am. Acts 1993, 73rd Leg., ch. 924 (H.B. 1016), § 1, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 20, effective January 1, 1998; am. Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 6, effective September 1, 2003; am. Acts 2017, 85th Leg., ch. 357 (H.B. 2228), § 3, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), §§ 27, 91(4), effective January 1, 2020.

NOTES TO DECISIONS

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Tax Law
•State & Local Taxes
••Personal Property Tax
•••Tangible Property
••••General Overview
••••Imposition of Tax

TAX LAW
State & Local Taxes
Personal Property Tax
Tangible Property

General Overview. — Because the questions the taxpayers raised had already been dedicated to taxing authorities to decide pursuant to Tex. Tax Code Ann. §§ 22.23(c), 41.41(a)(1), (3), (9), 41.411(a), the taxpayers could not collaterally attack the decisions of the authorities on the grounds that they were excused from exhausting administrative remedies because the matters were pure questions of law. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

Tex. Tax Code Ann. § 22.23(c) abrogated taxing authorities' powers to assess back taxes for omitted property for tax years 2001 and 2002, and the court found no language in the statute that repealed the authorities' power under Tex. Tax Code Ann. §§ 25.21, 25.23 to include previously omitted personal property in the appraisal roll for the current tax year, 2003; thus, the authorities acted within statutory authority under all these sections when they augmented the appraisal roll to reflect omitted property the taxpayers rendered pursuant to Tex. Tax Code Ann. § 22.23(c), and Tex. Tax Code Ann. § 25.25 did not apply to this case. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

IMPOSITION OF TAX. — Taxpayer waived its right to allocation by failing to file any allocation information contemporaneously with a rendition statement. The taxpayer's August 22, 2006 letter did not constitute a rendition statement because it was untimely filed and no allocation information was filed with the letter. Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741, 2009 Tex. App. LEXIS 2097 (Tex. App. Houston 1st Dist. Mar. 26, 2009, no pet.).

Sec. 22.24. Rendition and Report Forms.

(a) A person required to render property or to file a report as provided by this chapter shall use a form that substantially complies with the appropriate form prescribed or approved by the comptroller.

(b) A person filing a rendition or report shall include all information required by Section 22.01.

(c) The comptroller may prescribe or approve different forms for different kinds of property but shall ensure that each

form requires a property owner to furnish the information necessary to identify the property and to determine its ownership, taxability, and situs. Each form must include a box that the property owner may check to permit the property owner to affirm that the information contained in the most recent rendition statement filed by the property owner in a prior tax year is accurate with respect to the current tax year in accordance with Section 22.01(*l*). A form may not require but may permit a property owner to furnish information not specifically required by this chapter to be reported. In addition, a form prescribed or approved under this subsection must contain the following statement in bold type: "If you make a false statement on this form, you could be found guilty of a Class A misdemeanor or a state jail felony under Section 37.10, Penal Code."

(d) Except as required by Section 22.01(a), a rendition or report form shall permit but not require a property owner to state the owner's good faith estimate of the market value of the property.

(e) To be valid, a rendition or report must be sworn to before an officer authorized by law to administer an oath. The comptroller may not prescribe or approve a rendition or report form unless the form provides for the person filing the form to swear that the information provided in the rendition or report is true and accurate to the best of the person's knowledge and belief. This subsection does not apply to a rendition or report filed by a secured party, as defined by Section 22.01, the property owner, an employee of the property owner, or an employee of a property owner on behalf of an affiliated entity of the property owner.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 54, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 18, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 316 (H.B. 1879), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 463 (S.B. 1359), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 7, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 602 (H.B. 264), § 2, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 1215 (S.B. 1508), § 2, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 12, effective January 1, 2014.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Tangible Property

General Overview. — Finding in favor of the Harris County Appraisal District was proper where the Tax Code did not permit a change in the appraisal roll for interstate allocation for an aircraft belonging to the corporation and where the corporation had to show entitlement to interstate allocation; the corporation had to provide supporting information when submitting a rendition form to claim entitlement to allocation Tex. Tax Code Ann. §§ 21.03(b), 22.24(c), 22.24(b) and 34 Tex. Admin. Code § 9.4033(e). Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Sec. 22.25. Place and Manner of Filing.

A rendition statement or property report required or authorized by this chapter must be filed with the chief appraiser for the district in which the property listed in the statement or report is taxable.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 55, effective January 1, 1982.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Tangible Property

General Overview. — Finding in favor of the Harris County Appraisal District was proper where the Tax Code did not permit a change in the appraisal roll for interstate allocation for an aircraft belonging to the corporation, and where the corporation had to show entitlement to interstate allocation. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Sec. 22.26. Signature.

(a) Each rendition statement or property report required or authorized by this chapter must be signed by an individual who is required to file the statement or report.

(b) When a corporation is required to file a statement or report, an officer of the corporation or an employee or agent who has been designated in writing by the board of directors or by an authorized officer to sign in behalf of the corporation must sign the statement or report.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 22.27. Confidential Information.

(a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the

information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information;

(3) to the comptroller and the comptroller's employees authorized by the comptroller in writing to receive the information or to an assessor or a chief appraiser if requested in writing;

(4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the statement or report or the owner of the property that is a subject of the statement, report, or information is a party;

(5) for statistical purposes if in a form that does not identify specific property or a specific property owner;

(6) if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain;

(7) to a taxing unit or its legal representative that is engaged in the collection of delinquent taxes on the property that is the subject of the information;

(8) to an employee or agent of a taxing unit responsible for auditing, monitoring, or reviewing the operations of an appraisal district; or

(9) to an employee or agent of a school district that is engaged in the preparation of a protest of the comptroller's property value study in accordance with Section 403.303, Government Code.

(c) A person who legally has access to a statement or report or to other information made confidential by this section or who legally obtains the confidential information commits a Class B misdemeanor if he knowingly:

(1) permits inspection of the statement or report by a person not authorized to inspect it by Subsection (b) of this section; or

(2) discloses the confidential information to a person not authorized to receive the information by Subsection (b) of this section.

(d) No person who directly or indirectly provides information to the comptroller or appraisal office about real or personal property sales prices, either as set forth in Subsection (a) of this section under a promise of confidentiality, or otherwise, shall be liable to any other person as the result of providing such information.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 56, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 148 (S.B. 515), § 1, effective September 1, 1985; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), §§ 19, 20, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 1.1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 316 (H.B. 1879), § 2, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 5, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 1153 (H.B. 2941), § 2, effective June 19, 2009.

NOTES TO DECISIONS

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Civil Procedure
•Discovery
••Methods
•••Requests for Production & Inspection
Tax Law
•State & Local Taxes
••Real Property Tax
•••Assessment & Valuation
••••Valuation

CIVIL PROCEDURE
Discovery
Methods

Requests for Production & Inspection. — In a dispute involving the appraisal of a refinery, the trial court did not abuse its discretion by denying a motion to compel the production of documents submitted to the appraisal district by other corporations because Tex. Tax. Code Ann. § 25.195 did not permit a commercial property owner such as the refinery to obtain information voluntarily given to a central appraisal district under Tex. Tax. Code Ann. § 22.27, even if one of the enumerated exceptions to the confidentiality of the rendition information was applicable. In re Galveston Cent. Appraisal Dist., 252 S.W.3d 904, 2008 Tex. App. LEXIS 3440 (Tex. App. Houston 14th Dist. May 13, 2008, no pet.).

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation

Valuation. — In a dispute involving the appraisal of a refinery, the trial court did not abuse its discretion by denying a motion to compel the production of documents submitted to the appraisal district by other corporations because Tex. Tax. Code Ann. § 25.195 did not permit a commercial property owner such as the refinery to obtain information voluntarily given to a central appraisal district under Tex. Tax. Code Ann. § 22.27, even if one of the enumerated exceptions to the confidentiality of the rendition information was applicable. In re Galveston Cent. Appraisal Dist., 252 S.W.3d 904, 2008 Tex. App. LEXIS 3440 (Tex. App. Houston 14th Dist. May 13, 2008, no pet.).

Sec. 22.28. Penalty For Delinquent Report; Penalty Collection Procedures.

(a) Except as otherwise provided by Section 22.30, the chief appraiser shall impose a penalty on a person who fails to timely file a rendition statement or property report required by this chapter in an amount equal to 10 percent of the total amount of taxes imposed on the property for that year by taxing units participating in the appraisal district. The chief appraiser shall deliver by first class mail a notice of the imposition of the penalty to the person. The notice may be delivered with a notice of appraised value provided under Section 25.19, if practicable.

(b) The chief appraiser shall certify to the assessor for each taxing unit participating in the appraisal district that imposes taxes on the property that a penalty imposed under this chapter has become final. The assessor shall add the amount of the penalty to the original amount of tax imposed on the property and shall include that amount in the tax bill for that year. The penalty becomes part of the tax on the property and is secured by the tax lien that attaches to the property under Section 32.01.

(c) A penalty under this chapter becomes final if:

(1) the property owner does not protest under Section 22.30 the imposition of the penalty before the appraisal review board;

(2) the appraisal review board determines a protest brought by the property owner under Section 22.30 by denying a waiver of the penalty and the property owner does not bring an appeal under Chapter 42 or the judgment of the district court sustaining the determination subsequently becomes final; or

(3) a court imposes the penalty under Section 22.29 and the order of the court imposing the penalty subsequently becomes final.

(d) To help defray the costs of administering this chapter, a collector who collects a penalty imposed under Subsection (a) shall remit to the appraisal district that employs the chief appraiser who imposed the penalty an amount equal to five percent of the penalty amount collected.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 8, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 4, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 234 (H.B. 533), § 2, effective June 17, 2011.

NOTES TO DECISIONS

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••Personal Property Tax
•••Tangible Property
••••Failure to Pay Tax
••••Imposition of Tax

TAX LAW
State & Local Taxes
Personal Property Tax
Tangible Property

Failure to Pay Tax. — Tex. Tax Code Ann. § 22.28(a) became effective on January 1, 2004; thus, a taxpayer was not subject to a penalty for failure to render radio towers in the prior years. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

IMPOSITION OF TAX. — Tex. Tax Code Ann. § 21.055 implicitly provided that taxpayers had to timely render their aircraft before they could receive an allocation entitlement, and Tex. Tax Code Ann. § 22.28 was enacted to encourage timely filings; the taxpayer rendered its property after the statutory deadline for tax years 2005 and 2006 and waived its right to interstate allocation. Sturgis Air One, L.L.C. v. Harris County Appraisal Dist., 351 S.W.3d 381, 2011 Tex. App. LEXIS 2107 (Tex. App. Houston 14th Dist. Mar. 24, 2011, no pet.).

Sec. 22.29. Penalty for Fraud or Intent to Evade Tax.

(a) The chief appraiser shall impose an additional penalty on the person equal to 50 percent of the total amount of taxes imposed on the property for the tax year of the statement or report by the taxing units participating in the appraisal district if it is finally determined by a court that:

(1) the person filed a false statement or report with the intent to commit fraud or to evade the tax; or

(2) the person alters, destroys, or conceals any record, document, or thing, or presents to the chief appraiser any altered or fraudulent record, document, or thing, or otherwise engages in fraudulent conduct, for the purpose of affecting the course or outcome of an inspection, investigation, determination, or other proceeding before the appraisal district.

(b) Enforcement of this section shall be by a proceeding initiated by the district or county attorney of the county in which the appraisal is established, on behalf of the appraisal district.

(c) In making a determination of liability under this section, the court shall consider:

(1) the person's compliance history with respect to paying taxes and filing statements or reports;

(2) the type, nature, and taxability of the specific property involved;

(3) the type, nature, size, and sophistication of the person's business or other entity for which property is rendered;

(4) the completeness of the person's records;

(5) the person's reliance on advice provided by the appraisal district that may have contributed to the violation;

(6) any change in appraisal district policy during the current or preceding tax year that may affect how property is rendered; and

(7) any other factor the court considers relevant.

(d) The chief appraiser may retain a portion of a penalty collected under this section, not to exceed 20 percent of the amount of the penalty, to cover the chief appraiser's costs of collecting the penalty. The chief appraiser shall distribute the remainder of the penalty to each taxing unit participating in the appraisal district that imposes taxes on the property in proportion to the taxing unit's share of the total amount of taxes imposed on the property by all taxing units participating in the district.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 8, effective January 1, 2004.

Sec. 22.30. Waiver of Penalty.

(a) The chief appraiser may waive the penalty imposed by Section 22.28 if the chief appraiser determines that the person exercised reasonable diligence to comply with or has substantially complied with the requirements of this chapter. A written request, accompanied by supporting documentation, stating the grounds on which penalties should be waived must be sent to the chief appraiser before June 1 or not later than the 30th day after the date the person received notification of the imposition of the penalty, whichever is later. The chief appraiser shall make a determination of the penalty waiver request:

(1) based on the information submitted; and

(2) after consideration of the factors described by Subsection (b).

(a-1) If the chief appraiser denies the penalty waiver request, the chief appraiser shall deliver by first class mail written notice of the denial to the property owner. The property owner may protest the imposition of the penalty before the appraisal review board. To initiate a protest, the property owner must file written notice of the protest with the appraisal review board before June 1 or not later than the 30th day after the date the property owner receives the notice of denial, whichever is later.

(b) The appraisal review board shall determine the protest after considering:

(1) the person's compliance history with respect to paying taxes and filing statements or reports;

(2) the type, nature, and taxability of the specific property involved;

(3) the type, nature, size, and sophistication of the person's business or other entity for which property is rendered;

(4) the completeness of the person's records;

(5) the person's reliance on advice provided by the appraisal district that may have contributed to the person's failure to comply and the imposition of the penalty;

(6) any change in appraisal district policy during the current or preceding tax year that may affect how property is rendered; and

(7) any other factors that may have caused the person to fail to timely file a statement or report.

(c) The procedures for a protest before the appraisal review board under this section are governed by the procedures for a taxpayer protest under Subchapter C, Chapter 41. The property owner is entitled to appeal under Chapter 42 an order of the appraisal review board determining a protest brought under this section.

(d) Notwithstanding any other provision of this section, the chief appraiser and a protesting property owner may enter into a settlement agreement on the matter being protested, if both parties agree that there was a mistake.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 8, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 234 (H.B. 533), § 2, effective June 17, 2011.

Secs. 22.31 to 22.40. [Reserved for expansion].

Subchapter C

Other Reports

Sec. 22.41. Report of Political Subdivision Actions Affecting Real Property Values.

(a) At the request of the chief appraiser of an appraisal district in which a political subdivision of this state has territory, the governing body of the political subdivision shall deliver a written report to the chief appraiser describing each of the following actions taken by the governing body in the preceding period specified in the request:

(1) a zoning action;

(2) an action that directly restricts the use of real property or a class of real property specified by the action or that exempts real property or a class of real property specified by the action from an existing restriction on the use of the property; or

(3) an action that grants the owner or custodian of real property specified by the action the right or authority to make a change or improvement to the property.

(b) The report is not required to include an action that does not apply to real property in the appraisal district whose chief appraiser requested the report.

(c) The chief appraiser in the request for a report shall specify the period to be covered by the report. The governing body is not required to include in the report an action included in a previous report made to the chief appraiser of the same appraisal district. The governing body must deliver the report to the chief appraiser not later than the 30th day after the date of the request, unless the chief appraiser specifies or agrees to a later date.

(d) As soon as practicable after delivering a report to the chief appraiser under Subsection (c), the governing body making the report shall deliver a copy of the report to the governing body of each taxing unit in which is located property affected by an action included in the report.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 15, effective September 1, 1989.

CHAPTER 23

Appraisal Methods and Procedures

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Subchapter A

Appraisals Generally

Sec. 23.01. Appraisals Generally.

(a) Except as otherwise provided by this chapter, all taxable property is appraised at its market value as of January 1.

(b) The market value of property shall be determined by the application of generally accepted appraisal methods and techniques. If the appraisal district determines the appraised value of a property using mass appraisal standards, the mass appraisal standards must comply with the Uniform Standards of Professional Appraisal Practice. The same or similar appraisal methods and techniques shall be used in appraising the same or similar kinds of property. However, each property shall be appraised based upon the individual characteristics that affect the property's market value, and all available evidence that is specific to the value of the property shall be taken into account in determining the property's market value.

(c) Notwithstanding Section 1.04(7)(C), in determining the market value of a residence homestead, the chief appraiser may not exclude from consideration the value of other residential property that is in the same neighborhood as the residence homestead being appraised and would otherwise be considered in appraising the residence homestead because the other residential property:

(1) was sold at a foreclosure sale conducted in any of the three years preceding the tax year in which the residence homestead is being appraised and was comparable at the time of sale based on relevant characteristics with other residence homesteads in the same neighborhood; or

(2) has a market value that has declined because of a declining economy.

(d) The market value of a residence homestead shall be determined solely on the basis of the property's value as a residence homestead, regardless of whether the residential use of the property by the owner is considered to be the highest and best use of the property.

(e) **[Effective until January 1, 2020]** Notwithstanding any provision of this subchapter to the contrary, if the appraised value of property in a tax year is lowered under Subtitle F, the appraised value of the property as finally determined under that subtitle is considered to be the appraised value of the property for that tax year. In the following tax year, the chief appraiser may not increase the appraised value of the property unless the increase by the chief appraiser is reasonably supported by substantial evidence when all of the reliable and probative evidence in the record is considered as a whole. If the appraised value is finally determined in a protest under Section 41.41(a)(2) or an appeal under Section 42.26, the chief appraiser may satisfy the requirement to reasonably support by substantial evidence an increase in the appraised value of the property in the following tax year by presenting evidence showing that the inequality in the appraisal of property has been corrected with regard to the properties that were considered in determining the value of the subject property. The burden of proof is on the chief appraiser to support an increase in the appraised value of property under the circumstances described by this subsection.

(e) **[Effective January 1, 2020]** Notwithstanding any provision of this subchapter to the contrary, if the appraised value of property in a tax year is lowered under Subtitle F, the appraised value of the property as finally determined under that subtitle is considered to be the appraised value of the property for that tax year. In the next tax year in which the property is appraised, the chief appraiser may not increase the appraised value of the property unless the increase by the chief appraiser is reasonably supported by clear and convincing evidence when all of the reliable and probative

evidence in the record is considered as a whole. If the appraised value is finally determined in a protest under Section 41.41(a)(2) or an appeal under Section 42.26, the chief appraiser may satisfy the requirement to reasonably support by clear and convincing evidence an increase in the appraised value of the property in the next tax year in which the property is appraised by presenting evidence showing that the inequality in the appraisal of property has been corrected with regard to the properties that were considered in determining the value of the subject property. The burden of proof is on the chief appraiser to support an increase in the appraised value of property under the circumstances described by this subsection.

(f) The selection of comparable properties and the application of appropriate adjustments for the determination of an appraised value of property by any person under Section 41.43(b)(3) or 42.26(a)(3) must be based on the application of generally accepted appraisal methods and techniques. Adjustments must be based on recognized methods and techniques that are necessary to produce a credible opinion.

(g) Notwithstanding any other provision of this section, property owners representing themselves are entitled to offer an opinion of and present argument and evidence related to the market and appraised value or the inequality of appraisal of the owner's property.

(h) **[Effective January 1, 2020]** Appraisal methods and techniques included in the most recent versions of the following are considered generally accepted appraisal methods and techniques for the purposes of this title:

(1) the Appraisal of Real Estate published by the Appraisal Institute;

(2) the Dictionary of Real Estate Appraisal published by the Appraisal Institute;

(3) the Uniform Standards of Professional Appraisal Practice published by The Appraisal Foundation; and

(4) a publication that includes information related to mass appraisal.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 823 (S.B. 908), § 5, effective January 1, 1986; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 21, effective January 1, 1998; am. Acts 2009, 81st Leg., ch. 619 (H.B. 1038), § 1, effective January 1, 2010; am. Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 1, effective January 1, 2010; am. Acts 2009, 81st Leg., ch. 1405 (H.B. 3613), § 2, effective January 1, 2010; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.001(56), (57), effective September 1, 2011; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 28, effective January 1, 2020; am. Acts 2019, 86th Leg., ch. 1284 (H.B. 1313), § 2, effective January 1, 2020.

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Multidistrict Litigation. — Assignment of one judge to handle the pretrial phase of numerous ad valorem tax suits in different districts was not appropriate because the valuation of property is an inherently individualized and local process, as indicated in Tex. Tax Code Ann. § 23.01, which does not present a common question of fact within the meaning of Tex. R. Jud. Admin. 13.2(f). In re Ad Valorem Tax Litig., 216 S.W.3d 83, 2006 Tex. LEXIS 1335 (Tex. 2006).

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Requests for Production & Inspection. — In a dispute involving the appraisal of a refinery, the appraisal district was not entitled to discovery from the refinery regarding the sale of any refinery in the United States since 2003 because the district did not show that its experts were unable to appraise the refinery's property, and the request was overly broad and not likely to lead to discovery of admissible evidence. In re Galveston Cent. Appraisal Dist., 252 S.W.3d 904, 2008 Tex. App. LEXIS 3440 (Tex. App. Houston 14th Dist. May 13, 2008, no pet.).

In a taxpayer's challenge to the valuation of its coking unit, the trial court erred in ordering the taxpayer to respond to the appraisal district's discovery requests under Tex. R. Civ. P. 192 as the challenged requests were not reasonably tailored to include only matters relevant to prove the coker unit's value in the unequal taxation context, and thus were overly broad and unduly burdensome requests. In re MHCB (USA) Leasing & Fin. Corp., No. 01-06-00075-CV, 2006 Tex. App. LEXIS 3515 (Tex. App. Houston 1st Dist. Apr. 27, 2006).

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TAXPAYER PROTESTS. — With respect to the taxpayer's complaints against the Chief Appraiser, all of the taxpayer's claims concerned the Chief Appraiser's statutory duties of determining a home's market value for the Appraisal District's appraisal records; because the taxpayer's claims against the Chief Appraiser did not fall within the ultra vires exception, the trial court did not err in dismissing them for lack of jurisdiction. Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

NATURAL RESOURCES TAX
Imposition of Tax. — Trial court did not err in upholding the appraised value of oil and gas interests because a jury was provided with sufficient instructions and definitions to enable it to render a verdict, the jury heard evidence on the value of the oil and gas interests using Tex. Tax Code Ann. § 23.175, and the jury was instructed to find the market value. Moreover, an objector did not show that the charge probably caused the rendition of an improper judgment. Averitt v. Caudle, No. 11-07-00225-CV, 2009 Tex. App. LEXIS 2284 (Tex. App. Eastland Apr. 2, 2009).

PERSONAL PROPERTY TAX
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General Overview. — City's tax plan which omitted all personal property from the tax rolls was in violation of Tex. Const. art. VIII, § 1 and former Tex. Rev. Civ. Stat. Ann. arts. 7145 and 7144 (now Tex. Tax Code Ann. § 23.01), which provided that all property, real, personal, or mixed, was subject to taxation. Anderson County Taxpayers' League v. Palestine, 576 S.W.2d 679, 1979 Tex. App. LEXIS 3105 (Tex. Civ. App. Tyler Jan. 11, 1979, no writ).

TANGIBLE PROPERTY
General Overview. — In a valuation dispute relating to the taxation of furniture, fixtures, and equipment under Tex. Tax Code Ann. § 1.04(7), even if the testimony of an expert regarding market value was considered, a jury's findings were not supported by the evidence because they were outside of the range given by the experts; therefore, a judgment notwithstanding the verdict (JNOV) should have been granted; moreover, a no-evidence issue was preserved for review by the filing of a JNOV request. Harris County Appraisal Dist. v. Sigmor Corp., No. 01-06-00740-CV, 2008 Tex. App. LEXIS 2456 (Tex. App. Houston 1st Dist. Apr. 3, 2008).

Because it is the chief appraiser who determines the market value of taxable personal property and who calculates the portion of the fair market value of an aircraft that fairly reflects its use in Texas, and because these calculations must generally be done within the time required for the chief appraiser to prepare the appraisal records, supporting information must be submitted by the taxpayer seeking allocation under Tex. Tax Code Ann. § 21.02(a) along with the rendition. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

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League v. Palestine, 576 S.W.2d 679, 1979 Tex. App. LEXIS 3105 (Tex. Civ. App. Tyler Jan. 11, 1979, no writ).

REAL PROPERTY TAX

General Overview. — In a property assessment action, the lower court abused its discretion when it let stand a county appraisal agency's valuation of property owner's land as part of a group assessment did not consider the individual characteristics that negatively affected the property's market value as required by Tex. Tax Code Ann. § 23.01. Haney v. Cooke County Tax Appraisal Dist., 782 S.W.2d 349, 1989 Tex. App. LEXIS 3188 (Tex. App. Fort Worth Dec. 29, 1989, no writ).

ASSESSMENT & VALUATION

General Overview. — Each property should be appraised based upon the individual characteristics that affect the property's market value. While Tex. Const. art. VIII, § 1(a) requires that taxation shall be equal and uniform, that mandate may render different appraisal methods appropriate in different circumstances; therefore, caverns built to store hydrocarbons underneath land were subject to taxation separate from the land because they were in active commercial use that was distinct from the use of the land above. Matagorda County Appraisal Dist. v. Coastal Liquids Partners, L.P., 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

Trial court erred in ruling under Tex. Tax Code Ann. § 23.23(a)(2) that the appraised value of a taxpayer's real property was limited to the "capped value" amount and that this amount was also the property's market value; there is a distinction between market value and appraised value in the statutory definitions in Tex. Tax Code Ann. § 1.04(7), (8), and the appraised value is not necessarily the same as the market value, which is computed in accordance with Tex. Tax Code Ann. § 23.01(b). Dallas Cent. Appraisal Dist. v. Cunningham, 161 S.W.3d 293, 2005 Tex. App. LEXIS 3274 (Tex. App. Dallas Apr. 29, 2005, no pet.).

Provisions of Tex. Tax Code Ann. §§ 6.01, 6.03, 23.01, 25.21 expressly provide the necessary authority for an appraisal review board to ensure that the mineral interests of a county are appraised based on market value, unreduced by fraud, and for local taxing units to bring a challenge, if necessary, to insist that the appraisal review board do so. Therefore, the court issued a writ of mandamus directing a district court to vacate its order denying pleas to jurisdiction and to dismiss an action brought by local taxing units alleging that certain companies owning oil properties in the county committed fraud and conspiracy with respect to the valuation of the oil properties for ad valorem tax purposes. Under Tex. Const. art. V, § 8, the district court did not have subject matter jurisdiction because the legislature had provided that the claim had to be heard before the appraisal review board. In re ExxonMobil Corp., 153 S.W.3d 605, 162 Oil & Gas Rep. 115, 2004 Tex. App. LEXIS 7811 (Tex. App. Amarillo Aug. 26, 2004, no pet.).

Texas Property Tax Code allowed for the current market value of a leasehold interest to be used to appraise that interest rather than the annual contract rent paid as doing so validated two principles set forth in that code: (1) that all property subject to ad valorem taxes be evaluated at fair market value and, (2) that the current value be established on January 1 of each year. Panola County Fresh Water Supply Dist. No. One v. Panola County Appraisal Dist., 69 S.W.3d 278, 2002 Tex. App. LEXIS 821 (Tex. App. Texarkana Jan. 31, 2002, no pet.).

Pursuant to Tex. Tax Code Ann. § 23.01(a), land designated for agricultural use is appraised at its value based on the land's capacity to produce agricultural products. Compass Bank v. Bent Creek Invs., Inc., 52 S.W.3d 419, 2001 Tex. App. LEXIS 4832 (Tex. App. Fort Worth July 19, 2001, no pet.).

Agricultural use exemption, referred to as an exemption for qualified open space land, allows qualifying property to be appraised at a lower rate of valuation. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

Application of generally accepted appraisal techniques, pursuant to Tex. Tax Code Ann. § 23.01, did not abrogate case law, Tex. Const. art. VII, § 20, or Tex. Tax Code Ann. § 1.04(7), in which the fair market value of real estate incorporated purchase price. Bailey County Appraisal Dist. v. Smallwood, 848 S.W.2d 822, 1993 Tex. App. LEXIS 458 (Tex. App. Amarillo Feb. 11, 1993, no writ).

City's assessment of building owner's property at below 100 percent of its value violated former Tex. Rev. Civ. Stat. Ann. art. 7174 (now Tex. Tax Code Ann. § 23.01), which required that the property should have been valued at its true and full value. Dallas v. Union Tower Corp., 703 S.W.2d 275, 1985 Tex. App. LEXIS 12862 (Tex. App. Dallas Dec. 5, 1985, writ ref'd n.r.e.).

ASSESSMENT METHODS & TIMING. — Assignment of one judge to handle the pretrial phase of numerous ad valorem tax suits in different districts was not appropriate because the valuation of property is an inherently individualized and local process, as indicated in Tex. Tax Code Ann. § 23.01, which does not present a common question of fact within the meaning of Tex. R. Jud. Admin. 13.2(f). In re Ad Valorem Tax Litig., 216 S.W.3d 83, 2006 Tex. LEXIS 1335 (Tex. 2006).

VALUATION. — Judicial estoppel did not preclude property owners from asserting on appeal in the district court that the tax appraisal value of the property should be less than the value they asserted at the appraisal review board, because judicial estoppel only applied in subsequent actions, and the appeal constituted the same proceeding. Curry v. Harris County Appraisal Dist., 434 S.W.3d 815, 2014 Tex. App. LEXIS 6151 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

Finding in favor of the taxpayer in a property tax dispute was inappropriate because the testimony of the taxpayer's appraiser was legally insufficient to support the jury's findings. Although there was some evidence of the apartment complex's market value, the evidence did not conclusively establish the market value under Tex. Tax Code Ann. § 23.01(b). Cent. Appraisal Dist. v. Western AH 406, Ltd., 372 S.W.3d 672, 2012 Tex. App. LEXIS 3299 (Tex. App. Eastland Apr. 26, 2012, no pet.).

With respect to the taxpayer's complaints against the Chief Appraiser, all of the taxpayer's claims concerned the Chief Appraiser's statutory duties of determining a home's market value for the Appraisal District's appraisal records; because the taxpayer's claims against the Chief Appraiser did not fall within the ultra vires exception, the trial court did not err in dismissing them for lack of jurisdiction. Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

Court did not err in its valuation of the leasehold estates, because Tex. Tax Code Ann. § 23.01 limited consideration to characteristics that affected market value and no witness testified that market value was impacted by lease terms. Land v. Palo Pinto Appraisal Dist., 321 S.W.3d 722, 2010 Tex. App. LEXIS 6304 (Tex. App. Eastland Aug. 5, 2010, no pet.).

In a dispute involving the appraisal of a refinery, the appraisal district was not entitled to discovery from the refinery regarding the sale of any refinery in the United States since 2003 because the district did not show that its experts were unable to appraise the refinery's property, and the request was overly broad and not likely to lead to discovery of admissible evidence. In re Galveston Cent. Appraisal Dist., 252 S.W.3d 904, 2008 Tex. App. LEXIS 3440 (Tex. App. Houston 14th Dist. May 13, 2008, no pet.).

Trial court erred in ordering that an apartment complex providing housing to military families be appraised without considering contractual restrictions on rent and occupancy; these restrictions were individual characteristics to be considered in determining the market value of the property, as contemplated by Tex. Tax Code Ann. § 23.01(b). Western AH 406 Ltd. v. Cent. Appraisal Dist., 213 S.W.3d 544, 2007 Tex. App. LEXIS 306 (Tex. App. Eastland Jan. 18, 2007, no pet.).

In a taxpayer's challenge to the valuation of its coking unit, the trial court erred in ordering the taxpayer to respond to the appraisal district's discovery requests under Tex. R. Civ. P. 192 as the challenged requests were not reasonably tailored to include only matters relevant to prove the coker unit's value in the unequal taxation context, and thus were overly broad and unduly burdensome requests. In re MHCB (USA) Leasing & Fin. Corp., No. 01-06-00075-CV, 2006 Tex. App. LEXIS 3515 (Tex. App. Houston 1st Dist. Apr. 27, 2006).

ATTORNEY GENERAL OPINIONS

Analysis

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Tax Appraisals.
Tax on Incomplete Building.
Valuation of Mineral Interests.

Appraisals.
Pursuant to Tex. Tax Code Ann. § 23.01(c), a chief appraiser, in appraising a residence homestead, may not exclude from consideration the value of neighboring properties simply because they were subject to a foreclosure sale. 2012 Tex. Op. Att'y Gen. GA-0943.

Tax Appraisals.
An appraisal district and its participating taxing units are not authorized to submit an issue to the voters for an election to require a particular appraisal schedule, whether initiated by petition or otherwise. Sections 23.01, 23.23, and 25.18 of the Tax Code do not prohibit conducting appraisals every third year rather than annually. 2009 Tex. Op. Att'y Gen. GA-0740, 2009 Tex. AG LEXIS 60.

Tax on Incomplete Building.
Land upon which a building is partly completed on the first day of January is subject to be assessed for taxes at a valuation which includes the partially completed structure. 1939 Tex. Op. Att'y Gen. O-1709.

Valuation of Mineral Interests.
When a mineral interest appertains to surface property that crosses a county line, each county must separately determine the market value of the mineral interest only as it pertains to surface property located in the county according to generally accepted appraisal methods. 2001 Tex. Op. Att'y Gen. JC-0436.

Sec. 23.0101. Consideration of Alternate Appraisal Methods.

In determining the market value of property, the chief appraiser shall consider the cost, income, and market data comparison methods of appraisal and use the most appropriate method.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 22, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 1295 (S.B. 1641), § 1, effective January 1, 2000.

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••••Valuation

EVIDENCE
Privileges
Trade Secrets
Scope. — Galveston Central Appraisal District (GCAD) failed to adequately demonstrate its need for the requested information,because alternative methods of appraisal were available and it presented no evidence that those methods would not produce competent evidence of the market value of the refinery, two other valid methods of appraisal were available, and GCAD did not show that these methods would not provide a competent appraisal and evidence of the market value of the property. In re Refining-Texas, LP, 415 S.W.3d 567, 2013 Tex. App. LEXIS 12962 (Tex. App. Houston 1st Dist. Oct. 17, 2013, no pet.).

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation
Assessment Methods & Timing. — Galveston Central Appraisal District (GCAD) failed to adequately demonstrate its need for the requested information,because alternative methods of appraisal were available and it presented no evidence that those methods would not produce competent evidence of the market value of the refinery, two other valid methods of appraisal were available, and GCAD did not show that these methods would not provide a competent appraisal and evidence of the market value of the property. In re Refining-Texas, LP, 415 S.W.3d 567, 2013 Tex. App. LEXIS 12962 (Tex. App. Houston 1st Dist. Oct. 17, 2013, no pet.).

VALUATION. — Court did not err by considering comparable sales, because the lessees did not offer any valuation evidence other than the amount of their annual rentals and they did not object to the district's comparable sales testimony, and the trial court had some discretion to choose a methodology and the Texas Tax Code identified comparable sales as an appropriate methodology. Land v. Palo Pinto Appraisal Dist., 321 S.W.3d 722, 2010 Tex. App. LEXIS 6304 (Tex. App. Eastland Aug. 5, 2010, no pet.).

In a dispute about the valuation of underground salt caverns, the evidence was sufficient to support the market value determined by the use of a cost method under Tex. Tax Code Ann. § 23.011 because a taxpayer did not cross-examine witnesses about any deficiencies in using this method; it merely offered evidence of the use of the market data comparison method by its own appraiser; because both methods were equally applicable, the findings made by the trial court were given deference. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., No. 13-02-237-CV, 2008 Tex. App. LEXIS 3149 (Tex. App. Corpus Christi Apr. 30, 2008).

Sec. 23.011. Cost Method of Appraisal.

If the chief appraiser uses the cost method of appraisal to determine the market value of real property, the chief appraiser shall:

(1) use cost data obtained from generally accepted sources;

(2) make any appropriate adjustment for physical, functional, or economic obsolescence;

(3) make available to the public on request cost data developed and used by the chief appraiser as applied to all properties within a property category and may charge a reasonable fee to the public for the data;

(4) clearly state the reason for any variation between generally accepted cost data and locally produced cost data if the data vary by more than 10 percent; and

(5) make available to the property owner on request all applicable market data that demonstrate the difference between the replacement cost of the improvements to the property and the depreciated value of the improvements.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 22, effective January 1, 1998.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation

Valuation. — In a dispute about the valuation of underground salt caverns, the evidence was sufficient to support the market value determined by the use of a cost method under Tex. Tax Code Ann. § 23.011 because a taxpayer did not cross-examine witnesses about any deficiencies in using this method; it merely offered evidence of the use of the market data comparison method by its own appraiser; because both methods were equally applicable, the findings made by the trial court were given deference. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., No. 13-02-237-CV, 2008 Tex. App. LEXIS 3149 (Tex. App. Corpus Christi Apr. 30, 2008).

Sec. 23.012. Income Method of Appraisal.

(a) If the income method of appraisal is the most appropriate method to use to determine the market value of real property, the chief appraiser shall:

(1) analyze comparable rental data available to the chief appraiser or the potential earnings capacity of the property, or both, to estimate the gross income potential of the property;

(2) analyze comparable operating expense data available to the chief appraiser to estimate the operating expenses of the property;

(3) analyze comparable data available to the chief appraiser to estimate rates of capitalization or rates of discount; and

(4) base projections of future rent or income potential and expenses on reasonably clear and appropriate evidence.

(b) In developing income and expense statements and cash-flow projections, the chief appraiser shall consider:

(1) historical information and trends;

(2) current supply and demand factors affecting those trends; and

(3) anticipated events such as competition from other similar properties under construction.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 22, effective January 1, 1998; am. Acts 2003, 78th Leg., ch. 548 (H.B. 1460), § 1, effective January 1, 2004.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation

Valuation. — Trial court did not err in denying a taxpayer's motion to exclude the testimony of an appraisal district's expert, a registered professional appraiser with close to 30 years of experience, because his calculations were based on quantitative foundational data and followed the methodology approved by the statute. Key Energy Servs., LLC v. Shelby County Appraisal Dist., 428 S.W.3d 133, 2014 Tex. App. LEXIS 439 (Tex. App. Tyler Jan. 15, 2014, no pet.).

Sec. 23.013. Market Data Comparison Method of Appraisal.

(a) If the chief appraiser uses the market data comparison method of appraisal to determine the market value of real property, the chief appraiser shall use comparable sales data and shall adjust the comparable sales to the subject property.

(b) A sale is not considered to be a comparable sale unless the sale occurred within 24 months of the date as of which the market value of the subject property is to be determined, except that a sale that did not occur during that period may be considered to be a comparable sale if enough comparable properties were not sold during that period to constitute a representative sample.

(b-1) Notwithstanding Subsection (b), for a residential property in a county with a population of more than 150,000, a sale is not considered to be a comparable sale unless the sale occurred within 36 months of the date as of which the market value of the subject property is to be determined, regardless of the number of comparable properties sold during that period.

(c) A sale of a comparable property must be appropriately adjusted for any change in the market value of the comparable property during the period between the date of the sale of the comparable property and the date as of which the market value of the subject property is to be determined.

(d) Whether a property is comparable to the subject property shall be determined based on similarities with regard to location, square footage of the lot and improvements, property age, property condition, property access, amenities, views, income, operating expenses, occupancy, and the existence of easements, deed restrictions, or other legal burdens affecting marketability.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 22, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 1295 (S.B. 1641), § 2, effective January 1, 2000; am. Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 2, effective January 1, 2010; am. Acts 2013, 83rd Leg., ch. 611 (S.B. 1256), § 1, effective January 1, 2014.

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TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation

General Overview. — In a case involving the valuation of property for tax purposes, a trial court did not err by blending the income approach and the market sales data approach in determining value; the trial court produced relevant and reliable evidence regarding market value. Houston R.E. Income Props. XV, Ltd. v. Waller County Appraisal Dist., 123 S.W.3d 859, 2003 Tex. App. LEXIS 10583 (Tex. App. Houston 1st Dist. Dec. 18, 2003, no pet.).

VALUATION. — Court did not err by considering comparable sales, because the lessees did not offer any valuation evidence other than the amount of their annual rentals and they did not object to the district's comparable sales testimony, and the trial court had some discretion to choose a methodology and the Texas Tax Code identified comparable sales as an appropriate methodology. Land v. Palo Pinto Appraisal Dist., 321 S.W.3d 722, 2010 Tex. App. LEXIS 6304 (Tex. App. Eastland Aug. 5, 2010, no pet.).

In a dispute about the valuation of underground salt caverns, the evidence was sufficient to support the market value determined by the use of a cost method under Tex. Tax Code Ann. § 23.011 because a taxpayer did not cross-examine witnesses about any deficiencies in using this method; it merely offered evidence of the use of the market data comparison method by its own appraiser; because both methods were equally applicable, the findings made by the trial court were given deference. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., No. 13-02-237-CV, 2008 Tex. App. LEXIS 3149 (Tex. App. Corpus Christi Apr. 30, 2008).

Sec. 23.014. Exclusion of Property As Real Property.

Except as provided by Section 23.24(b), in determining the market value of real property, the chief appraiser shall analyze the effect on that value of, and exclude from that value the value of, any:

(1) tangible personal property, including trade fixtures;
(2) intangible personal property; or
(3) other property that is not subject to appraisal as real property.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 548 (H.B. 1460), § 2, effective January 1, 2004; am. Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 2, effective January 1, 2010.

Sec. 23.02. Reappraisal of Property Damaged in Disaster Area. [Contingently repealed; Effective until contingency met]

(a) The governing body of a taxing unit that is located partly or entirely inside an area declared to be a disaster area by the governor may authorize reappraisal of all property damaged in the disaster at its market value immediately after the disaster.

(b) If a taxing unit authorizes a reappraisal pursuant to this section, the appraisal office shall complete the reappraisal as soon as practicable. The appraisal office shall include on the appraisal records, in addition to other information required or authorized by law:

(1) the date of the disaster;
(2) the appraised value of the property after the disaster; and
(3) if the reappraisal is not authorized by all taxing units in which the property is located, an indication of the taxing units to which the reappraisal applies.

(c) A taxing unit that authorizes a reappraisal under this section must pay the appraisal district all the costs of making the reappraisal. If two or more taxing units provide for the reappraisal in the same territory, each shall share the costs of the reappraisal in that territory in the proportion the total dollar amount of taxes imposed in that territory in the preceding year bears to the total dollar amount of taxes all units providing for reappraisal of that territory imposed in the preceding year.

(d) If property damaged in a disaster is reappraised as provided by this section, the governing body shall provide for prorating the taxes on the property for the year in which the disaster occurred. If the taxes are prorated, taxes due on the property are determined as follows: the taxes on the property based on its value on January 1 of that year are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days before the date the disaster occurred; the taxes on the property based on its reappraised value are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days, including the date the disaster occurred, remaining in the year; and the total of the two amounts is the amount of taxes on the property for the year.

(e) [Repealed by Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 28, effective August 29, 1983.]

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 57, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 28, effective August 29, 1983; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), §§ 13, 14, effective June 14, 2013; contingently repealed by Acts 2019, 86th Leg., ch. 1034 (H.B. 492), § 10.

NOTES TO OPINIONS

Attorney General Opinions

Disaster ReappraisalPursuant to Tex. Tax Code Ann. § 23.02(c), a taxing unit authorizing a disaster reappraisal must pay the appraisal district all the costs of making the reappraisal. Appraisal districts may not capitalize on a disaster by requesting additional funds from taxing units for expenses the appraisal district would incur regardless of the disaster. To the extent that an appraisal district incurs additional costs resulting from a disaster reappraisal, it may require participating taxing units to fund those extraordinary expenses. Tex. Op. Att'y Gen. KP-0192 (2018).

Tex. Tax Code Ann. § 25.19 requires a chief appraiser to deliver a written notice to the owner of each property that was reappraised in the current tax year. The Legislature made no exception to this requirement for disaster reappraisals conducted pursuant to Tex. Tax Code Ann. § 23.02. Thus, a court would likely conclude that a chief appraiser must provide notice to a property owner of a reappraisal when the owner's property value decreases as a result of the disaster reappraisal. Tex. Op. Att'y Gen. KP-0192 (2018).

Sec. 23.03. Compilation of Large Properties and Properties Subject to Limitation on Appraised Value.

Each year the chief appraiser shall compile and send to the Texas Department of Economic Development a list of properties in the appraisal district that in that tax year:

(1) have a market value of $100 million or more; or

(2) are subject to a limitation on appraised value under Chapter 313.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 2, effective January 1, 2002.

Secs. 23.04 to 23.10. [Reserved for expansion].

Subchapter B

Special Appraisal Provisions

Sec. 23.11. Governmental Action That Constitutes Taking.

In appraising private real property, the effect of a governmental action on the market value of private real property as determined in a suit or contested case filed under Chapter 2007, Government Code, shall be taken into consideration by the chief appraiser in determining the market value of the property.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 517 (S.B. 14), § 3, effective September 1, 1995.

Sec. 23.12. Inventory.

(a) Except as provided by Sections 23.121, 23.1241, 23.124, and 23.127, the market value of an inventory is the price for which it would sell as a unit to a purchaser who would continue the business. An inventory shall include residential real property which has never been occupied as a residence and is held for sale in the ordinary course of a trade or business, provided that the residential real property remains unoccupied, is not leased or rented, and produces no income.

(b) The chief appraiser shall establish procedures for the equitable and uniform appraisal of inventory for taxation. In conjunction with the establishment of the procedures, the chief appraiser shall:

(1) establish, publish, and adhere to one procedure for the determination of the quantity of property held in inventory without regard to the kind, nature, or character of the property comprising the inventory; and

(2) apply the same enforcement, verification, and audit procedures, techniques, and criteria to the discovery, physical examination, or quantification of all inventories without regard to the kind, nature, or character of the property comprising the inventory.

(c) In appraising an inventory, the chief appraiser shall use the information obtained pursuant to Subsection (b) of this section and shall apply generally accepted appraisal techniques in computing the market value as defined in Subsection (a) of this section.

(d) Subsections (b) and (c) of this section apply only to an inventory held for sale, lease, or rental.

(e) A person who owns an inventory to which Subsection (b) of this section applies may bring an action to enjoin the chief appraiser from certifying to a taxing unit any portion of the appraisal roll that lists an inventory for which the chief appraiser has not complied with the requirements of Subsection (b) of this section.

(f) The owner of an inventory other than a dealer's motor vehicle inventory as that term is defined by Section 23.121, a dealer's heavy equipment inventory as that term is defined by Section 23.1241, or a dealer's vessel and outboard motor inventory as that term is defined by Section 23.124, or a retail manufactured housing inventory as that term is defined by Section 23.127 may elect to have the inventory appraised at its market value as of September 1 of the year preceding the tax year to which the appraisal applies by filing an application with the chief appraiser requesting that the inventory be appraised as of September 1. The application must clearly describe the inventory to which it applies and be signed by the owner of the inventory. The application applies to the appraisal of the inventory in each tax year that begins after the next August 1 following the date the application is filed with the chief appraiser unless the owner of the inventory by written notice filed with the chief appraiser revokes the application or the ownership of the inventory

changes. A notice revoking the application is effective for each tax year that begins after the next September following the date the notice of revocation is filed with the chief appraiser.

(g) [Expired pursuant to Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 16, effective January 1, 1991.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 58, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 590 (H.B. 2445), § 1, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 16, effective September 1, 1989; am. Acts 1993, 73rd Leg., ch. 672 (S.B. 878), §§ 1, 2, effective January 1, 1994; am. Acts 1995, 74th Leg., ch. 836 (H.B. 2940), § 1, effective January 1, 1996; am. Acts 1995, 74th Leg., ch. 836 (H.B. 2940), § 2, effective January 1, 1996; am. Acts 1995, 74th Leg., ch. 945 (H.B. 2624), § 1, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(73), effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1112 (H.B. 2606), § 1, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1184 (S.B. 759), § 1, effective January 1, 1998.

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TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — County appraisal district improperly calculated the value of a bankruptcy debtor's residential real estate development by aggregating the values of individual lots in the development, since Tex. Tax Code Ann. § 23.12(a) required that the development be valued as a unit of the debtor's inventory of lots, and the debtor properly provided a more accurate appraisal using the established subdivision development methodology. In re Breakwater Shores Partners, L.P., No. 10-61254, 2012 Bankr. LEXIS 1454 (Bankr. E.D. Tex. Apr. 5, 2012).

ASSESSMENTS. — There was evidence that the evaluation used by a county appraisal district was not arbitrary where the district explained the method used, the reasons for adoption of that method, and the way that it applied its methodology to the particular fact situation, and where there was also evidence provided to the appraisal district by the taxpayer regarding the amount that the taxpayer had paid for the property being evaluated. The appraisal district determined that under its method of calculation of value, no allowance for depreciation was warranted, and, from that, it determined its opinion of the fair market value of the taxpayer's inventory for the two years at issue. Lack's Stores, Inc. v. Gregg County Appraisal Dist., No. 06-10-00125-CV, 2011 Tex. App. LEXIS 7364 (Tex. App. Texarkana Sept. 9, 2011).

PERSONAL PROPERTY TAX
Tangible Property

General Overview. — County appraisal district's experts cited the proper standard and stated their opinion as to the value if the jewelry wholesaler's inventory was sold as a unit, and there was common sense to the district's appraisal that was lacking in the wholesaler's appraisal. Stuckey Diamonds v. Harris County Appraisal Dist., 93 S.W.3d 212, 2002 Tex. App. LEXIS 5123 (Tex. App. Houston 14th Dist. July 18, 2002, no pet.).

Tex. Tax Code Ann. § 23.12(a), allowing valuation of property for ad valorem taxation purposes by any reasonable method related to the mandated use of the market-value approach for valuation, is constitutional. Travis Cent. Appraisal Dist. v. FM Props. Operating Co., 947 S.W.2d 724, 1997 Tex. App. LEXIS 3303 (Tex. App. Austin June 26, 1997, review denied).

Under Tex. Tax Code Ann. § 23.12(f), the owner of an inventory may elect to have the inventory appraised at its market value as of September 1 of the year preceding the tax year to which the appraisal applies by filing an application with the chief appraiser. Enron Corp. v. Spring Indep. Sch. Dist., 922 S.W.2d 931, 1996 Tex. LEXIS 54 (Tex. 1996).

Tex. Tax. Code Ann. § 23.12(f), did not result in an unconstitutional exemption of property, under Tex. Const. art. VIII, § 1(a), simply because the volume and value of petitioner's inventory increased after the valuation date. H.E. Butt Grocery Co. v. Jefferson County Appraisal Dist., 922 S.W.2d 941, 1996 Tex. LEXIS 47 (Tex. 1996).

Tex. Tax Code Ann. § 23.12(f) is unconstitutional because it gives inventory owners the option of electing a more favorable property tax appraisal date than that afforded to other state taxpayers; such disparate treatment violates the mandate contained in Tex. Const. art. VIII, §§ 1, 2, that taxation be "equal and uniform." Spring Indep. Sch. Dist. v. Harris County Appraisal Dist., 889 S.W.2d 562, 1994 Tex. App. LEXIS 2664 (Tex. App. Houston 14th Dist. Nov. 3, 1994), writ granted in part, No. 94-1329 (Tex. 1995), rev'd, 922 S.W.2d 931, 1996 Tex. LEXIS 54 (Tex. 1996).

REAL PROPERTY TAX
Assessment & Valuation

Valuation. — County appraisal district improperly calculated the value of a bankruptcy debtor's residential real estate development by aggregating the values of individual lots in the development, since Tex. Tax Code Ann. § 23.12(a) required that the development be valued as a unit of the debtor's inventory of lots, and the debtor properly provided a more accurate appraisal using the established subdivision development methodology. In re Breakwater Shores Partners, L.P., No. 10-61254, 2012 Bankr. LEXIS 1454 (Bankr. E.D. Tex. Apr. 5, 2012).

Sec. 23.12A. Dealer's Motor Vehicle Inventory; Value [Renumbered].

Renumbered to Tex. Tax Code § 23.121 by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(46), effective September 1, 1995 and by Acts 1995, 74th Leg., ch. 945 (H.B. 2624), § 2, effective January 1, 1996.

Sec. 23.12B. Prepayment of Taxes by Certain Taxpayers [Renumbered].

Renumbered to Tex. Tax Code § 23.122 by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(47), effective September 1, 1995 and by Acts 1995, 74th Leg., ch. 945 (H.B. 2624), § 3, effective January 1, 1996.

Sec. 23.12D. Dealer's Vessel and Outboard Motor Inventory; Value [Renumbered].

Renumbered to Tex. Tax Code § 23.124 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(73), effective September 1, 1997.

Sec. 23.12E. Prepayment of Taxes by Certain Taxpayers [Renumbered].

Renumbered to Tex. Tax Code § 23.125 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(73), effective September 1, 1997.

Sec. 23.12F. Declarations and Statements Confidential [Renumbered].

Renumbered to Tex. Tax Code § 23.126 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(73), effective September 1, 1997.

Sec. 23.121. Dealer's Motor Vehicle Inventory; Value.

(a) In this section:

(1) "Chief appraiser" means the chief appraiser for the appraisal district in which a dealer's motor vehicle inventory is located.

(2) "Collector" means the county tax assessor-collector in the county in which a dealer's motor vehicle inventory is located.

(3) "Dealer" means a person who holds a dealer's general distinguishing number issued by the Texas Department of Motor Vehicles under the authority of Chapter 503, Transportation Code, or who is legally recognized as a motor vehicle dealer pursuant to the law of another state and who complies with the terms of Section 152.063(f). The term does not include:

(A) a person who holds a manufacturer's license issued under Chapter 2301, Occupations Code;

(B) an entity that is owned or controlled by a person who holds a manufacturer's license issued under Chapter 2301, Occupations Code;

(C) a dealer whose general distinguishing number issued by the Texas Department of Motor Vehicles under the authority of Chapter 503, Transportation Code, prohibits the dealer from selling a vehicle to any person except a dealer; or

(D) a dealer who:

(i) does not sell motor vehicles described by Section 152.001(3)(A);

(ii) meets either of the following requirements:

(a) the total annual sales from the dealer's motor vehicle inventory, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the preceding tax year are 25 percent or less of the dealer's total revenue from all sources during that period; or

(b) the dealer did not sell a motor vehicle to a person other than another dealer during the 12-month period corresponding to the preceding tax year and the dealer estimates that the dealer's total annual sales from the dealer's motor vehicle inventory, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the current tax year will be 25 percent or less of the dealer's total revenue from all sources during that period;

(iii) not later than August 31 of the preceding tax year, filed with the chief appraiser and the collector a declaration on a form prescribed by the comptroller stating that the dealer elected not to be treated as a dealer under this section in the current tax year; and

(iv) renders the dealer's motor vehicle inventory in the current tax year by filing a rendition with the chief appraiser in the manner provided by Chapter 22.

(4) "Dealer's motor vehicle inventory" means all motor vehicles held for sale by a dealer.

(5) "Dealer-financed sale" means the sale of a motor vehicle in which the seller finances the purchase of the vehicle, is the sole lender in the transaction, and retains exclusively the right to enforce the terms of the agreement evidencing the sale.

(6) "Declaration" means the dealer's motor vehicle inventory declaration form promulgated by the comptroller as required by this section.

(7) "Fleet transaction" means the sale of five or more motor vehicles from a dealer's motor vehicle inventory to the same person within one calendar year.

(8) "Motor vehicle" means a towable recreational vehicle or a fully self-propelled vehicle with at least two wheels which has as its primary purpose the transport of a person or persons, or property, whether or not intended for use on a public street, road, or highway. The term does not include:

(A) a vehicle with respect to which the certificate of title has been surrendered in exchange for a salvage certificate in the manner provided by law; or

(B) equipment or machinery designed and intended to be used for a specific work-related purpose other than the transporting of a person or property.

(9) "Owner" means a dealer who owes current year vehicle inventory taxes levied against a dealer's motor vehicle inventory.

(10) "Person" means a natural person, corporation, partnership, or other legal entity.

(11) "Sales price" means the total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department

of Motor Vehicles. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as "sales price" on the Application for Texas Certificate of Title if that form were involved.

(12) "Subsequent sale" means a dealer-financed sale of a motor vehicle that, at the time of the sale, has been the subject of a dealer-financed sale from the same dealer's motor vehicle inventory in the same calendar year.

(13) "Total annual sales" means the total of the sales price from every sale from a dealer's motor vehicle inventory for a 12-month period.

(14) "Towable recreational vehicle" means a nonmotorized vehicle that is designed for temporary human habitation for recreational, camping, or seasonal use and:

(A) is titled and registered with the Texas Department of Motor Vehicles through the office of the collector;

(B) is permanently built on a single chassis;

(C) contains one or more life support systems; and

(D) is designed to be towable by a motor vehicle.

(a-1) A dealer who has elected to file the declaration described by Subsection (a)(3)(D)(iii) and to render the dealer's motor vehicle inventory as provided by Subsection (a)(3)(D)(iv) must continue to file the declaration and render the dealer's motor vehicle inventory so long as the dealer meets the requirements of Subsection (a)(3)(D)(ii)(a) or (b).

(b) For the purpose of the computation of property tax, the market value of a dealer's motor vehicle inventory on January 1 is the total annual sales from the dealer's motor vehicle inventory, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the prior tax year, divided by 12.

(c) For the purpose of the computation of property tax, the market value of the dealer's motor vehicle inventory of an owner who was not a dealer on January 1 of the prior tax year, the chief appraiser shall estimate the market value of the dealer's motor vehicle inventory. In making the estimate required by this subsection the chief appraiser shall extrapolate using sales data, if any, generated by sales from the dealer's motor vehicle inventory in the prior tax year.

(d) Except for dealer's motor vehicle inventory, personal property held by a dealer is appraised as provided by other sections of this code. In the case of a dealer whose sales from dealer's motor vehicle inventory are made predominately to dealers, the chief appraiser shall appraise the dealer's motor vehicle inventory as provided by Section 23.12 of this code.

(e) A dealer is presumed to be an owner of a dealer's motor vehicle inventory on January 1 if, in the 12-month period ending on December 31 of the immediately preceding year, the dealer sold a motor vehicle to a person other than a dealer. The presumption created by this subsection is not rebutted by the fact that a dealer has no motor vehicles physically on hand for sale from dealer's motor vehicle inventory on January 1.

(f) The comptroller shall promulgate a form entitled Dealer's Motor Vehicle Inventory Declaration. Except as provided by Section 23.122(*l*), not later than February 1 of each year, or, in the case of a dealer who was not in business on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. For purposes of this subsection, a dealer is presumed to have commenced business on the date of issuance to the dealer of a dealer's general distinguishing number as provided by Chapter 503, Transportation Code. Notwithstanding the presumption created by this subsection, a chief appraiser may, at his or her sole discretion, designate as the date on which a dealer commenced business a date other than the date of issuance to the dealer of a dealer's general distinguishing number. The declaration is sufficient to comply with this subsection if it sets forth the following information:

(1) the name and business address of each location at which the dealer owner conducts business;

(2) each of the dealer's general distinguishing numbers issued by the Texas Department of Motor Vehicles;

(3) a statement that the dealer owner is the owner of a dealer's motor vehicle inventory; and

(4) the market value of the dealer's motor vehicle inventory for the current tax year as computed under Section 23.121(b).

(g) Under the terms provided by this subsection, the chief appraiser may examine the books and records of the holder of a general distinguishing number issued by the Texas Department of Motor Vehicles. A request made under this subsection must be made in writing, delivered personally to the custodian of the records, at the location for which the general distinguishing number has been issued, must provide a period not less than 15 days for the person to respond to the request, and must state that the person to whom it is addressed has the right to seek judicial relief from compliance with the request. In a request made under this section the chief appraiser may examine:

(1) the document issued by the Texas Department of Motor Vehicles showing the person's general distinguishing number;

(2) documentation appropriate to allow the chief appraiser to ascertain the applicability of this section and Section 23.122 to the person;

(3) sales records to substantiate information set forth in the dealer's declaration filed by the person.

(h) If a dealer fails to file a declaration as required by this section, or if, on the declaration required by this section, a dealer reports the sale of fewer than five motor vehicles in the prior year, the chief appraiser shall report that fact to the Texas Department of Motor Vehicles and the department shall initiate termination proceedings. The chief appraiser shall include with the report a copy of a declaration, if any, indicating the sale by a dealer of fewer than five motor vehicles in the prior year. A report by a chief appraiser to the Texas Department of Motor Vehicles as provided by this subsection is prima facie grounds for the cancellation of the dealer's general distinguishing number under Section

503.038(a)(9), Transportation Code, or for refusal by the Texas Department of Motor Vehicles to renew the dealer's general distinguishing number.

(i) A dealer who fails to file a declaration required by this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $500. Each day during which a dealer fails to comply with the terms of this subsection is a separate violation.

(j) A dealer who violates Subsection (g) of this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $500. Each day during which a person fails to comply with the terms of Subsection (g) of this section is a separate violation.

(k) In addition to other penalties provided by law, a dealer who fails to file or fails to timely file a declaration required by this section shall forfeit a penalty. A tax lien attaches to the dealer's business personal property to secure payment of the penalty. The appropriate district attorney, criminal district attorney, county attorney, chief appraiser, or person designated by the chief appraiser shall collect the penalty established by this section in the name of the chief appraiser. Venue of an action brought under this subsection is in the county in which the violation occurred or in the county in which the owner maintains the owner's principal place of business or residence. A penalty forfeited under this subsection is $1,000 for each month or part of a month in which a declaration is not filed or timely filed after it is due.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 672 (S.B. 878), § 3, effective January 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(46), effective September 1, 1995 (renumbered from § 23.12A); am. Acts 1995, 74th Leg., ch. 945 (H.B. 2624), § 2, effective January 1, 1996 (renumbered from § 23.12A); am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 30.249, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 321 (H.B. 2116), §§ 1—3, effective May 26, 1997; am. Acts 1999, 76th Leg., ch. 1038 (H.B. 3033), § 1, effective June 18, 1999; am. Acts 2009, 81st Leg., ch. 116 (H.B. 2071), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 933 (H.B. 3097), §§ 3K.03, 3K.04, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 850 (H.B. 315), §§ 1, 2, effective January 1, 2014.

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CONTRACTS LAW
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Installment Contracts. — In a case arising from the sale of a new sport utility vehicle, summary judgment was properly granted to a seller because there was no violation of the Texas Finance Code where the seller included an inventory sales tax under Tex. Fin. Code Ann. § 348.005(2) in an installment contract with a caption marking it as a dealer's inventory tax; the action taken complied with an interpretation given by the Texas Consumer Credit Commissioner. DiBello v. Charlie Thomas Ford, Ltd., 288 S.W.3d 118, 2009 Tex. App. LEXIS 1479 (Tex. App. Houston 1st Dist. Mar. 5, 2009), reh'g denied, No. 01-08-00549-CV, 2009 Tex. App. LEXIS 6407 (Tex. App. Houston 1st Dist. Apr. 23, 2009).

TAX LAW
State & Local Taxes
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Assessments. — Tex. Tax Code Ann. § 23.121 was constitutional under Tex. Const. art. VIII, § 1, as applied because the sales-based approach captured the value of inventory over time and taxes were paid on inventory actually sold. Expo Motorcars, L.L.C. v. Harris County Appraisal Dist., No. 01-08-00473-CV, 2009 Tex. App. LEXIS 5738 (Tex. App. Houston 1st Dist. July 23, 2009).

TAXPAYER PROTESTS. — Motor vehicle dealer was not denied due process under Tex. Const. art. I, §§ 19, 27 because the actual market value of its inventory for a given year was not based on the dealer's actual sales in that calendar year but was the actual market value of inventory as of January 1 based on sales in the previous calendar year under Tex. Tax. Code Ann. § 23.121. Thus, the actual sales in the later calendar year were irrelevant to the dealer's protest and the dealer could have timely protested the valuation under Tex. Tax Code Ann. §§ 41.41 and 41.44. Expo Motorcars, L.L.C. v. Harris County Appraisal Dist., No. 01-08-00473-CV, 2009 Tex. App. LEXIS 5738 (Tex. App. Houston 1st Dist. July 23, 2009).

PERSONAL PROPERTY TAX
Tangible Property

General Overview. — In a case arising from the sale of a new sport utility vehicle, summary judgment was properly granted to a seller because there was no violation of the Texas Finance Code where the seller included an inventory sales tax under Tex. Fin. Code Ann. § 348.005(2) in an installment contract with a caption marking it as a dealer's inventory tax; the action taken complied with an interpretation given by the Texas Consumer Credit Commissioner. DiBello v. Charlie Thomas Ford, Ltd., 288 S.W.3d 118, 2009 Tex. App. LEXIS 1479 (Tex. App. Houston 1st Dist. Mar. 5, 2009), reh'g denied, No. 01-08-00549-CV, 2009 Tex. App. LEXIS 6407 (Tex. App. Houston 1st Dist. Apr. 23, 2009).

Where a marketing agent for a fire truck manufacturer obtained bare legal title to the trucks from the manufacturer, immediately transferred title to in-state purchasers of fire trucks to accomodate agency regulations, and received only a commission on the sales, the marketing agent was merely a conduit between the real seller and the purchasers and was not subject to an assessment of personal property ad valorem taxes because the marketing agent did not sell motor vehicle inventory. Martin v. Harris County Appraisal Dist. & Harris County Appraisal Review Bd., 44 S.W.3d 190, 2001 Tex. App. LEXIS 1851 (Tex. App. Houston 14th Dist. Mar. 22, 2001, no pet.).

IMPOSITION OF TAX. — Tex. Tax Code Ann. § 23.121 was constitutional under Tex. Const. art. VIII, § 1, as applied because the sales-based approach captured the value of inventory over time and taxes were paid on inventory actually sold. Expo Motorcars, L.L.C. v. Harris County Appraisal Dist., No. 01-08-00473-CV, 2009 Tex. App. LEXIS 5738 (Tex. App. Houston 1st Dist. July 23, 2009).

Motor vehicle dealer was not denied due process under Tex. Const. art. I, §§ 19, 27 because the actual market value of its inventory for a given year was not based on the dealer's actual sales in that calendar year but was the actual market value of inventory as of January 1 based on sales in the previous calendar year under Tex. Tax. Code Ann. § 23.121. Thus, the actual sales

in the later calendar year were irrelevant to the dealer's protest and the dealer could have timely protested the valuation under Tex. Tax Code Ann. §§ 41.41 and 41.44. Expo Motorcars, L.L.C. v. Harris County Appraisal Dist., No. 01-08-00473-CV, 2009 Tex. App. LEXIS 5738 (Tex. App. Houston 1st Dist. July 23, 2009).

Sec. 23.1211. Temporary Production Aircraft; Value.

(a) In this section:

(1) "List price" means the value of an aircraft as listed in the most recent edition of the International Bureau of Aviation Aircraft Values Book.

(2) "Maximum takeoff weight" means the maximum takeoff weight listed in the aircraft's type certificate data sheet for the lowest rated configuration or, if the aircraft does not have a type certificate data sheet, the maximum takeoff weight target as published by the aircraft's manufacturer.

(3) "Temporary production aircraft" means an aircraft:

(A) that is a transport category aircraft as defined by federal aviation regulations;

(B) for which a Federal Aviation Administration special airworthiness certificate has been issued;

(C) that is operated under a Federal Aviation Administration special flight permit;

(D) that has a maximum takeoff weight of at least 145,000 pounds; and

(E) that is temporarily located in this state for purposes of manufacture or assembly.

(b) The chief appraiser shall determine the appraised value of temporary production aircraft to be 10 percent of the aircraft's list price as of January 1.

(c) The legislature finds that there is a lack of information that reliably establishes the market value of temporary production aircraft. Accordingly, the legislature has enacted this section to specify the method to be used in determining the appraised value of such aircraft.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 848 (H.B. 3727), § 1, effective September 1, 2011.

Sec. 23.122. Prepayment of Taxes by Certain Taxpayers.

(a) In this section:

(1) "Aggregate tax rate" means the combined tax rates of all relevant taxing units authorized by law to levy property taxes against a dealer's motor vehicle inventory.

(2) "Chief appraiser" has the meaning given it in Section 23.121 of this code.

(3) "Collector" has the meaning given it in Section 23.121 of this code.

(4) "Dealer's motor vehicle inventory" has the meaning given it in Section 23.121 of this code.

(5) "Declaration" has the meaning given it in Section 23.121 of this code.

(6) "Owner" has the meaning given it in Section 23.121 of this code.

(7) "Relevant taxing unit" means a taxing unit, including the county, authorized by law to levy property taxes against a dealer's motor vehicle inventory.

(8) "Sales price" has the meaning given it in Section 23.121 of this code.

(9) "Statement" means the Dealer's Motor Vehicle Inventory Tax Statement filed on a form promulgated by the comptroller as required by this section.

(10) "Subsequent sale" has the meaning given it in Section 23.121 of this code.

(11) "Total annual sales" has the meaning given it in Section 23.121 of this code.

(12) "Unit property tax factor" means a number equal to one-twelfth of the prior year aggregate tax rate at the location where a dealer's motor vehicle inventory is located on January 1 of the current year.

(b) Except for a vehicle sold to a dealer, a vehicle included in a fleet transaction, or a vehicle that is the subject of a subsequent sale, an owner or a person who has agreed by contract to pay the owner's current year property taxes levied against the owner's motor vehicle inventory shall assign a unit property tax to each motor vehicle sold from a dealer's motor vehicle inventory. The unit property tax of each motor vehicle is determined by multiplying the sales price of the motor vehicle by the unit property tax factor. On or before the 10th day of each month the owner shall, together with the statement filed by the owner as required by this section, deposit with the collector a sum equal to the total of unit property tax assigned to all motor vehicles sold from the dealer's motor vehicle inventory in the prior month to which a unit property tax was assigned. The money shall be deposited by the collector in or otherwise credited by the collector to the owner's escrow account for prepayment of property taxes as provided by this section. An escrow account required by this section is used to pay property taxes levied against the dealer's motor vehicle inventory, and the owner shall fund the escrow account as provided by this subsection.

(c) The collector shall maintain the escrow account for each owner in the county depository. The collector is not required to maintain a separate account in the depository for each escrow account created as provided by this section but shall maintain separate records for each owner. The collector shall retain any interest generated by the escrow account to defray the cost of administration of the prepayment procedure established by this section. Interest generated by an escrow account created as provided by this section is the sole property of the collector, and that interest may be used by no entity other than the collector. Interest generated by an escrow account may not be used to reduce or otherwise affect the annual appropriation to the collector that would otherwise be made.

(d) The owner may not withdraw funds in an escrow account created pursuant to this section.

(e) The comptroller shall promulgate a form entitled a Dealer's Motor Vehicle Inventory Tax Statement. Each month, a dealer shall complete the form regardless of whether a motor vehicle is sold. A dealer may use no other form for that purpose. The statement may include the information the comptroller deems appropriate but shall include at least the following:

(1) a description of each motor vehicle sold;

(2) the sales price of the motor vehicle;

(3) the unit property tax of the motor vehicle if any; and

(4) the reason no unit property tax is assigned if no unit property tax is assigned.

(f) On or before the 10th day of each month a dealer shall file with the collector the statement covering the sale of each motor vehicle sold by the dealer in the prior month. On or before the 10th day of a month following a month in which a dealer does not sell a motor vehicle, the dealer must file the statement with the collector and indicate that no sales were made in the prior month. A dealer shall file a copy of the statement with the chief appraiser and retain documentation relating to the disposition of each motor vehicle sold. A chief appraiser or collector may examine documents held by a dealer as required by this subsection in the same manner, and subject to the same provisions, as are set forth in Section 23.121(g).

(g) The requirements of Subsection (f) of this section apply to all dealers, without regard to whether or not the dealer owes vehicle inventory tax for the current year. A dealer who owes no vehicle inventory tax for the current year because he was not in business on January 1 may neither assign a unit property tax to a motor vehicle sold by the dealer nor remit money with the statement unless pursuant to the terms of a contract as provided by Subsection (*l*) of this section.

(h) A collector may establish a procedure, voluntary or mandatory, by which the unit property tax of a vehicle is paid and deposited into an owner's escrow account at the time of processing the transfer of title to the motor vehicle.

(i) A relevant taxing unit shall, on its tax bill prepared for the owner of a dealer's motor vehicle inventory, separately itemize the taxes levied against the dealer's motor vehicle inventory. When the tax bill is prepared by a relevant taxing unit for a dealer's motor vehicle inventory, the assessor for the relevant taxing unit, or an entity, if any, other than the collector, that collects taxes on behalf of the taxing unit, shall provide the collector a true and correct copy of the tax bill sent to the owner, including taxes levied against the dealer's motor vehicle inventory. The collector shall apply the money in the owner's escrow account to the taxes imposed and deliver a tax receipt to the owner. The collector shall apply the amount to each relevant taxing unit in proportion to the amount of taxes levied, and the assessor of each relevant taxing unit shall apply the funds received from the collector to the taxes owed by the owner.

(j) If the amount in the escrow account is not sufficient to pay the taxes in full, the collector shall apply the money to the taxes and deliver to the owner a tax receipt for the partial payment and a tax bill for the amount of the deficiency together with a statement that the owner must remit to the collector the balance of the total tax due.

(k) The collector shall remit to each relevant taxing unit the total amount collected by the collector in deficiency payments. The assessor of each relevant taxing unit shall apply those funds to the taxes owed by the owner. Taxes that are due but not received by the collector on or before January 31 are delinquent. Not later than February 15 the collector shall distribute to relevant taxing units in the manner set forth in this section all funds collected pursuant to the authority of this section and held in escrow by the collector as provided by this section. This section does not impose a duty on a collector to collect delinquent taxes that the collector is not otherwise obligated by law or contract to collect.

(*l*) A person who acquires the business or assets of an owner may, by contract, agree to pay the current year vehicle inventory taxes owed by the owner. The owner who owes the current year tax and the person who acquires the business or assets of the owner shall jointly notify the chief appraiser and the collector of the terms of the agreement and of the fact that the purchaser has agreed to pay the current year vehicle inventory taxes owed by the selling dealer. The chief appraiser and the collector shall adjust their records accordingly. Notwithstanding the terms of Section 23.121 of this code, a person who agrees to pay current year vehicle inventory taxes as provided by this subsection is not required to file a declaration until the year following the acquisition. This subsection does not relieve the selling owner of tax liability.

(m) A dealer who fails to file a statement as required by this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $100. Each day during which a dealer fails to comply with the terms of this subsection is a separate violation.

(n) In addition to other penalties provided by law, a dealer who fails to file or fails to timely file a statement as required by this section shall forfeit a penalty. A tax lien attaches to the dealer's business personal property to secure payment of the penalty. The appropriate district attorney, criminal district attorney, county attorney, collector, or person designated by the collector shall collect the penalty established by this section in the name of the collector. Venue of an action brought under this subsection is in the county in which the violation occurred or in the county in which the owner maintains the owner's principal place of business or residence. A penalty forfeited under this subsection is $500 for each month or part of a month in which a statement is not filed or timely filed after it is due.

(o) An owner who fails to remit unit property taxes due as required by this section shall pay a penalty of five percent of the amount due. If the amount is not paid within 10 days after the due date, the owner shall pay an additional penalty of five percent of the amount due. Notwithstanding the terms of this section, unit property taxes paid on or before January 31 of the year following the date on which they are due are not delinquent. The collector, the collector's designated agent, or the county or district attorney shall enforce the terms of this subsection. A penalty under this subsection is in addition to any other penalty provided by law if the owner's taxes are delinquent.

(p) Fines collected pursuant to the authority of this section shall be deposited in the county depository to the credit of the general fund. Penalties collected pursuant to the authority of this section are the sole property of the collector, may be used by no entity other than the collector, and may not be used to reduce or otherwise affect the annual appropriation to the collector that would otherwise be made.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 672 (S.B. 878), § 3, effective January 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(47), effective September 1, 1995 (renumbered from Sec. 23.12B); am. Acts 1995, 74th Leg., ch. 945 (H.B. 2624), § 3, effective January 1, 1996 (renumbered from Sec. 23.12B); am. Acts 1997, 75th Leg., ch. 321 (H.B. 2116), §§ 4—7, effective May 26, 1997; am. Acts 2009, 81st Leg., ch. 116 (H.B. 2071), § 2, effective September 1, 2009.

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Installment Contracts. — "Unit property tax value" is a tax pursuant to the Texas Tax Code, and Tex. Fin. Code Ann. § 348.005(2) authorizes dealers to include the amount of the unit property tax value for a particular vehicle at the time of sale as an "itemized charge." Therefore, summary judgment was properly granted to a dealer in a case alleging fraud in the purchase of a used car because it was not improper to include the dealer's inventory tax on an installment contract; moreover, no misrepresentation was shown because a model installment contract set forth in 7 Tex. Admin. Code § 84.809(b) was used, and the language "paid to seller" made it clear which party the tax was payable to. Gifford v. Don Davis Auto, Inc., 274 S.W.3d 890, 2008 Tex. App. LEXIS 9250 (Tex. App. Fort Worth Dec. 11, 2008), reh'g denied, No. 2-07-064-CV, 2009 Tex. App. LEXIS 3066 (Tex. App. Fort Worth Jan. 8, 2009).

TAX LAW
State & Local Taxes
Personal Property Tax
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General Overview. — "Unit property tax value" is a tax pursuant to the Texas Tax Code, and Tex. Fin. Code Ann. § 348.005(2) authorizes dealers to include the amount of the unit property tax value for a particular vehicle at the time of sale as an "itemized charge." Therefore, summary judgment was properly granted to a dealer in a case alleging fraud in the purchase of a used car because it was not improper to include the dealer's inventory tax on an installment contract; moreover, no misrepresentation was shown because a model installment contract set forth in 7 Tex. Admin. Code § 84.809(b) was used, and the language "paid to seller" made it clear which party the tax was payable to. Gifford v. Don Davis Auto, Inc., 274 S.W.3d 890, 2008 Tex. App. LEXIS 9250 (Tex. App. Fort Worth Dec. 11, 2008), reh'g denied, No. 2-07-064-CV, 2009 Tex. App. LEXIS 3066 (Tex. App. Fort Worth Jan. 8, 2009).

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Use of Fund.
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Use of Escrow Account Funds.

The interest generated by the dealer's motor vehicle escrow account held by the tax assessor-collector pursuant to section 23.122 of the Tax Code constitutes a fund which is to be used at the discretion of the collector to defray the cost of administration of the statutory prepayment procedure. The funds may be kept in a special account, and the collector does not need the approval of the commissioners court for their disbursement. Such funds may, however, only be used to defray the cost of administration of the prepayment procedure. They may not be used for general office expenses of the assessor-collector which are unrelated to the cost of administering the program. 1996 Tex. Op. Att'y Gen. DM-398.

Use of Fund.

A tax assessor-collector may use interest that accrues on the Motor Vehicle Inventory Tax Fund established under section 23.122 of the Tax Code to supplement the salaries of the full-time employees who administer the prepayment program if the assessor-collector determines that salary supplements are a legitimate cost of administering the prepayment program. A county auditor must audit the Motor Vehicle Inventory Tax Fund, as well as interest earned on that fund. Any equipment that a tax assessor-collector purchases with interest earned on the Motor Vehicle Inventory Tax Fund is under the sole control of the office of the assessor-collector. 1999 Tex. Op. Att'y Gen. JC-0135.

Use of Interest.

Interest earned on motor vehicle inventory tax escrow accounts may not be used for expenses not related to the administration of the prepayment procedure. The determination as to whether and to what extent a particular purchase is a legitimate cost related to administration of the prepayment procedure is for the tax assessor-collector to make in the first instance. A county auditor's authority to audit the interest monies includes the authority to review expenditures from the fund and to make audit reports regarding the interest monies to the commissioners court. Purchases made by a tax assessor-collector with the interest monies are not subject to competitive bidding under the County Purchasing Act. 1999 Tex. Op. Att'y Gen. JC-0149.

Use of Interest on Escrow Accounts.

A tax assessor-collector may use interest earned on motor vehicle inventory tax escrow accounts to supplement her own salary but this is subject to judicial review to determine that this use of interest monies is a legitimate cost of administration of the motor vehicle inventory tax prepayment program and that it serves a public purpose. 2001 Tex. Op. Att'y Gen. JC-0348.

Sec. 23.123. Declarations and Statements Confidential.

(a) In this section:
(1) "Collector" has the meaning given it in Section 23.122 of this code.
(2) "Chief appraiser" has the meaning given it in Section 23.122 of this code.
(3) "Dealer" has the meaning given it in Section 23.121 of this code.

(4) "Declaration" has the meaning given it in Section 23.122 of this code.

(5) "Owner" has the meaning given it in Section 23.121 of this code.

(6) "Statement" has the meaning given it in Section 23.122 of this code.

(b) Except as provided by this section, a declaration or statement filed with a chief appraiser or collector as required by Section 23.121 or Section 23.122 of this code is confidential and not open to public inspection. A declaration or statement and the information contained in either may not be disclosed to anyone except an employee of the appraisal office who appraises the property or to an employee of the county tax assessor-collector involved in the maintenance of the owner's escrow account.

(c) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the declaration or statement or to that person's representative authorized by the person in writing to receive the information;

(3) to the comptroller or an employee of the comptroller authorized by the comptroller to receive the information;

(4) to a collector or chief appraiser;

(5) to a district attorney, criminal district attorney or county attorney involved in the enforcement of a penalty imposed pursuant to Section 23.121 or Section 23.122;

(6) for statistical purposes if in a form that does not identify specific property or a specific property owner;

(7) if and to the extent that the information is required for inclusion in a public document or record that the appraisal or collection office is required by law to prepare or maintain; or

(8) to the Texas Department of Motor Vehicles for use by that department in auditing compliance of its licensees with appropriate provisions of applicable law.

(d) A person who knowingly permits inspection of a declaration or statement by a person not authorized to inspect the declaration or statement or who discloses confidential information contained in the declaration or statement to a person not authorized to receive the information commits an offense. An offense under this subsection is a Class B misdemeanor.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 945 (H.B. 2624), § 4, effective January 1, 1996; am. Acts 1999, 76th Leg., ch. 1038 (H.B. 3033), § 2, effective June 18, 1999; am. Acts 2009, 81st Leg., ch. 933 (H.B. 3097), § 3K.05, effective September 1, 2009.

Sec. 23.124. Dealer's Vessel and Outboard Motor Inventory; Value.

(a) In this section:

(1) "Chief appraiser" means the chief appraiser for the appraisal district in which a dealer's vessel and outboard motor inventory is located.

(2) "Collector" means the county tax assessor-collector in the county in which a dealer's vessel and outboard motor inventory is located.

(3) "Dealer" means a person who holds a dealer's and manufacturer's number issued by the Parks and Wildlife Department under the authority of Section 31.041, Parks and Wildlife Code, or is authorized by law or interstate reciprocity agreement to purchase vessels or outboard motors in Texas without paying the sales tax. The term does not include a person who is principally engaged in manufacturing vessels or outboard motors or an entity that is owned or controlled by such a person.

(4) "Dealer's vessel and outboard motor inventory" means all vessels and outboard motors held for sale by a dealer.

(5) "Dealer-financed sale" means the sale of a vessel or outboard motor in which the seller finances the purchase of the vessel or outboard motor, is the sole lender in the transaction, and retains exclusively the right to enforce the terms of the agreement evidencing the sale.

(6) "Declaration" means the dealer's vessel and outboard motor inventory declaration form promulgated by the comptroller as required by this section.

(7) "Fleet transaction" means the sale of five or more vessels or outboard motors from a dealer's vessel and outboard motor inventory to the same business entity within one calendar year.

(8) "Outboard motor" has the meaning given it by Section 31.003, Parks and Wildlife Code.

(9) "Owner" means a dealer who owes current year vessel and outboard motor inventory taxes levied against a dealer's vessel and outboard motor inventory.

(10) "Person" means a natural person, corporation, partnership, or other legal entity.

(11) "Sales price" means the total amount of money paid or to be paid for the purchase of:

(A) a vessel, other than a trailer that is treated as a vessel, as set forth as "sales price" in the form entitled "Application for Texas Certificate of Number/Title for Boat/Seller, Donor or Trader's Affidavit" promulgated by the Parks and Wildlife Department;

(B) an outboard motor as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title for an Outboard Motor/Seller, Donor or Trader's Affidavit" promulgated by the Parks and Wildlife Department; or

(C) a trailer that is treated as a vessel as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Motor Vehicles.

In a transaction involving a vessel, an outboard motor, or a trailer that is treated as a vessel that does not involve the use of one of these forms, the term means an amount of money that is equivalent, or substantially equivalent, to

the amount that would appear as "sales price" on the Application for Texas Certificate of Number/Title for Boat/Seller, Donor or Trader's Affidavit, the Application for Texas Certificate of Title for an Outboard Motor/Seller, Donor or Trader's Affidavit, or the Application for Texas Certificate of Title if one of these forms were involved.

(12) "Subsequent sale" means a dealer-financed sale of a vessel or outboard motor that, at the time of the sale, has been the subject of a dealer-financed sale from the same dealer's vessel and outboard motor inventory in the same calendar year.

(13) "Total annual sales" means the total of the sales price from every sale from a dealer's vessel and outboard motor inventory for a 12-month period.

(14) "Vessel" has the meaning given it by Section 31.003, Parks and Wildlife Code, except such term shall not include:

(A) vessels of more than 65 feet in length, measured from end to end over the deck, excluding sheer; and

(B) canoes, kayaks, punts, rowboats, rubber rafts, or other vessels under 14 feet in length when paddled, poled, oared, or windblown.

The term "vessel" also includes trailers that are treated as vessels as defined in this section.

(15) "Trailer treated as a vessel" means a vehicle that:

(A) is designed to carry a vessel; and

(B) is either a "trailer" or "semitrailer" as such terms are defined by Section 501.002, Transportation Code.

(b) For the purpose of the computation of property tax, the market value of a dealer's vessel and outboard motor inventory on January 1 is the total annual sales from the dealer's vessel and outboard motor inventory, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the prior tax year, divided by 12.

(c) For the purpose of the computation of property tax on the market value of a dealer's vessel and outboard motor inventory of an owner who was not a dealer on January 1 of the prior tax year, the chief appraiser shall estimate the market value of the dealer's vessel and outboard motor inventory. In making the estimate required by this subsection, the chief appraiser shall extrapolate using sales data, if any, generated by sales from the dealer's vessel and outboard motor inventory in the prior tax year.

(d) Except for the dealer's vessel and outboard motor inventory, personal property held by a dealer is appraised as provided by other sections of this code. In the case of a dealer whose sales from the dealer's vessel and outboard motor inventory are made predominantly to dealers, the chief appraiser shall appraise the dealer's vessel and outboard motor inventory as provided by Section 23.12 of this code.

(e) A dealer is presumed to be an owner of a dealer's vessel and outboard motor inventory on January 1 if, in the 12-month period ending on December 31 of the immediately preceding year, the dealer sold a vessel or outboard motor to a person other than a dealer. The presumption created by this subsection is not rebutted by the fact that a dealer has no vessels or outboard motors physically on hand for sale from a dealer's vessel and outboard motor inventory on January 1.

(f) The comptroller shall promulgate a form entitled "Dealer's Vessel and Outboard Motor Inventory Declaration." Except as provided by Section 23.125(*l*) of this code, not later than February 1 of each year or, in the case of a dealer who was not in business on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth the following information:

(1) the name and business address of each location at which the dealer owner conducts business;

(2) each of the dealer's and manufacturer's numbers issued by the Parks and Wildlife Department;

(3) a statement that the dealer owner is the owner of a dealer's vessel and outboard motor inventory; and

(4) the market value of the dealer's vessel and outboard motor inventory for the current tax year as computed under Subsection (b) of this section.

(g) Under the terms provided by this subsection, the chief appraiser may examine the books and records of the holder of a dealer's and manufacturer's number issued by the Parks and Wildlife Department. A request made under this subsection must be made in writing, delivered personally to the custodian of the records, must provide a period not less than 15 days for the person to respond to the request, and must state that the person to whom it is addressed has the right to seek judicial relief from compliance with the request. In a request made under this section the chief appraiser may examine:

(1) the document issued by the Parks and Wildlife Department showing the person's dealer's and manufacturer's number;

(2) documentation appropriate to allow the chief appraiser to ascertain the applicability of this section and Section 23.125 of this code to the person;

(3) sales records to substantiate information set forth in the dealer's declaration filed by the person.

(h) If a dealer fails to file a declaration required by this section, or if, on the declaration required by this section, a dealer reports the sale of fewer than five vessels or outboard motors in the prior year, the chief appraiser shall report that fact to the Parks and Wildlife Department.

(i) A dealer who fails to file a declaration required by this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $500. Each day during which a dealer fails to comply with the terms of this subsection is a separate violation.

(j) A dealer who violates Subsection (g) of this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $500. Each day during which a dealer fails to comply with the terms of Subsection (g) of this section is a separate violation.

(k) In addition to other penalties provided by law, a dealer who fails to file or fails to timely file a declaration required by this section shall forfeit a penalty. A tax lien attaches to the dealer's business personal property to secure payment of the penalty. The appropriate district attorney, criminal district attorney, or county attorney shall collect the penalty established by this section in the name of the chief appraiser or collector. Venue of an action brought under this subsection is in the county in which the violation occurred or in the county in which the owner maintains the owner's principal place of business or residence. A penalty forfeited under this subsection is $1,000 for each month or part of a month in which a declaration is not filed or timely filed after it is due.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 836 (H.B. 2940), § 3, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(73), effective September 1, 1997 (renumbered from Sec. 23.12D); am. Acts 1997, 75th Leg., ch. 1052 (S.B. 1153), §§ 1, 2, effective January 1, 1998; am. Acts 2009, 81st Leg., ch. 116 (H.B. 2071), § 3, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 933 (H.B. 3097), § 3K.06, effective September 1, 2009.

Sec. 23.1241. Dealer's Heavy Equipment Inventory; Value.

(a) In this section:

(1) "Dealer" means a person engaged in the business in this state of selling, leasing, or renting heavy equipment. The term does not include a bank, savings bank, savings and loan association, credit union, or other finance company. In addition, for purposes of taxation of a person's inventory of heavy equipment in a tax year, the term does not include a person who renders the person's inventory of heavy equipment for taxation in that tax year by filing a rendition statement or property report in accordance with Chapter 22.

(2) "Dealer's heavy equipment inventory" means all items of heavy equipment that a dealer holds for sale, lease, or rent in this state during a 12-month period.

(3) "Dealer-financed sale" means the sale at retail of an item of heavy equipment in which the dealer finances the purchase of the item, is the sole lender in the transaction, and retains exclusively the right to enforce the terms of the agreement that evidences the sale.

(4) "Declaration" means a dealer's heavy equipment inventory declaration form adopted by the comptroller under this section.

(5) "Fleet transaction" means the sale of five or more items of heavy equipment from a dealer's heavy equipment inventory to the same person in one calendar year.

(6) "Heavy equipment" means self-propelled, self-powered, or pull-type equipment, including farm equipment or a diesel engine, that weighs at least 1,500 pounds and is intended to be used for agricultural, construction, industrial, maritime, mining, or forestry uses. The term does not include a motor vehicle that is required by:

(A) Chapter 501, Transportation Code, to be titled; or

(B) Chapter 502, Transportation Code, to be registered.

(7) "Sales price" means:

(A) the total amount of money paid or to be paid to a dealer for the purchase of an item of heavy equipment; or

(B) for a lease or rental, the total amount of the lease or rental payments.

(8) "Subsequent sale" means a dealer-financed sale of an item of heavy equipment that, at the time of the sale, has been the subject of a dealer-financed sale from the same dealer's heavy equipment inventory in the same calendar year. The term does not include a rental or lease with an unexercised purchase option or without a purchase option.

(9) "Total annual sales" means the total of the:

(A) sales price for each sale from a dealer's heavy equipment inventory in a 12-month period; and

(B) lease and rental payments received for each lease or rental of heavy equipment inventory in a 12-month period.

(b) For the purpose of the computation of property tax, the market value of a dealer's heavy equipment inventory on January 1 is the total annual sales, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the preceding tax year, divided by 12.

(b-1) For the purpose of the computation of property tax on the market value of the dealer's heavy equipment inventory, the sales price of an item of heavy equipment that is sold during the preceding tax year after being leased or rented for a portion of that same tax year is considered to be the sum of the sales price of the item plus the total lease and rental payments received for the item in the preceding tax year.

(c) For the purpose of the computation of property tax on the market value of the dealer's heavy equipment inventory of an owner who was not a dealer on January 1 of the preceding tax year, the chief appraiser shall estimate the market value of the dealer's heavy equipment inventory. In making the estimate required by this subsection, the chief appraiser shall extrapolate using sales data, if any, generated by sales from the dealer's heavy equipment inventory in the preceding tax year.

(d) Except for dealer's heavy equipment inventory, personal property held by a dealer is appraised as provided by the other sections of this code. In the case of a dealer whose sales from the dealer's heavy equipment inventory are made predominately to other dealers, the chief appraiser shall appraise the dealer's heavy equipment inventory as provided by Section 23.12.

(e) A dealer is presumed to be an owner of a dealer's heavy equipment inventory on January 1 if, in the 12-month period ending on December 31 of the preceding year, the dealer sold, leased, or rented an item of heavy equipment to a person other than a dealer. The presumption is not rebutted by the fact that a dealer has no item of heavy equipment physically on hand for sale from the dealer's heavy equipment inventory on January 1.

(f) The comptroller by rule shall adopt a dealer's heavy equipment inventory declaration form. Except as provided by Section 23.1242(k), not later than February 1 of each year, or, in the case of a dealer who was not in business on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth:

(1) the name and business address of each location at which the declarant conducts business;

(2) a statement that the declarant is the owner of a dealer's heavy equipment inventory; and

(3) the market value of the declarant's heavy equipment inventory for the current tax year as computed under Subsection (b).

(g) As provided by this subsection, the chief appraiser may examine the books and records of a dealer. A request made under this subsection must be made in writing, must be delivered personally to the custodian of the records at a location at which the dealer conducts business, must provide a period of not less than 15 days for the person to respond to the request, and must state that the person to whom the request is addressed has the right to seek judicial relief from compliance with the request. In a request made under this section, the chief appraiser may examine:

(1) documentation appropriate to allow the chief appraiser to ascertain the applicability of this section and Section 23.1242 to the person; and

(2) sales records to substantiate information set forth in the declaration filed by the dealer.

(h) [Repealed by Acts 1999, 76th Leg., ch. 574 (S.B. 521), § 2(1), effective June 18, 1999.]

(i) [Repealed by Acts 2011, 82nd Leg., ch. 322 (H.B. 2476), § 8, effective January 1, 2012.]

(j) In addition to other penalties provided by law, a dealer who fails to file or fails to timely file a declaration required by Subsection (f) shall forfeit a penalty. A tax lien attaches to the dealer's business personal property to secure payment of the penalty. The appropriate district attorney, criminal district attorney, or county attorney may collect the penalty established by this section in the name of the collector. The chief appraiser may collect the penalty in the name of the chief appraiser. The chief appraiser or the appropriate district attorney, criminal district attorney, or county attorney may sue to enforce compliance with this section. Venue of an action brought under this subsection, including an action for injunctive relief, is in the county in which the violation occurred or in the county in which the owner maintains the owner's principal place of business or residence. The court may award attorney's fees to a chief appraiser, district attorney, criminal district attorney, or county attorney who prevails in a suit to collect a penalty or enforce compliance with this section. A penalty forfeited under this subsection is $1,000 for each month or part of a month in which a declaration is not filed or timely filed after it is due.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1184 (S.B. 759), § 2, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 574 (S.B. 521), § 2(1), effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1550 (S.B. 1435), §§ 1—3, effective January 1, 2000; am. Acts 2009, 81st Leg., ch. 116 (H.B. 2071), § 4, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 322 (H.B. 2476), §§ 1, 2, 8, effective January 1, 2012; am. Acts 2013, 83rd Leg., ch. 884 (H.B. 826), § 1, effective January 1, 2014.

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Motion to transfer lawsuits to a single judge was denied, as contention of lessors of natural gas compressors that appraisal districts had incorrectly valued their compressors for property tax purposes did not involve common questions of fact but rather, the issues of whether the compressors qualified as "heavy equipment" and whether the lessors were "dealers" under the Tax Code were questions of statutory construction, which were questions of law. Further, whether a particular compressor would satisfy the definition of heavy equipment would turn on characteristics specific to that compressor. In re Heavy Equip. Appraisal Litig., No. 12-0185, 2013 Tex. LEXIS 1079 (Tex. Feb. 14, 2013).

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Taxpayer, a heavy equipment dealer, could not deduct from its inventory lease transactions in which the lease contained a purchase option that was never exercised. The leases were not "subsequent sales" as defined in Tex. Tax Code Ann. § 23.1241(a)(8) because they were not "dealer-financed sales" as

defined in § 23.1241(a)(3). Briggs Equip. Trust v. Harris County Appraisal Dist., 294 S.W.3d 667, 2009 Tex. App. LEXIS 3877 (Tex. App. Houston 1st Dist. June 4, 2009), reh'g denied, No. 01-08-00190-CV, 2009 Tex. App. LEXIS 9970 (Tex. App. Houston 1st Dist. Sept. 17, 2009).

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General Overview. — Transfer of cases in which lessors of natural gas compressors asserted that appraisal districts had incorrectly valued their compressors for property tax purposes would not further convenience and efficiency where, although the parties might be required to send similarly-worded discovery requests, the answers to those requests would vary based on the unique characteristics of the compressor and the specific terms of its related lease agreement. Further, appraisal districts would be inconvenienced by transfer, and it would burden their public budgets. In re Heavy Equip. Appraisal Litig., No. 12-0185, 2013 Tex. LEXIS 1079 (Tex. Feb. 14, 2013).

Motion to transfer lawsuits to a single judge was denied, as contention of lessors of natural gas compressors that appraisal districts had incorrectly valued their compressors for property tax purposes did not involve common questions of fact but rather, the issues of whether the compressors qualified as "heavy equipment" and whether the lessors were "dealers" under the Tax Code were questions of statutory construction, which were questions of law. Further, whether a particular compressor would satisfy the definition of heavy equipment would turn on characteristics specific to that compressor. In re Heavy Equip. Appraisal Litig., No. 12-0185, 2013 Tex. LEXIS 1079 (Tex. Feb. 14, 2013).

IMPOSITION OF TAX. — Company's inventory of heavy equipment qualified as dealer's heavy equipment inventory under Tex. Tax Code Ann. § 23.1241 because those units of personal property were held for sale; the company qualified for special valuation of its terminal tractor inventory. Gregg Appraisal Dist. v. Capacity of Tex., Inc., No. 12-11-00045-CV, 2012 Tex. App. LEXIS 1718 (Tex. App. Tyler Feb. 29, 2012).

Taxpayer, a heavy equipment dealer, could not deduct from its inventory lease transactions in which the lease contained a purchase option that was never exercised. The leases were not "subsequent sales" as defined in Tex. Tax Code Ann. § 23.1241(a)(8) because they were not "dealer-financed sales" as defined in § 23.1241(a)(3). Briggs Equip. Trust v. Harris County Appraisal Dist., 294 S.W.3d 667, 2009 Tex. App. LEXIS 3877 (Tex. App. Houston 1st Dist. June 4, 2009), reh'g denied, No. 01-08-00190-CV, 2009 Tex. App. LEXIS 9970 (Tex. App. Houston 1st Dist. Sept. 17, 2009).

Sec. 23.1242. Prepayment of Taxes by Heavy Equipment Dealers.

(a) In this section:

(1) "Aggregate tax rate" means the combined tax rates of all appropriate taxing units authorized by law to levy property taxes against a dealer's heavy equipment inventory.

(2) "Dealer's heavy equipment inventory," "declaration," "dealer," "sales price," "subsequent sale," and "total annual sales" have the meanings assigned those terms by Section 23.1241.

(3) "Statement" means the dealer's heavy equipment inventory tax statement filed on a form adopted by the comptroller under this section.

(4) "Unit property tax factor" means a number equal to one-twelfth of the preceding year's aggregate ad valorem tax rate at the location where a dealer's heavy equipment inventory is located on January 1 of the current year.

(b) Except for an item of heavy equipment sold to a dealer, an item of heavy equipment included in a fleet transaction, an item of heavy equipment that is the subject of a subsequent sale, or an item of heavy equipment that is subject to a lease or rental, an owner or a person who has agreed by contract to pay the owner's current year property taxes levied against the owner's heavy equipment inventory shall assign a unit property tax to each item of heavy equipment sold from a dealer's heavy equipment inventory. In the case of a lease or rental, the owner shall assign a unit property tax to each item of heavy equipment leased or rented. The unit property tax of each item of heavy equipment is determined by multiplying the sales price of the item or the monthly lease or rental payment received for the item, as applicable, by the unit property tax factor. If the transaction is a lease or rental, the owner shall collect the unit property tax from the lessee or renter at the time the lessee or renter submits payment for the lease or rental. The owner of the equipment shall state the amount of the unit property tax assigned as a separate line item on an invoice. On or before the 20th day of each month the owner shall, together with the statement filed by the owner as required by this section, deposit with the collector an amount equal to the total of unit property tax assigned to all items of heavy equipment sold, leased, or rented from the dealer's heavy equipment inventory in the preceding month to which a unit property tax was assigned. The money shall be deposited by the collector to the credit of the owner's escrow account for prepayment of property taxes as provided by this section. An escrow account required by this section is used to pay property taxes levied against the dealer's heavy equipment inventory, and the owner shall fund the escrow account as provided by this subsection.

(c) The collector shall maintain the escrow account for each owner in the county depository. The collector is not required to maintain a separate account in the depository for each escrow account created as provided by this section but shall maintain separate records for each owner. The collector shall retain any interest generated by the escrow account to defray the cost of administration of the prepayment procedure established by this section. Interest generated by an escrow account created as provided by this section is the sole property of the collector and that interest may not be used by an entity other than the collector. Interest generated by an escrow account may not be used to reduce or otherwise affect the annual appropriation to the collector that would otherwise be made.

(d) Except as provided by Section 23.1243, the owner may not withdraw funds in an escrow account created under this section.

(e) The comptroller by rule shall adopt a dealer's heavy equipment inventory tax statement form. Each month, a dealer shall complete the form regardless of whether an item of heavy equipment is sold, leased, or rented. A dealer may use no other form for that purpose. The statement may include the information the comptroller considers appropriate but shall include at least the following:

(1) a description of each item of heavy equipment sold, leased, or rented including any unique identification or serial number affixed to the item by the manufacturer;

(2) the sales price of or lease or rental payment received for the item of heavy equipment, as applicable;

(3) the unit property tax of the item of heavy equipment, if any; and

(4) the reason no unit property tax is assigned if no unit property tax is assigned.

(f) On or before the 20th day of each month, a dealer shall file with the collector the statement covering the sale, lease, or rental of each item of heavy equipment sold, leased, or rented by the dealer in the preceding month. On or before the 20th day of a month following a month in which a dealer does not sell, lease, or rent an item of heavy equipment, the dealer must file the statement with the collector and indicate that no sales, leases, or rentals were made in the prior month. A dealer shall file a copy of the statement with the chief appraiser and retain documentation relating to the disposition of each item of heavy equipment sold and the lease or rental of each item of heavy equipment. A chief appraiser or collector may examine documents held by a dealer as provided by this subsection in the same manner, and subject to the same conditions, as provided by Section 23.1241(g).

(g) Except as provided by this subsection, Subsection (f) applies to any dealer, regardless of whether a dealer owes heavy equipment inventory tax for the current year. A dealer who owes no heavy equipment inventory tax for the current year because the dealer was not in business on January 1:

(1) shall file the statement required by this section showing the information required by this section for each month that the dealer is in business; and

(2) may not assign a unit property tax to an item of heavy equipment sold by the dealer or remit money with the statement except in compliance with the terms of a contract as provided by Subsection (k).

(h) A taxing unit shall, on its tax bill prepared for the owner of a dealer's heavy equipment inventory, separately itemize the taxes levied against the dealer's heavy equipment inventory. When the tax bill is prepared for a dealer's heavy equipment inventory, the assessor for the taxing unit, or an entity, if any, other than the collector, that collects taxes on behalf of the taxing unit, shall provide the collector a true and correct copy of the tax bill sent to the owner, including taxes levied against the dealer's heavy equipment inventory. The collector shall apply the money in the owner's escrow account to the taxes imposed and deliver a tax receipt to the owner. The collector shall apply the amount to each appropriate taxing unit in proportion to the amount of taxes levied, and the assessor of each taxing unit shall apply the funds received from the collector to the taxes owed by the owner.

(i) If the amount in the escrow account is not sufficient to pay the taxes in full, the collector shall apply the money to the taxes and deliver to the owner a tax receipt for the partial payment and a tax bill for the amount of the deficiency together with a statement that the owner must remit to the collector the balance of the total tax due.

(j) The collector shall remit to each appropriate taxing unit the total amount collected by the collector in deficiency payments. The assessor of each taxing unit shall apply those funds to the taxes owed by the owner. Taxes that are due but not received by the collector on or before January 31 are delinquent. Not later than February 15, the collector shall distribute to each appropriate taxing unit in the manner provided by this section all funds collected under authority of this section and held in escrow by the collector under this section. This section does not impose a duty on a collector to collect delinquent taxes that the collector is not otherwise obligated by law or contract to collect.

(k) A person who acquires the business or assets of an owner may, by contract, agree to pay the current year heavy equipment inventory taxes owed by the owner. The owner who owes the current year tax and the person who acquires the business or assets of the owner shall jointly notify the chief appraiser and the collector of the terms of the agreement and of the fact that the other person has agreed to pay the current year heavy equipment inventory taxes owed by the dealer. The chief appraiser and the collector shall adjust their records accordingly. Notwithstanding Section 23.1241, a person who agrees to pay current year heavy equipment inventory taxes as provided by this subsection is not required to file a declaration until the year following the acquisition. This subsection does not relieve the selling owner of the tax liability.

(*l*) [Repealed by Acts 2011, 82nd Leg., ch. 322 (H.B. 2476), § 8, effective January 1, 2012.]

(m) In addition to other penalties provided by law, a dealer who fails to file or fails to timely file a statement as required by this section shall forfeit a penalty. A tax lien attaches to the dealer's business personal property to secure payment of the penalty. The appropriate district attorney, criminal district attorney, or county attorney may collect the penalty established by this section in the name of the collector. The chief appraiser may collect the penalty in the name of the chief appraiser. The chief appraiser or the appropriate district attorney, criminal district attorney, or county attorney may sue to enforce compliance with this section. Venue of an action brought under this subsection, including an action for injunctive relief, is in the county in which the violation occurred or in the county in which the owner maintains the owner's principal place of business or residence. The court may award attorney's fees to a chief appraiser, district attorney, criminal district attorney, or county attorney who prevails in a suit to collect a penalty or enforce compliance with this section. A penalty forfeited under this subsection is $500 for each month or part of a month in which a statement is not filed or timely filed after it is due.

(n) An owner who fails to remit unit property taxes due as required by this section shall pay a penalty of five percent of the amount due. If the amount is not paid within 10 days after the due date, the owner shall pay an additional penalty of five percent of the amount due. Notwithstanding this section, unit property taxes paid on or before January 31 of the year following the date on which they are due are not delinquent. The collector, the collector's designated agent, or the county or district attorney shall enforce this subsection. A penalty under this subsection is in addition to any other penalty provided by law if the owner's taxes are delinquent.

(o) A fine collected under this section shall be deposited in the county depository to the credit of the general fund. A penalty collected under this section is the sole property of the collector, may be used by no entity other than the collector,

and may not be used to reduce or otherwise affect the annual appropriation to the collector that would otherwise be made.

(p) Section 23.123 applies to a declaration or statement filed under this section in the same manner in which that section applies to a statement or declaration filed as required by Section 23.121 or 23.122.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1184 (S.B. 759), § 2, effective January 1, 1998; am. Acts 2009, 81st Leg., ch. 116 (H.B. 2071), § 5, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 322 (H.B. 2476), §§ 3, 8, effective January 1, 2012; am. Acts 2017, 85th Leg., ch. 89 (H.B. 1346), § 1, effective September 1, 2017.

Sec. 23.1243. Refund of Prepayment of Taxes on Fleet Transaction.

(a) In this section, "dealer" and "fleet transaction" have the meanings assigned those terms by Section 23.1241.

(b) A dealer may apply to the chief appraiser for a refund of the unit property tax paid on a sale that is a fleet transaction.

(c) The chief appraiser shall determine whether to approve or deny, wholly or partly, the refund requested in the application. The chief appraiser shall deliver a written notice of the chief appraiser's determination to the collector maintaining the escrow account described by Section 23.1242 and to the applicant that states the amount, if any, to be refunded.

(d) A collector who receives a notice described by Subsection (c) stating an amount to be refunded shall pay the amount to the dealer not later than the 45th day after the date the collector receives the notice. The dealer shall use the dealer's best efforts to pay the refund to the customer who paid the tax that relates to the fleet transaction for which the refund is requested not later than the 30th day after the date the dealer receives the refund.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 322 (H.B. 2476), § 4, effective January 1, 2012.

Sec. 23.125. Prepayment of Taxes by Certain Taxpayers.

(a) In this section:

(1) "Aggregate tax rate" means the combined tax rates of all relevant taxing units authorized by law to levy property taxes against a dealer's vessel and outboard motor inventory.

(2) "Chief appraiser" has the meaning given it in Section 23.124 of this code.

(3) "Collector" has the meaning given it in Section 23.124 of this code.

(4) "Dealer's vessel and outboard motor inventory" has the meaning given it in Section 23.124 of this code.

(5) "Declaration" has the meaning given it in Section 23.124 of this code.

(6) "Owner" has the meaning given it in Section 23.124 of this code.

(7) "Relevant taxing unit" means a taxing unit, including the county, authorized by law to levy property taxes against a dealer's vessel and outboard motor inventory.

(8) "Sales price" has the meaning given it in Section 23.124 of this code.

(9) "Statement" means the dealer's vessel and outboard motor inventory tax statement filed on a form promulgated by the comptroller as required by this section.

(10) "Subsequent sale" has the meaning given it in Section 23.124 of this code.

(11) "Total annual sales" has the meaning given it in Section 23.124 of this code.

(12) "Unit property tax factor" means a number equal to one-twelfth of the prior year aggregate tax rate at the location where a dealer's vessel and outboard motor inventory is located on January 1 of the current year.

(b) Except for a vessel or outboard motor sold to a dealer, a vessel or outboard motor included in a fleet transaction, or a vessel or outboard motor that is the subject of a subsequent sale, an owner or a person who has agreed by contract to pay the owner's current year property taxes levied against the owner's vessel and outboard motor inventory shall assign a unit property tax to each vessel and outboard motor sold from a dealer's vessel and outboard motor inventory. The unit property tax of each vessel or outboard motor is determined by multiplying the sales price of the vessel or outboard motor by the unit property tax factor. On or before the 10th day of each month the owner shall, together with the statement filed by the owner as required by this section, deposit with the collector a sum equal to the total of unit property tax assigned to all vessels and outboard motors sold from the dealer's vessel and outboard motor inventory in the prior month to which a unit property tax was assigned. The money shall be deposited by the collector in or otherwise credited by the collector to the owner's escrow account for prepayment of property taxes as provided by this section. An escrow account required by this section is used to pay property taxes levied against the dealer's vessel and outboard motor inventory, and the owner shall fund the escrow account as provided by this subsection.

(c) The collector shall maintain the escrow account for each owner in the county depository. The collector is not required to maintain a separate account in the depository for each escrow account created as provided by this section but shall maintain separate records for each owner. The collector shall retain any interest generated by the escrow account to defray the cost of administration of the prepayment procedure established by this section. Interest generated by an escrow account created as provided by this section is the sole property of the collector, and that interest may be used by no entity other than the collector. Interest generated by an escrow account may not be used to reduce or otherwise affect the annual appropriation to the collector that would otherwise be made.

(d) The owner may not withdraw funds in an escrow account created pursuant to this section.

(e) The comptroller shall promulgate a form entitled "Dealer's Vessel and Outboard Motor Inventory Tax Statement." Each month, a dealer shall complete the form regardless of whether a vessel and outboard motor is sold. A dealer may use no other form for that purpose. The statement may include the information the comptroller deems appropriate but shall include at least the following:

(1) a description of each vessel or outboard motor sold;

(2) the sales price of the vessel or outboard motor;

(3) the unit property tax of the vessel or outboard motor, if any; and

(4) the reason no unit property tax is assigned if no unit property tax is assigned.

(f) On or before the 10th day of each month a dealer shall file with the collector the statement covering the sale of each vessel or outboard motor sold by the dealer in the prior month. On or before the 10th day of a month following a month in which a dealer does not sell a vessel or outboard motor, the dealer must file the statement with the collector and indicate that no sales were made in the prior month. A dealer shall file a copy of the statement with the chief appraiser and retain documentation relating to the disposition of each vessel and outboard motor sold. A chief appraiser or collector may examine documents held by a dealer as provided by this subsection in the same manner, and subject to the same provisions, as are set forth in Section 23.124(g).

(g) Except as provided by this subsection, the requirements of Subsection (f) of this section apply to all dealers, without regard to whether or not the dealer owes vessel and outboard motor inventory tax for the current year. A dealer who owes no vessel and outboard motor inventory tax for the current year because he was not in business on January 1:

(1) shall file the statement required by this section showing the information required by this section for each month during which the dealer is in business; and

(2) may neither assign a unit property tax to a vessel or outboard motor sold by the dealer nor remit money with the statement unless pursuant to the terms of a contract as provided by Subsection (*l*) of this section.

(h) A collector may establish a procedure, voluntary or mandatory, by which the unit property tax of a vessel or outboard motor is paid and deposited into an owner's escrow account at the time of processing the transfer of title to the vessel or outboard motor.

(i) A relevant taxing unit shall, on its tax bill prepared for the owner of a dealer's vessel and outboard motor inventory, separately itemize the taxes levied against the dealer's vessel and outboard motor inventory. When the tax bill is prepared by a relevant taxing unit for a dealer's vessel and outboard motor inventory, the assessor for the relevant taxing unit, or an entity, if any, other than the collector, that collects taxes on behalf of the taxing unit, shall provide the collector a true and correct copy of the tax bill sent to the owner, including taxes levied against a dealer's vessel and outboard motor inventory. The collector shall apply the money in the owner's escrow account to the taxes imposed and deliver a tax receipt to the owner. The collector shall apply the amount to each relevant taxing unit in proportion to the amount of taxes levied, and the assessor of each relevant taxing unit shall apply the funds received from the collector to the taxes owed by the owner.

(j) If the amount in the escrow account is not sufficient to pay the taxes in full, the collector shall apply the money to the taxes and deliver to the owner a tax receipt for the partial payment and a tax bill for the amount of the deficiency together with a statement that the owner must remit to the collector the balance of the total tax due.

(k) The collector shall remit to each relevant taxing unit the total amount collected by the collector in deficiency payments. The assessor of each relevant taxing unit shall apply those funds to the taxes owed by the owner. Taxes that are due but not received by the collector on or before January 31 are delinquent. Not later than February 15, the collector shall distribute to relevant taxing units in the manner set forth in this section all funds collected pursuant to the authority of this section and held in escrow by the collector as provided by this section. This section does not impose a duty on a collector to collect delinquent taxes that the collector is not otherwise obligated by law or contract to collect.

(*l*) A person who acquires the business or assets of an owner may, by contract, agree to pay the current year vessel and outboard motor inventory taxes owed by the owner. The owner who owes the current year tax and the person who acquires the business or assets of the owner shall jointly notify the chief appraiser and the collector of the terms of the agreement and of the fact that the other person has agreed to pay the current year vessel and outboard motor inventory taxes owed by the dealer. The chief appraiser and the collector shall adjust their records accordingly. Notwithstanding the terms of Section 23.124 of this code, a person who agrees to pay current year vessel and outboard motor inventory taxes as provided by this subsection is not required to file a declaration until the year following the acquisition. This subsection does not relieve the selling owner of the tax liability.

(m) A dealer who fails to file a statement as required by this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $100. Each day during which a dealer fails to comply with the terms of this subsection is a separate violation.

(n) In addition to other penalties provided by law, a dealer who fails to file or fails to timely file a statement as required by this section shall forfeit a penalty. A tax lien attaches to the owner's business personal property to secure payment of the penalty. The appropriate district attorney, criminal district attorney, or county attorney shall collect the penalty established by this section in the name of the chief appraiser or collector. Venue of an action brought under this subsection is in the county in which the violation occurred or in the county in which the owner maintains the owner's principal place of business or residence. A penalty forfeited under this subsection is $500 for each month or part of a month in which a statement is not filed or timely filed after it is due.

(o) An owner who fails to remit unit property taxes due as required by this section shall pay a penalty of five percent of the amount due. If the amount is not paid within 10 days after the due date, the owner shall pay an additional penalty of five percent of the amount due. Notwithstanding the terms of this section, unit property taxes paid on or before January 31 of the year following the date on which they are due are not delinquent. The collector, the collector's designated agent, or the county or district attorney shall enforce the terms of this subsection. A penalty under this subsection is in addition to any other penalty provided by law if the owner's taxes are delinquent.

(p) Fines and penalties collected pursuant to the authority of this section shall be deposited in the county depository to the credit of the general fund.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 836 (H.B. 2940), § 4, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(73), effective September 1, 1997 (renumbered from Sec. 23.12E); am. Acts 2009, 81st Leg., ch. 116 (H.B. 2071), § 6, effective September 1, 2009.

Sec. 23.126. Declarations and Statements Confidential.

(a) In this section:

(1) "Collector" has the meaning given it in Section 23.124 of this code.

(2) "Chief appraiser" has the meaning given it in Section 23.124 of this code.

(3) "Dealer" has the meaning given it in Section 23.124 of this code.

(4) "Declaration" has the meaning given it in Section 23.124 of this code.

(5) "Owner" has the meaning given it in Section 23.124 of this code.

(6) "Statement" has the meaning given it in Section 23.124 of this code.

(b) Except as provided by this section, a declaration or statement filed with a chief appraiser or collector as required by Section 23.124 or Section 23.125 of this code is confidential and not open to public inspection. A declaration or statement and the information contained in either may not be disclosed to anyone except an employee of the appraisal office who appraises the property or to an employee of the county tax assessor-collector involved in the maintenance of the owner's escrow account.

(c) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the declaration or statement or to that person's representative authorized by the person in writing to receive the information;

(3) to the comptroller or an employee of the comptroller authorized by the comptroller to receive the information;

(4) to a collector or chief appraiser;

(5) to a district attorney, criminal district attorney, or county attorney involved in the enforcement of a penalty imposed pursuant to Section 23.124 or Section 23.125 of this code;

(6) for statistical purposes if in a form that does not identify specific property or a specific property owner; or

(7) if and to the extent that the information is required for inclusion in a document or record that the appraisal or collection office is required by law to prepare or maintain.

(d) A person who knowingly permits inspection of a declaration or statement by a person not authorized to inspect the declaration or statement or who discloses confidential information contained in the declaration or statement to a person not authorized to receive the information commits an offense. An offense under this subsection is a Class B misdemeanor.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 836 (H.B. 2940), § 5, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(73), effective September 1, 1997 (renumbered from Sec. 23.12F).

Sec. 23.127. Retail Manufactured Housing Inventory; Value.

(a) In this section:

(1) "Chief appraiser" means the chief appraiser for the appraisal district in which a retailer's retail manufactured housing inventory is located.

(2) "Collector" means the county tax assessor-collector for the county in which a retailer's retail manufactured housing inventory is located.

(3) "Declaration" means a retail manufactured housing inventory declaration form adopted by the comptroller under this section in relation to units of manufactured housing considered to be retail manufactured housing inventory.

(4) "Department" means the Texas Department of Housing and Community Affairs.

(5) "HUD-code manufactured home" has the meaning assigned by Section 1201.003, Occupations Code.

(6) "Manufactured housing" means:

(A) a HUD-code manufactured home as it would customarily be held by a retailer in the normal course of business in a retail manufactured housing inventory; or

(B) a mobile home as it would customarily be held by a retailer in the normal course of business in a retail manufactured housing inventory.

(7) "Mobile home" has the meaning assigned by Section 1201.003, Occupations Code.

(8) "Owner" means a retailer who owes current year inventory taxes imposed on a retailer's retail manufactured housing inventory.

(9) "Retail manufactured housing inventory" means all units of manufactured housing that a retailer holds for sale at retail and that are defined as inventory by Section 1201.201, Occupations Code.

(10) "Retailer" has the meaning assigned by Section 1201.003, Occupations Code.

(11) "Retailer-financed sale" means the sale at retail of a unit of manufactured housing in which the retailer finances the purchase of the unit of manufactured housing, is the sole lender in the transaction, and retains exclusively the right to enforce the terms of the agreement that evidences the sale.

(12) "Sales price" means the total amount of money paid or to be paid to a retailer for the purchase of a unit of manufactured housing, excluding any amount paid for the installation of the unit.

(13) "Subsequent sale" means a retailer-financed sale of a unit of manufactured housing that, at the time of the sale, has been the subject of a retailer-financed sale from the same retail manufactured housing inventory in the same calendar year.

(14) "Total annual sales" means the total of the sales price for each sale from a retail manufactured housing inventory in a 12-month period.

(b) For the purpose of the computation of property taxes, the market value of a retail manufactured housing inventory on January 1 is the total annual sales, less sales to retailers and subsequent sales, for the 12-month period corresponding to the preceding tax year, divided by 12.

(c) For the purpose of the computation of property taxes on the market value of the retail manufactured housing inventory of an owner who was not a retailer on January 1 of the preceding tax year, the chief appraiser shall estimate the market value of the retail manufactured housing inventory. In making the estimate required by this subsection, the chief appraiser shall extrapolate using any sales data generated by sales from the retail manufactured housing inventory in the preceding tax year.

(d) Except for a retail manufactured housing inventory, personal property held by a retailer is appraised as provided by the other sections of this code. In the case of a retailer whose sales from the retail manufactured housing inventory are made predominately to other retailers, the chief appraiser shall appraise the retail manufactured housing inventory as provided by Section 23.12.

(e) A retailer is presumed to be an owner of a retail manufactured housing inventory on January 1 if, in the 12-month period ending on December 31 of the immediately preceding year, the retailer sold a unit of manufactured housing to a person other than a retailer. The presumption created by this subsection is not rebutted by the fact that a retailer does not have any units of manufactured housing physically on hand for sale from the retail manufactured housing inventory on January 1.

(f) The comptroller by rule shall adopt a form entitled "Retail Manufactured Housing Inventory Declaration." Except as provided by Section 23.128(k), not later than February 1 of each year or, in the case of a retailer who was not in business on January 1, not later than the 30th day after the date the retailer commences business, each retailer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth the following information:

(1) the name and business address of each location at which the retailer conducts business;

(2) the retailer's license number issued by the department;

(3) a statement that the retailer is the owner of a retail manufactured housing inventory; and

(4) the market value of the retailer's manufactured housing inventory for the current tax year as computed under Subsection (b).

(g) The chief appraiser may examine the books and records of a retailer. A request made under this subsection must be made in writing, delivered personally to the custodian of the records at a location at which the retailer conducts business, provide a period of not less than 15 days for the person to respond to the request, and state that the person to whom the request is addressed has the right to seek judicial relief from compliance with the request. In an examination made under this section, the chief appraiser may examine:

(1) the document issued by the department showing the retailer's license number;

(2) documentation appropriate to allow the chief appraiser to ascertain the applicability of this section and Section 23.128 to the retailer; and

(3) sales records to substantiate information stated in a retailer's declaration filed by the person.

(h) If a retailer fails to file a declaration as required by Subsection (f), or if, on the declaration required by Subsection (f) a retailer reports the sale of fewer than two units of manufactured housing in the preceding year, the chief appraiser shall report that fact to the department.

(i) A retailer who fails to file a declaration as required by Subsection (f) commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $500. Each day that a retailer fails to file the declaration as required by Subsection (f) is a separate violation.

(j) A retailer who violates Subsection (g) commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $500. Each day that a retailer fails to comply with Subsection (g) is a separate violation.

(k) In addition to other penalties provided by law, a retailer who fails to file or fails to timely file a declaration required by Subsection (f) is liable for a penalty in the amount of $1,000 for each month or part of a month in which a

declaration is not filed or timely filed after it is due. A lien attaches to the retailer's business personal property to secure payment of the penalty. The appropriate district attorney, criminal district attorney, county attorney, chief appraiser, or person designated by the chief appraiser shall collect the penalty established by this section in the name of the chief appraiser. Venue of an action brought under this subsection is in the county in which the violation occurred or in the county in which the retailer maintains the retailer's principal place of business or residence.

(*l*) Section 23.123 applies to a declaration filed under this section in the same manner in which that section applies to a declaration filed as required by Section 23.121.

(m) Except as provided by Subsection (d), a chief appraiser shall appraise retail manufactured housing inventory in the manner provided by this section.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1112 (H.B. 2606), § 2, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 1060 (H.B. 3197), § 1, effective January 1, 2000; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 14A.812, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 116 (H.B. 2071), § 7, effective September 1, 2009; am. Acts 2017, 85th Leg., ch. 408 (H.B. 2019), §§ 81, 82, effective September 1, 2017.

Sec. 23.128. Prepayment of Taxes by Manufactured Housing Retailers.

(a) In this section:

(1) "Aggregate tax rate" means the combined tax rates of all appropriate taxing units authorized by law to impose property taxes on a retail manufactured housing inventory.

(2) "Appropriate taxing unit" means a taxing unit, including the county, authorized by law to impose property taxes on a retail manufactured housing inventory.

(3) "Chief appraiser," "collector," "declaration," "manufactured housing," "owner," "retail manufactured housing inventory," "retailer," "sales price," "subsequent sale," and "total annual sales" have the meanings assigned by Section 23.127.

(4) "Statement" means the retail manufactured housing inventory tax statement filed on a form adopted by the comptroller under this section.

(5) "Unit property tax factor" means a number equal to one-twelfth of the preceding year's aggregate ad valorem tax rate at the location at which a retail manufactured housing inventory is located on January 1 of the current year.

(b) Except for a unit of manufactured housing sold to a retailer or a unit of manufactured housing that is the subject of a subsequent sale, a retailer or a person who has agreed by contract to pay the retailer's current year property taxes imposed on the retailer's manufactured housing inventory shall assign a unit property tax to each unit of manufactured housing sold from a retail manufactured housing inventory. The unit property tax of each unit of manufactured housing is determined by multiplying the sales price of the unit by the unit property tax factor. On or before the 10th day of each month the retailer shall, together with the statement filed by the retailer as required by this section, deposit with the collector an amount equal to the total of the unit property tax assigned to all units of manufactured housing sold from the retail manufactured housing inventory in the preceding month to which a unit property tax was assigned. The collector shall deposit the money to the credit of the retailer's escrow account for prepayment of property taxes as provided by this section. An escrow account required by this section is used to pay property taxes imposed on the retail manufactured housing inventory, and the retailer shall fund the escrow account as provided by this subsection.

(c) The collector shall maintain the escrow account for each retailer in the county depository. The collector is not required to maintain a separate account in the depository for each escrow account created as provided by this section but shall maintain separate records for each retailer. The collector shall retain any interest generated by the escrow account to defray the cost of administration of the prepayment procedure established by this section. Interest generated by an escrow account created as provided by this section is the sole property of the collector and may not be used by an entity other than the collector. Interest generated by an escrow account may not be used to reduce or otherwise affect the annual appropriation to the collector that would otherwise be made.

(d) The retailer may not withdraw money in an escrow account created under this section.

(e) The comptroller by rule shall adopt a form entitled "Retail Manufactured Housing Inventory Tax Statement." Each month, a retailer shall complete the form regardless of whether a unit of manufactured housing is sold. A retailer may not use another form for that purpose. The statement shall include:

(1) a description of the unit of manufactured housing sold, including any unique identification or serial number affixed to each unit by the manufacturer;

(2) the sales price of the unit of manufactured housing;

(3) any unit property tax of the unit of manufactured housing;

(4) the reason a unit property tax is not assigned if that is the case; and

(5) any other information the comptroller considers appropriate.

(f) On or before the 10th day of each month, a retailer shall file with the collector the statement covering the sale of each unit of manufactured housing sold by the retailer in the preceding month. On or before the 10th day of a month following a month in which a dealer does not sell a unit of manufactured housing, the dealer must file the statement with the collector and indicate that no sales were made in the prior month. A retailer shall file a copy of the statement with the chief appraiser and retain documentation relating to the disposition of each unit of manufactured housing sold. A chief appraiser or collector may examine documents held by a retailer as required by this subsection in the same manner, and subject to the same conditions, as in Section 23.127(g).

(g) Subsection (f) applies to a retailer regardless of whether the retailer owes retail manufactured housing inventory tax for the current year. A retailer who does not owe any retail manufactured housing inventory tax for the current year because the retailer was not in business on January 1 may not assign a unit property tax to a unit of manufactured housing sold by the retailer or remit money with the statement unless under the terms of a contract as provided by Subsection (k).

(h) An appropriate taxing unit shall, on its tax bill prepared for the owner of a retail manufactured housing inventory, separately itemize the taxes imposed on the retail manufactured housing inventory. When the tax bill is prepared for a retail manufactured housing inventory, the assessor for the taxing unit, or an entity, if any, other than the collector, that collects taxes on behalf of the taxing unit, shall provide the collector a true and correct copy of the tax bill sent to the owner, including taxes imposed on the retail manufactured housing inventory. The collector shall apply the money in the owner's escrow account to the taxes imposed and deliver a tax receipt to the owner. The collector shall apply the amount to each appropriate taxing unit in proportion to the amount of taxes imposed, and the assessor of each taxing unit shall apply the money received from the collector to the taxes owed by the owner. No penalties or interest shall be assessed against an owner for property taxes which the owner has previously paid but which are not delivered to the appropriate taxing unit before the date on which such taxes become delinquent.

(i) If the amount in the escrow account is not sufficient to pay the taxes in full, the collector shall apply the money to the taxes and deliver to the owner a tax receipt for the partial payment and a tax bill for the amount of the deficiency together with a statement that the owner must remit to the collector the balance of the total tax due; however, no penalty or interest shall be assessed against an owner for that portion of the property taxes which represents the amount of the partial payment if the amount of the deficiency is not paid before the date the deficiency is delinquent.

(j) The collector shall remit to each appropriate taxing unit the total amount collected by the collector in deficiency payments. The assessor of each taxing unit shall apply that amount to the taxes owed by the owner. Taxes that are due but not received by the collector on or before January 31 are delinquent. Not later than February 15, the collector shall distribute to each appropriate taxing unit in the manner provided by this section all money collected under this section and held in escrow by the collector under this section. This section does not impose a duty on a collector to collect delinquent taxes that the collector is not otherwise obligated by law or contract to collect.

(k) A person who acquires the business or assets of a retailer may, by contract, agree to pay the current year retail manufactured housing inventory taxes owed by the retailer. The retailer who owes the current year tax and the person who acquires the business or assets of the retailer shall jointly notify the chief appraiser and the collector of the terms of the agreement and of the fact that the purchaser has agreed to pay the current year retail manufactured housing inventory taxes owed by the selling retailer. The chief appraiser and the collector shall adjust their records accordingly. Notwithstanding Section 23.127, a person who agrees to pay current year retail manufactured housing inventory taxes as provided by this subsection is not required to file a declaration until the year following the acquisition. This subsection does not relieve the selling retailer of tax liability.

(*l*) A retailer who fails to file a statement as required by this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $100. Each day that a retailer fails to comply with this subsection is a separate violation.

(m) In addition to other penalties provided by law, a retailer who fails to file or fails to timely file a statement as required by this section is liable for a penalty in the amount of $500 for each month or part of a month in which a statement is not filed after it is due. A tax lien attaches to the retailer's business personal property to secure payment of the penalty. The appropriate district attorney, criminal district attorney, county attorney, collector, or person designated by the collector shall collect the penalty established by this section in the name of the collector. Venue of an action brought under this subsection is in the county in which the violation occurred or in the county in which the retailer maintains the retailer's principal place of business or residence.

(n) A retailer who fails to remit unit property taxes due as required by this section shall pay a penalty of five percent of the amount due. If the amount is not paid within 10 days after the due date, the retailer shall pay an additional penalty of five percent of the amount due. Notwithstanding this section, unit property taxes paid on or before January 31 of the year following the date on which they are due are not delinquent. The collector, the collector's designated agent, or the county or district attorney shall enforce this subsection. A penalty under this subsection is in addition to any other penalty provided by law if the owner's taxes are delinquent.

(o) A fine collected under this section shall be deposited in the county depository to the credit of the general fund. A penalty collected under this section is the sole property of the collector and may not be used by an entity other than the collector or used to reduce or otherwise affect the annual appropriation to the collector that would otherwise be made.

(p) Section 23.123 applies to a statement filed under this section in the same manner in which that section applies to a statement filed as required by Section 23.122.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1112 (H.B. 2606), § 2, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 1060 (H.B. 3197), § 2, effective January 1, 2000; am. Acts 1999, 76th Leg., ch. 1060 (H.B. 3197), § 3, effective September 1, 1999; am. Acts 2009, 81st Leg., ch. 116 (H.B. 2071), § 8, effective September 1, 2009.

Sec. 23.129. Waiver of Certain Penalties.

(a) Subject to Subsection (b):

(1) a chief appraiser may waive a penalty imposed by Section 23.121(k), 23.1241(j), or 23.127(k); and

(2) a collector may waive a penalty imposed by Section 23.122(n), 23.1242(m), or 23.128(m).

(b) A chief appraiser or collector may waive a penalty under Subsection (a) only if:

(1) the taxpayer seeking the waiver files a written application for the waiver with the chief appraiser or collector, as applicable, not later than the 30th day after the date the declaration or statement, as applicable, was required to be filed;

(2) the taxpayer's failure to file or failure to timely file the declaration or statement was a result of:

(A) a disaster that made it effectively impossible for the taxpayer to comply with the filing requirement; or

(B) an event beyond the control of the taxpayer that destroyed the taxpayer's property or records; and

(3) the taxpayer is otherwise in compliance with this chapter.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 192 (S.B. 1385), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 16, effective June 14, 2013.

Sec. 23.13. Taxable Leaseholds.

A taxable leasehold or other possessory interest in real property that is exempt from taxation to the owner of the estate or interest encumbered by the possessory interest is appraised at the market value of the leasehold or other possessory interest. However, the appraised value may not be less than the total rental paid for the interest for the current tax year.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

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General Overview. — Under Tex. Tax Code Ann. § 23.13, the minimum appraised value of a leasehold is the total rent paid for a year, but this minimum does not limit the property from being taxed at a greater amount if such an amount is justified by the appraised market value. Panola County Fresh Water Supply Dist. No. One v. Panola County Appraisal Dist., 69 S.W.3d 278, 2002 Tex. App. LEXIS 821 (Tex. App. Texarkana Jan. 31, 2002, no pet.).

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Leasehold estate in land and improvements of exempt property under Tex. Tax. Code Ann. § 23.13 was the appropriate interest to be evaluated for appraisal and proper method of valuation was equity method rather than possessory interest method for purposes of determining ad valorem taxes. Tarrant Appraisal Dist. v. American Airlines, Inc., 826 S.W.2d 767, 1992 Tex. App. LEXIS 649 (Tex. App. Fort Worth Mar. 11, 1992, no writ).

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Easements granted by the School Land Board in coastal and upland public lands that are dedicated to the permanent school fund are taxable pursuant to sections 11.11 and 23.13 of the Tax Code. 1989 Tex. Op. Att'y Gen. JM-1049.

Sec. 23.135. License to Occupy Dwelling Unit in Tax-Exempt Retirement Community.

A license to occupy a dwelling unit in a retirement community that is exempt from taxation under Section 11.18(d)(19) is not a taxable leasehold or other possessory interest in real property regardless of whether the occupant of the

dwelling unit is required to pay a refundable or nonrefundable deposit or a periodic service fee under the contract granting the occupant the license to occupy the dwelling unit.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 606 (H.B. 2080), § 1, effective June 17, 2005.

Sec. 23.14. Appraisal of Property Subject to Environmental Response Requirement.

(a) In this section, "environmental response requirement" means remedial action by a property owner to correct, mitigate, or prevent a present or future air, water, or land pollution.

(b) In appraising real property that the chief appraiser knows is subject to an environmental response requirement, the present value of the estimated cost to the owner of the property of the environmental response requirement is an appropriate element that reduces market value and shall be taken into consideration by the chief appraiser in determining the market value of the property.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 403 (H.B. 1735), § 1, effective August 30, 1993.

Sec. 23.15. Intangibles of an Insurance Company.

Intangible property owned by an insurance company incorporated under the laws of this state is appraised as provided by Article 4.01, Insurance Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 23.16. Intangibles of a Savings and Loan Association.

Intangible property owned by a savings and loan association is appraised as provided by Section 89.003, Finance Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 7.90, effective September 1, 1999.

Sec. 23.17. Mineral Interest Not Being Produced.

An interest in a mineral that may be removed by surface mining or quarrying from a deposit and that is not being produced is appraised at the price for which the interest would sell while the mineral is in place and not being produced. The appraised value is determined by applying a per acre value to the number of acres covered by the interest. The aggregate of the appraised value of the interest and the appraised value of all other interests that if not under separate ownership would constitute a fee simple estate in real property may not exceed the appraised value that would be placed on the fee estate if the interest in minerals were not owned separately.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

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General Overview. — County could not levy taxes on property owner's sand, gravel, and limestone, because substances such as sand, gravel, and limestone were not minerals within the ordinary and natural meaning of the word for ad valorem tax purposes. Gifford-Hill & Co. v. Wise County Appraisal Dist., No. D-0201, 1992 Tex. LEXIS 42 (Tex. Apr. 22, 1992).

ATTORNEY GENERAL OPINIONS

Severed Mineral Estate.

An undeveloped mineral estate is subject to ad valorem taxation where mineral estate was reserved in a deed conveying surface estate. 1942 Tex. Op. Att'y Gen. O-4978.

Sec. 23.175. Oil or Gas Interest.

(a) If a real property interest in oil or gas in place is appraised by a method that takes into account the future income from the sale of oil or gas to be produced from the interest, the method must use the average price of the oil or gas from the interest for the preceding calendar year multiplied by a price adjustment factor as the price at which the oil or gas produced from the interest is projected to be sold in the current year of the appraisal. The average price for the preceding calendar year is calculated by dividing the sum of the monthly average prices for which oil and gas from the interest was selling during each month of the preceding calendar year by 12. If there was no production of oil or gas from the interest during any month of the preceding calendar year, the average price for which similar oil and gas from comparable interests was selling during that month is to be used. Except as otherwise provided by this subsection, the chief appraiser shall calculate the price adjustment factor by dividing the spot price of West Texas Intermediate crude oil in nominal dollars per barrel or the spot price of natural gas at the Henry Hub in nominal dollars per million British thermal units, as applicable, as projected for the current calendar year by the United States Energy Information Administration in the most recently published edition of the Annual Energy Outlook by the spot price of West Texas

Intermediate crude oil in nominal dollars per barrel or the spot price of natural gas at the Henry Hub in nominal dollars per million British thermal units, as applicable, for the preceding calendar year as stated in the same report. If as of March 1 of the current calendar year the most recently published edition of the Annual Energy Outlook was published before December 1 of the preceding calendar year, the chief appraiser shall use the projected current and preceding calendar year spot price of West Texas Intermediate crude oil in nominal dollars per barrel or the spot price of natural gas at the Henry Hub in nominal dollars per million British thermal units, as applicable, as stated in the Short-Term Energy Outlook report published in January of the current calendar year by the United States Energy Information Administration in the price adjustment factor calculations. The price for the interest used in the second through the sixth calendar year of the appraisal may not reflect an annual escalation or de-escalation rate that exceeds the average annual percentage change from 1982 to the most recent year for which the information is available in the producer price index for domestically produced petroleum or for natural gas, as applicable, as published by the Bureau of Labor Statistics of the United States Department of Labor. The price for the interest used in the sixth calendar year of the appraisal must be used in each subsequent year of the appraisal.

(b) The comptroller by rule shall develop and distribute to each appraisal office appraisal manuals that specify the formula to be used in computing the limit on the price for an interest used in the second through the sixth year of an appraisal and the methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

(c) Each appraisal office shall use the formula, methods, and procedures specified by the appraisal manuals developed under Subsection (b).

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 998 (H.B. 925), § 1, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 911 (H.B. 2982), § 2, effective January 1, 2008; am. Acts 2011, 82nd Leg., ch. 144 (S.B. 1505), § 1, effective January 1, 2012; am. Acts 2015, 84th Leg., ch. 4 (S.B. 1985), § 1, effective January 1, 2016.

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General Overview. — Trial court did not err in upholding the appraised value of oil and gas interests because a jury was provided with sufficient instructions and definitions to enable it to render a verdict, the jury heard evidence on the value of the oil and gas interests using Tex. Tax Code Ann. § 23.175, and the jury was instructed to find the market value. Moreover, an objector did not show that the charge probably caused the rendition of an improper judgment. Averitt v. Caudle, No. 11-07-00225-CV, 2009 Tex. App. LEXIS 2284 (Tex. App. Eastland Apr. 2, 2009).

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General Overview. — In a dispute over the valuation of oil and gas interests, testimony from a professional appraiser was not conclusory and insufficient because the appraiser testified without objection to his expertise and qualifications, he testified in great detail how he arrived at the appraisal values for the oil and gas interests, he explained that he valued the property using accepted appraisal methods, he testified at length regarding the methods and techniques he used to appraise the properties, he gave his appraisal values using Tex. Tax Code Ann. § 23.175, and he explained that these values exceeded market value. Moreover, an objector also conducted extensive cross-examination of the appraiser regarding his appraisal techniques. Averitt v. Caudle, No. 11-07-00225-CV, 2009 Tex. App. LEXIS 2284 (Tex. App. Eastland Apr. 2, 2009).

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Property Valuation. — Trial court did not err in entering a judgment that upheld the cumulative fair market values placed by oil companies on two gas unit working interests because the values were arrived at under a correct interpretation of Tex. Tax Code Ann. § 23.175(a), and even where the oil companies were paid $8.00 per Mcf by a gas purchaser for gas sold from the wells in the preceding year, the value of the working interests was properly calculated based solely on the $2.00 per Mcf spot price paid for the gas because the remaining $6.00 represented the purchaser's commitment fee under the oil companies' take-or-pay contracts and that commitment fee was non-taxable intangible personal property. Zapata County Appraisal Dist. v. Coastal Oil & Gas Corp., 90 S.W.3d 847, 157 Oil & Gas Rep. 1062, 2002 Tex. App. LEXIS 6727 (Tex. App. San Antonio Sept. 18, 2002, reh'g denied).

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Imposition of Tax. — In a dispute over the valuation of oil and gas interests, testimony from a professional appraiser was not conclusory and insufficient because the appraiser testified without objection to his expertise and qualifications, he testified in great detail how he arrived at the appraisal values for the oil and gas interests, he explained that he valued the property using accepted appraisal methods, he testified at length regarding the methods and techniques he used to appraise the properties, he gave his appraisal values using Tex. Tax Code Ann. § 23.175, and he explained that these values exceeded market value. Moreover, an objector also conducted extensive cross-examination of the appraiser regarding his appraisal techniques. Averitt v. Caudle, No. 11-07-00225-CV, 2009 Tex. App. LEXIS 2284 (Tex. App. Eastland Apr. 2, 2009).

Trial court did not err in upholding the appraised value of oil and gas interests because a jury was provided with sufficient instructions and definitions to enable it to render a verdict, the jury heard evidence on the value of the oil and gas interests using Tex. Tax Code Ann. § 23.175, and the jury was instructed to find the market value. Moreover, an objector did not show that the

charge probably caused the rendition of an improper judgment. Averitt v. Caudle, No. 11-07-00225-CV, 2009 Tex. App. LEXIS 2284 (Tex. App. Eastland Apr. 2, 2009).

In a case involving the taxation of oil and gas interests, the evidence did not conclusively establish that an appraisal district failed to comply with Tex. Tax Code Ann. § 23.175; the jury heard evidence on the values prepared by a professional appraiser using the provisions of § 23.175. The professional appraiser acknowledged that the values exceeded market value violating state law, and he also prepared appraisals using accepted appraisal methods to arrive at market value. Averitt v. Caudle, No. 11-07-00225-CV, 2009 Tex. App. LEXIS 2284 (Tex. App. Eastland Apr. 2, 2009).

Sec. 23.18. Property Owned by a Nonprofit Homeowners' Organization for the Benefit of Its Members.

(a) Because many residential subdivisions are developed on the basis of a nonprofit corporation or association maintaining nominal ownership to property, such as swimming pools, parks, meeting halls, parking lots, tennis courts, or other similar property, that is held for the use, benefit, and enjoyment of the members of the organization, that nominally owned property is to be appraised as provided by this section on the basis of a nominal value to avoid double taxation of the property that would result from taxation on the basis of market value of both the property of the organization and the residential units or lots of the members of the organization, whose property values are enhanced by the right to use the organization's property.

(b) All property owned by an organization that qualifies as a nonprofit homeowners' organization under this section is appraised at a nominal value as provided by this section if:

(1) the property is held for the use, benefit, and enjoyment of all members of the organization equally;

(2) each member of the organization owns an easement, license, or other nonrevokable right for the use and enjoyment on an equal basis of all property held by the organization, even if the right is subject to a restriction imposed by the instruments conveying the right or interest or granting the easement or subject to a rule, regulation, or bylaw imposed by the organization pursuant to authority granted by articles of incorporation, declaration of covenants, conditions and restrictions, bylaws, or articles of association of the organization; and

(3) each member's easement, license, or other nonrevokable right to the use and enjoyment of the property is appurtenant to and an integral part of the taxable real property owned by the member.

(c) The chief appraiser, in appraising property owned by a member of a qualified nonprofit homeowners' organization who is entitled to the use and enjoyment of facilities owned by the organization, shall consider the enhanced value of the property resulting from the member's right to the use and benefit of those facilities.

(d) An organization qualifies as a nonprofit homeowners' organization under this section if:

(1) it engages in residential real estate management;

(2) it is organized and operated to provide for the acquisition, construction, management, maintenance, and care of property nominally owned by the organization and held for the use, benefit, and enjoyment of its members;

(3) 60 percent or more of the gross income of the organization consists of amounts received as membership dues, fees, or assessments from owners of residences or residential lots within an area subject to the jurisdiction and assessment of the organization;

(4) 90 percent or more of the expenditures of the organization is made for the purpose of acquiring, constructing, managing, maintaining, and caring for the property nominally held by the organization;

(5) each member owns an easement, a license, or other nonrevokable right for the use and enjoyment on an equal basis of all property nominally owned by the organization even if the right is subject to a restriction imposed by the instruments conveying the right or interest or granting the easement or subject to a rule, regulation, or bylaw imposed by the organization pursuant to authority granted by articles of incorporation, declaration of covenants, conditions and restrictions, the bylaws, or articles of association of the organization;

(6) net earnings of the organization do not inure to the benefit of any member of the organization or individual, other than by acquiring, constructing, or providing management, maintenance, and care of the organization's property or by a rebate of excess membership dues, fees, or assessments; and

(7) it qualifies for taxation under Section 1301 of the Tax Reform Act of 1976, Section 528 of the Internal Revenue Code of 1954, as amended, entitled "Certain Homeowners Associations."

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 59, effective January 1, 1982.

Sec. 23.19. Property Occupied by Stockholders of Corporation Incorporated Under Cooperative Association Act.

(a) In this section, "cooperative housing corporation" means a corporation incorporated under the Cooperative Association Act (Article 1396-50.01, Vernon's Texas Civil Statutes) to provide dwelling places for its stockholders.

(b) If an appraisal district receives a written request for the appraisal of real property and improvements of a cooperative housing corporation according to the separate interests of the corporation's stockholders, the chief appraiser shall separately appraise the interests described by Subsection (d) if the conditions required by Subsections (e) and (f) have been met. Separate appraisal under this section is for the purposes of administration of tax exemptions, determination of applicable limitations of taxes under Section 11.26 or 11.261, and apportionment by a cooperative housing corporation of property taxes among its stockholders but is not the basis for determining value on which a tax is imposed under this title. A stockholder whose interest is separately appraised under this section may protest and appeal the appraised value in the manner provided by this title for protest and appeal of the appraised value of other property.

(c) An appraisal under this section applies to the tax year in which a request is made under this section only if the request is received by the appraisal district before March 1. After the first separate appraisal of interests of stockholders of a cooperative housing corporation under this section, separate appraisals of interests of stockholders of the corporation shall be made in subsequent years without further request. A request may not be rescinded after the first separate appraisal has been made, and a request is binding on future owners and stockholders of the corporation.

(d) The interest that is to be separately appraised under this section is the market value of the right of exclusive occupancy of each separate dwelling place that is transferable only concurrently with the transfer of stock ownership in the corporation by the person having the right of occupancy, together with the market value of the right of use of a portion of the total common area used in the residential occupancy that is equal to the percentage of the total amount of the stock issued by the corporation that is owned by the stockholder.

(e) A separate appraisal of interests under this section may not be made unless:

(1) the person making the request files a resolution of the board of directors of the corporation certifying that the stockholders of the corporation have approved the request in the manner provided by the corporate articles of incorporation or bylaws for approval of matters affecting the corporation generally; and

(2) a diagrammatic floor plan of the improvements and a survey plot map of the land showing the location of the improvements on the land have been filed with the appraisal district.

(f) The chief appraiser may require a cooperative housing corporation for which separate appraisal of interests has been requested under this section to submit or verify a list of stockholders of the corporation at least annually.

(g) A tax bill or a separate statement accompanying the tax bill to a cooperative housing corporation for which interests of stockholders are separately appraised under this section must state, in addition to the information required by Section 31.01, the appraised value and taxable value of each interest separately appraised. Each exemption claimed as provided by this title by a person entitled to the exemption shall also be deducted from the total appraised value of the property of the corporation. The total tax imposed by a school district, county, municipality, or junior college district shall be reduced by any amount that represents an increase in taxes attributable to separately appraised interests of the real property and improvements that are subject to the limitation of taxes prescribed by Section 11.26 or 11.261. The corporation shall apportion among its stockholders liability for reimbursing the corporation for property taxes according to the relative taxable values of their interests.

(h) A cooperative housing corporation remains liable for payment of all taxes, penalties, and interest imposed under this title on property owned by the corporation, and the tax lien attaches to the entirety of the property.

(i) The chief appraiser may charge a fee in an amount not to exceed $100 for the initial cost of separately appraising interests in a cooperative housing corporation.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 547 (S.B. 21), § 2, effective January 1, 1988; am. Acts 2003, 78th Leg., ch. 396 (H.B. 136), § 2, effective January 1, 2004.

Sec. 23.20. Waiver of Special Appraisal.

(a) An owner of inventory or real property may in writing waive the right to special appraisal provided by Section 23.12 or Subchapter C, D, E, F, or G as to one or more taxing units designated in the waiver. In a tax year in which a waiver is in effect, the property is appraised for each taxing unit to which the waiver applies at the value determined under Subchapter A of this chapter or the value determined under Section 23.12 or Subchapter C, D, E, F, or G, whichever is the greater value.

(b) A waiver of the right to special appraisal provided by Section 23.12 may be submitted at any time. A waiver of the right to special appraisal provided by Subchapter C, D, E, F, or G may be submitted with an application for appraisal under that subchapter or at any other time. A property owner who has waived special appraisal under this section as to one or more taxing units may make additional waivers under this section as to other taxing units in which the property is located.

(c) A waiver under this section is effective for 25 consecutive tax years beginning on the first tax year in which the waiver is effective without regard to whether the property is subject to appraisal under Section 23.12 or Subchapter C, D, E, F, or G. To be effective in the year in which the waiver is executed, it must be filed before May 1 of that year with the chief appraiser of the appraisal district in which the property is located, unless for good cause shown the chief appraiser extends the filing deadline for not more than 60 days. An application filed after the year's deadline takes effect in the next tax year.

(d) A waiver filed under this section is applicable to the property for the term of the waiver, runs with any land to which the waiver applies, and is binding on the owner who executed the waiver and any successor in interest. A waiver may not be revoked as to any taxing unit except on approval by official action of the governing body of the taxing unit on a finding by the governing body that the revocation of the waiver would not materially impair the contractual, bond, or other debt obligation of the taxing unit wholly or partly payable from property taxes to which the property is subject. An application for revocation must be filed with the governing body of each taxing unit to which the revocation is to apply. A waiver may not be revoked if revocation is prohibited under a rule adopted under Subsection (e). The revocation is effective in the year in which the governing body approves the revocation if the chief appraiser receives a written notice of the approval before the appraisal review board approves the appraisal records. If the notice is not received before the deadline the revocation takes effect in the next tax year.

(e) The Texas Commission on Environmental Quality, a commissioners court, and the Texas Transportation Commission each, by rule, may ensure that a waiver under this section that applies to real property is properly and timely executed, and is irrevocable by the owner of the property to which the waiver applies or by any other related person receiving or proposing to receive, directly or indirectly, the proceeds of any bonds issued by or to be issued by the taxing unit. The rules of the Texas Commission on Environmental Quality apply to waivers applicable to taxing units that are conservation and reclamation districts subject to the jurisdiction of the commission. The rules of the commissioners court apply to waivers applicable to taxing units that are road districts created by the commissioners court. The rules of the Texas Transportation Commission apply to waivers applicable to taxing units that are road utility districts subject to the jurisdiction of the commission.

(f) For computations required to be made under this title, the appraised value of the property for taxation by a taxing unit to which a waiver applies is the value at which the property is taxed under this section.

(g) A waiver of a special appraisal of property under Subchapter C, D, E, F, or G of this chapter does not constitute a change of use of the property or diversion of the property to another use for purposes of the imposition of additional taxes under any of those subchapters.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 17, effective June 15, 1989; Enacted by Acts 1989, 71st Leg., ch. 1235 (H.B. 1948), § 1, effective June 16, 1989; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 11.281, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 165 (S.B. 971), § 22(68), effective September 1, 1995; am. Acts 2003, 78th Leg., ch. 700 (H.B. 2726), § 1, effective January 1, 2004.

Sec. 23.21. Property Used to Provide Affordable Housing.

(a) In appraising real property that is rented or leased to a low-income individual or family meeting income-eligibility standards established by the owner of the property under regulations or restrictions limiting to a percentage of the individual's or the family's income the amount that the individual or family may be required to pay for the rental or lease of the property, the chief appraiser shall take into account the extent to which that use and limitation reduce the market value of the property.

(b) In appraising real property that is rented or leased to a low-income individual or family meeting income-eligibility standards established by a governmental entity or under a governmental contract for affordable housing limiting the amount that the individual or family may be required to pay for the rental or lease of the property, the chief appraiser shall take into account the extent to which that use and limitation reduce the market value of the property.

(c) In appraising land or a housing unit that is leased by a community land trust created or designated under Section 373B.002, Local Government Code, to a family meeting the income-eligibility standards established by Section 373B.006 of that code under regulations or restrictions limiting the amount that the family may be required to pay for the rental or lease of the property, the chief appraiser shall take into account the extent to which that use and limitation reduce the market value of the property.

(d) In appraising a housing unit that the owner or a predecessor of the owner acquired from a community land trust created or designated under Section 373B.002, Local Government Code, and that is located on land owned by the trust and leased by the owner of the housing unit, the chief appraiser shall take into account the extent to which any regulations or restrictions limiting the right of the owner of the housing unit to sell the housing unit, including any limitation on the price for which the housing unit may be sold, reduce the market value of the housing unit.

(e) In appraising real property that was previously owned by an organization that received an exemption for the property under Section 11.181(a) and that was sold to a low-income individual or family meeting income eligibility standards established by the organization under regulations or restrictions limiting to a percentage of the individual's or the family's income the amount that the individual or family was required to pay for purchasing the property, the chief appraiser shall take into account the extent to which that use and limitation and any resale restrictions or conditions applicable to the property established by the organization reduce the market value of the property.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 980 (H.B. 2577), § 53, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 16.04, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 383 (S.B. 402), § 4, effective January 1, 2012; am. Acts 2011, 82nd Leg., ch. 1309 (H.B. 3133), § 3, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 22.001(41), effective September 1, 2013.

Sec. 23.215. Appraisal of Certain Nonexempt Property Used for Low-Income or Moderate-Income Housing.

(a) This section applies only to real property owned by an organization:

(1) that on the effective date of this section was rented to a low-income or moderate-income individual or family satisfying the organization's income eligibility requirements and that continues to be used for that purpose;

(2) that was financed under the low income housing tax credit program under Subchapter DD, Chapter 2306, Government Code;

(3) that does not receive an exemption under Section 11.182 or 11.1825; and

(4) the owner of which has not entered into an agreement with any taxing unit to make payments to the taxing unit instead of taxes on the property.

(b) The chief appraiser shall appraise the property in the manner provided by Section 11.1825(q).

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1156 (H.B. 3546), § 5, effective January 1, 2004.

Sec. 23.22. Land Use of Which Is Restricted by Governmental Entity.

In appraising land the use of which is subject to a restriction that is imposed by a governmental entity and to which the owner of the land has not consented, including a restriction to preserve wildlife habitat, the chief appraiser shall consider the effect of the restriction on the value of the property.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 23, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 160.5, effective September 1, 1999 (renumbered from Sec. 23.21).

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Valuation. — Appellate court overruled the taxpayer's assertion, based upon Tex. Tax Code Ann. § 23.22, that the county appraisal district failed to take into account the diminution in value placed upon some of his properties by zoning restrictions, because the appellate court found no reported cases which carried even any mention of Tex. Tax Code Ann. § 23.22 or made any construction of its application to the facts at hand; it was undisputed that the county appraisal district had placed appraised values on some of the taxpayer's properties as commercial properties and applied commercial values to these tracts in arriving at their values (even though some of these properties were then zoned for residential use only). Daily v. Bowie County Appraisal Dist., No. 06-07-00055-CV, 2007 Tex. App. LEXIS 9222 (Tex. App. Texarkana Nov. 28, 2007).

Sec. 23.225. Appraisal of Land Included in Habitat Preserve and Subject to Conservation Easement [Repealed].

Repealed by Acts 2007, 80th Leg., ch. 454 (H.B. 604), § 3, effective January 1, 2008.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 5, effective September 1, 2005.

Sec. 23.23. Limitation on Appraised Value of Residence Homestead.

(a) Notwithstanding the requirements of Section 25.18 and regardless of whether the appraisal office has appraised the property and determined the market value of the property for the tax year, an appraisal office may increase the appraised value of a residence homestead for a tax year to an amount not to exceed the lesser of:

(1) the market value of the property for the most recent tax year that the market value was determined by the appraisal office; or

(2) the sum of:

(A) 10 percent of the appraised value of the property for the preceding tax year;

(B) the appraised value of the property for the preceding tax year; and

(C) the market value of all new improvements to the property.

(b) When appraising a residence homestead, the chief appraiser shall:

(1) appraise the property at its market value; and

(2) include in the appraisal records both the market value of the property and the amount computed under Subsection (a)(2).

(c) The limitation provided by Subsection (a) takes effect as to a residence homestead on January 1 of the tax year following the first tax year the owner qualifies the property for an exemption under Section 11.13. The limitation expires on January 1 of the first tax year that neither the owner of the property when the limitation took effect nor the owner's spouse or surviving spouse qualifies for an exemption under Section 11.13.

(d) This section does not apply to property appraised under Subchapter C, D, E, F, or G.

(e) In this section, "new improvement" means an improvement to a residence homestead made after the most recent appraisal of the property that increases the market value of the property and the value of which is not included in the appraised value of the property for the preceding tax year. The term does not include repairs to or ordinary maintenance of an existing structure or the grounds or another feature of the property.

(f) Notwithstanding Subsections (a) and (e) and except as provided by Subdivision (2), an improvement to property that would otherwise constitute a new improvement is not treated as a new improvement if the improvement is a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by wind or water damage. For purposes of appraising the property under Subsection (a) in the tax year in which the structure would have constituted a new improvement:

(1) the appraised value the property would have had in the preceding tax year if the casualty or damage had not occurred is considered to be the appraised value of the property for that year, regardless of whether that appraised value exceeds the actual appraised value of the property for that year as limited by Subsection (a); and

(2) the replacement structure is considered to be a new improvement only if:

(A) the square footage of the replacement structure exceeds that of the replaced structure as that structure existed before the casualty or damage occurred; or

(B) the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure.

(g) In this subsection, "disaster recovery program" means the disaster recovery program administered by the General Land Office or by a political subdivision of this state that is funded with community development block grant disaster recovery money authorized by federal law. Notwithstanding Subsection (f)(2), and only to the extent necessary to satisfy the requirements of the disaster recovery program, a replacement structure described by that subdivision is not considered to be a new improvement if to satisfy the requirements of the disaster recovery program it was necessary that:

(1) the square footage of the replacement structure exceed that of the replaced structure as that structure existed before the casualty or damage occurred; or

(2) the exterior of the replacement structure be of higher quality construction and composition than that of the replaced structure.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 47, effective January 1, 1998; am. Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 9, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1355 (H.B. 438), § 1, effective January 1, 2008; am. Acts 2009, 81st Leg., ch. 359 (H.B. 1257), § 1(d), effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1417 (H.B. 770), § 8, effective January 1, 2010; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 15, effective January 1, 2014; am. Acts 2019, 86th Leg., ch. 24 (S.B. 812), § 1, effective May 7, 2019.

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General Overview. — Trial court properly granted summary judgment for tax appraisers where the 10 percent annual cap on valuation increases of residential homesteads applied to the residence homestead as a single unit, i.e., the land together with improvements. Bader v. Dallas Cent. Appraisal Dist., 139 S.W.3d 778, 2004 Tex. App. LEXIS 6592 (Tex. App. Dallas July 22, 2004, no pet.).

ASSESSMENT & VALUATION

General Overview. — Trial court erred in ruling under Tex. Tax Code Ann. § 23.23(a)(2) that the appraised value of a taxpayer's real property was limited to the "capped value" amount and that this amount was also the property's market value; there is a distinction between market value and appraised value in the statutory definitions in Tex. Tax Code Ann. § 1.04(7), (8), and the appraised value is not necessarily the same as the market value, which is computed in accordance with Tex. Tax Code Ann. § 23.01(b). Dallas Cent. Appraisal Dist. v. Cunningham, 161 S.W.3d 293, 2005 Tex. App. LEXIS 3274 (Tex. App. Dallas Apr. 29, 2005, no pet.).

VALUATION. — Because the character of a residence homestead as defined in Tex. Tax Code Ann. § 11.13(j)(1)(A) does not require full ownership vested in a single individual, the residence homestead appraised value cap under Tex. Tax Code Ann. § 23.23(a) could not be prorated based on a taxpayer's partial ownership of his homestead. Martinez v. Dallas Cent. Appraisal Dist., 339 S.W.3d 184, 2011 Tex. App. LEXIS 2031 (Tex. App. Dallas Mar. 22, 2011, no pet.).

Record reflected that the taxing authorities' valuation comported with Tex. Tax Code Ann. § 23.23 as the taxing authorities' appraised value of the property for tax year 2007 was $106,590. Amidei v. Harris County Appraisal Dist., No. 01-08-00833-CV, 2009 Tex. App. LEXIS 5559 (Tex. App. Houston 1st Dist. July 16, 2009).

ATTORNEY GENERAL OPINIONS

Analysis

Post-Hurricane Appraisals.
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Post-Hurricane Appraisals.

Calculation of the 2010 appraised value of a residence homestead damaged by Hurricane Ike in 2008 and renovated to its pre-storm status is determined by Tex. Tax Code Ann. § 23.23(f) so long as the structure was "rendered uninhabitable or unusable"; if the structure was not rendered uninhabitable or unusable, calculation of the 2010 appraised value is dependent upon whether the renovations may reasonably be said to constitute a mere "repair" or a "new improvement" under Tex. Tax Code Ann. § 23.23(e); if the structure was rendered uninhabitable or unusable, calculation of the 2010 appraised value is dependent upon the appraised value the property would have had in 2009 but for the storm damage, together with the market value of all new improvements to the property as described by Tex. Tax Code Ann. § 23.23(f)(2). 2010 Tex. Op. Att'y Gen. GA-0805.

Tax Appraisals.

An appraisal district and its participating taxing units are not authorized to submit an issue to the voters for an election to require a particular appraisal schedule, whether initiated by petition or otherwise. Sections 23.01, 23.23, and 25.18 of the Tax Code do not prohibit conducting appraisals every third year rather than annually. 2009 Tex. Op. Att'y Gen. GA-0740, 2009 Tex. AG LEXIS 60.

Valuation of Repairs from Disaster.

For purposes of section 23.23 of the Tax Code, which caps the market value of a residence homestead's appraised value, the term "new improvement" includes repairs made following a natural disaster because the repairs are not "ordinary maintenance." Enhancements that increase a homestead's market value are new improvements for purposes of section 23.23(a)(2), and their value must be included in the calculation of a homestead's capped appraised value. For purposes of section 11.26(b) of the Tax Code, which permits a school district to increase the tax on a senior's residence homestead if the homestead has been improved, an appraiser must determine whether a homestead damaged by a natural disaster has been repaired or improved. 2003 Tex. Op. Att'y Gen. GA-0091.

Sec. 23.24. Furniture, Fixtures, and Equipment.

(a) If real property is appraised by a method that takes into account the value of furniture, fixtures, and equipment

in or on the real property, the furniture, fixtures, and equipment shall not be subject to additional appraisal or taxation as personal property.

(b) In determining the market value of the real property appraised on the basis of rental income, the chief appraiser may not separately appraise or take into account any personal property valued as a portion of the income of the real property, and the market value of the real property must include the combined value of the real property and the personal property.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 479 (S.B. 1464), § 1, effective September 1, 1999; am. Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 2, effective January 1, 2010.

Sec. 23.25. Appraisal of Land Used for Single-Family Residential Purposes That Is Contiguous to Agricultural or Open-Space Land with Common Ownership.

(a) This section applies only to the appraisal of a parcel of land that:
(1) is used for single-family residential purposes; and
(2) is contiguous to a parcel of land that is:
(A) appraised under Subchapter C or D; and
(B) owned by:
(i) the same person;
(ii) the person's spouse;
(iii) an individual related within the first degree of consanguinity to the person; or
(iv) a legal entity that is affiliated with the person.

(b) In appraising the parcel of land, the chief appraiser shall:
(1) determine the price for which the parcel of land being appraised and the contiguous parcel of land described by Subsection (a)(2) would sell if both parcels were sold as a single combined parcel of land; and
(2) attribute a portion of the amount determined under Subdivision (1) to the parcel of land being appraised based on the proportion that the size of the parcel of land being appraised bears to the size of the single combined parcel of land described by Subdivision (1).

(c) If the chief appraiser uses the market data comparison method of appraisal to appraise the parcel of land, the chief appraiser may not use comparable sales data pertaining to the sale of land located in the corporate limits of a municipality.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1112 (H.B. 3630), § 1, effective January 1, 2008.

Sec. 23.26. Solar Energy Property.

(a) In this section, "solar energy property" means a "solar energy device" as defined by Section 11.27(c)(1) that is used for a commercial purpose, including a commercial storage device, power conditioning equipment, transfer equipment, and necessary parts for the device and equipment.

(b) This section applies only to solar energy property that is constructed or installed on or after January 1, 2014.

(c) The chief appraiser shall use the cost method of appraisal to determine the market value of solar energy property.

(d) To determine the market value of solar energy property using the cost method of appraisal, the chief appraiser shall:
(1) use cost data obtained from generally accepted sources;
(2) make any appropriate adjustment for physical, functional, or economic obsolescence and any other justifiable factor; and
(3) calculate the depreciated value of the property by using a useful life that does not exceed 10 years.

(e) The chief appraiser may not in any tax year determine the depreciated value under Subsection (d)(3) to be less than 20 percent of the value computed after making appropriate adjustments under Subsection (d)(2) to the value determined under Subsection (d)(1).

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 687 (H.B. 2500), § 1, effective January 1, 2014.

Secs. 23.27 to 23.40. [Reserved for expansion].

Subchapter C

Land Designated for Agricultural Use

Sec. 23.41. Appraisal.

(a) Land designated for agricultural use is appraised at its value based on the land's capacity to produce agricultural products. The value of land based on its capacity to produce agricultural products is determined by capitalizing the average net income the land would have yielded under prudent management from production of agricultural products during the five years preceding the current year. However, if the value of land as determined by capitalization of average

net income exceeds the market value of the land as determined by other generally accepted appraisal methods, the land shall be appraised by application of the other appraisal methods.

(b) The comptroller shall promulgate rules specifying the methods to apply and the procedures to use in appraising land designated for agricultural use.

(c), (d) [Repealed by Acts 1999, 76th Leg., ch. 574 (S.B. 521), § 2(2), effective June 18, 1999.]

(e) Improvements other than appurtenances to the land, the mineral estate, and all land used for residential purposes and for processing harvested agricultural products are appraised separately at market value. Riparian water rights, private roads, dams, reservoirs, water wells, and canals, ditches, terraces, and similar reshapings of or additions to the soil for agricultural purposes are appurtenances to the land, and the effect of each on the value of the land for agricultural use shall be considered in appraising the land. However, the comptroller shall provide that in calculating average net income from land a deduction from income be allowed for an appurtenance subject to depreciation or depletion.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 60, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 21, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 574 (S.B. 521), § 2(2), effective June 18, 1999.

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CONTRACTS LAW
Third Parties

Subrogation. — Because a debtor's land was designated for agricultural use as provided by the Tax Code, Tex. Const. art. XVI, § 50(a)(6)(I), prohibited it from being used as security for a home equity loan, but the bank was entitled to equitable subrogation for the amount paid to a third party and for taxes from the home equity loan proceeds. LaSalle Bank Nat'l Ass'n v. White, No. 04-05-00548-CV, 2006 Tex. App. LEXIS 3698 (Tex. App. San Antonio May 3, 2006), op. withdrawn, sub. op., 217 S.W.3d 573, 2006 Tex. App. LEXIS 8747 (Tex. App. San Antonio Oct. 11, 2006).

REAL PROPERTY LAW
Financing

General Overview. — Plaintiff mortgagor's property, if later re-designated as agricultural, was protected from forced sale under Tex. Const. art. XVI, § 50(a)(6)(I), regardless of its designation when the debt was incurred, but issues of fact existed on whether the land qualified as agricultural under Tex. Tax Code Ann. subchs. C, D, when defendant bank sought to foreclose. Marketic v. U. S. Bank Nat'l Ass'n, 436 F. Supp. 2d 842, 2006 U.S. Dist. LEXIS 43038 (N.D. Tex. 2006).

HOMESTEAD EXEMPTIONS. — Plaintiff mortgagor's property, if later re-designated as agricultural, was protected from forced sale under Tex. Const. art. XVI, § 50(a)(6)(I), regardless of its designation when the debt was incurred, but issues of fact existed on whether the land qualified as agricultural under Tex. Tax Code Ann. subchs. C, D, when defendant bank sought to foreclose. Marketic v. U. S. Bank Nat'l Ass'n, 436 F. Supp. 2d 842, 2006 U.S. Dist. LEXIS 43038 (N.D. Tex. 2006).

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — Plaintiff mortgagor's property, if later re-designated as agricultural, was protected from forced sale under Tex. Const. art. XVI, § 50(a)(6)(I), regardless of its designation when the debt was incurred, but issues of fact existed on whether the land qualified as agricultural under Tex. Tax Code Ann. subchs. C, D, when defendant bank sought to foreclose. Marketic v. U. S. Bank Nat'l Ass'n, 436 F. Supp. 2d 842, 2006 U.S. Dist. LEXIS 43038 (N.D. Tex. 2006).

Sec. 23.42. Eligibility.

(a) **[Effective until January 1, 2020]** Except as provided by Subsection (a-1), an individual is entitled to have land he owns designated for agricultural use if, on January 1:

(1) the land has been devoted exclusively to or developed continuously for agriculture for the three years preceding the current year;

(2) the individual is using and intends to use the land for agriculture as an occupation or a business venture for profit during the current year; and

(3) agriculture is the individual's primary occupation and primary source of income.

(a) **[Effective January 1, 2020]** An individual is entitled to have land he owns designated for agricultural use if, on January 1:

(1) the land has been devoted exclusively to or developed continuously for agriculture for the three years preceding the current year;

(2) the individual is using and intends to use the land for agriculture as an occupation or a business venture for profit during the current year; and

(3) agriculture is the individual's primary occupation and primary source of income.

(a-1) **[Effective until January 1, 2020]** On or after January 1, 2008, an individual is not entitled to have land designated for agricultural use if the land secures a home equity loan described by Section 50(a)(6), Article XVI, Texas Constitution.

(a-1) **[Effective January 1, 2020]** [Repealed.]

(b) Use of land for nonagricultural purposes does not deprive an owner of his right to an agricultural designation if the nonagricultural use is secondary to and compatible with the agricultural use of the land.

(c) Agriculture is an individual's primary occupation and primary source of income if as of January 1 he devotes a greater portion of his time to and derives a greater portion of his gross income from agriculture than any other occupation. The time an individual devotes to each occupation and the gross income he derives from each is determined by averaging the time he devoted to each and the gross income he derived from each for any number of consecutive years not exceeding five years immediately preceding January 1 of the current year, that he has engaged in agriculture as an occupation. However, if he has not been engaged in agriculture as an occupation for the entire year preceding January 1, the time he has devoted to and the income he has derived from each occupation since the date he began engaging in agriculture as an occupation determine whether agriculture is his primary occupation and primary source of income.

(d) For purposes of this section:

(1) "Agriculture" means the use of land to produce plant or animal products, including fish or poultry products, under natural conditions but does not include the processing of plant or animal products after harvesting or the production of timber or forest products.

(2) "Occupation" includes employment and a business venture that requires continual supervision or management.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2007, 80th Leg., ch. 1112 (H.B. 3630), § 2, effective January 1, 2008; am. Acts 2019, 86th Leg., ch. 12 (H.B. 1254), §§ 1, 2, effective January 1, 2020.

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REAL PROPERTY LAW

Homestead Exemptions. — Tex. Const. art. XVI, § 50(a)(6)(I)'s use of the phrase "designated for agricultural use as provided by statutes governing property tax" referred to land put to an agricultural use as defined by, and assessed for tax purposes under, both Tex. Tax Code Ann. § 23.42 and Tex. Tax Code Ann. § 23.51; because the homeowner's land was designated for agricultural use, the Texas Constitution prohibited it from being used as security for a home equity loan. LaSalle Bank Nat'l Ass'n v. White, 217 S.W.3d 573, 2006 Tex. App. LEXIS 8747 (Tex. App. San Antonio), reh'g denied, No. 04-05-00548-CV, 2006 Tex. App. LEXIS 11288 (Tex. App. San Antonio Oct. 11, 2006).

TAX LAW

State & Local Taxes

Real Property Tax

Assessment & Valuation

Assessment Methods & Timing. — Tex. Const. art. XVI, § 50(a)(6)(I)'s use of the phrase "designated for agricultural use as provided by statutes governing property tax" referred to land put to an agricultural use as defined by, and assessed for tax purposes under, both Tex. Tax Code Ann. § 23.42 and Tex. Tax Code Ann. § 23.51; because the homeowner's land was designated for agricultural use, the Texas Constitution prohibited it from being used as security for a home equity loan. LaSalle Bank Nat'l Ass'n v. White, 217 S.W.3d 573, 2006 Tex. App. LEXIS 8747 (Tex. App. San Antonio), reh'g denied, No. 04-05-00548-CV, 2006 Tex. App. LEXIS 11288 (Tex. App. San Antonio Oct. 11, 2006).

ATTORNEY GENERAL OPINIONS

Application to Aquatic Life.

Section 23.42 of the Tax Code and article VIII, sections 1-d, 1-d-1, 19 and 19a of the Texas Constitution, pertain to fish and other forms of aquatic life. 1983 Tex. Op. Att'y Gen. JM-87.

Sec. 23.425. Eligibility of Land Used for Growing Florist Items in Certain Counties.

(a) This section applies only to land:

(1) that is located in a county with a population of 35,000 or less; and

(2) on which a greenhouse for growing florist items solely for wholesale purposes is located.

(b) A person who owns land described by Subsection (a) is entitled to have the land designated for agricultural use under this subchapter if the land otherwise qualifies for the designation under Section 23.42 and the person who owns the land is not using it in conjunction with or contiguous to land being used to conduct retail sales of florist items. For purposes of Section 23.41, a greenhouse described by Subsection (a)(2) is an appurtenance to the land.

(c) In this section:

(1) "Florist item" has the meaning assigned by Section 71.041, Agriculture Code.

(2) "Greenhouse" means a building or permanent structure that is enclosed with a nonporous covering and is designed or constructed for growing plants in a protected or climate-controlled environment.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 365 (S.B. 1272), § 1, effective January 1, 2002.

Sec. 23.426. Temporary Cessation of Agricultural Use Due to Quarantine for Ticks.

(a) The entitlement of an individual to have land the individual owns designated for agricultural use under this subchapter does not end because the individual ceases exclusively or continuously using the land for agriculture as an occupation or a business venture for profit for the period prescribed by Subsection (b) if the land:

(1) is subject to a temporary quarantine established at any time during the tax year by the Texas Animal Health

Commission for the purpose of regulating the handling of livestock and eradicating ticks or exposure to ticks under Chapter 167, Agriculture Code; and

(2) otherwise continues to qualify for the designation under Section 23.42.

(b) Subsection (a) applies to land eligible for appraisal under this subchapter only during the period that begins on the date the land is designated as a tick eradication area and that ends on the date the land is released from quarantine by the Texas Animal Health Commission.

(c) The owner of land to which this section applies must, not later than the 30th day after the date the land is designated as a tick eradication area, notify in writing the chief appraiser for each appraisal district in which the land is located that the land is located in a tick eradication area.

(d) The owner of land to which this section applies must, not later than the 30th day after the date the land is released from quarantine by the Texas Animal Health Commission, notify in writing the chief appraiser for each appraisal district in which the land is located that the land has been released from quarantine by the Texas Animal Health Commission.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 101 (H.B. 3348), § 1, effective May 21, 2019.

Sec. 23.43. Application.

(a) An individual claiming the right to have his land designated for agricultural use must apply for the designation each year he claims it. Application for the designation is made by filing a sworn application form with the chief appraiser for the appraisal district in which the land is located.

(b) A claimant must deliver a completed application form to the chief appraiser before May 1 and must furnish the information required by the form. For good cause shown the chief appraiser may extend the deadline for filing the application by written order for a single period not to exceed 60 days.

(c) If a claimant fails to timely file a completed application form in a given year, he may not receive the agricultural designation for that year.

(d) The comptroller in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim. The comptroller shall require that the form permit a claimant who has previously been allowed an agricultural designation to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported. The form must include a space for the claimant to state the claimant's date of birth. Failure to provide the date of birth does not affect a claimant's right to an agricultural designation under this subchapter.

(e) Before February 1 the chief appraiser shall deliver an application form to each individual whose land was designated for agricultural use during the preceding year. He shall include with the application a brief explanation of the requirements for obtaining agricultural designation.

(f) Each year the chief appraiser for each appraisal district shall publicize, in a manner reasonably designed to notify all residents of the district, the requirements of this section and the availability of application forms.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), §§ 61, 62, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 22, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 352 (H.B. 1464), § 2, effective September 1, 2015.

Sec. 23.431. Late Application for Agricultural Designation.

(a) The chief appraiser shall accept and approve or deny an application for an agricultural designation after the deadline for filing it has passed if it is filed before approval of the appraisal records by the appraisal review board.

(b) If an application for agricultural designation is approved when the application is filed late, the owner is liable for a penalty of 10 percent of the difference between the amount of tax imposed on the property and the amount that would be imposed without the agricultural designation.

(c) The chief appraiser shall make an entry on the appraisal records indicating the person's liability for the penalty and shall deliver written notice of imposition of the penalty, explaining the reason for its imposition, to the person.

(d) The tax assessor for a taxing unit to which an agricultural designation allowed after a late application applies shall add the amount of the penalty to the owner's tax bill, and the tax collector for the unit shall collect the penalty at the time and in the manner he collects the tax. The amount of the penalty constitutes a lien against the property against which the penalty is imposed, as if it were a tax, and accrues penalty and interest in the same manner as a delinquent tax.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 63, effective January 1, 1982.

Sec. 23.44. Action on Application.

(a) The chief appraiser shall determine individually each claimant's right to the agricultural designation. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

(1) approve the application and designate the land for agricultural use;

(2) disapprove the application and request additional information from the claimant in support of the claim; or

(3) deny the application.

(b) If the chief appraiser requests additional information from a claimant, the claimant must furnish the information within 30 days after the date of the request or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing additional information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for agricultural designation filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser denies an application, he shall deliver a written notice of the denial to the claimant within five days after the date of denial. The notice must include a brief explanation of the procedures for protesting the denial.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 64, effective January 1, 1982.

Sec. 23.45. Application Confidential.

(a) An application for agricultural designation filed with a chief appraiser is confidential and not open to public inspection. The application and the information it contains about specific property or a specific owner may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the application or to his representative authorized in writing to receive the information;

(3) to the comptroller and his employees authorized by him in writing to receive the information or to an assessor or a chief appraiser if requested in writing;

(4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the application is a party;

(5) for statistical purposes if in a form that does not identify specific property or a specific property owner; or

(6) if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain.

(c) A person who legally has access to an application for agricultural designation or who legally obtains the confidential information the application contains commits a Class B misdemeanor if he knowingly:

(1) permits inspection of the application by a person not authorized to inspect it by Subsection (b) of this section; or

(2) discloses confidential information contained in the report to a person not authorized to receive the information by Subsection (b) of this section.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 65, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 23, effective September 1, 1991.

Sec. 23.46. Additional Taxation.

(a) When appraising land designated for agricultural use, the chief appraiser also shall appraise the land at its market value and shall record both the market value and the value based on its capacity to produce agricultural products in the appraisal records.

(b) Property taxes imposed on land designated for agricultural use are based on the land's agricultural use value determined as provided by Section 23.41 of this code after the appropriate assessment ratio has been applied to that value. When an assessor calculates the amount of tax due on the land, however, he shall also calculate the amount of tax that would have been imposed had the land not been designated for agricultural use. The difference in the amount of tax imposed and the amount that would have been imposed is the amount of additional tax for that year, and the assessor shall enter that amount in his tax records relating to the property.

(c) If land that has been designated for agricultural use in any year is sold or diverted to a nonagricultural use, the total amount of additional taxes for the three years preceding the year in which the land is sold or diverted plus interest at the rate provided for delinquent taxes becomes due. Subject to Subsection (f), a determination that the land has been diverted to a nonagricultural use is made by the chief appraiser. For purposes of this subsection, the chief appraiser may not consider any period during which land is owned by the state in determining whether the land has been diverted to a nonagricultural use. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes plus interest as soon as practicable after the change of use occurs. If the additional taxes are due because of a sale of the land, the assessor for each taxing unit shall prepare and deliver the bill as soon as practicable after the sale occurs. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(d) A tax lien attaches to the land on the date the sale or change of use occurs to secure payment of the additional tax and interest imposed by Subsection (c) of this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(e) Land is not diverted to nonagricultural use for purposes of Subsection (c) of this section solely because the owner of the land claims it as part of his residence homestead for purposes of Section 11.13 of this code.

(f) If land designated for agricultural use under this subchapter is owned by an individual 65 years of age or older, before making a determination that the land has been diverted to a nonagricultural use, the chief appraiser shall deliver a written notice to the owner stating that the chief appraiser believes the land may have been diverted to a nonagricultural use. The notice must include a form on which the owner may indicate that the owner remains entitled to have the land designated for agricultural use and a self-addressed postage prepaid envelope with instructions for returning the form to the chief appraiser. The chief appraiser shall consider the owner's response on the form in determining whether the land has been diverted to a nonagricultural use. If the chief appraiser does not receive a response on or before the 60th day after the date the notice is mailed, the chief appraiser must make a reasonable effort to locate the owner and determine whether the owner remains entitled to have the land designated for agricultural use before determining that the land has been diverted to a nonagricultural use. For purposes of this subsection, sending an additional notice to the owner immediately after the expiration of the 60-day period by first class mail in an envelope on which is written, in all capital letters, "RETURN SERVICE REQUESTED," or another appropriate statement directing the United States Postal Service to return the notice if it is not deliverable as addressed, or providing the additional notice in another manner that the chief appraiser determines is appropriate, constitutes a reasonable effort on the part of the chief appraiser.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 66, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 652 (S.B. 1143), § 1, effective June 19, 1983; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 11, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 18, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 345 (S.B. 728), § 4, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 352 (H.B. 1464), § 3, effective September 1, 2015.

NOTES TO DECISIONS

TAX LAW
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General Overview. — Land used for agricultural purposes is appraised for tax purposes as "qualified open-space land" pursuant to Tex. Const. art. VIII, § 1-d-1, Tex. Tax Code Ann. § 23.46, and Tex. Tax Code Ann. § 23.51. Compass Bank v. Bent Creek Invs., Inc., 52 S.W.3d 419, 2001 Tex. App. LEXIS 4832 (Tex. App. Fort Worth July 19, 2001, no pet.).

Sec. 23.47. Loan Secured by Lien on Agricultural-Use Land.

(a) A lender may not require as a condition to granting or amending the terms of a loan secured by a lien in favor of the lender on land appraised according to this subchapter that the borrower waive the right to the appraisal or agree not to apply for or receive the appraisal.

(b) A provision in an instrument pertaining to a loan secured by a lien in favor of the lender on land appraised according to this subchapter is void to the extent that the provision attempts to require the borrower to waive the right to the appraisal or to prohibit the borrower from applying for or receiving the appraisal.

(c) A provision in an instrument pertaining to a loan secured by a lien in favor of the lender on land appraised according to this subchapter that requires the borrower to make a payment to protect the lender from loss because of the imposition of additional taxes and interest under Section 23.46 is void unless the provision:

(1) requires the borrower to pay into an escrow account established by the lender an amount equal to the additional taxes and interest that would be due under Section 23.46 if a sale or change of use occurred on January 1 of the year in which the loan is granted or amended;

(2) requires the escrow account to bear interest to be credited to the account monthly;

(3) permits the lender to apply money in the escrow account to the payment of a bill for additional taxes and interest under Section 23.46 before the loan is paid and requires the lender to refund the balance remaining in the escrow account after the bill is paid to the borrower; and

(4) requires the lender to refund the money in the escrow account to the borrower on the payment of the loan.

(d) On the request of the borrower or the borrower's representative, the assessor for each taxing unit shall compute the additional taxes and interest that would be due that taxing unit under Section 23.46 if a sale or change of use occurred on January 1 of the year in which the loan is granted or amended. The assessor may charge a reasonable fee not to exceed the actual cost of making the computation.

(e) In this section, "lender" means a lending institution, including a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, life insurance company, or governmental agency that customarily provides financing or an affiliate of any of those entities. The term does not include an agency of the United States.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 82 (H.B. 947), § 1, effective May 11, 1995.

Sec. 23.48. Reappraisal of Land Subject to Temporary Quarantine for Ticks.

(a) An owner of land designated for agricultural use on which the Texas Animal Health Commission has established a temporary quarantine of at least 90 days in length in the current tax year for the purpose of regulating the handling

of livestock and eradicating ticks or exposure to ticks at any time during a tax year is entitled to a reappraisal of the owner's land for that year on written request delivered to the chief appraiser.

(b) As soon as practicable after receiving a request for reappraisal, the chief appraiser shall complete the reappraisal. In determining the appraised value of the land under Section 23.41, the effect on the value of the land caused by the infestation of ticks is an additional factor that must be taken into account. The appraised value of land reappraised under this section may not exceed the lesser of:

(1) the market value of the land as determined by other appraisal methods; or

(2) one-half of the original appraised value of the land for the current tax year.

(c) A property owner may not be required to pay the appraisal district for the costs of making the reappraisal. Each taxing unit that participates in the appraisal district and imposes taxes on the land shall share the costs of the reappraisal in the proportion the total dollar amount of taxes imposed by that taxing unit on that land in the preceding year bears to the total dollar amount of taxes all taxing units participating in the appraisal district imposed on the land in the preceding year.

(d) If land is reappraised as provided by this section, the governing body of each taxing unit that participates in the appraisal district and imposes taxes on the land shall provide for prorating the taxes on the land for the tax year in which the reappraisal is conducted. If the taxes are prorated, taxes due on the land are determined as follows: the taxes on the land based on its value on January 1 of that year are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days in that year before the date the reappraisal was conducted; the taxes on the land based on its reappraised value are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days, including the date the reappraisal was conducted, remaining in the year; and the total of the two amounts is the amount of taxes imposed on the land for that year. Notwithstanding Section 26.15, the assessor for each applicable taxing unit shall enter the reappraised value on the appropriate tax roll together with the original appraised value and the calculation of the taxes imposed on the land under this section. If for any tax year the reappraisal results in a decrease in the tax liability of the landowner, the assessor for the taxing unit shall prepare and mail a new tax bill in the manner provided by Chapter 31. If the owner has paid the tax, each taxing unit that imposed taxes on the land in that year shall promptly refund the difference between the tax paid and the tax due on the lower appraised value.

(e) In appraising the land for any subsequent tax year in which the Texas Animal Health Commission quarantine remains in place, the chief appraiser shall continue to take into account the effect on the value of the land caused by the infestation of ticks.

(f) If the owner of the land is informed by the Texas Animal Health Commission that the quarantine is no longer in place, not later than the 30th day after the date on which the owner received that information the owner of the land shall so notify the chief appraiser in writing. If the owner fails to notify the chief appraiser as required by this subsection, a penalty is imposed on the property equal to 10 percent of the difference between the taxes imposed on the property in each year it is erroneously allowed appraisal under this section and the taxes that would otherwise have been imposed.

(g) The chief appraiser shall make an entry in the appraisal records for the property against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who owns the property. The notice shall include a brief explanation of the procedures for protesting the imposition of the penalty. The assessor for each taxing unit that imposed taxes on the property on the basis of appraisal under this section shall add the amount of the penalty to the unit's tax bill for taxes on the property against which the penalty is imposed. The penalty shall be collected at the same time and in the same manner as the taxes on the property against which the penalty is imposed. The amount of the penalty constitutes a lien on the property against which the penalty is imposed and accrues penalty and interest in the same manner as a delinquent tax.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1011 (H.B. 967), § 2, effective June 15, 2007.

Secs. 23.49 to 23.50. [Reserved for expansion].

Subchapter D

Appraisal of Agricultural Land

Sec. 23.51. Definitions.

In this subchapter:

(1) **[Effective until January 1, 2021]** "Qualified open-space land" means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use or to production of timber or forest products for five of the preceding seven years or land that is used principally as an ecological laboratory by a public or private college or university. Qualified open-space land includes all appurtenances to the land. For the purposes of this subdivision, appurtenances to the land means private roads, dams, reservoirs, water wells, canals, ditches, terraces, and other reshapings of the soil, fences, and riparian water rights. Notwithstanding the other provisions of this subdivision, land that is currently devoted principally to wildlife management as defined by Subdivision (7)(B) or (C) to the degree of intensity generally accepted

in the area qualifies for appraisal as qualified open-space land under this subchapter regardless of the manner in which the land was used in any preceding year.

(1) **[Effective January 1, 2021]** "Qualified open-space land" means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use or to production of timber or forest products for five of the preceding seven years or land that is used principally as an ecological laboratory by a public or private college or university and that has been used principally in that manner by a college or university for five of the preceding seven years. Qualified open-space land includes all appurtenances to the land. For the purposes of this subdivision, appurtenances to the land means private roads, dams, reservoirs, water wells, canals, ditches, terraces, and other reshapings of the soil, fences, and riparian water rights. Notwithstanding the other provisions of this subdivision, land that is currently devoted principally to wildlife management as defined by Subdivision (7)(B) or (C) to the degree of intensity generally accepted in the area qualifies for appraisal as qualified open-space land under this subchapter regardless of the manner in which the land was used in any preceding year.

(2) "Agricultural use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; planting cover crops or leaving land idle for the purpose of participating in a governmental program, provided the land is not used for residential purposes or a purpose inconsistent with agricultural use; and planting cover crops or leaving land idle in conjunction with normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use. The term also includes the use of land for wildlife management. The term also includes the use of land to raise or keep bees for pollination or for the production of human food or other tangible products having a commercial value, provided that the land used is not less than 5 or more than 20 acres.

(3) "Category" means the value classification of land considering the agricultural use to which the land is principally devoted. The chief appraiser shall determine the categories into which land in the appraisal district is classified. In classifying land according to categories, the chief appraiser shall distinguish between irrigated cropland, dry cropland, improved pasture, native pasture, orchard, and waste. The chief appraiser may establish additional categories. The chief appraiser shall further divide each category according to soil type, soil capability, irrigation, general topography, geographical factors, and other factors that influence the productive capacity of the category. The chief appraiser shall obtain information from the Texas Agricultural Extension Service, the Natural Resources Conservation Service of the United States Department of Agriculture, and other recognized agricultural sources for the purposes of determining the categories of land existing in the appraisal district.

(4) "Net to land" means the average annual net income derived from the use of open-space land that would have been earned from the land during the five-year period preceding the year before the appraisal by an owner using ordinary prudence in the management of the land and the farm crops or livestock produced or supported on the land and, in addition, any income received from hunting or recreational leases. The chief appraiser shall calculate net to land by considering the income that would be due to the owner of the land under cash lease, share lease, or whatever lease arrangement is typical in that area for that category of land, and all expenses directly attributable to the agricultural use of the land by the owner shall be subtracted from this owner income and the results shall be used in income capitalization. In calculating net to land, a reasonable deduction shall be made for any depletion that occurs of underground water used in the agricultural operation. For land that qualifies under Subdivision (7) for appraisal under this subchapter, the chief appraiser may not consider in the calculation of net to land the income that would be due to the owner under a hunting or recreational lease of the land.

(5) "Income capitalization" means the process of dividing net to land by the capitalization rate to determine the appraised value.

(6) "Exotic animal" means a species of game not indigenous to this state, including axis deer, nilga antelope, red sheep, other cloven-hoofed ruminant mammals, or exotic fowl as defined by Section 142.001, Agriculture Code.

(7) "Wildlife management" means:

(A) actively using land that at the time the wildlife-management use began was appraised as qualified open-space land under this subchapter or as qualified timber land under Subchapter E in at least three of the following ways to propagate a sustaining breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine, or recreation:

(i) habitat control;

(ii) erosion control;

(iii) predator control;

(iv) providing supplemental supplies of water;

(v) providing supplemental supplies of food;

(vi) providing shelters; and

(vii) making of census counts to determine population;

(B) actively using land to protect federally listed endangered species under a federal permit if the land is:

(i) included in a habitat preserve and is subject to a conservation easement created under Chapter 183, Natural Resources Code; or

(ii) part of a conservation development under a federally approved habitat conservation plan that restricts the use of the land to protect federally listed endangered species; or

(C) actively using land for a conservation or restoration project to provide compensation for natural resource damages pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. Section 2701 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), or Chapter 40, Natural Resources Code.

(8) "Endangered species," "federal permit," and "habitat preserve" have the meanings assigned by Section 83.011, Parks and Wildlife Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 67, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 207 (H.B. 2045), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 773 (H.B. 1440), § 1, effective January 1, 1988; am. Acts 1987, 70th Leg., ch. 780 (H.B. 1867), §§ 1, 2, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 19, effective January 1, 1990; am. Acts 1991, 72nd Leg., ch. 560 (H.B. 1298), §§ 1—3, effective January 1, 1992; am. Acts 1993, 73rd Leg., ch. 203 (H.B. 608), § 6, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 911 (H.B. 1358), § 1, effective January 1, 1996; am. Acts 2003, 78th Leg., ch. 775 (H.B. 3607), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 817 (S.B. 760), § 1, effective January 1, 2006; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 6, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 454 (H.B. 604), § 1, effective January 1, 2008; am. Acts 2007, 80th Leg., ch. 1112 (H.B. 3630), § 3, effective January 1, 2008; am. Acts 2009, 81st Leg., ch. 495 (S.B. 801), § 1, effective January 1, 2010; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 46.01, effective September 28, 2011; am. Acts 2019, 86th Leg., ch. 360 (H.B. 639), § 1, effective January 1, 2021.

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CONSTITUTIONAL LAW
Equal Protection

Scope of Protection. — Tex. Tax Code Ann. § 23.51 is constitutional and does not violate equal protection simply because it requires that, in order to be a "qualified open-space land" for tax purposes, the land must have been devoted principally to agricultural use for five to seven preceding years. The purpose of the open-space exemption in § 23.51 is to preserve and benefit the family farm and the requirement that the land must have been principally devoted to agricultural use for five to seven preceding years is to ensure that the tax benefit is received only by those for whom it was intended, as opposed to someone who has just purchased the property and wants to make it temporarily agricultural so as to obtain the benefit. McCormick v. Attorney Gen. of Texas, 822 S.W.2d 814, 1992 Tex. App. LEXIS 307 (Tex. App. Fort Worth Jan. 29, 1992, no writ).

CONTRACTS LAW
Third Parties

Subrogation. — Because a debtor's land was designated for agricultural use as provided by the Tax Code, Tex. Const. art. XVI, § 50(a)(6)(I), prohibited it from being used as security for a home equity loan, but the bank was entitled to equitable subrogation for the amount paid to a third party and for taxes from the home equity loan proceeds. LaSalle Bank Nat'l Ass'n v. White, No. 04-05-00548-CV, 2006 Tex. App. LEXIS 3698 (Tex. App. San Antonio May 3, 2006), op. withdrawn, sub. op., 217 S.W.3d 573, 2006 Tex. App. LEXIS 8747 (Tex. App. San Antonio Oct. 11, 2006).

GOVERNMENTS
Legislation

Interpretation. — Tex. Tax Code Ann. § 23.51(7) requires each owner-applicant, including members of a wildlife co-op, to perform "three of the seven qualifying activities" on his land in order to have his land designated as open-space land through the wildlife management classification. Cordillera Ranch, Ltd. v. Kendall County Appraisal Dist., 136 S.W.3d 249, 2004 Tex. App. LEXIS 1998 (Tex. App. San Antonio Mar. 3, 2004, no pet.).

REAL PROPERTY LAW
Financing

General Overview. — Plaintiff mortgagor's property, if later re-designated as agricultural, was protected from forced sale under Tex. Const. art. XVI, § 50(a)(6)(I), regardless of its designation when the debt was incurred, but issues of fact existed on whether the land qualified as agricultural under Tex. Tax Code Ann. subchs. C, D, when defendant bank sought to foreclose. Marketic v. U. S. Bank Nat'l Ass'n, 436 F. Supp. 2d 842, 2006 U.S. Dist. LEXIS 43038 (N.D. Tex. 2006).

HOMESTEAD EXEMPTIONS. — Tex. Const. art. XVI, § 50(a)(6)(I)'s use of the phrase "designated for agricultural use as provided by statutes governing property tax" referred to land put to an agricultural use as defined by, and assessed for tax purposes under, both Tex. Tax Code Ann. § 23.42 and Tex. Tax Code Ann. § 23.51; because the homeowner's land was designated for agricultural use, the Texas Constitution prohibited it from being used as security for a home equity loan. LaSalle Bank Nat'l Ass'n v. White, 217 S.W.3d 573, 2006 Tex. App. LEXIS 8747 (Tex. App. San Antonio), reh'g denied, No. 04-05-00548-CV, 2006 Tex. App. LEXIS 11288 (Tex. App. San Antonio Oct. 11, 2006).

Plaintiff mortgagor's property, if later re-designated as agricultural, was protected from forced sale under Tex. Const. art. XVI, § 50(a)(6)(I), regardless of its designation when the debt was incurred, but issues of fact existed on whether the land qualified as agricultural under Tex. Tax Code Ann. subchs. C, D, when defendant bank sought to foreclose. Marketic v. U. S. Bank Nat'l Ass'n, 436 F. Supp. 2d 842, 2006 U.S. Dist. LEXIS 43038 (N.D. Tex. 2006).

PROPERTY VALUATION. — Based on the appraisal procedure of Tex. Tax Code Ann. §§ 23.54(a) and 23.57(a) for open-space exemption of a property owner's land under Tex. Const. art. VIII, § 1-d-1, wherein independent applications based on ownership were required, a wildlife co-op could not seek a collective assessment of its eligibility for exemption under Tex. Tax Code Ann. § 23.51(7), as each owner had to meet the requirements independently; Cordillera Ranch, Ltd. v. Kendall County Appraisal Dist., 136 S.W.3d 249, 2004 Tex. App. LEXIS 1998 (Tex. App. San Antonio Mar. 3, 2004, no pet.).

TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property

General Overview. — Pursuant to Tex. Tax Code Ann. § 23.51(1), taxpayers were entitled to an open-space land designation for certain property because there was sufficient evidence to conclude that the property was devoted principally to agricultural use for the requisite period of time. Dallas Cent. Appraisal Dist. v. Seven Inv. Co., 813 S.W.2d 197, 1991 Tex. App. LEXIS 2130 (Tex. App. Dallas July 2, 1991), writ granted No. D-1594 (Tex. 1991), rev'd, 835 S.W.2d 75, 1992 Tex. LEXIS 67 (Tex. 1992).

There was sufficient evidence that property was being principally used for agricultural purposes, as defined by Tex. Tax Code Ann. § 23.51(2), where the landowners planted wheat and oats and used tractors to plow the fields, although the remainder of the tract was wasteland. Hays County Appraisal Dist. v. Robinson, 809 S.W.2d 328, 1991 Tex. App. LEXIS 1248 (Tex. App. Austin May 8, 1991, no writ).

To be designated as open-space land, a property must be devoted to an agricultural use, thus, fact that bees foraged on property was not enough to meet the requirements for open-space land designation, and only the area immediately surrounding bee hives should have been designated as open-air. Pizzitola v. Galveston County Cent. Appraisal Dist., 808 S.W.2d 244, 1991 Tex. App. LEXIS 898 (Tex. App. Houston 1st Dist. Apr. 11, 1991, no writ).

REAL PROPERTY TAX

General Overview. — Plaintiff mortgagor's property, if later re-designated as agricultural, was protected from forced sale under Tex. Const. art. XVI, § 50(a)(6)(I), regardless of its designation when the debt was incurred, but issues of fact existed on whether the land qualified as agricultural under Tex. Tax Code Ann. subchs. C, D, when defendant bank sought to foreclose. Marketic v. U. S. Bank Nat'l Ass'n, 436 F. Supp. 2d 842, 2006 U.S. Dist. LEXIS 43038 (N.D. Tex. 2006).

In a dispute regarding open-space valuation of real property, the evidence of the use of the property for keeping goats and other animals was legally and factually sufficient to support the trial court's judgment for the taxpayers, which turned largely on its determinations of witness credibility. Calhoun County Appraisal Review Bd. v. Stofer L.P., No. 13-04-00029-CV, 2005 Tex. App. LEXIS 6629 (Tex. App. Corpus Christi Aug. 18, 2005).

Rules of the Texas State Property Tax Board that indicate that land that is principally used for recreation does not qualify for the open space designation under Tex. Const. art. VIII, § 1-d-1(a) are consistent with the requirement of Tex. Tax Code Ann. § 23.51 that land must be devoted principally to agricultural use in order to qualify as open space land. Tarrant Appraisal Dist. v. Moore, 845 S.W.2d 820, 1993 Tex. LEXIS 6 (Tex. 1993).

Taxpayers were entitled to a lower property valuation for agricultural use of land where a portion of the land was used to grow animal feed, and the fact that taxpayers owned horses for recreation did not mean that all of taxpayers' land was used for recreational purposes. Kerr Cent. Appraisal Dist. v. Stacy, 775 S.W.2d 739, 1989 Tex. App. LEXIS 2442 (Tex. App. San Antonio July 12, 1989, writ denied).

An agricultural use exemption under Tex. Tax Code Ann. § 23.51 to be applied against the amount of ad valorem taxes assessed by the county was not applicable to a landowner because he only hunted deer on his property and did not use it for any agricultural purposes. Bower v. Edwards County Appraisal Dist., 752 S.W.2d 629, 1988 Tex. App. LEXIS 1655 (Tex. App. San Antonio May 25, 1988, writ denied).

ASSESSMENT & VALUATION

General Overview. — Rollback taxes under Tex. Tax Code Ann. § 23.55 were not the responsibility of a property seller under a sales contract because while the purchasers claimed that a change in use from qualified open-space land under Tex. Tax Code Ann. § 23.51(1) triggered the assessment, testimony by a county appraisal district employee indicated that the transfer in ownership triggered the assessment. Rizzo v. Ancira, No. 03-09-00424-CV, 2010 Tex. App. LEXIS 6173 (Tex. App. Austin July 29, 2010).

In a dispute regarding open-space valuation of real property, the evidence of the use of the property for keeping goats and other animals was legally and factually sufficient to support the trial court's judgment for the taxpayers, which turned largely on its determinations of witness credibility. Calhoun County Appraisal Review Bd. v. Stofer L.P., No. 13-04-00029-CV, 2005 Tex. App. LEXIS 6629 (Tex. App. Corpus Christi Aug. 18, 2005).

Land used for agricultural purposes is appraised for tax purposes as "qualified open-space land" pursuant to Tex. Const. art. VIII, § 1-d-1, Tex. Tax Code Ann. § 23.46, and Tex. Tax Code Ann. § 23.51. Compass Bank v. Bent Creek Invs., Inc., 52 S.W.3d 419, 2001 Tex. App. LEXIS 4832 (Tex. App. Fort Worth July 19, 2001, no pet.).

Where a landowner brought suit against an appraisal board upon the appraisal board's denial of the landowner's application to classify his property as qualified open-space pursuant to Tex. Tax. Code Ann. § 23.51(1), a trial court judgment in favor of the landowner upon a finding of § 23.51(1) constitution was reversed because only agricultural and timber lands were excluded from market-value appraisal; § 23.51(1) was unconstitutional under Tex. Const. art. VIII, § 2 to the extent that it purported to remove from market-value appraisal open-space land used as an ecological laboratory, the precise purpose for which the landowner's property was used. Williamson County Appraisal Dist. v. Nootsie, Ltd., 905 S.W.2d 289, 1995 Tex. App. LEXIS 1250 (Tex. App. Austin June 7, 1995), writ granted No. 95-1041 (Tex. 1996), rev'd, 925 S.W.2d 659, 1996 Tex. LEXIS 102 (Tex. 1996).

To establish that land was incorrectly denied appraisal as open-space land, a landowner must prove the property is: (1) currently devoted principally to agricultural use; (2) to the degree of intensity generally accepted in the area; and (3) has been devoted principally to agricultural use for five of the preceding seven years. Oyster Creek Assoc. Joint Venture v. Ft. Bend Cent. Appraisal Dist., No. 01-90-00903-CV, 1991 Tex. App. LEXIS 1617 (Tex. App. Houston 1st Dist. June 27, 1991).

Landowner's use of small tract of land for agricultural purposes for the required number of years as required by Tex. Tax Code. Ann. § 23.51, entitled the land to be declared open-space agricultural land for taxation purposes. Riess v. Appraisal Dist. of Williamson County, 735 S.W.2d 633, 1987 Tex. App. LEXIS 8300 (Tex. App. Austin Aug. 12, 1987, writ denied).

ASSESSMENT METHODS & TIMING. — Tex. Const. art. XVI, § 50(a)(6)(I)'s use of the phrase "designated for agricultural use as provided by statutes governing property tax" referred to land put to an agricultural use as defined by, and assessed for tax purposes under, both Tex. Tax Code Ann. § 23.42 and Tex. Tax Code Ann. § 23.51; because the homeowner's land was designated for agricultural use, the Texas Constitution prohibited it from being used as security for a home equity loan. LaSalle Bank Nat'l Ass'n v. White, 217 S.W.3d 573, 2006 Tex. App. LEXIS 8747 (Tex. App. San Antonio), reh'g denied, No. 04-05-00548-CV, 2006 Tex. App. LEXIS 11288 (Tex. App. San Antonio Oct. 11, 2006).

ATTORNEY GENERAL OPINIONS

Net to Land Valuation.

The valuation methods for calculating "net to land" in determining the appraised value of open-space land set forth in sections 23.51 through 23.57 of the Tax Code does not conflict

with the Texas Constitution. 1995 Tex. Op. Att'y Gen. DM-0355.

Sec. 23.52. Appraisal of Qualified Agricultural Land.

(a) The appraised value of qualified open-space land is determined on the basis of the category of the land, using accepted income capitalization methods applied to average net to land. The appraised value so determined may not exceed the market value as determined by other appraisal methods.

(b) The chief appraiser shall determine the appraised value according to this subchapter and, when requested by a landowner, the appraised value according to Subchapter C of this chapter of each category of open-space land owned by that landowner and shall make each value and the market value according to the preceding year's appraisal roll available to a person seeking to apply for appraisal as provided by this subchapter or as provided by Subchapter C of this chapter.

(c) The chief appraiser may not change the appraised value of a parcel of open-space land unless the owner has applied for and the land has qualified for appraisal as provided by this subchapter or by Subchapter C of this chapter or unless the change is made as a result of a reappraisal.

(d) The comptroller by rule shall develop and distribute to each appraisal office appraisal manuals setting forth this method of appraising qualified open-space land, and each appraisal office shall use the appraisal manuals in appraising qualified open-space land. The comptroller by rule shall develop and the appraisal office shall enforce procedures to verify that land meets the conditions contained in Subdivision (1) of Section 23.51. The rules, before taking effect, must be approved by the comptroller with the review and counsel of the Department of Agriculture .

(e) For the purposes of Section 23.55 of this code, the chief appraiser also shall determine the market value of qualified open-space land and shall record both the market value and the appraised value in the appraisal records.

(f) The appraisal of minerals or subsurface rights to minerals is not within the provisions of this subchapter.

(g) The category of land that qualifies under Section 23.51(7) is the category of the land under this subchapter or Subchapter E, as applicable, before the wildlife-management use began.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 68, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 24, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 911 (H.B. 1358), § 2, effective January 1, 1996; am. Acts 2001, 77th Leg., ch. 1172 (H.B. 3123), § 2, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 495 (S.B. 801), § 2, effective January 1, 2010; am. Acts 2017, 85th Leg., ch. 23 (S.B. 594), § 1, effective January 1, 2018; am. Acts 2017, 85th Leg., ch. 533 (S.B. 526), § 10(b), effective September 1, 2017.

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CIVIL PROCEDURE
Trials

Bench Trials. — Trial court's finding of fact summarizing tax valuation of agricultural land as "based on percentage combinations or averaging of principal agricultural enterprises into a single land category" was accurate pursuant to Tex. Tax Code Ann. § 23.52(a). Rusk Industries, Inc. v. Hopkins County Tax Appraisal Dist., 818 S.W.2d 111, 1991 Tex. App. LEXIS 2354 (Tex. App. Texarkana Sept. 24, 1991), writ granted No. D-1716 (Tex. 1992).

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation

Assessment Methods & Timing. — In an ad valorem tax case in which an appraisal district applied rollback taxes to certain parcels of land that landowners were developing as residential subdivisions, there was no merit in the landowners' claim that the appraisal district failed to properly notify them of its determination that a "change of use" had occurred with respect to one of the parcels of land because neither Tex. Tax Code Ann. § 25.18 nor Tex. Tax Code Ann. § 23.55 require that a change of use determination be made within three years after the change of use occurred, and grafting the reappraisal deadlines onto the change of use determination statute is not necessary to give either statute meaning. Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist., 234 S.W.3d 809, 2007 Tex. App. LEXIS 7622 (Tex. App. Dallas Sept. 19, 2007, no pet.).

VALUATION. — In an ad valorem tax case in which an appraisal district applied rollback taxes to certain parcels of land that landowners were developing as residential subdivisions, there was no merit in the landowners' claim that the appraisal district failed to properly notify them of its determination that a "change of use" had occurred with respect to one of the parcels of land because neither Tex. Tax Code Ann. § 25.18 nor Tex. Tax Code Ann. § 23.55 require that a change of use determination be made within three years after the change of use occurred, and grafting the reappraisal deadlines onto the change of use determination statute is not necessary to give either statute meaning. Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist., 234 S.W.3d 809, 2007 Tex. App. LEXIS 7622 (Tex. App. Dallas Sept. 19, 2007, no pet.).

Sec. 23.521. Standards for Qualification of Land for Appraisal Based on Wildlife Management Use.

(a) The Parks and Wildlife Department, with the assistance of the comptroller, shall develop standards for determining whether land qualifies under Section 23.51(7) for appraisal under this subchapter. The comptroller by rule shall adopt the standards developed by the Parks and Wildlife Department and distribute those rules to each appraisal

district. On request of the Parks and Wildlife Department, the Texas Agricultural Extension Service shall assist the department in developing the standards.

(b) The standards adopted under Subsection (a) may require that a tract of land be a specified minimum size to qualify under Section 23.51(7)(A) for appraisal under this subchapter, taking into consideration one or more of the following factors:

(1) the activities listed in Section 23.51(7)(A);

(2) the type of indigenous wild animal population the land is being used to propagate;

(3) the region in this state in which the land is located; and

(4) any other factor the Parks and Wildlife Department determines is relevant.

(c) The standards adopted under Subsection (a) may include specifications for a written management plan to be developed by a landowner if the landowner receives a request for a written management plan from a chief appraiser as part of a request for additional information under Section 23.57.

(d) In determining whether land qualifies under Section 23.51(7) for appraisal under this subchapter, the chief appraiser and the appraisal review board shall apply the standards adopted under Subsection (a) and, to the extent they do not conflict with those standards, the appraisal manuals developed and distributed under Section 23.52(d).

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1172 (H.B. 3123), § 1, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 454 (H.B. 604), § 2, effective January 1, 2008.

Sec. 23.522. Temporary Cessation of Agricultural Use During Drought.

The eligibility of land for appraisal under this subchapter does not end because the land ceases to be devoted principally to agricultural use to the degree of intensity generally accepted in the area if:

(1) a drought declared by the governor creates an agricultural necessity to extend the normal time the land remains out of agricultural production; and

(2) the owner of the land intends that the use of the land in that manner and to that degree of intensity be resumed when the declared drought ceases.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 3, effective January 1, 2010.

Sec. 23.523. Temporary Cessation of Agricultural Use When Property Owner Deployed or Stationed Outside State As Member of Armed Services.

(a) The eligibility of land for appraisal under this subchapter does not end because the land ceases to be devoted principally to agricultural use to the degree of intensity generally accepted in the area if the owner of the land:

(1) is a member of the armed services of the United States who is deployed or stationed outside this state; and

(2) intends that the use of the land in that manner and to that degree of intensity be resumed not later than the 180th day after the date the owner ceases to be deployed or stationed outside this state.

(b) The owner of land to which this section applies must notify the appraisal office in writing not later than the 30th day after the date the owner is deployed or stationed outside this state that the owner:

(1) will be or has been deployed or stationed outside this state; and

(2) intends to use the land in the manner, to the degree, and within the time described by Subsection (a)(2).

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 83 (H.B. 777), § 1, effective May 23, 2017.

Sec. 23.525. Oil and Gas Operations on Land.

The eligibility of land for appraisal under this subchapter does not end because a lessee under an oil and gas lease begins conducting oil and gas operations over which the Railroad Commission of Texas has jurisdiction on the land if the portion of the land on which oil and gas operations are not being conducted otherwise continues to qualify for appraisal under this subchapter.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 365 (H.B. 3198), § 1, effective September 1, 2017; Renumbered from Tex. Tax Code § 23.524 by Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 21.001(43), effective September 1, 2019.

Sec. 23.524. Oil and Gas Operations on Land. [Renumbered]

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 365 (H.B. 3198), § 1, effective September 1, 2017; Renumbered to Tex. Tax Code § 23.525 by Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 21.001(43), effective September 1, 2019.

Sec. 23.526. Temporary Cessation of Agricultural Use Due to Quarantine for Ticks.

(a) The eligibility of land for appraisal under this subchapter does not end because the land ceases to be devoted principally to agricultural use to the degree of intensity generally accepted in the area for the period prescribed by Subsection (b) if the land:

(1) is subject to a temporary quarantine established at any time during the tax year by the Texas Animal Health Commission for the purpose of regulating the handling of livestock and eradicating ticks or exposure to ticks under Chapter 167, Agriculture Code;

(2) is appraised under this subchapter primarily on the basis of the livestock located in the area subject to quarantine in the tax year; and

(3) otherwise continues to qualify for appraisal under this subchapter.

(b) Subsection (a) applies to land eligible for appraisal under this subchapter only during the period that begins on the date the land is designated as a tick eradication area and that ends on the date the land is released from quarantine by the Texas Animal Health Commission.

(c) The owner of land to which this section applies must, not later than the 30th day after the date the land is designated as a tick eradication area, notify in writing the chief appraiser for each appraisal district in which the land is located that the land is located in a tick eradication area.

(d) The owner of land to which this section applies must, not later than the 30th day after the date the land is released from quarantine by the Texas Animal Health Commission, notify in writing the chief appraiser for each appraisal district in which the land is located that the land has been released from quarantine by the Texas Animal Health Commission.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 101 (H.B. 3348), § 2, effective May 21, 2019.

Sec. 23.53. Capitalization Rate.

The capitalization rate to be used in determining the appraised value of qualified open-space land as provided by this subchapter is 10 percent or the interest rate specified by the Farm Credit Bank of Texas or its successor on December 31 of the preceding year plus 2-½ percentage points, whichever percentage is greater.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1995, 74th Leg., ch. 579 (S.B. 642), § 4, effective January 1, 1996.

Sec. 23.54. Application.

(a) A person claiming that his land is eligible for appraisal under this subchapter must file a valid application with the chief appraiser.

(b) To be valid, the application must:

(1) be on a form provided by the appraisal office and prescribed by the comptroller; and

(2) contain the information necessary to determine the validity of the claim.

(c) The comptroller shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The comptroller, in prescribing the contents of the application form, shall require that the form permit a claimant who has previously been allowed appraisal under this subchapter to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported. The form must include a space for the claimant to state the claimant's date of birth. Failure to provide the date of birth does not affect a claimant's eligibility to have the claimant's land appraised under this subchapter.

(d) The form must be filed before May 1. However, for good cause the chief appraiser may extend the filing deadline for not more than 60 days.

(e) If a person fails to file a valid application on time, the land is ineligible for appraisal as provided by this subchapter for that year. Once an application is filed and appraisal under this subchapter is allowed, the land is eligible for appraisal under this subchapter in subsequent years without a new application unless the ownership of the land changes or its eligibility under this subchapter ends. However, subject to Section 23.551, if the chief appraiser has good cause to believe that land is no longer eligible for appraisal under this subchapter, the chief appraiser may require a person allowed appraisal under this subchapter in a prior year to file a new application to confirm that the land is currently eligible for appraisal under this subchapter by delivering a written notice that a new application is required, accompanied by the application form, to the person who filed the application that was previously allowed.

(f) The appraisal office shall make a sufficient number of printed application forms readily available at no charge.

(g) Each year the chief appraiser for each appraisal district shall publicize, in a manner reasonably designed to notify all residents of the district, the requirements of this section and the availability of application forms.

(h) A person whose land is allowed appraisal under this subchapter shall notify the appraisal office in writing before May 1 after eligibility of the land under this subchapter ends or after a change in the category of agricultural use. If a person fails to notify the appraisal office as required by this subsection a penalty is imposed on the property equal to 10 percent of the difference between the taxes imposed on the property in each year it is erroneously allowed appraisal under this subchapter and the taxes that would otherwise have been imposed.

(i) The chief appraiser shall make an entry in the appraisal records for the property against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who owns the property. The notice shall include a brief explanation of the procedures for protesting the imposition of the penalty. The assessor for each taxing unit that imposed taxes on the property on the basis of appraisal under this subchapter shall add the amount of the penalty to the unit's tax bill for taxes on the property against which the penalty is imposed. The penalty shall be collected at the same time and in the same manner as the taxes on the property against

which the penalty is imposed. The amount of the penalty constitutes a lien on the property against which the penalty is imposed and accrues penalty and interest in the same manner as a delinquent tax.

(j) If the chief appraiser discovers that appraisal under this subchapter has been erroneously allowed in any one of the five preceding years because of failure of the person whose land was allowed appraisal under this subchapter to give notice that its eligibility has ended, he shall add the difference between the appraised value of the land under this subchapter and the market value of the land to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 69, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 25, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 14, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 352 (H.B. 1464), § 4, effective September 1, 2015.

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CIVIL PROCEDURE
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General Overview. — Where on appeal of a corporate taxpayer's challenge to Tex. Tax. Code Ann. § 23.56(3) the statute was held unconstitutional in a separate case, the taxpayer was required by Tex. Tax. Code Ann. § 42.21 to exhaust its administrative remedies for each year at issue on appeal, and the trial court on remand had jurisdiction to consider only those years in which the taxpayer applied for open-space land designation pursuant to Tex. Tax. Code Ann. § 23.54 and protested the denial of that application pursuant to Tex. Tax. Code Ann. § 41.41. Henderson County Appraisal Dist. v. HL Farm Corp., 956 S.W.2d 672, 1997 Tex. App. LEXIS 5563 (Tex. App. Eastland Oct. 23, 1997, no pet.).

REMEDIES
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Mandamus. — Mandamus relief was denied to an energy company because an appraisal district had no duty to act on an untimely application for an open-space agricultural appraisal for the years 1999 through 2002, pursuant to Tex. Tax Code Ann. § 23.541(a)(1). A tax-exemption for public use was revoked after it was discovered that the land in question was being leased after 1998 for mining. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

GOVERNMENTS
Courts

Judicial Precedents. — Texas Supreme Court decision holding Tex. Tax. Code Ann. § 23.56(3), which denied open-space designation to foreign entities, unconstitutional, was to be applied retroactively; therefore, a corporate taxpayer that had been in litigation challenging the statute was allowed a recovery for the years in which it had exhausted its administrative remedies under Tex. Tax. Code Ann. §§ 23.54 and 41.41. Henderson County Appraisal Dist. v. HL Farm Corp., 956 S.W.2d 672, 1997 Tex. App. LEXIS 5563 (Tex. App. Eastland Oct. 23, 1997, no pet.).

REAL PROPERTY LAW

Property Valuation. — Based on the appraisal procedure of Tex. Tax Code Ann. §§ 23.54(a) and 23.57(a) for open-space exemption of a property owner's land under Tex. Const. art. VIII, § 1-d-1, wherein independent applications based on ownership are required, a wildlife co-op could not seek a collective assessment of its eligibility for exemption under Tex. Tax Code Ann. § 23.51(7), as each owner had to meet the requirements independently. Cordillera Ranch, Ltd. v. Kendall County Appraisal Dist., 136 S.W.3d 249, 2004 Tex. App. LEXIS 1998 (Tex. App. San Antonio Mar. 3, 2004, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Once a landowner obtains an exemption from property tax for agricultural use, the landowner need not submit new applications to obtain the exemption in subsequent years, however, if the ownership of the land changes, a new application is required to obtain an agricultural use exception. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

Because Tex. Tax Code Ann. §§ 23.54 and 25.19 were not contradictory and were to be given equal effect, the taxpayer's remedy for an erroneous appraisal was pursuant to Tex. Tax Code Ann. § 41.41, at which administrative hearing the taxpayer could address improper notice concerns. Harris County Appraisal Dist. v. Dincans, 882 S.W.2d 75, 1994 Tex. App. LEXIS 1881 (Tex. App. Houston 14th Dist. July 28, 1994, writ denied).

PERSONAL PROPERTY TAX
Exempt Property

General Overview. — Based on the appraisal procedure of Tex. Tax Code Ann. §§ 23.54(a) and 23.57(a) for open-space exemption of a property owner's land under Tex. Const. art. VIII, § 1-d-1, wherein independent applications based on ownership are required, a wildlife co-op could not seek a collective assessment of its eligibility for exemption under Tex. Tax Code Ann. § 23.51(7), as each owner had to meet the requirements independently. Cordillera Ranch, Ltd. v. Kendall County Appraisal Dist., 136 S.W.3d 249, 2004 Tex. App. LEXIS 1998 (Tex. App. San Antonio Mar. 3, 2004, no pet.).

Chief appraiser did not exceed his statutory authority by requiring property owners to submit new applications for open-space exemptions under Tex. Tax Code Ann. § 23.54(e); the property owner that failed to file a timely, valid application, was not eligible for the open-space exemption for that year under

§ 23.54(e). Peil v. Waller County Appraisal Dist., 737 S.W.2d 33, 1987 Tex. App. LEXIS 7902 (Tex. App. Houston 14th Dist. July 23, 1987, no writ).

REAL PROPERTY TAX
General Overview. — In county's suit against landowner to collect delinquent ad valorem taxes, the notice requirements of former Tex. Rev. Civ. Stat. Ann. art. 7174A, § 4 (now Tex. Tax Code Ann. § 23.54), under which defendant was required to file an application when seeking an agriculture use designation, was constitutional, as former art. 7174A, § 4 did not conflict with Tex. Const. Art. VIII, § 1-d-1. Fisher v. Kerr County, 739 S.W.2d 434, 1987 Tex. App. LEXIS 8780 (Tex. App. San Antonio Sept. 23, 1987, no writ).

ASSESSMENT & VALUATION
Valuation. — Mandamus relief was denied to an energy company because an appraisal district had no duty to act on an untimely application for an open-space agricultural appraisal for the years 1999 through 2002, pursuant to Tex. Tax Code Ann. § 23.541(a)(1). A tax-exemption for public use was revoked after it was discovered that the land in question was being leased after 1998 for mining. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

EXEMPTIONS. — Given that (1) no application for open-space appraisal was ever filed as required by Tex. Tax Code Ann. § 23.54, and (2) the owners' written notice of protest was filed well after the approval of the appraisal records, for purposes of Tex. Tax Code Ann. § 41.44(b), the owners failed to exhaust their administrative remedies, which was a jurisdictional prerequisite to obtaining judicial review, and thus the trial court properly granted appellees' plea to the jurisdiction. Daughtry v. Atascosa County Appraisal Dist., 307 S.W.3d 343, 2009 Tex. App. LEXIS 8441 (Tex. App. San Antonio Nov. 4, 2009, no pet.).

Sec. 23.541. Late Application for Appraisal As Agricultural Land.

(a) The chief appraiser shall accept and approve or deny an application for appraisal under this subchapter after the deadline for filing it has passed if it is filed before approval of the appraisal records by the appraisal review board.

(b) If appraisal under this subchapter is approved when the application is filed late, the owner is liable for a penalty of 10 percent of the difference between the amount of tax imposed on the property and the amount that would be imposed if the property were taxed at market value.

(c) The chief appraiser shall make an entry on the appraisal records indicating the person's liability for the penalty and shall deliver written notice of imposition of the penalty, explaining the reason for its imposition, to the person.

(d) The tax assessor for a taxing unit that taxes land based on an appraisal under this subchapter after a late application shall add the amount of the penalty to the owner's tax bill, and the tax collector for the unit shall collect the penalty at the time and in the manner he collects the tax. The amount of the penalty constitutes a lien against the property against which the penalty is imposed, as if it were a tax, and accrues penalty and interest in the same manner as a delinquent tax.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 70, effective January 1, 1982.

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ADMINISTRATIVE LAW
Judicial Review
Reviewability
Preservation for Review. — Taxpayers were properly granted an agricultural-use valuation where they met the jurisdictional requirements for judicial review and timely filed their petition for review after denial. Cooke County Tax Appraisal v. Teel, No. 2-03-115-CV, 2003 Tex. App. LEXIS 10017 (Tex. App. Fort Worth Nov. 26, 2003), op. withdrawn, sub. op., reh'g denied, 129 S.W.3d 724, 2004 Tex. App. LEXIS 1153 (Tex. App. Fort Worth Feb. 5, 2004).

CIVIL PROCEDURE
Remedies
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Common Law Writs
Mandamus. — Mandamus relief was denied to an energy company because an appraisal district had no duty to act on an untimely application for an open-space agricultural appraisal for the years 1999 through 2002, pursuant to Tex. Tax Code Ann. § 23.541(a)(1). A tax-exemption for public use was revoked after it was discovered that the land in question was being leased after 1998 for mining. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

TAX LAW
State & Local Taxes
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Valuation. — Mandamus relief was denied to an energy company because an appraisal district had no duty to act on an untimely application for an open-space agricultural appraisal for the years 1999 through 2002, pursuant to Tex. Tax Code Ann. § 23.541(a)(1). A tax-exemption for public use was revoked after it was discovered that the land in question was being leased after 1998 for mining. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

Sec. 23.55. Change of Use of Land.

(a) If the use of land that has been appraised as provided by this subchapter changes, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the three years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter and the tax that would

have been imposed had the land been taxed on the basis of market value in each of those years, plus interest at an annual rate of five percent calculated from the dates on which the differences would have become due. For purposes of this subsection, the chief appraiser may not consider any period during which land is owned by the state in determining whether a change in the use of the land has occurred.

(b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(c) The additional tax imposed by this section does not apply to a year for which the tax has already been imposed.

(d) If the change of use applies to only part of a parcel that has been appraised as provided by this subchapter, the additional tax applies only to that part of the parcel and equals the difference between the taxes imposed on that part of the parcel and the taxes that would have been imposed had that part been taxed on the basis of market value.

(e) Subject to Section 23.551, a determination that a change in use of the land has occurred is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes plus interest as soon as practicable. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(f) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs as a result of:

(1) a sale for right-of-way;

(2) a condemnation;

(3) a transfer of the property to the state or a political subdivision of the state to be used for a public purpose; or

(4) a transfer of the property from the state, a political subdivision of the state, or a nonprofit corporation created by a municipality with a population of more than one million under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) to an individual or a business entity for purposes of economic development if the comptroller determines that the economic development is likely to generate for deposit in the general revenue fund during the next two fiscal bienniums an amount of taxes and other revenues that equals or exceeds 20 times the amount of additional taxes and interest that would have been imposed under Subsection (a) had the sanctions provided by that subsection applied to the transfer.

(g) If the use of the land changes to a use that qualifies under Subchapter E of this chapter, the sanctions provided by Subsection (a) of this section do not apply.

(h) Additional taxes, if any, for a year in which land was designated for agricultural use as provided by Subchapter C of this chapter (or Article VIII, Section 1-d, of the constitution) are determined as provided by that subchapter, and the additional taxes imposed by this section do not apply for that year.

(i) The use of land does not change for purposes of Subsection (a) of this section solely because the owner of the land claims it as part of his residence homestead for purposes of Section 11.13 of this code.

(j) The sanctions provided by Subsection (a) do not apply to a change in the use of land if:

(1) the land is located in an unincorporated area of a county with a population of less than 100,000;

(2) the land does not exceed five acres;

(3) the land is owned by a not-for-profit cemetery organization;

(4) the cemetery organization dedicates the land for a cemetery purpose;

(5) the cemetery organization has not dedicated more than five acres of land in the county for a cemetery purpose in the five years preceding the date the cemetery organization dedicates the land for a cemetery purpose; and

(6) the land is adjacent to a cemetery that has been in existence for more than 100 years.

(k) In Subsection (j), "cemetery," "cemetery organization," and "cemetery purpose" have the meanings assigned those terms by Section 711.001, Health and Safety Code.

(*l*) The sanctions provided by Subsection (a) of this section do not apply to land owned by an organization that qualifies as a religious organization under Section 11.20(c) of this code if the organization converts the land to a use for which the land is eligible for an exemption under Section 11.20 of this code within five years.

(m) For purposes of determining whether a transfer of land qualifies for the exemption from additional taxes provided by Subsection (f)(4), on an application of the entity transferring or proposing to transfer the land or of the individual or entity to which the land is transferred or proposed to be transferred, the comptroller shall determine the amount of taxes and other revenues likely to be generated as a result of the economic development for deposit in the general revenue fund during the next two fiscal bienniums. If the comptroller determines that the amount of those revenues is likely to equal or exceed 20 times the amount of additional taxes and interest that would be imposed under Subsection (a) if the sanctions provided by that subsection applied to the transfer, the comptroller shall issue a letter to the applicant stating the comptroller's determination and shall send a copy of the letter by regular mail to the chief appraiser.

(n) Within one year of the conclusion of the two fiscal bienniums for which the comptroller issued a letter as provided under Subsection (m), the board of directors of the appraisal district, by official board action, may direct the chief appraiser to request the comptroller to determine if the amount of revenues was equal to or exceeded 20 times the

amount of taxes and interest that would have been imposed under Subsection (a). The comptroller shall issue a finding as to whether the amount of revenue met the projected increases. The chief appraiser shall review the results of the comptroller's finding and shall make a determination as to whether sanctions under Subsection (a) should be imposed. If the chief appraiser determines that the sanctions provided by Subsection (a) shall be imposed, the sanctions shall be based on the date of the transfer of the property under Subsection (f)(4).

(o) The sanctions provided by Subsection (a) do not apply to land owned by an organization that qualifies as a charitable organization under Section 11.18(c), is organized exclusively to perform religious or charitable purposes, and engages in performing the charitable functions described by Section 11.18(d)(19), if the organization converts the land to a use for which the land is eligible for an exemption under Section 11.18(d)(19) within five years.

(p) The sanctions provided by Subsection (a) do not apply to real property transferred to an organization described by Section 11.181(a) if the organization converts the real property to a use for which the real property is eligible for an exemption under Section 11.181(a). This subsection does not apply to the sanctions provided by Subsection (a) in connection with a change in use described by this subsection that are due to a county or school district unless the governing body of the county or school district, as applicable, waives the sanctions in the manner required by law for official action by the body.

(q) The sanctions provided by Subsection (a) do not apply to land owned by an organization that qualifies as a school under Section 11.21(d) if the organization converts the land to a use for which the land is eligible for an exemption under Section 11.21 within five years.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 71, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 652 (S.B. 1143), § 2, effective June 19, 1983; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 12, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 20, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 471 (S.B. 428), § 2, effective June 12, 1995; am. Acts 1995, 74th Leg., ch. 811 (H.B. 1884), § 1, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(74), effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 345 (S.B. 728), § 5, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 351 (S.B. 1033), § 1, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 49, effective January 1, 1998; am. Acts 2003, 78th Leg., ch. 288 (H.B. 2416), § 1.08, effective June 18, 2003; am. Acts 2003, 78th Leg., ch. 1176 (S.B. 480), § 1, effective June 20, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(81), effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 885 (H.B. 2278), § 3.69, effective April 1, 2009; am. Acts 2011, 82nd Leg., ch. 1309 (H.B. 3133), § 4, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 865 (H.B. 561), § 1, effective June 14, 2013; am. Acts 2019, 86th Leg., ch. 1361 (H.B. 1743), § 1, effective September 1, 2019.

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CIVIL PROCEDURE
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Res Judicata. — Where a church appealed rollback taxes assessed on its property pursuant to Tex. Tax Code Ann. § 23.55(a) and its appeal of a decision upholding the assessment on ground that the 1995 version of § 23.55(a) was not to be applied retroactively was dismissed for failure to file the clerk's record timely, its subsequent suit for a declaratory judgment that would have exempted the property from the rollback taxes incurred on grounds that the 1995 and 1997 versions of § 23.55(a) extinguished the taxes awarded in the prior judgment was barred as res judicata. Hilltop Baptist Temple v. Williamson County Appraisal Dist., 995 S.W.2d 905, 1999 Tex. App. LEXIS 4778 (Tex. App. Austin June 30, 1999, no pet.).

CONSTITUTIONAL LAW
Substantive Due Process

Scope of Protection. — Landowner was entitled to attorney's fees and costs in an action brought against state and local taxing units for depriving the landowner of due process in assessing roll-back taxes without giving him adequate notice or opportunity to challenge the taxes, as required by Texas Tax Code § 23.55(e) where due process is required notice and a fair opportunity to be heard prior to a deprivation of a protected property interest. State v. Southoaks Dev. Co., 920 S.W.2d 330, 1995 Tex. App. LEXIS 3627 (Tex. App. San Antonio Sept. 20, 1995, no writ).

REAL PROPERTY LAW
Deeds

Covenants of Title. — Where a subsequent property owner failed to establish when a tax lien for rollback taxes attached to the property by showing when the determination was made by the chief appraiser pursuant to Tex. Tax Code Ann. § 23.55(e), the property owner was not entitled to judgment as a matter of law on its claim that the original seller breached the warranty against encumbrances. Compass Bank v. Bent Creek Invs., Inc., 52 S.W.3d 419, 2001 Tex. App. LEXIS 4832 (Tex. App. Fort Worth July 19, 2001, no pet.).

OWNERSHIP & TRANSFER
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Elements. — In an ad valorem tax case in which an appraisal district applied rollback taxes to certain parcels of land that landowners were developing as residential subdivisions, there was no merit in the landowners' claim that the appraisal district applied rollback taxes to portions of parcels dedicated to public use in violation of the Texas Tax Code where, based on the stipulated facts presented, acceptance of the dedicated land did not occur until the city issued its final acceptance certificates stating that the public improvements and dedications were ac-

cepted, and because the final acceptance certificates were signed after the date of the change of use, the property was not finally dedicated at the time the change of use occurred; accordingly, rollback tax penalties were properly assessed against the landowners for the land at issue because they owned the land at the time that the change of use occurred. Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist., 234 S.W.3d 809, 2007 Tex. App. LEXIS 7622 (Tex. App. Dallas Sept. 19, 2007, no pet.).

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — Under Tex. Tax Code Ann. § 23.55(e) the agricultural rollback tax lien does not arise purely as a matter of law, but is dependent upon an official determination by the chief appraiser. Compass Bank v. Bent Creek Invs., Inc., 52 S.W.3d 419, 2001 Tex. App. LEXIS 4832 (Tex. App. Fort Worth July 19, 2001, no pet.).

Where the agricultural use of property was ended, there was "change of use" authorizing the imposition of a rollback tax pursuant to Tex. Tax Code Ann. § 23.55(a). Resolution Trust Corp. v. Tarrant County Appraisal Dist., 926 S.W.2d 797, 1996 Tex. App. LEXIS 3741 (Tex. App. Fort Worth June 20, 1996, no writ).

Tex. Tax Code Ann. § 23.55 provides for the imposition of an additional revenue-raising tax as a penalty for changing the use of real estate that had been previously taxed as open space land. Resolution Trust Corp. v. Tarrant County Appraisal Dist., No. 2-95-053-CV, No. 02-95-00053-CV, 1996 Tex. App. LEXIS 2521 (Tex. App. Fort Worth), op. withdrawn, sub. op., 926 S.W.2d 797, 1996 Tex. App. LEXIS 3741 (Tex. App. Fort Worth June 20, 1996).

ASSESSMENT & VALUATION

General Overview. — Rollback taxes under Tex. Tax Code Ann. § 23.55 were not the responsibility of a property seller under a sales contract because while the purchasers claimed that a change in use from qualified open-space land under Tex. Tax Code Ann. § 23.51(1) triggered the assessment, testimony by a county appraisal district employee indicated that the transfer in ownership triggered the assessment. Rizzo v. Ancira, No. 03-09-00424-CV, 2010 Tex. App. LEXIS 6173 (Tex. App. Austin July 29, 2010).

Absent a determination by the chief appraiser pursuant to Tex. Tax Code Ann. § 23.55(e), no tax lien attaches for rollback taxes; the rollback tax lien does not arise purely as a matter of law, but is dependent upon an official determination by the chief appraiser. Compass Bank v. Bent Creek Invs., Inc., 52 S.W.3d 419, 2001 Tex. App. LEXIS 4832 (Tex. App. Fort Worth July 19, 2001, no pet.).

When property appraised as open-space land ceases being used for agricultural purposes, a rollback tax is assessed under Tex. Tax Code Ann. § 23.55(a) in order to recapture the taxes the owner would have paid had the property been taxed at market value for each year covered by the rollback. The rollback tax equals the difference between the taxes the owner actually paid in the five years preceding the change in use and the taxes the owner would have paid on his property's market value, and the property owner can trigger the rollback by ending agricultural operations or diverting the property to a non-agricultural use. Compass Bank v. Bent Creek Invs., Inc., 52 S.W.3d 419, 2001 Tex. App. LEXIS 4832 (Tex. App. Fort Worth July 19, 2001, no pet.).

Rollback tax attaches pursuant to Tex. Tax Code Ann. § 23.55(b) on the date when the change in use occurs. Under Tex. Tax Code Ann. § 23.55(e), the chief appraiser determines if and when the change of use occurs and must send the owner written notice of the determination to allow the owner an opportunity to protest that determination. Compass Bank v. Bent Creek Invs., Inc., 52 S.W.3d 419, 2001 Tex. App. LEXIS 4832 (Tex. App. Fort Worth July 19, 2001, no pet.).

ASSESSMENT METHODS & TIMING. — In an ad valorem tax case in which an appraisal district applied rollback taxes to certain parcels of land that landowners were developing as residential subdivisions, there was no merit in the landowners' claim that the appraisal district failed to properly notify them of its determination that a "change of use" had occurred with respect to one of the parcels of land because neither Tex. Tax Code Ann. § 25.18 nor Tex. Tax Code Ann. § 23.55 require that a change of use determination be made within three years after the change of use occurred, and grafting the reappraisal deadlines onto the change of use determination statute is not necessary to give either statute meaning; determining a change of use is not one of the appraisal activities listed in Tex. Tax Code Ann. § 25.18, and there is nothing in Tex. Tax Code Ann. § 23.55 that suggests any intent on the part of the legislature to link change of use determinations to the reappraisal statute. Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist., 234 S.W.3d 809, 2007 Tex. App. LEXIS 7622 (Tex. App. Dallas Sept. 19, 2007, no pet.).

In an ad valorem tax case in which an appraisal district applied rollback taxes to certain parcels of land that landowners were developing as residential subdivisions, there was no merit in the landowners' claim that the appraisal district applied rollback taxes to portions of parcels dedicated to public use in violation of the Texas Tax Code where, based on the stipulated facts presented, acceptance of the dedicated land did not occur until the city issued its final acceptance certificates stating that the public improvements and dedications were accepted, and because the final acceptance certificates were signed after the date of the change of use, the property was not finally dedicated at the time the change of use occurred; accordingly, rollback tax penalties were properly assessed against the landowners for the land at issue because they owned the land at the time that the change of use occurred. Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist., 234 S.W.3d 809, 2007 Tex. App. LEXIS 7622 (Tex. App. Dallas Sept. 19, 2007, no pet.).

VALUATION. — In an ad valorem tax case in which an appraisal district applied rollback taxes to certain parcels of land that landowners were developing as residential subdivisions, there was no merit in the landowners' claim that the appraisal district failed to properly notify them of its determination that a "change of use" had occurred with respect to one of the parcels of land because neither Tex. Tax Code Ann. § 25.18 nor Tex. Tax Code Ann. § 23.55 require that a change of use determination be made within three years after the change of use occurred, and grafting the reappraisal deadlines onto the change of use determination statute is not necessary to give either statute meaning; determining a change of use is not one of the appraisal activities listed in Tex. Tax Code Ann. § 25.18, and there is nothing in Tex. Tax Code Ann. § 23.55 that suggests any intent on the part of the legislature to link change of use determinations to the reappraisal statute. Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist., 234 S.W.3d 809, 2007 Tex. App. LEXIS 7622 (Tex. App. Dallas Sept. 19, 2007, no pet.).

ATTORNEY GENERAL OPINIONS

Analysis

Rollback Tax.
Rollback Tax on State Land.

Rollback Tax.

The section 23.55 of the Tax Code rollback tax is imposed only when there has been a change in use of the land. It is not imposed on land that is still in agricultural use but no longer qualifies for special valuation because it is not devoted to agricultural use to the degree of intensity generally accepted in the area. 1987 Tex. Op. Att'y Gen. JM-667.

Rollback Tax on State Land.

State-owned land used for public purposes is not subject to the rollback tax under section 23.55 of the Tax Code. 1997 Tex. Op. Att'y Gen. DM-0448.

Sec. 23.551. Additional Notice to Certain Landowners.

(a) If land appraised as provided by this subchapter is owned by an individual 65 years of age or older, before making a determination that a change in use of the land has occurred, the chief appraiser shall deliver a written notice to the owner stating that the chief appraiser believes a change in use of the land may have occurred.

(b) The notice must include a form on which the owner may indicate that the land remains eligible to be appraised as provided by this subchapter and a self-addressed postage prepaid envelope with instructions for returning the form to the chief appraiser.

(c) The chief appraiser shall consider the owner's response on the form in determining whether the land remains eligible for appraisal under this subchapter.

(d) If the chief appraiser does not receive a response on or before the 60th day after the date the notice is mailed, the chief appraiser must make a reasonable effort to locate the owner and determine whether the land remains eligible to be appraised as provided by this subchapter before determining that a change in use of the land has occurred.

(e) For purposes of this section, sending an additional notice to the owner immediately after the expiration of the 60-day period prescribed by Subsection (d) by first class mail in an envelope on which is written, in all capital letters, "RETURN SERVICE REQUESTED," or another appropriate statement directing the United States Postal Service to return the notice if it is not deliverable as addressed, or providing the additional notice in another manner that the chief appraiser determines is appropriate, constitutes a reasonable effort on the part of the chief appraiser.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 352 (H.B. 1464), § 6, effective September 1, 2015.

Sec. 23.56. Land Ineligible for Appraisal As Open-Space Land.

Land is not eligible for appraisal as provided by this subchapter if:

(1) the land is located inside the corporate limits of an incorporated city or town, unless:

(A) the city or town is not providing the land with governmental and proprietary services substantially equivalent in standard and scope to those services it provides in other parts of the city or town with similar topography, land utilization, and population density;

(B) the land has been devoted principally to agricultural use continuously for the preceding five years; or

(C) the land:

(i) has been devoted principally to agricultural use or to production of timber or forest products continuously for the preceding five years; and

(ii) is used for wildlife management;

(2) the land is owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; or

(3) the land is owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2009, 81st Leg., ch. 495 (S.B. 801), § 3, effective January 1, 2010.

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CIVIL PROCEDURE
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Amended Pleadings

General Overview. — Where on appeal of a corporate taxpayer's challenge to Tex. Tax. Code Ann. § 23.56(3) the statute was held unconstitutional in a separate case, the taxpayer was required by Tex. Tax. Code Ann. § 42.21 to exhaust its administrative remedies for each year at issue on appeal, and the trial court on remand had jurisdiction to consider only those years in which the taxpayer applied for open-space land designation pursuant to Tex. Tax. Code Ann. § 23.54 and protested the denial

of that application pursuant to Tex. Tax. Code Ann. § 41.41. Henderson County Appraisal Dist. v. HL Farm Corp., 956 S.W.2d 672, 1997 Tex. App. LEXIS 5563 (Tex. App. Eastland Oct. 23, 1997, no pet.).

CONSTITUTIONAL LAW
Substantive Due Process

Scope of Protection. — Trial court's summary judgment in favor of taxing authorities and denying a foreign corporation an advantageous tax appraisal because of its foreign status was reversed where the court determined that Tex. Tax Code Ann. § 23.56(3) violated Tex. Const. art. I., § 3 because the classification status was not rationally related to the promotion and preservation of open-space land. HL Farm Corp. v. Henderson County Appraisal Dist., 894 S.W.2d 830, 1995 Tex. App. LEXIS 468 (Tex. App. Tyler Feb. 14, 1995, no writ).

EQUAL PROTECTION

Scope of Protection. — The statutory process for reduced tax valuation of open space land, Tex. Tax Code Ann. § 23.56(3), violated Tex. Const. art. I, § 3, because it impermissibly discriminated against a corporation whose majority interest was owned by a nonresident alien. HL Farm Corp. v. Self, 877 S.W.2d 288, 1994 Tex. LEXIS 74 (Tex. 1994).

Tex. Tax. Code Ann. § 23.56(3) which made land owned by nonresident aliens ineligible for favorable tax treatment did not violate Equal Protection Clause of Fourteenth Amendment to U.S. Constitution because the classification of § 23.56(3) had a fair and substantial relation to the object of the legislation. Alexander Ranch, Inc. v. Central Appraisal Dist., 733 S.W.2d 303, 1987 Tex. App. LEXIS 7338 (Tex. App. Eastland May 21, 1987, writ ref'd n.r.e.), cert. denied, 486 U.S. 1026, 108 S. Ct. 2005, 100 L. Ed. 2d 236, 1988 U.S. LEXIS 2282 (U.S. 1988), disapproved, HL Farm Corp. v. Self, No. D-1794, 1994 Tex. LEXIS 11 (Tex. Jan. 5, 1994), overruled, HL Farm Corp. v. Self, 877 S.W.2d 288, 1994 Tex. LEXIS 74 (Tex. 1994).

STATE CONSTITUTIONAL OPERATION. — In matters of taxation, due process requirements are satisfied if the party complaining of the tax is given an opportunity to be heard by some assessment board at some stage in the proceedings before valuation is finally determined; Tex. Tax Code § 23.56(3) affords procedural due process as there is a reasonable basis for the classification in § 23.56(3). G.N.B., Inc. v. Collin County Appraisal Dist., 862 S.W.2d 52, 1993 Tex. App. LEXIS 2692 (Tex. App. Dallas Aug. 6, 1993), rev'd, 874 S.W.2d 659, 1994 Tex. LEXIS 37 (Tex. 1994).

Tex. Const. art. VIII, § 1 does not require absolute equality in taxation; a classification in a tax law which creates disparate tax consequences meets the requirements of § 1 if there is a rational basis for the classification; there is a rational basis for the eligibility limitations in Tex. Tax Code § 23.56(3), viz., the legislature's desire to preserve and benefit the family farm. G.N.B., Inc. v. Collin County Appraisal Dist., 862 S.W.2d 52, 1993 Tex. App. LEXIS 2692 (Tex. App. Dallas Aug. 6, 1993), rev'd, 874 S.W.2d 659, 1994 Tex. LEXIS 37 (Tex. 1994).

Eligibility limitations in Tex. Tax Code § 23.56(3) do not exceed the scope of the authority granted to the legislature by Tex. Const. art. VIII, § 1-d-1 as the legislature has authority to limit eligibility based on ownership of the land as well as use of the land, because the legislature could not fulfill § 1-d-1's purpose of preserving and benefiting the family farm without the ability to place limitations on ownership as well as use of land; language in an early draft of § 1-d-1 that made aliens ineligible for open-space land designation could have been deleted for any number of reasons and, given the plain language of § 1-d-1, any subsequent eligibility limitation imposed against aliens was not necessarily contrary to the intent of its drafters. G.N.B., Inc. v. Collin County Appraisal Dist., 862 S.W.2d 52, 1993 Tex. App. LEXIS 2692 (Tex. App. Dallas Aug. 6, 1993), rev'd, 874 S.W.2d 659, 1994 Tex. LEXIS 37 (Tex. 1994).

Tex. Tax Code § 23.56(3) does not deny favorable tax appraisals based on national origin or any other enumerated class, but instead discriminates on the basis of residency and citizenship and, consequently, the Equal Rights Amendment is inapplicable; discrimination against aliens is distinguishable from discrimination on the basis of national origin, and because § 23.56(3) does not deny equality on the basis of national origin or any other class listed in the Equal Rights Amendment, it does not discriminate on a basis forbidden by that amendment. G.N.B., Inc. v. Collin County Appraisal Dist., 862 S.W.2d 52, 1993 Tex. App. LEXIS 2692 (Tex. App. Dallas Aug. 6, 1993), rev'd, 874 S.W.2d 659, 1994 Tex. LEXIS 37 (Tex. 1994).

GOVERNMENTS
Courts

Judicial Precedents. — Texas Supreme Court decision holding Tex. Tax. Code Ann. § 23.56(3), which denied open-space designation to foreign entities, unconstitutional, was to be applied retroactively; therefore, a corporate taxpayer that had been in litigation challenging the statute was allowed a recovery for the years in which it had exhausted its administrative remedies under Tex. Tax. Code Ann. §§ 23.54 and 41.41. Henderson County Appraisal Dist. v. HL Farm Corp., 956 S.W.2d 672, 1997 Tex. App. LEXIS 5563 (Tex. App. Eastland Oct. 23, 1997, no pet.).

LEGISLATION

Interpretation. — Property is ineligible for appraisal as open-space land if it is owned by a legal entity required by federal law to register its ownership or acquisition of the property and a nonresident alien or foreign government or any combination thereof owns a majority interest in the entity, and such ownership may be either direct or indirect; to limit the term, "ownership," only to direct ownership would render the statute ineffective because its restrictions could be avoided by nonresident aliens who undertake the negligible trouble and expense of forming a domestic corporation to directly own property; when construing a statute, appellate courts must consider the consequences that follow from a particular construction and avoid a construction which would produce an absurd result and, although allowing entities owned by nonresident aliens to gain favorable tax treatment merely by creating a domestic shell corporation is not absurd, it would frustrate the apparent purpose of Tex. Tax Code Ann. § 23.56(3), i.e., preventing corporations owned in majority part by nonresident aliens from seeking favorable tax breaks. G.N.B., Inc. v. Collin County Appraisal Dist., 862 S.W.2d 52, 1993 Tex. App. LEXIS 2692 (Tex. App. Dallas Aug. 6, 1993), rev'd, 874 S.W.2d 659, 1994 Tex. LEXIS 37 (Tex. 1994).

REAL PROPERTY LAW
Zoning & Land Use

Constitutional Limits. — Eligibility limitation, under Tex. Tax Code Ann. § 23.56(3), that excluded non-resident aliens from qualifying for an open-space land designation, furthered the goal of Tex, Const. art. VIII, § 1-d-1 of preserving and benefiting family farms, and thus was constitutional. HL Farm Corp. v. Self, 820 S.W.2d 372, 1991 Tex. App. LEXIS 3075 (Tex. App. Dallas Oct. 18, 1991), writ granted No. D-1794 (Tex. 1992), rev'd, No. D-1794, 1994 Tex. LEXIS 11 (Tex. Jan. 5, 1994).

TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property

General Overview. — Foreign corporation was ineligible to receive an agricultural use property valuation under Tex. Tax. Code Ann. § 23.56(3) where the corporation admitted it was required to register its ownership with the federal government, and where the majority ownership interest was held by nonresident aliens. Spindle Top Bayou Farm, Inc. v. Chambers County Appraisal Dist., No. 01-89-00276-CV, 1989 Tex. App. LEXIS 2817 (Tex. App. Houston 1st Dist. Nov. 16, 1989).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — Foreign corporation's property could be excluded by Tex. Tax Code Ann. § 23.56 from ad valorem taxation as open-space agricultural land since the state statute was not preempted by an international treaty. Hidalgo County Appraisal Dist. v. Engfar N.V., 756 S.W.2d 754, 1988 Tex. App. LEXIS 1546 (Tex. App. Corpus Christi June 23, 1988, no writ).

Sec. 23.57. Action on Applications.

(a) The chief appraiser shall determine separately each applicant's right to have his land appraised under this subchapter. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

(1) approve the application and allow appraisal under this subchapter;

(2) disapprove the application and request additional information from the applicant in support of the claim; or

(3) deny the application.

(b) If the chief appraiser requests additional information from an applicant, the applicant must furnish it within 30 days after the date of the request or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing the information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for appraisal under this subchapter filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser denies an application, he shall deliver a written notice of the denial to the applicant within five days after the date he makes the determination. He shall include with the notice a brief explanation of the procedures for protesting his action and a full explanation of the reasons for denial of the application.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 72, effective January 1, 1982.

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Mandamus. — Mandamus relief was denied to an energy company because an appraisal district had no duty to act on an untimely application for an open-space agricultural appraisal for the years 1999 through 2002, pursuant to Tex. Tax Code Ann. § 23.541(a)(1). A tax-exemption for public use was revoked after it was discovered that the land in question was being leased after 1998 for mining. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

REAL PROPERTY LAW
Property Valuation. — Based on the appraisal procedure of Tex. Tax Code Ann. §§ 23.54(a) and 23.57(a) for open-space exemption of a property owner's land under Tex. Const. art. VIII, § 1-d-1, wherein independent applications based on ownership were required, a wildlife co-op could not seek a collective assessment of its eligibility for exemption under Tex. Tax Code Ann. § 23.51(7), as each owner had to meet the requirements independently; Cordillera Ranch, Ltd. v. Kendall County Appraisal Dist., 136 S.W.3d 249, 2004 Tex. App. LEXIS 1998 (Tex. App. San Antonio Mar. 3, 2004, no pet.).

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation
Valuation. — Mandamus relief was denied to an energy company because an appraisal district had no duty to act on an untimely application for an open-space agricultural appraisal for the years 1999 through 2002, pursuant to Tex. Tax Code Ann. § 23.541(a)(1). A tax-exemption for public use was revoked after it was discovered that the land in question was being leased after 1998 for mining. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

ATTORNEY GENERAL OPINIONS

Net to Land Valuation.
The valuation methods for calculating "net to land" in determining the appraised value of open-space land set forth in sections 23.51 through 23.57 of the Tax Code does not conflict with the Texas Constitution. 1995 Tex. Op. Att'y Gen. DM-0355.

Sec. 23.58. Loan Secured by Lien on Open-Space Land.

(a) A lender may not require as a condition to granting or amending the terms of a loan secured by a lien in favor of the lender on land appraised according to this subchapter that the borrower waive the right to the appraisal or agree not to apply for or receive the appraisal.

(b) A provision in an instrument pertaining to a loan secured by a lien in favor of the lender on land appraised according to this subchapter is void to the extent that the provision attempts to require the borrower to waive the right to the appraisal or to prohibit the borrower from applying for or receiving the appraisal.

(c) A provision in an instrument pertaining to a loan secured by a lien in favor of the lender on land appraised according to this subchapter that requires the borrower to make a payment to protect the lender from loss because of the imposition of additional taxes and interest under Section 23.55 is void unless the provision:

(1) requires the borrower to pay into an escrow account established by the lender an amount equal to the additional taxes and interest that would be due under Section 23.55 if a change of use occurred on January 1 of the year in which the loan is granted or amended;

(2) requires the escrow account to bear interest to be credited to the account monthly;

(3) permits the lender to apply money in the escrow account to the payment of a bill for additional taxes and interest under Section 23.55 before the loan is paid and requires the lender to refund the balance remaining in the escrow account after the bill is paid to the borrower; and

(4) requires the lender to refund the money in the escrow account to the borrower on the payment of the loan.

(d) On the request of the borrower or the borrower's representative, the assessor for each taxing unit shall compute the additional taxes and interest that would be due that taxing unit under Section 23.55 if a change of use occurred on January 1 of the year in which the loan is granted or amended. The assessor may charge a reasonable fee not to exceed the actual cost of making the computation.

(e) In this section, "lender" has the meaning assigned by Section 23.47(e).

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 82 (H.B. 947), § 2, effective May 11, 1995.

Sec. 23.59. Appraisal of Open-Space Land That Is Converted to Timber Production.

(a) If land that has been appraised under this subchapter for at least five preceding years is converted to production of timber after September 1, 1997, the owner may elect to have the land continue to be appraised under this subchapter for 15 years after the date of the conversion, so long as the land qualifies for appraisal as timber land under Subchapter E. In that event, the land is deemed to be the same category of land under this subchapter as it was immediately before conversion to timber production.

(b) The election must be made by a new application filed as provided by Section 23.54 and remains in effect for 15 years or until a change in use of the land occurs.

(c) This section applies to the appraisal of land converted to timber production only until the end of the tax year in which the 15th anniversary of the date of the conversion occurs. In the 16th and subsequent years, the land shall be appraised as timber land as provided by Subchapter E, so long as it qualifies as timber land under Subchapter E.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 765 (H.B. 1723), § 1, effective September 1, 1997.

Sec. 23.60. Reappraisal of Land Subject to Temporary Quarantine for Ticks.

(a) An owner of qualified open-space land, other than land used for wildlife management, on which the Texas Animal Health Commission has established a temporary quarantine of at least 90 days in length in the current tax year for the purpose of regulating the handling of livestock and eradicating ticks or exposure to ticks at any time during a tax year is entitled to a reappraisal of the owner's land for that year on written request delivered to the chief appraiser.

(b) As soon as practicable after receiving a request for reappraisal, the chief appraiser shall complete the reappraisal. In determining the appraised value of the land under Section 23.52, the effect on the value of the land caused by the infestation of ticks is an additional factor that must be taken into account. The appraised value of land reappraised under this section may not exceed the lesser of:

(1) the market value of the land as determined by other appraisal methods; or

(2) one-half of the original appraised value of the land for the current tax year.

(c) A property owner may not be required to pay the appraisal district for the costs of making the reappraisal. Each taxing unit that participates in the appraisal district and imposes taxes on the land shall share the costs of the reappraisal in the proportion the total dollar amount of taxes imposed by that taxing unit on that land in the preceding year bears to the total dollar amount of taxes all taxing units participating in the appraisal district imposed on that land in the preceding year.

(d) If land is reappraised as provided by this section, the governing body of each taxing unit that participates in the appraisal district and imposes taxes on the land shall provide for prorating the taxes on the land for the tax year in which the reappraisal is conducted. If the taxes are prorated, taxes due on the land are determined as follows: the taxes on the land based on its value on January 1 of that year are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days in that year before the date the reappraisal was conducted; the taxes on the land based on its reappraised value are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days, including the date the reappraisal was conducted, remaining in the year; and the total of the two amounts is the amount of taxes imposed on the land for that year. Notwithstanding Section 26.15, the assessor for each applicable taxing unit shall enter the reappraised value on the appropriate tax roll together with the original appraised value and the calculation of the taxes imposed on the land under this section. If for any tax year the reappraisal results in a decrease in the tax liability of the landowner, the assessor for the taxing unit shall prepare and mail a new tax bill in the manner provided by Chapter 31. If the owner has paid the tax, each taxing unit that imposed taxes on the land in that year shall promptly refund the difference between the tax paid and the tax due on the lower appraised value.

(e) In appraising the land for any subsequent tax year in which the Texas Animal Health Commission quarantine remains in place, the chief appraiser shall continue to take into account the effect on the value of the land caused by the infestation of ticks.

(f) If the owner of the land is informed by the Texas Animal Health Commission that the quarantine is no longer in place, not later than the 30th day after the date on which the owner received that information the owner of the land

shall so notify the chief appraiser. If the owner fails to notify the chief appraiser as required by this subsection, a penalty is imposed on the property equal to 10 percent of the difference between the taxes imposed on the property in each year it is erroneously allowed appraisal under this section and the taxes that would otherwise have been imposed.

(g) The chief appraiser shall make an entry in the appraisal records for the property against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who owns the property. The notice shall include a brief explanation of the procedures for protesting the imposition of the penalty. The assessor for each taxing unit that imposed taxes on the property on the basis of appraisal under this section shall add the amount of the penalty to the unit's tax bill for taxes on the property against which the penalty is imposed. The penalty shall be collected at the same time and in the same manner as the taxes on the property against which the penalty is imposed. The amount of the penalty constitutes a lien on the property against which the penalty is imposed and accrues penalty and interest in the same manner as a delinquent tax.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1011 (H.B. 967), § 3, effective June 15, 2007.

Secs. 23.61 to 23.70. [Reserved for expansion].

Subchapter E

Appraisal of Timber Land

Sec. 23.71. Definitions.

In this subchapter:

(1) "Category of the land" means the value classification of land for timber production, based on soil type, soil capability, general topography, weather, location, and other pertinent factors, as determined by competent governmental sources.

(2) "Net to land" means the average net income that would have been earned by a category of land over the preceding five years by a person using ordinary prudence in the management of the land and the timber produced on the land. The net income for each year is determined by multiplying the land's potential average annual growth, expressed in tons, by the stumpage value, expressed in price per ton, of large pine sawtimber, small pine sawtimber, pine pulpwood, hardwood sawtimber, hardwood pulpwood, and any other significant timber product, taking into consideration the three forest types and the four different soil types, as determined by using information for the East Texas timber-growing region as a whole from the U.S. Forest Service, the Natural Resources Conservation Service of the United States Department of Agriculture, the Texas Forest Service, and colleges and universities within this state, and by subtracting from the product reasonable management costs and other reasonable expenses directly attributable to the production of the timber that a prudent manager of the land and timber, seeking to maximize return, would incur in the management of the land and timber. Stumpage prices shall be determined by using information collected for all types of timber sales, including cutting contract and gatewood sales.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2003, 78th Leg., ch. 968 (S.B. 1646), § 1, effective January 1, 2004.

Sec. 23.72. Qualification for Productivity Appraisal.

(a) Land qualifies for appraisal as provided by this subchapter if it is currently and actively devoted principally to production of timber or forest products to the degree of intensity generally accepted in the area with intent to produce income and has been devoted principally to production of timber or forest products or to agricultural use that would qualify the land for appraisal under Subchapter C or D for five of the preceding seven years.

(b) In determining whether land is currently and actively devoted principally to the production of timber or forest products to the degree of intensity generally accepted in an area, a chief appraiser may not consider the purpose for which a portion of a parcel of land is used if the portion is:

(1) used for the production of timber or forest products, including a road, right-of-way, buffer area, or firebreak; or

(2) subject to a right-of-way that was taken through the exercise of the power of eminent domain.

(c) For the purpose of the appraisal of land under this subchapter, a portion of a parcel of land described by Subsection (b) is considered land that qualifies for appraisal under this subchapter if the remainder of the parcel of land qualifies for appraisal under this subchapter.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 780 (H.B. 1867), § 3, effective January 1, 1988; am. Acts 2019, 86th Leg., ch. 43 (H.B. 1409), § 1, effective September 1, 2019.

Sec. 23.73. Appraisal of Qualified Timber Land.

(a) The appraised value of qualified timber land is determined on the basis of the category of the land, using accepted income capitalization methods applied to average net to land. The appraised value so determined may not exceed the market value of the land as determined by other appraisal methods.

(b) The comptroller by rule shall develop and distribute to each appraisal office appraisal manuals setting forth this method of appraising qualified timber land, and each appraisal office shall use the appraisal manuals in appraising

qualified timber land. The comptroller by rule shall develop and the appraisal office shall enforce procedures to verify that land meets the conditions contained in Section 23.72. The rules, before taking effect, must be approved by the comptroller with the review and counsel of the Texas A&M Forest Service.

(c) For the purposes of Section 23.76 of this code, the chief appraiser also shall determine the market value of qualified timber land and shall record both the market value and the appraised value in the appraisal records.

(d) The appraisal of minerals or subsurface rights to minerals is not within the provisions of this subchapter.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 73, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 26, effective September 1, 1991; am. Acts 2017, 85th Leg., ch. 23 (S.B. 594), § 2, effective January 1, 2018; am. Acts 2017, 85th Leg., ch. 533 (S.B. 526), § 10(c), effective September 1, 2017.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation
General Overview. — Tex. Tax Code Ann. §§ 23.73 and 23.76 provide the method for appraising qualified timberland and the taxes to be assessed on property when a change in use of timberland occurs. Harris County Appraisal Dist. v. Wilkerson, 911 S.W.2d 84, 1995 Tex. App. LEXIS 1853 (Tex. App. Houston 1st Dist. Aug. 10, 1995, writ denied).

Sec. 23.74. Capitalization Rate.

(a) The capitalization rate to be used in determining the appraised value of qualified timber land as provided by this subchapter is the greater of:

(1) the interest rate specified by the Farm Credit Bank of Texas or its successor on December 31 of the preceding year plus 2-½ percentage points; or

(2) the capitalization rate used in determining the appraised value of qualified timber land as provided by this subchapter for the preceding tax year.

(b) Notwithstanding Subsection (a):

(1) in the first tax year in which the capitalization rate determined under that subsection equals or exceeds 10 percent, the capitalization rate for that tax year is the rate determined under Subsection (a)(1); and

(2) for each tax year following the tax year described by Subdivision (1), the capitalization rate is the average of the rate determined under Subsection (a)(1) for the current tax year and the capitalization rate used for each of the four tax years preceding the current tax year other than a tax year preceding the tax year described by Subdivision (1).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1995, 74th Leg., ch. 579 (S.B. 642), § 5, effective January 1, 1996; am. Acts 2003, 78th Leg., ch. 968 (S.B. 1646), § 2, effective January 1, 2004.

Sec. 23.75. Application.

(a) A person claiming that his land is eligible for appraisal as provided by this subchapter must file a valid application with the chief appraiser.

(b) To be valid, the application must:

(1) be on a form provided by the appraisal office and prescribed by the comptroller; and

(2) contain the information necessary to determine the validity of the claim.

(c) The comptroller shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The comptroller, in prescribing the contents of the application form, shall require that the form permit a claimant who has previously been allowed appraisal under this subchapter to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

(d) The form must be filed before May 1. However, for good cause the chief appraiser may extend the filing deadline for not more than 60 days.

(e) If a person fails to file a valid application on time, the land is ineligible for appraisal as provided by this subchapter for that year. Once an application is filed and appraisal under this subchapter is allowed, the land is eligible for appraisal under this subchapter in subsequent years without a new application unless the ownership of the land changes or its eligibility under this subchapter ends. However, the chief appraiser if he has good cause to believe the land's eligibility under this subchapter has ended, may require a person allowed appraisal under this subchapter in a prior year to file a new application to confirm that the land is currently eligible under this subchapter by delivering a written notice that a new application is required, accompanied by the application form, to the person who filed the application that was previously allowed.

(f) The appraisal office shall make a sufficient number of printed application forms readily available at no charge.

(g) Each year the chief appraiser for each appraisal district shall publicize, in a manner reasonably designed to notify all residents of the district, the requirements of this section and the availability of application forms.

(h) A person whose land is allowed appraisal under this subchapter shall notify the appraisal office in writing before May 1 after eligibility of the land under this subchapter ends. If a person fails to notify the appraisal office as required

by this subsection a penalty is imposed on the property equal to 10 percent of the difference between the taxes imposed on the property in each year it is erroneously allowed appraisal under this subchapter and the taxes that would otherwise have been imposed.

(i) The chief appraiser shall make an entry in the appraisal records for the property against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who owns the property. The notice shall include a brief explanation of the procedures for protesting the imposition of the penalty. The assessor for each taxing unit that imposed taxes on the property on the basis of appraisal under this subchapter shall add the amount of the penalty to the unit's tax bill for taxes on the property against which the penalty is imposed. The penalty shall be collected at the same time and in the same manner as the taxes on the property against which the penalty is imposed. The amount of the penalty constitutes a lien on the property against which the penalty is imposed and accrues penalty and interest in the same manner as a delinquent tax.

(j) If the chief appraiser discovers that appraisal under this subchapter has been erroneously allowed in any one of the five preceding years because of failure of the person whose land was allowed appraisal under this subchapter to give notice that its eligibility had ended, the chief appraiser shall add the difference between the appraised value of the land under this subchapter and the market value of the land to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 74, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 27, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 579 (S.B. 642), § 6, effective January 1, 1996.

Sec. 23.751. Late Application for Appraisal As Timber Land.

(a) The chief appraiser shall accept and approve or deny an application for appraisal under this subchapter after the deadline for filing it has passed if it is filed before approval of the appraisal records by the appraisal review board.

(b) If appraisal under this subchapter is approved when the application is filed late, the owner is liable for a penalty of 10 percent of the difference between the amount of tax imposed on the property and the amount that would be imposed if the property were taxed at market value.

(c) The chief appraiser shall make an entry on the appraisal records indicating the person's liability for the penalty and shall deliver written notice of imposition of the penalty, explaining the reason for its imposition, to the person.

(d) The tax assessor for a taxing unit that taxes land based on an appraisal under this subchapter after a late application shall add the amount of the penalty to the owner's tax bill, and the tax collector for the unit shall collect the penalty at the time and in the manner he collects the tax. The amount of the penalty constitutes a lien against the property against which the penalty is imposed, as if it were a tax, and accrues penalty and interest in the same manner as a delinquent tax.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 75, effective January 1, 1982.

Sec. 23.76. Change of Use of Land.

(a) If the use of land that has been appraised as provided by this subchapter changes, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the three years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter and the tax that would have been imposed had the land been taxed on the basis of market value in each of those years, plus interest at an annual rate of five percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(c) The additional tax imposed by this section does not apply to a year for which the tax has already been imposed.

(d) If the change of use applies to only part of a parcel that has been appraised as provided by this subchapter, the additional tax applies only to that part of the parcel and equals the difference between the taxes imposed on that part of the parcel and the taxes that would have been imposed had that part been taxed on the basis of market value.

(e) A determination that a change in use of the land has occurred is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes and interest as soon as practicable after the change of use occurs. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(f) The sanctions provided by Subsection (a) do not apply if the change of use occurs as a result of:

(1) a sale for right-of-way;

(2) a condemnation; or

(3) a transfer of the land to this state or a political subdivision of this state to be used for a public purpose.

(g) If the use of the land changes to a use that qualifies under Subchapter C, D, or H of this chapter, the sanctions provided by Subsection (a) of this section do not apply.

(h) The use of land does not change for purposes of Subsection (a) solely because the owner of the land claims it as part of the owner's residence homestead for purposes of Section 11.13.

(i) The sanctions provided by Subsection (a) do not apply to land owned by an organization that qualifies as a religious organization under Section 11.20(c) if the organization converts the land to a use for which the land is eligible for an exemption under Section 11.20 within five years.

(j) The sanctions provided by Subsection (a) do not apply to a change in the use of land if:

(1) the land is located in an unincorporated area of a county with a population of less than 100,000;

(2) the land does not exceed five acres;

(3) the land is owned by a not-for-profit cemetery organization;

(4) the cemetery organization dedicates the land for a cemetery purpose;

(5) the cemetery organization has not dedicated more than five acres of land in the county for a cemetery purpose in the five years preceding the date the cemetery organization dedicates the land for a cemetery purpose; and

(6) the land is adjacent to a cemetery that has been in existence for more than 100 years.

(k) In Subsection (j), "cemetery," "cemetery organization," and "cemetery purpose" have the meanings assigned those terms by Section 711.001, Health and Safety Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 76, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 13, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 21, effective September 1, 1989; am. Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 4, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 723 (H.B. 958), § 1, effective June 18, 1999; am. Acts 2005, 79th Leg., ch. 921 (H.B. 312), § 1, effective September 1, 2005; am. Acts 2019, 86th Leg., ch. 1361 (H.B. 1743), § 2, effective September 1, 2019.

Sec. 23.765. Oil and Gas Operations on Land.

The eligibility of land for appraisal under this subchapter does not end because a lessee under an oil and gas lease begins conducting oil and gas operations over which the Railroad Commission of Texas has jurisdiction on the land if the portion of the land on which oil and gas operations are not being conducted otherwise continues to qualify for appraisal under this subchapter.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 43 (H.B. 1409), § 2, effective September 1, 2019.

Sec. 23.77. Land Ineligible for Appraisal As Timber Land.

Land is not eligible for appraisal as provided by this subchapter if:

(1) the land is located inside the corporate limits of an incorporated city or town, unless:

(A) the city or town is not providing the land with governmental and proprietary services substantially equivalent in standard and scope to those services it provides in other parts of the city or town with similar topography, land utilization, and population density; or

(B) the land has been devoted principally to production of timber or forest products continuously for the preceding five years;

(2) the land is owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; or

(3) the land is owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 23.78. Minimum Taxable Value of Timber Land.

The taxable value of qualified timber land appraised as provided by this subchapter may not be less than the appraised value of that land for the taxing unit in the 1978 tax year, except that the taxable value used for any tax year may not exceed the market value of the land as determined by other generally accepted appraisal methods. If the appraised value of timber land determined as provided by this subchapter is less than a taxing unit's appraised value of that land in 1978, the assessor for the unit shall substitute the 1978 appraised value for that land on the unit's appraisal roll.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 77, effective January 1, 1982.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation

General Overview. — In an action challenging the value assessed on real property for tax purposes when the same or substantially the same parcel was reappraised for its timber use value a parcel's floor value under Tex. Tax Code Ann. § 23.78 had to be determined by reference to its total parcel value on the 1978 tax rolls. Temple Eastex, Inc. v. Spurger Independent School Dist., 720 S.W.2d 607, 1986 Tex. App. LEXIS 9291 (Tex. App. Beaumont Oct. 2, 1986, no writ).

In an action challenging the value assessed on real property for tax purposes to the extent that the same or substantially the same parcel on the 1978 tax rolls was reappraised for its timber use value, the reference in Tex. Tax Code Ann. § 23.78 to "that land" referred to the entire parcel rather than a portion of the parcel. Temple Eastex, Inc. v. Spurger Independent School Dist., 720 S.W.2d 607, 1986 Tex. App. LEXIS 9291 (Tex. App. Beaumont Oct. 2, 1986, no writ).

Sec. 23.79. Action on Applications.

(a) The chief appraiser shall determine separately each applicant's right to have his land appraised under this subchapter. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

(1) approve the application and allow appraisal under this subchapter;

(2) disapprove the application and request additional information from the applicant in support of the claim; or

(3) deny the application.

(b) If the chief appraiser requests additional information from an applicant, the applicant must furnish it within 30 days after the date of the request or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing the information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for appraisal under this subchapter filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser denies an application, he shall deliver a written notice of the denial to the applicant within five days after the date he makes the determination. He shall include with the notice a brief explanation of the procedures for protesting his action.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 78, effective January 1, 1982.

Sec. 23.80. [Reserved for expansion].

Subchapter F

Appraisal of Recreational, Park, and Scenic Land

Sec. 23.81. Definitions.

In this subchapter:

(1) "Recreational, park, or scenic use" means use for individual or group sporting activities, for park or camping activities, for development of historical, archaeological, or scientific sites, or for the conservation and preservation of scenic areas.

(2) "Deed restriction" means a valid and enforceable provision that limits the use of land and that is included in a written instrument filed and recorded in the deed records of the county in which the land is located.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 79, effective January 1, 1982.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — Tex. Tax Code Ann. §§ 23.81—23.87 which provides for the appraisal of land based on its market value as recreational, scenic or park land and which is equally and uniformly applied under a reasonable classification of property based upon the legitimate state interest of ensuring the continued existence of scenic, park, and recreational lands in urban areas, does not violate the mandate of Tex. Const. art. VIII. Tarrant Appraisal Dist. v. Colonial Country Club, 767 S.W.2d 230, 1989 Tex. App. LEXIS 945 (Tex. App. Fort Worth Mar. 8, 1989, writ denied).

Sec. 23.82. Voluntary Restrictions.

(a) The owner of a fee simple estate in land of at least five acres may limit the use of the land to recreational, park, or scenic use by filing with the county clerk of the county in which the land is located a written instrument executed in the form and manner of a deed.

(b) The instrument must describe the land, name each owner of the land, and provide that the restricted land may be used only for recreational, park, or scenic uses during the term of the deed restriction. The term of the deed restriction must be for at least 10 years, and the length of the term must be stated in the instrument.

(c) The county attorney of the county in which the restricted land is located or any person owning or having an interest in the restricted land may enforce a deed restriction that complies with the requirements of this section.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 79, effective January 1, 1982.

Sec. 23.83. Appraisal of Restricted Land.

(a) A person is entitled to have land he owns appraised under this subchapter if, on January 1:

(1) the land is restricted as provided by this subchapter;

(2) the land is used in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain;

(3) the land has been devoted exclusively to recreational, park, or scenic uses for the preceding year; and

(4) he is using and intends to use the land exclusively for those purposes in the current year.

(b) The chief appraiser may not consider any factor other than one relating to the value of the land as restricted. Sales of comparable land not restricted as provided by this subchapter may not be used to determine the value of restricted land.

(c) Improvements other than appurtenances to the land and the mineral estate are appraised separately at market value. Riparian water rights, private roads, dams, reservoirs, water wells, and canals, ditches, terraces, and similar reshapings of or additions to the soil are appurtenances to the land and the effect of each on the value of the land for recreational, park, or scenic uses shall be considered in appraising the land.

(d) If land is appraised under this subchapter for a year, the chief appraiser shall determine at the end of that year whether the land was used exclusively for recreational, park, or scenic uses. If the land was not used exclusively for recreational, park, or scenic uses, the assessor for each taxing unit shall impose an additional tax equal to the difference in the amount of tax imposed and the amount that would have been imposed for that year if the land had not been restricted to recreational, park, or scenic uses. The assessor shall include the amount of additional tax plus interest on the next bill for taxes on the land.

(e) The comptroller shall promulgate rules specifying the methods to apply and the procedures to use in appraising land under this subchapter.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 79, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 28, effective September 1, 1991.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — Indirect benefits enjoyed by a nonprofit country club's membership as a result of the club's generation of revenues did not constitute private gain as prohibited by the Greenbelt Act, Tex. Tax Code Ann.§ 23.83(a)(2). Tarrant Appraisal Dist. v. Colonial Country Club, 767 S.W.2d 230, 1989 Tex. App. LEXIS 945 (Tex. App. Fort Worth Mar. 8, 1989, writ denied).

Sec. 23.84. Application.

(a) A person claiming the right to have his land appraised under this subchapter must apply for the right the first year he claims it. Application for appraisal under this chapter is made by filing a sworn application form with the chief appraiser for the appraisal district in which the land is located.

(b) A claimant must deliver a completed application form to the chief appraiser before May 1 and must furnish the information required by the form. For good cause shown the chief appraiser may extend the deadline for filing the application by written order for a single period not to exceed 60 days.

(c) If a claimant fails to timely file a completed application form, the land is ineligible for appraisal as provided by this subchapter for that year. Once an application is filed and appraisal under this subchapter is allowed, the land is eligible for appraisal under this subchapter during the term of the deed restriction without a new application unless the ownership of the land changes or its eligibility under this subchapter ends. However, the chief appraiser, if he has good cause to believe the land's eligibility under this subchapter has ended, may require a person allowed appraisal under this subchapter in a prior year to file a new application to confirm that the land is currently eligible under this subchapter by delivering a written notice that a new application is required, accompanied by the application form, to the person who filed the application that was previously allowed.

(d) A person whose land is allowed appraisal under this subchapter shall notify the appraisal office in writing before May 1 after eligibility of the land under this subchapter ends.

(e) If the chief appraiser discovers that appraisal under this subchapter has been erroneously allowed in any one of the five preceding years, the chief appraiser shall add the difference between the appraised value of the land under this subchapter and the market value of the land if it had not been restricted to recreational, park, or scenic uses to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation.

(f) The comptroller in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim and that the form requires the

claimant to state that the land for which he claims appraisal under this subchapter will be used exclusively for recreational, park, or scenic uses in the current year.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 79, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 29, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 579 (S.B. 642), § 7, effective January 1, 1996.

Sec. 23.85. Action on Application.

(a) The chief appraiser shall determine individually each claimant's right to appraisal under this subchapter. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

(1) approve the application and allow appraisal under this subchapter;

(2) disapprove the application and request additional information from the claimant in support of the claim; or

(3) deny the application.

(b) If the chief appraiser requests additional information from a claimant, the claimant must furnish the information within 30 days after the date of the request or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing additional information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for appraisal under this subchapter filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser denies an application, he shall deliver a written notice of the denial to the claimant within five days after the date of denial. The notice must include a brief explanation of the procedures for protesting the denial.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 79, effective January 1, 1982.

Sec. 23.86. Additional Taxation for Preceding Years.

(a) If land that has been appraised under this subchapter is no longer subject to a deed restriction or is diverted to a use other than recreational, park, or scenic uses, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs or the deed restriction expires that the land was appraised as provided by this subchapter and the tax that would have been imposed had the land not been restricted to recreational, park, or scenic uses in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the land on the date the change of use occurs or the deed restriction expires to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(c) The assessor shall prepare and deliver a statement for the additional taxes as soon as practicable after the change of use occurs or the deed restriction expires. The taxes become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next date on which the unit's taxes become delinquent that is more than 10 days after the date the statement is delivered.

(d) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs as a result of a sale for right-of-way or a condemnation.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 79, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 14, effective August 29, 1983.

Sec. 23.87. Penalty for Violating Deed Restriction.

(a) If land appraised under this subchapter is used for other than recreational, park, or scenic uses before the term of the deed restriction expires, a penalty is imposed on the land equal to the difference between the taxes imposed on the land for the year in which the violation occurs and the amount that would have been imposed for that year had the land not been restricted to recreational, park, or scenic uses.

(b) The chief appraiser shall make an entry in the appraisal records for the land against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who filed the application for appraisal under this subchapter. The notice shall include a brief explanation of the procedures for protesting the imposition of the penalty.

(c) The assessor for each taxing unit that imposed taxes on the land on the basis of appraisal under this subchapter shall add the amount of the penalty to the unit's tax bill for taxes on the land against which the penalty is imposed. The penalty shall be collected at the same time and in the same manner as the taxes on the land against which the penalty is imposed. The amount of the penalty constitutes a lien on the land against which the penalty is imposed and accrues penalties and interest in the same manner as a delinquent tax.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 79, effective January 1, 1982.

Secs. 23.88 to 23.90. [Reserved for expansion].

Subchapter G

Appraisal of Public Access Airport Property

Sec. 23.91. Definitions.

In this subchapter:

(1) "Airport property" means real property that is designed to be used or is used for airport purposes, including the landing, parking, shelter, or takeoff of aircraft and the accommodation of individuals engaged in the operation, maintenance, or navigation of aircraft or of aircraft passengers in connection with their use of aircraft or of airport property.

(2) "Public access airport property" means privately owned airport property that is regularly used by the public for or regularly provides services to the public in connection with airport purposes.

(3) "Deed restriction" means a valid and enforceable provision that restricts the use of property and that is included in a written instrument filed and recorded in the deed records of the county in which the property is located.

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 581 (S.B. 970), § 1, effective January 1, 1982.

NOTES TO DECISIONS

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Permanent Injunctions. — Under Tex. Tax Code Ann. § 23.91, Tex. Tax Code Ann. § 23.92(a), (b), and Tex. Transp. Code Ann. § 25.002(1) and Tex. Transp. Code Ann. § 22.001(2), just because an airport declared itself a "public access airport property," pursuant to Tex. Tax. Code Ann. § 23.93(a) and Tex. Tax. Code Ann. § 23.94(a), did not prohibit the airport from charging a fee for services rendered to a lot owner who had stopped paying easement fees for the use thereof and the airport was entitled to a permanent injunction against the lot owner to bar him from repeatedly trespassing on the airport's property. Beathard Joint Venture v. W. Houston Airport Corp., 72 S.W.3d 426, 2002 Tex. App. LEXIS 2068 (Tex. App. Texarkana Mar. 21, 2002, no pet.).

TRANSPORTATION LAW
Air Transportation

Airports & Airways Development Act. — Owner of public access airport property, under Tex. Tax Code Ann. § 23.91(2), was not precluded, by that declaration, from charging a fee for its services. Beathard Joint Venture v. W. Houston Airport Corp., 72 S.W.3d 426, 2002 Tex. App. LEXIS 2068 (Tex. App. Texarkana Mar. 21, 2002, no pet.).

Sec. 23.92. Voluntary Restrictions.

(a) The owner of a fee simple estate in property of at least five acres may limit the use of that part of the property which is airport property to public access airport property by filing with the county clerk of the county in which the property is located a written instrument executed in the form and manner of a deed.

(b) The instrument must describe the property and the restricted part of the property, name each owner of the property, and provide that the restricted property may only be used as public access airport property during the term of the deed restriction. The term of the deed restriction must be for at least 10 years, and the length of the term must be stated in the instrument.

(c) The county attorney of the county in which the restricted property is located or any person owning or having an interest in the restricted property may enforce a deed restriction that complies with the requirements of this section.

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 581 (S.B. 970), § 1, effective January 1, 1982.

NOTES TO DECISIONS

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Permanent Injunctions. — Under Tex. Tax Code Ann. § 23.91, Tex. Tax Code Ann. § 23.92(a), (b), and Tex. Transp. Code Ann. § 25.002(1) and Tex. Transp. Code Ann. § 22.001(2), just because an airport declared itself a "public access airport property," pursuant to Tex. Tax. Code Ann. § 23.93(a) and Tex. Tax. Code Ann. § 23.94(a), did not prohibit the airport from charging a fee for services rendered to a lot owner who had stopped paying easement fees for the use thereof and the airport was entitled to a permanent injunction against the lot owner to bar him from repeatedly trespassing on the airport's property. Beathard Joint Venture v. W. Houston Airport Corp., 72 S.W.3d 426, 2002 Tex. App. LEXIS 2068 (Tex. App. Texarkana Mar. 21, 2002, no pet.).

Sec. 23.93. Appraisal of Restricted Land.

(a) A person is entitled to have airport property he owns appraised under this subchapter if, on January 1:

(1) the property is restricted as provided by this subchapter;

(2) the property has been devoted exclusively to use as public access airport property for the preceding year; and

(3) he is using and intends to use the property exclusively as public access airport property in the current year.

(b) The chief appraiser may not consider any factor other than one relating to the value of the airport property as restricted. Sales of comparable airport property not restricted as provided by this subchapter may not be used to determine the value of restricted property.

(c) Improvements to the property that qualify as public access airport property are appraised as provided by this subchapter, but other improvements and the mineral estate are appraised separately at market value.

(d) If airport property is appraised under this subchapter for a year, the chief appraiser shall determine at the end of that year whether the property was used exclusively as public access airport property. If the airport property was not used exclusively as public access airport property, the assessor for each taxing unit shall impose an additional tax equal to the difference in the amount of tax imposed and the amount that would have been imposed for that year if the property had not been restricted to use as public access airport property. The assessor shall include the amount of additional tax plus interest on the next bill for taxes on the land.

(e) The comptroller shall promulgate rules specifying the methods to apply and the procedures to use in appraising property under this subchapter.

HISTORY: am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 81, effective January 1, 1982; Enacted by Acts 1981, 67th Leg., ch. 581 (S.B. 970), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 30, effective September 1, 1991.

NOTES TO DECISIONS

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Permanent Injunctions. — Under Tex. Tax Code Ann. § 23.91, Tex. Tax Code Ann. § 23.92(a), (b), and Tex. Transp. Code Ann. § 25.002(1) and Tex. Transp. Code Ann. § 22.001(2), just because an airport declared itself a "public access airport property," pursuant to Tex. Tax. Code Ann. § 23.93(a) and Tex. Tax. Code Ann. § 23.94(a), did not prohibit the airport from charging a fee for services rendered to a lot owner who had stopped paying easement fees for the use thereof and the airport was entitled to a permanent injunction against the lot owner to bar him from repeatedly trespassing on the airport's property. Beathard Joint Venture v. W. Houston Airport Corp., 72 S.W.3d 426, 2002 Tex. App. LEXIS 2068 (Tex. App. Texarkana Mar. 21, 2002, no pet.).

Sec. 23.94. Application.

(a) A person claiming the right to have his airport property appraised under this subchapter must apply for the right the first year he claims it. Application for appraisal under this subchapter is made by filing a sworn application form with the chief appraiser for each appraisal district in which the land is located.

(b) A claimant must deliver a completed application form to the chief appraiser before May 1 and must furnish the information required by the form. For good cause shown the chief appraiser may extend the deadline for filing the application by written order for a single period not to exceed 60 days.

(c) If a claimant fails to timely file a completed application form, the property is ineligible for appraisal as provided by this subchapter for that year. Once an application is filed and appraisal under this subchapter is allowed, the property is eligible for appraisal under this subchapter during the term of the deed restriction without a new application unless the ownership of the property changes or its eligibility under this subchapter ends. However, the chief appraiser, if he has good cause to believe the property's eligibility under this subchapter has ended, may require a person allowed appraisal under this subchapter in a prior year to file a new application to confirm that the property is currently eligible under this subchapter by delivering a written notice that a new application is required, accompanied by the application form, to the person who filed the application that was previously allowed.

(d) A person whose property is allowed appraisal under this subchapter shall notify the appraisal office in writing before May 1 after eligibility of the property under this subchapter ends.

(e) If the chief appraiser discovers that appraisal under this subchapter has been erroneously allowed in any one of the five preceding years, the chief appraiser shall add the difference between the appraised value of the property under this subchapter and the value of the property if it had not been restricted to use as public access airport property to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation.

(f) The comptroller in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim and that the form requires the claimant to state that the airport property for which he claims appraisal under this subchapter will be used exclusively as public access airport property in the current year.

HISTORY: am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 82, effective January 1, 1982; Enacted by Acts 1981, 67th Leg., ch. 581 (S.B. 970), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 31, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 579 (S.B. 642), § 8, effective January 1, 1996.

NOTES TO DECISIONS

CIVIL PROCEDURE
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Permanent Injunctions. — Under Tex. Tax Code Ann. § 23.91, Tex. Tax Code Ann. § 23.92(a), (b), and Tex. Transp. Code Ann. § 25.002(1) and Tex. Transp. Code Ann. § 22.001(2), just because an airport declared itself a "public access airport property," pursuant to Tex. Tax. Code Ann. § 23.93(a) and Tex.

Tax. Code Ann. § 23.94(a), did not prohibit the airport from charging a fee for services rendered to a lot owner who had stopped paying easement fees for the use thereof and the airport was entitled to a permanent injunction against the lot owner to bar him from repeatedly trespassing on the airport's property. Beathard Joint Venture v. W. Houston Airport Corp., 72 S.W.3d 426, 2002 Tex. App. LEXIS 2068 (Tex. App. Texarkana Mar. 21, 2002, no pet.).

Sec. 23.95. Action on Application.

(a) The chief appraiser shall determine individually each claimant's right to appraisal under this subchapter. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

(1) approve the application and allow appraisal under this subchapter;

(2) disapprove the application and request additional information from the claimant in support of the claim; or

(3) deny the application.

(b) If the chief appraiser requests additional information from a claimant, the claimant must furnish the information within 30 days after the date of the request or before April 15, whichever is earlier, or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing additional information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for appraisal under this subchapter filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser denies an application, he shall deliver a written notice of the denial to the claimant within five days after the date of denial. The notice must include a brief explanation of the procedures for protesting the denial.

HISTORY: am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 83, effective January 1, 1982; Enacted by Acts 1981, 67th Leg., ch. 581 (S.B. 970), § 1, effective January 1, 1982.

Sec. 23.96. Taxation for Preceding Years.

(a) If airport property that has been appraised under this subchapter is no longer subject to a deed restriction, an additional tax is imposed on the property equal to the difference between the taxes imposed on the property for each of the five years preceding the year in which the deed restriction expires that the property was appraised as provided by this subchapter and the tax that would have been imposed had the property not been restricted to use as public access airport property in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the property on the date the deed restriction expires to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(c) The assessor shall prepare and deliver a statement for the additional taxes as soon as practicable after the deed restriction expires. The taxes become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next date on which the unit's taxes become delinquent that is more than 10 days after the date the statement is delivered.

(d) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs as a result of a sale for right-of-way or a condemnation.

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 581 (S.B. 970), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 15, effective August 29, 1983.

Sec. 23.97. Penalty for Violating Deed Restriction.

(a) If airport property appraised under this subchapter is used as other than public access airport property before the term of the deed restriction expires, a penalty is imposed on the property equal to the difference between the taxes imposed on the property on the basis of appraisal under this subchapter for the year in which the violation occurs and the amount that would have been imposed for that year had the property not been restricted to use as public access airport property.

(b) The chief appraiser shall make an entry in the appraisal records for the property against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who filed the application for appraisal under this subchapter. The notice shall include a brief explanation of the procedures for protesting the imposition of the penalty.

(c) The assessor for each taxing unit that imposed taxes on the property on the basis of appraisal under this subchapter shall add the amount of the penalty to the unit's tax bill for taxes on the property against which the penalty is imposed. The county assessor-collector shall add the amount of the penalty to the county's tax bill for taxes on the property. The penalty shall be collected at the same time and in the same manner as the taxes on the property against which the penalty is imposed. The amount of the penalty constitutes a lien on the property against which the penalty is imposed and accrues penalty and interest in the same manner as a delinquent tax.

HISTORY: am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 84, effective January 1, 1982; Enacted by Acts 1981, 67th Leg., ch. 581 (S.B. 970), § 1, effective January 1, 1982.

Subchapter H

Appraisal of Restricted-use Timber Land

Sec. 23.9801. Definitions.

In this subchapter:

(1) "Aesthetic management zone" means timber land on which timber harvesting is restricted for aesthetic or conservation purposes, including:

(A) maintaining standing timber adjacent to public rights-of-way, including highways and roads; and

(B) preserving an area in a forest, as defined by Section 152.003, Natural Resources Code, that is designated by the director of the Texas Forest Service as special or unique because of the area's natural beauty, topography, or historical significance.

(2) "Critical wildlife habitat zone" means timber land on which the timber harvesting is restricted so as to provide at least three of the following benefits for the protection of an animal or plant that is listed as endangered or threatened under the Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.) and its subsequent amendments or as endangered under Section 68.002, Parks and Wildlife Code:

(A) habitat control;

(B) erosion control;

(C) predator control;

(D) providing supplemental supplies of water;

(E) providing supplemental supplies of food;

(F) providing shelters; and

(G) making of census counts to determine population.

(3) "Management plan" means a plan that uses forestry best management practices consistent with the agricultural and silvicultural nonpoint source pollution management program administered by the State Soil and Water Conservation Board under Section 201.026, Agriculture Code.

(4) "Regenerate" means to replant or manage natural regeneration.

(5) "Streamside management zone" means timber land on which timber harvesting is restricted in accordance with a management plan to:

(A) protect water quality; or

(B) preserve a waterway, including a lake, river, stream, or creek.

(6) "Qualified restricted-use timber land" means land that qualifies for appraisal as provided by this subchapter.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 5, effective January 1, 2000.

Sec. 23.9802. Qualification for Appraisal As Restricted-Use Timber Land.

(a) Land qualifies for appraisal as provided by this subchapter if the land is in an aesthetic management zone, critical wildlife habitat zone, or streamside management zone.

(b) Land qualifies for appraisal as provided by this subchapter if:

(1) timber was harvested from the land in a year in which the land was appraised under Subchapter E; and

(2) the land has been regenerated for timber production to the degree of intensity generally accepted in the area for commercial timber land and with intent to produce income.

(c) Land ceases to qualify for appraisal under Subsection (b) on the 10th anniversary of the date the timber was harvested under Subsection (b)(1). This subsection does not disqualify the land from qualifying for appraisal under this section in a tax year following that anniversary based on the circumstances existing in that subsequent tax year.

(d) In determining whether land qualifies for appraisal as provided by this subchapter, a chief appraiser may not consider the purpose for which a portion of a parcel of land is used if the portion is:

(1) used for the production of timber or forest products, including a road, right-of-way, buffer area, or firebreak; or

(2) subject to a right-of-way that was taken through the exercise of the power of eminent domain.

(e) For the purpose of the appraisal of land under this subchapter, a portion of a parcel of land described by Subsection (d) is considered land that qualifies for appraisal under this subchapter if the remainder of the parcel of land qualifies for appraisal under this subchapter.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 5, effective January 1, 2000; am. Acts 2019, 86th Leg., ch. 43 (H.B. 1409), § 3, effective September 1, 2019.

Sec. 23.9803. Appraisal of Qualified Restricted-Use Timber Land.

(a) Except as provided by Subsection (b), the appraised value of qualified restricted-use timber land is one-half of the appraised value of the land as determined under Section 23.73(a).

(b) The appraised value determined under Subsection (a) may not exceed the lesser of:

(1) the market value of the land as determined by other appraisal methods; or

(2) the appraised value of the land for the year preceding the first year of appraisal under this subchapter.

(c) The chief appraiser shall determine the market value of qualified restricted-use timber land and shall record both the market value and the appraised value in the appraisal records.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 5, effective January 1, 2000.

Sec. 23.9804. Application.

(a) A person claiming that the person's land is eligible for appraisal as provided by this subchapter must file a valid application with the chief appraiser.

(b) To be valid, an application for appraisal under Section 23.9802(a) must:

(1) be on a form provided by the appraisal office and prescribed by the comptroller;

(2) provide evidence that the land qualifies for designation as an aesthetic management zone, critical wildlife habitat zone, or streamside management zone;

(3) specify the location of the proposed zone and the quantity of land, in acres, in the proposed zone; and

(4) contain other information necessary to determine the validity of the claim.

(c) To be valid, an application for appraisal under Section 23.9802(b) must:

(1) be on a form provided by the appraisal office and prescribed by the comptroller;

(2) provide evidence that the land on which the timber was harvested was appraised under Subchapter E in the year in which the timber was harvested;

(3) provide evidence that all of the land has been regenerated in compliance with Section 23.9802(b)(2); and

(4) contain other information necessary to determine the validity of the claim.

(d) The comptroller shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The comptroller, in prescribing the contents of the application form, shall require that the form permit a claimant who has previously been allowed appraisal under this subchapter to indicate that the previously reported information has not changed and to supply only the eligibility information not previously reported.

(e) The form must be filed before May 1. However, for good cause shown, the chief appraiser may extend the filing deadline for not more than 15 days.

(f) If a person fails to file a valid application on time, the land is ineligible for appraisal as provided by this subchapter for that year. Once an application is filed and appraisal under this subchapter is allowed, the land is eligible for appraisal under the applicable provision of this subchapter in subsequent years without a new application unless the ownership of the land changes, the standing timber is harvested, or the land's eligibility under this subchapter ends. However, if the chief appraiser has good cause to believe the land's eligibility under this subchapter has ended, the chief appraiser may require a person allowed appraisal under this subchapter in a previous year to file a new application to confirm that the land is currently eligible under this subchapter by delivering a written notice that a new application is required, accompanied by the application form, to the person who filed the application that was previously allowed.

(g) The appraisal office shall make a sufficient number of printed application forms readily available at no charge.

(h) Each year the chief appraiser for each appraisal district shall publicize, in a manner reasonably designed to notify all residents of the district, the requirements of this section and the availability of application forms.

(i) A person whose land is allowed appraisal under this subchapter shall notify the appraisal office in writing before May 1 after eligibility of the land under this subchapter ends. If a person fails to notify the appraisal office as required by this subsection, a penalty is imposed on the property equal to 10 percent of the difference between the taxes imposed on the property in each year it is erroneously allowed appraisal under this subchapter and the taxes that would otherwise have been imposed.

(j) The chief appraiser shall make an entry in the appraisal records for the property against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who owns the property. The notice shall include a brief explanation of the procedures for protesting the imposition of the penalty. The assessor for each taxing unit that imposed taxes on the property on the basis of appraisal under this subchapter shall add the amount of the penalty to the unit's tax bill for taxes on the property against which the penalty is imposed. The penalty shall be collected at the same time and in the same manner as the taxes on the property against which the penalty is imposed. The amount of the penalty constitutes a lien on the property against which the penalty is imposed and on delinquency accrues penalty and interest in the same manner as a delinquent tax.

(k) If the chief appraiser discovers that appraisal under this subchapter has been erroneously allowed in any of the 10 preceding years because of failure of the person whose land was allowed appraisal under this subchapter to give notice that the land's eligibility had ended, the chief appraiser shall add the difference between the appraised value of the land under this subchapter and the market value of the land for any year in which the land was ineligible for appraisal under this subchapter to the appraisal records as provided by Section 25.21 for other property that escapes taxation.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 5, effective January 1, 2000.

Sec. 23.9805. Action on Application.

(a) The chief appraiser shall determine separately each applicant's right to have the applicant's land appraised under this subchapter. After considering the application and all relevant information, the chief appraiser shall, based on the law and facts:

(1) approve the application and allow appraisal under this subchapter;

(2) disapprove the application and request additional information from the applicant in support of the claim; or

(3) deny the application.

(b) If the chief appraiser requests additional information from an applicant, the applicant must furnish it not later than the 30th day after the date of the request or the chief appraiser shall deny the application. However, for good cause shown, the chief appraiser may extend the deadline for furnishing the information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for appraisal under this subchapter filed with the chief appraiser before the chief appraiser submits the appraisal records for review and determination of protests as provided by Chapter 41.

(d) If the chief appraiser denies an application, the chief appraiser shall deliver a written notice of the denial to the applicant not later than the fifth day after the date the chief appraiser makes the determination. The chief appraiser shall include with the notice a brief explanation of the procedures for protesting the denial.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 5, effective January 1, 2000.

Sec. 23.9806. Application Denial Based on Zone Location.

(a) Before a chief appraiser may deny an application under Section 23.9805 on the ground that the land is not located in an aesthetic management zone, critical wildlife habitat zone, or streamside management zone, the chief appraiser must first request a determination letter from the director of the Texas Forest Service as to the type, location, and size of the zone, if any, in which the land is located.

(b) The chief appraiser shall notify the landowner and each taxing unit in which the land is located that a determination letter has been requested.

(c) The director's letter is conclusive as to the type, size, and location of the zone for purposes of appraisal of the land under this subchapter.

(d) If the land is located in a zone described in the determination letter, the chief appraiser shall approve the application and allow appraisal under this subchapter if the applicant is otherwise entitled to have the applicant's land appraised under this subchapter.

(e) The director of the Texas Forest Service by rule shall adopt procedures under this section. The procedures must allow the chief appraiser, the landowner, and a representative of each taxing unit in which the land is located to present information to the director before the director issues the determination letter.

(f) Chapters 41 and 42 do not apply to a determination under this section by the director of the Texas Forest Service of the type, size, and location of a zone.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 5, effective January 1, 2000.

Sec. 23.9807. Change of Use of Land.

(a) If the use of land that has been appraised as provided by this subchapter changes to a use that qualifies the land for appraisal under Subchapter E, an additional tax is imposed on the land equal to the sum of:

(1) the difference between:

(A) the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter; and

(B) the taxes that would have been imposed had the land been appraised under Subchapter E in each of those years; and

(2) interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) If the use of land that has been appraised as provided by this subchapter changes to a use that does not qualify the land for appraisal under Subchapter E or under this subchapter, an additional tax is imposed on the land equal to the sum of:

(1) the difference between:

(A) the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter; and

(B) the taxes that would have been imposed had the land been taxed on the basis of market value in each of those years; and

(2) interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(c) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(d) The additional tax imposed by this section does not apply to a year for which the tax has already been imposed.

(e) If the change of use applies to only part of a parcel that has been appraised as provided by this subchapter, the additional tax applies only to that part of the parcel.

(f) A determination that a change in use of the land has occurred is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes and interest as soon as practicable after the change of use occurs. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(g) The harvesting of timber from the land before the expiration of the period provided by Section 23.9802(c) constitutes a change of use of the land for purposes of this section.

(h) The sanction provided by Subsection (a) or (b) does not apply if the change of use occurs as a result of a:

(1) sale for right-of-way;

(2) condemnation; or

(3) change in law.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 5, effective January 1, 2000.

Sec. 23.9808. Oil and Gas Operations on Land.

The eligibility of land for appraisal under this subchapter does not end because a lessee under an oil and gas lease begins conducting oil and gas operations over which the Railroad Commission of Texas has jurisdiction on the land if the portion of the land on which oil and gas operations are not being conducted otherwise continues to qualify for appraisal under this subchapter.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 43 (H.B. 1409), § 4, effective September 1, 2019.

CHAPTER 24

Central Appraisal

Subchapter A. Transportation Business Intangibles [Repealed]

Section	
24.01.	Appraisal by Comptroller [Repealed].
24.02.	Property Information Report [Repealed].
24.03.	Additional Information [Repealed].
24.04.	Penalty for Failure or Refusal to Deliver Required Information [Repealed].
24.05.	Assistance from State Agencies [Repealed].
24.06.	Method of Appraisal [Repealed].
24.07.	Intrastate Apportionment [Repealed].
24.08.	Protest Hearing [Repealed].
24.09.	Notice [Repealed].
24.10.	Rules [Repealed].
24.11.	Certification of Apportioned Value [Repealed].
24.12.	Omitted Property [Repealed].
24.13.	Imposition of Tax [Repealed].
24.14.	Exemption from Gross Receipts Tax [Repealed].
24.15 to 24.30.	[Reserved].

Subchapter B. Railroad Rolling Stock

24.31.	Appraisal at Headquarters.
24.32.	Rolling Stock Information Reports.
24.33.	Report of Leased Rolling Stock Forwarded.
24.34.	Interstate Allocation.
24.35.	Notice, Review, and Protest.
24.36.	Certification to Comptroller.
24.365.	Correction of Certified Amount.
24.37.	Intrastate Apportionment.
24.38.	Certification of Apportioned Value.
24.39.	Imposition of Tax.
24.40.	Omitted Property.

Subchapter A

Transportation Business Intangibles
[Repealed]

Sec. 24.01. Appraisal by Comptroller [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 232 (H.B. 485), § 1, effective May 28, 1987; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 32, effective September 1, 1991.

Sec. 24.02. Property Information Report [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 85, effective August 14, 1981; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 33, effective September 1, 1991.

Sec. 24.03. Additional Information [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 35, effective September 1, 1991.

Sec. 24.04. Penalty for Failure or Refusal to Deliver Required Information [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 34, effective September 1, 1991.

Sec. 24.05. Assistance from State Agencies [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 35, effective September 1, 1991.

Sec. 24.06. Method of Appraisal [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 35, effective September 1, 1991.

Sec. 24.07. Intrastate Apportionment [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 35, effective September 1, 1991.

Sec. 24.08. Protest Hearing [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 35, effective September 1, 1991.

Sec. 24.09. Notice [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 86, effective August 14, 1981; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 35, effective September 1, 1991.

Sec. 24.10. Rules [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 35, effective September 1, 1991.

Sec. 24.11. Certification of Apportioned Value [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 16, effective August 29, 1983; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 35, effective September 1, 1991.

Sec. 24.12. Omitted Property [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 35, effective September 1, 1991.

Sec. 24.13. Imposition of Tax [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 87, effective August 14, 1981; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 16, effective August 29, 1983.

Sec. 24.14. Exemption from Gross Receipts Tax [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 1, effective January 1, 1994.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Secs. 24.15 to 24.30. [Reserved for expansion].

Subchapter B

Railroad Rolling Stock

Sec. 24.31. Appraisal at Headquarters.

The chief appraiser for the county in which the owner of rolling stock used by a railroad resides or maintains a principal place of business in this state shall appraise for taxation the rolling stock owned on January 1. However, if the owner does not reside or maintain a place of business in this state, the chief appraiser for the county in which a railroad that leases the rolling stock maintains its principal place of business in this state shall appraise it.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 88, effective January 1, 1982.

Sec. 24.32. Rolling Stock Information Reports.

(a) In addition to any reports required by Chapter 22, a person who on January 1 owns or manages and controls as a fiduciary any rolling stock used in the operation of a railroad shall file a property information report listing the rolling stock with the chief appraiser for the county in which the owner maintains his principal place of business in this state.

(b) If the owner of a railroad is leasing or otherwise using rolling stock on January 1 for use in the operation of the railroad, he shall file a separate report, attached to the report required by Subsection (a) of this section, listing the rolling stock, the name and business address of the owner, and the full consideration for the lease or use.

(c) A report required by this section must be on a form prescribed by the comptroller. In prescribing the form, the comptroller shall ensure that it requires the information necessary to determine market value of rolling stock used in this state.

(d) The report must contain all the information required by the form and must be signed by the individual required to file the report by Subsection (a) of this section. When a corporation is required to file the report, an officer of the corporation or an employee or agent who has been designated in writing by the board of directors or by an authorized officer to sign in behalf of the corporation must sign the report.

(e) A report must be filed before May 1. For good cause shown the chief appraiser may extend the filing deadline by written order for a single period not to exceed 15 days.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 89, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 36, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 464 (H.B. 203), § 2, effective January 1, 1994.

Sec. 24.33. Report of Leased Rolling Stock Forwarded.

If the owner of leased rolling stock resides in this state or maintains a place of business in this state, the chief appraiser receiving the lessee's report required by Subsection (b) of Section 24.32 of this code shall deliver a certified copy of the report by registered or certified mail to the chief appraiser responsible for appraising the rolling stock as provided by Section 24.31 of this code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 90, effective January 1, 1982.

Sec. 24.34. Interstate Allocation.

(a) If the railroad operates in another state or country, the chief appraiser shall allocate to this state the proportion of the total market value of the rolling stock that fairly reflects its use in this state during the preceding tax year.

(b) The comptroller shall adopt rules establishing formulas for interstate allocation of the value of railroad rolling stock.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 91, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 37, effective September 1, 1991.

Sec. 24.35. Notice, Review, and Protest.

(a) The chief appraiser shall deliver notice to the owner of the rolling stock as provided by Section 25.19 of this code and present the appraised value for review and protest as provided by Chapter 41 of this code.

(b) Review and protests of appraisals of railroad rolling stock must be completed by July 1 or as soon thereafter as practicable and for that reason shall be given priority.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 92, effective January 1, 1982.

Sec. 24.36. Certification to Comptroller.

On approval of the appraised value of the rolling stock as provided by Chapter 41 of this code, the chief appraiser shall certify to the comptroller the amount of market value allocated to this state for each owner whose rolling stock is appraised in the county and the name and business address of each owner.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 93, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 38, effective September 1, 1991.

Sec. 24.365. Correction of Certified Amount.

(a) A chief appraiser who discovers that the chief appraiser's certification to the comptroller of the amount of the market value of rolling stock allocated to this state under Section 24.36 was incomplete or incorrect shall immediately certify the correct amount of that market value to the comptroller.

(b) As soon as practicable after the comptroller receives the correct certification from the chief appraiser, the comptroller shall certify to the county assessor-collector for each affected county the information required by Section 24.38 as corrected.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 268 (S.B. 1095), § 2, effective September 1, 2001.

Sec. 24.37. Intrastate Apportionment.

The comptroller shall apportion the appraised value of each owner's rolling stock to each county in which the railroad using it operates according to the ratio the mileage of road owned by the railroad in the county bears to the total mileage of road the railroad owns in this state.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 38, effective September 1, 1991.

Sec. 24.38. Certification of Apportioned Value.

Before July 26, the comptroller shall certify to the county assessor-collector for each county in which a railroad operates:

(1) the county's apportioned amount of the market value of each owner's rolling stock; and

(2) the name and business address of each owner.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 16, effective August 29, 1983; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 38, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 908 (H.B. 1309), § 1, effective January 1, 2010.

Sec. 24.39. Imposition of Tax.

The county assessor-collector and commissioners court may not change the apportioned values certified as provided by this subchapter. The county assessor-collector shall add each owner's rolling stock and the value apportioned to the county as certified to him to the appraisal roll certified to him by the chief appraiser as provided by Section 26.01 of this code for county tax purposes. He shall calculate the county tax due on the rolling stock as provided by Section 26.09 of this code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 94, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 16, effective August 29, 1983.

Sec. 24.40. Omitted Property.

(a) If a chief appraiser discovers that rolling stock used in this state and subject to appraisal by him has not been appraised and apportioned to the counties in one of the two preceding years, he shall appraise the property as of January 1 for each year it was omitted, submit the appraisal for review and protest, and certify the approved value to the comptroller.

(b) The certification shall show that the appraisal is for property that escaped taxation in a prior year and shall indicate the year and the appraised value for each year.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 95, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 39, effective September 1, 1991.

CHAPTER 25

Local Appraisal

Section	
25.01.	Preparation of Appraisal Records.
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25.027.	Restriction on Posting Information on Internet Website.
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25.10.	Standing Timber.
25.11.	Undivided Interests.
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25.16.	Property Losing Exemption During Tax Year.
25.17.	Property Overlapping Taxing Unit or Appraisal District Boundaries.
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25.195.	Inspection by Property Owner.
25.20.	Access by Taxing Units.
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25.23.	Supplemental Appraisal Records.
25.24.	Appraisal Roll.
25.25.	Correction of Appraisal Roll.
25.26.	Forfeiture of Remedy for Nonpayment of Taxes.

Sec. 25.01. Preparation of Appraisal Records.

(a) By May 15 or as soon thereafter as practicable, the chief appraiser shall prepare appraisal records listing all property that is taxable in the district and stating the appraised value of each.

(b) The chief appraiser with the approval of the board of directors of the district may contract with a private appraisal firm to perform appraisal services for the district, subject to his approval. A contract for private appraisal services is void if the amount of compensation to be paid the private appraisal firm is contingent on the amount of or increase in appraised, assessed, or taxable value of property appraised by the appraisal firm.

(c) A contract for appraisal services for an appraisal district is invalid if it does not provide that copies of the appraisal, together with supporting data, must be made available to the appraisal district and such appraisals and supporting data shall be public records. "Supporting data" shall not be construed to include personal notes, correspondence, working papers, thought processes, or any other matters of a privileged or proprietary nature.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 96, effective January 1, 1982.

NOTES TO DECISIONS

Analysis

Tax Law
•State & Local Taxes
••Administration & Proceedings
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••••General Overview
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TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Because it is the chief appraiser who determines the market value of taxable personal property and who calculates the portion of the fair market value of an aircraft that fairly reflects its use in Texas, and because these calculations must generally be done within the time required for the chief appraiser to prepare the appraisal records, supporting information must be submitted by the taxpayer seeking allocation under Tex. Tax Code Ann. § 21.02(a) along with the rendition. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

TAXPAYER PROTESTS. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

With respect to the taxpayer's complaints against the Chief Appraiser, all of the taxpayer's claims concerned the Chief Appraiser's statutory duties of determining a home's market value for the Appraisal District's appraisal records; because the taxpayer's claims against the Chief Appraiser did not fall within the ultra vires exception, the trial court did not err in dismissing them for lack of jurisdiction. Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

REAL PROPERTY TAX

General Overview. — Court rejected appellants' contention that there were conclusory statements in an affidavit by a custodian of county appraisal district records, which affidavit was in support of summary judgment motions under Tex. R. Civ. P.

166a; the identification of the affiant as the custodian provided an adequate factual basis for the statement that the map attached to the affidavit depicted school district boundaries as they related to the property at issue and that the boundaries existed since at least 1962, given that an appraisal district was required to maintain records listing all property that was taxable in the district pursuant to Tex. Tax Code Ann. § 25.01(a). Choctaw Props., L.L.C. v. Aledo I.S.D., 127 S.W.3d 235, 2003 Tex. App. LEXIS 10659 (Tex. App. Waco Dec. 17, 2003, no pet.).

ASSESSMENT & VALUATION

General Overview. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

VALUATION. — In appellee's action for nuisance and trespass, the trial court did not err under Tex. Tax Code Ann. § 25.01(a) in excluding evidence of the appraised value of appellee's property; appellee moved at trial that appellant's exhibit was a printout from a web site with numerous handwritten writings that had not been property authenticated. Pasquinelli Portrait Homes-Durango Ridge LP v. Securlock at Bedford, Ltd., No. 02-11-00392-CV, 2013 Tex. App. LEXIS 3990 (Tex. App. Fort Worth Mar. 28, 2013), app. dismissed, op. withdrawn, No. 02-11-00392-CV, 2013 Tex. App. LEXIS 9898 (Tex. App. Fort Worth Aug. 8, 2013).

With respect to the taxpayer's complaints against the Chief Appraiser, all of the taxpayer's claims concerned the Chief Appraiser's statutory duties of determining a home's market value for the Appraisal District's appraisal records; because the taxpayer's claims against the Chief Appraiser did not fall within the ultra vires exception, the trial court did not err in dismissing them for lack of jurisdiction. Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

Sec. 25.011. Special Appraisal Records.

(a) The chief appraiser for each appraisal district shall prepare and maintain a record of property specially appraised under Chapter 23 of this code and subject, in the future, to additional taxation for change in use or status.

(b) The record for each type of specially appraised property must be maintained in a separate document for each 12-month period beginning June 1. The document must include the name of at least one owner of the property, the acreage of the property, and other information sufficient to identify the property as required by the comptroller. All entries in each document must be kept in alphabetical order according to the last name of each owner whose name is part of the record.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 97, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 40, effective September 1, 1991.

Sec. 25.02. Form and Content.

(a) The appraisal records shall be in the form prescribed by the comptroller and shall include:

(1) the name and address of the owner or, if the name or address is unknown, a statement that it is unknown;

(2) real property;

(3) separately taxable estates or interests in real property, including taxable possessory interests in exempt real property;

(4) personal property;

(5) the appraised value of land and, if the land is appraised as provided by Subchapter C, D, E, or H, Chapter 23, the market value of the land;

(6) the appraised value of improvements to land;

(7) the appraised value of a separately taxable estate or interest in land;

(8) the appraised value of personal property;

(9) the kind of any partial exemption the owner is entitled to receive, whether the exemption applies to appraised or assessed value, and, in the case of an exemption authorized by Section 11.23, the amount of the exemption;

(10) the tax year to which the appraisal applies; and

(11) an identification of each taxing unit in which the property is taxable.

(b) A mistake in the name or address of an owner does not affect the validity of the appraisal records, of any appraisal or tax roll based on them, or of the tax imposed. The mistake may be corrected as provided by this code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 98, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 41, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 6, effective September 1, 1999.

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EVIDENCE
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Presumption of Regularity. — Incorrect name on certified delinquent tax statements did not defeat the presumption created by Tex. Tax Code Ann. § 33.47(a) that the statements were accurate; the taxpayers did not dispute their ownership of the property under Tex. Tax Code Ann. § 42.09, and the validity of the tax roll was unaffected by a clerical mistake as provided in Tex. Tax Code Ann. § 25.02(b). Seiflein v. City of Houston, No. 01-09-00361-CV, 2010 Tex. App. LEXIS 778 (Tex. App. Houston 1st Dist. Feb. 4, 2010).

GOVERNMENTS
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Interpretation. — If Tex. Tax Code Ann. §§ 25.02(a), 25.03, 25.24, 25.25(c)(3), and 25.25(d) were read together, the term form of the property identified the type of property and not merely its appraisal value and the property at issue was correctly described on the appraisal roll, and § 25.25(c)(3) would not have permitted a change in the appraisal value on the appraisal roll. Dallas Cent. Appraisal Dist. v. G.T.E. Directories Corp., 905 S.W.2d 318, 1995 Tex. App. LEXIS 1839 (Tex. App. Dallas June 22, 1995, writ denied), reh'g denied, No. 05-94-01110-CV, 1995 Tex. App. LEXIS 1837 (Tex. App. Dallas Aug. 2, 1995).

REAL PROPERTY LAW
Landlord & Tenant
Lease Agreements
Commercial Leases

General Overview. — Because the obligation for ad valorem taxes on real estate was imposed on the owner of the realty pursuant to former Tex. Rev. Civ. Stat. Ann. art. 7171 (now Tex. Tax Code Ann. § 25.02), the trial court erred in concluding that a contract between the owner and the tenant made the tenant responsible for ad valorem taxes on the leasehold estate; the contract did not relieve the owner of its ultimate responsibility to the taxing authority to pay the taxes, but it did permit the owner to seek appropriate remedies against the tenant for failure to fulfill its contractual obligation to pay the taxes. A. J. Robbins & Co. v. Roberts, 610 S.W.2d 854, 1980 Tex. App. LEXIS 4289 (Tex. Civ. App. Amarillo Dec. 31, 1980, writ ref'd n.r.e.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — For purposes of Tex. Tex. Code Ann. § 25.02, "form" means the identification of the type of property listed under § 25.02(a), and the different types of property include real property, personal property, improvements to real property, or some other physical description of the property on the appraisal roll, other than its appraised value or its use. A & S Air Serv. v. Denton Cent. Appraisal Dist., 99 S.W.3d 340, 2003 Tex. App. LEXIS 1397 (Tex. App. Fort Worth Feb. 13, 2003, no pet.).

ASSESSMENTS. — Trial court erred by dismissing appellant homeowners' claims against appellees, the city and government officials, for assessing back city taxes because sovereign immunity was waived by actions taken by government officials that were outside their statutory authority as no remedy was provided in Tex. Tax Code Ann. § 25.21 for omitted taxing units. Appellants' properties were already properly appraised and entered in the appraisal records for the years at issue; no supplemental appraisal record existed as required by Tex. Tax Code Ann. §§ 25.23(b), 25.02(a)(10). Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

There is no evidence that the legislature intended the separate listing requirement contained in Tex. Tax Code Ann. § 25.02 to have any effect on challenges to appraised value brought under Tex. Tax Code Ann. § 42.26; Tex. Tax Code Ann. § 25.02 itself appears to be only an administrative provision addressing the "form and content" of records maintained by the appraisal district; there is no authority suggesting that Tex. Tax Code Ann. § 25.02 provides a basis for bringing separate challenges to land and improvement values as separate "appraised values" under Tex. Tax Code Ann. § 42.26. Covert v. Williamson Cent. Appraisal Dist., 241 S.W.3d 655, 2007 Tex. App. LEXIS 9380 (Tex. App. Austin Nov. 30, 2007, no pet.).

COLLECTION. — As for the amounts at issue, a certified delinquent-tax statement is prima facie evidence of the amount of penalties, tax, and interest, and on those matters, and in this case, the county relied solely on the presumption under Tex. Tax Code Ann. § 33.47(a) that these amounts were due, delinquent, and unpaid, and the taxpayer did not offer evidence to rebut that presumption, which was not undermined by the misidentification of the property's owner, for purposes of Tex. Tax Code Ann. § 25.02(b). Felt v. Harris County, No. 14-12-00327-CV, 2013 Tex. App. LEXIS 4981 (Tex. App. Houston 14th Dist. Apr. 23, 2013).

Incorrect name on certified delinquent tax statements did not defeat the presumption created by Tex. Tax Code Ann. § 33.47(a) that the statements were accurate; the taxpayers did not dispute their ownership of the property under Tex. Tax Code Ann. § 42.09, and the validity of the tax roll was unaffected by a clerical mistake as provided in Tex. Tax Code Ann. § 25.02(b). Seiflein v. City of Houston, No. 01-09-00361-CV, 2010 Tex. App. LEXIS 778 (Tex. App. Houston 1st Dist. Feb. 4, 2010).

Because a trust still retained the full acres on the record date for purposes of property tax assessments in 1997, the entire tax bill for that year was to be mailed to the trust under Tex. Tax Code Ann. §§ 22.01, 25.02, 32.07. Old Farms Owners Ass'n v. Houston Indep. Sch. Dist., 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

DEFICIENCIES. — Trial court erred by dismissing appellant homeowners' claims against appellees, the city and government officials, for assessing back city taxes because sovereign immunity was waived by actions taken by government officials that were outside their statutory authority as no remedy was provided in Tex. Tax Code Ann. § 25.21 for omitted taxing units. Appellants' properties were already properly appraised and entered in the appraisal records for the years at issue; no supplemental appraisal record existed as required by Tex. Tax Code Ann. §§ 25.23(b), 25.02(a)(10). Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — Salt dome storage caverns, which were expanded to meet the needs of the company leasing the storage space, did not fit the tax code's definition of an "improvement," and they were not subject to an appraisal separate from the surface land. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., 118 S.W.3d 464, 160 Oil & Gas Rep. 969, 2003 Tex. App. LEXIS 7577 (Tex. App. Corpus Christi Aug. 29, 2003), rev'd, 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

District court did not lose jurisdiction over an appeal challenging the appraisal of property where the appraisal records does not identity the property owner or mistakenly identifies the property owner. Plaza Equity Partners v. Dallas Cent. Appraisal Dist., 765 S.W.2d 520, 1989 Tex. App. LEXIS 473 (Tex. App. Dallas Jan. 25, 1989, no writ).

Although an airplane owner was not named on a city's tax assessment rolls, given that the owner did not deny ownership of the plane for the period for which taxes were sought and had no other defenses to the city's claim for taxes that the owner still had tax liability owed on the plane under extension of the principles of Tex. Rev. Civ. Stat. Ann. art 7171 (now Tex. Tax. Code Ann. § 25.02) that an assessment was not void even if it was not assessed in the name of the owner of the property being taxed.

Dallas v. Dean Carlton, Inc., 611 S.W.2d 445, 1980 Tex. App. LEXIS 4049 (Tex. Civ. App. Dallas Oct. 24, 1980, writ ref'd n.r.e.).

ASSESSMENT METHODS & TIMING. — Appraisal district properly provided notice of what it was taxing because the tax notices specified the property identification number, the name of the well, and the Texas Railroad Commission identification number. Key Energy Servs., LLC v. Shelby County Appraisal Dist., 428 S.W.3d 133, 2014 Tex. App. LEXIS 439 (Tex. App. Tyler Jan. 15, 2014, no pet.).

VALUATION. — There is no evidence that the legislature intended the separate listing requirement contained in Tex. Tax Code Ann. § 25.02 to have any effect on challenges to appraised value brought under Tex. Tax Code Ann. § 42.26; Tex. Tax Code Ann. § 25.02 itself appears to be only an administrative provision addressing the "form and content" of records maintained by the appraisal district; there is no authority suggesting that Tex. Tax Code Ann. § 25.02 provides a basis for bringing separate challenges to land and improvement values as separate "appraised values" under Tex. Tax Code Ann. § 42.26. Covert v. Williamson Cent. Appraisal Dist., 241 S.W.3d 655, 2007 Tex. App. LEXIS 9380 (Tex. App. Austin Nov. 30, 2007, no pet.).

ATTORNEY GENERAL OPINIONS

Appraisal Records.

The chief appraiser of an appraisal district determines whether land and improvements are combined into a single taxpayer account or parcel; a taxpayer's separate rendition of land and improvements does not change this conclusion. 2010 Tex. Op. Att'y Gen. GA-0790.

Sec. 25.025. Confidentiality of Certain Home Address Information.

(a) **[Effective until January 1, 2021]** This section applies only to:

(1) a current or former peace officer as defined by Article 2.12, Code of Criminal Procedure, and the spouse or surviving spouse of the peace officer;

(2) the adult child of a current peace officer as defined by Article 2.12, Code of Criminal Procedure;

(3) a county jailer as defined by Section 1701.001, Occupations Code;

(4) an employee of the Texas Department of Criminal Justice;

(5) a commissioned security officer as defined by Section 1702.002, Occupations Code;

(6) an individual who shows that the individual, the individual's child, or another person in the individual's household is a victim of family violence as defined by Section 71.004, Family Code, by providing:

(A) a copy of a protective order issued under Chapter 85, Family Code, or a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure; or

(B) other independent documentary evidence necessary to show that the individual, the individual's child, or another person in the individual's household is a victim of family violence;

(7) an individual who shows that the individual, the individual's child, or another person in the individual's household is a victim of sexual assault or abuse, stalking, or trafficking of persons by providing:

(A) a copy of a protective order issued under Chapter 7A or Article 6.09, Code of Criminal Procedure, or a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure; or

(B) other independent documentary evidence necessary to show that the individual, the individual's child, or another person in the individual's household is a victim of sexual assault or abuse, stalking, or trafficking of persons;

(8) a participant in the address confidentiality program administered by the attorney general under Subchapter C, Chapter 56, Code of Criminal Procedure, who provides proof of certification under Article 56.84, Code of Criminal Procedure;

(9) a federal judge, a state judge, or the spouse of a federal judge or state judge;

(10) a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

(11) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

(12) an officer or employee of a community supervision and corrections department established under Chapter 76, Government Code, who performs a duty described by Section 76.004(b) of that code;

(13) a criminal investigator of the United States as described by Article 2.122(a), Code of Criminal Procedure;

(14) a police officer or inspector of the United States Federal Protective Service;

(15) a current or former United States attorney or assistant United States attorney and the spouse and child of the attorney;

(16) a current or former employee of the office of the attorney general who is or was assigned to a division of that office the duties of which involve law enforcement;

(17) a medical examiner or person who performs forensic analysis or testing who is employed by this state or one or more political subdivisions of this state;

(18) a current or former member of the United States armed forces who has served in an area that the president of the United States by executive order designates for purposes of 26 U.S.C. Section 112 as an area in which armed forces of the United States are or have engaged in combat;

(19) a current or former employee of the Texas Juvenile Justice Department or of the predecessors in function of the department;

(20) a current or former juvenile probation or supervision officer certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code;

(21) a current or former employee of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code;

(22) a current or former employee of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of the office; and

(23) a current or former employee of a federal judge or state judge.

(24) [As added by Acts 2019, H.B. 2446] a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code.

(24) [As added by Acts 2019, S.B. 1494] a current or former child protective services caseworker, adult protective services caseworker, or investigator for the Department of Family and Protective Services or a current or former employee of a department contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of the department; and

(25) a state officer elected statewide or a member of the legislature.

(a) **[Effective January 1, 2021]** This section applies only to:

(1) a current or former peace officer as defined by Article 2.12, Code of Criminal Procedure, and the spouse or surviving spouse of the peace officer;

(2) the adult child of a current peace officer as defined by Article 2.12, Code of Criminal Procedure;

(3) a county jailer as defined by Section 1701.001, Occupations Code;

(4) an employee of the Texas Department of Criminal Justice;

(5) a commissioned security officer as defined by Section 1702.002, Occupations Code;

(6) an individual who shows that the individual, the individual's child, or another person in the individual's household is a victim of family violence as defined by Section 71.004, Family Code, by providing:

(A) a copy of a protective order issued under Chapter 85, Family Code, or a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure; or

(B) other independent documentary evidence necessary to show that the individual, the individual's child, or another person in the individual's household is a victim of family violence;

(7) an individual who shows that the individual, the individual's child, or another person in the individual's household is a victim of sexual assault or abuse, stalking, or trafficking of persons by providing:

(A) a copy of a protective order issued under Subchapter A or B, Chapter 7B, Code of Criminal Procedure, or a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure; or

(B) other independent documentary evidence necessary to show that the individual, the individual's child, or another person in the individual's household is a victim of sexual assault or abuse, stalking, or trafficking of persons;

(8) a participant in the address confidentiality program administered by the attorney general under Subchapter B, Chapter 58, Code of Criminal Procedure, who provides proof of certification under Article 58.059, Code of Criminal Procedure;

(9) a federal judge, a state judge, or the spouse of a federal judge or state judge;

(10) a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

(11) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

(12) an officer or employee of a community supervision and corrections department established under Chapter 76, Government Code, who performs a duty described by Section 76.004(b) of that code;

(13) a criminal investigator of the United States as described by Article 2.122(a), Code of Criminal Procedure;

(14) a police officer or inspector of the United States Federal Protective Service;

(15) a current or former United States attorney or assistant United States attorney and the spouse and child of the attorney;

(16) a current or former employee of the office of the attorney general who is or was assigned to a division of that office the duties of which involve law enforcement;

(17) a medical examiner or person who performs forensic analysis or testing who is employed by this state or one or more political subdivisions of this state;

(18) a current or former member of the United States armed forces who has served in an area that the president of the United States by executive order designates for purposes of 26 U.S.C. Section 112 as an area in which armed forces of the United States are or have engaged in combat;

(19) a current or former employee of the Texas Juvenile Justice Department or of the predecessors in function of the department;

(20) a current or former juvenile probation or supervision officer certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code;

(21) a current or former employee of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code;

(22) a current or former employee of the Texas Civil Commitment Office or the predecessor in function of the office or a division of the office; and

(23) a current or former employee of a federal judge or state judge.

(24) [As added by Acts 2019, H.B. 2446] a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code.

(24) [As added by Acts 2019, S.B. 1494] a current or former child protective services caseworker, adult protective services caseworker, or investigator for the Department of Family and Protective Services or a current or former employee of a department contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of the department; and

(25) a state officer elected statewide or a member of the legislature.

(a-1) In this section:

(1) "Federal judge" means:

(A) a judge, former judge, or retired judge of a United States court of appeals;

(B) a judge, former judge, or retired judge of a United States district court;

(C) a judge, former judge, or retired judge of a United States bankruptcy court; or

(D) a magistrate judge, former magistrate judge, or retired magistrate judge of a United States district court.

(2) "State judge" means:

(A) a judge, former judge, or retired judge of an appellate court, a district court, a statutory probate court, a constitutional county court, or a county court at law of this state;

(B) an associate judge appointed under Chapter 201, Family Code, or Chapter 54A, Government Code, or a retired associate judge or former associate judge appointed under either law;

(C) a justice of the peace;

(D) a master, magistrate, referee, hearing officer, or associate judge appointed under Chapter 54, Government Code; or

(E) a municipal court judge.

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the comptroller, and taxing units and political subdivisions of this state if:

(1) the information identifies the home address of a named individual to whom this section applies; and

(2) the individual:

(A) chooses to restrict public access to the information on the form prescribed for that purpose by the comptroller under Section 5.07; or

(B) is a federal or state judge, or the spouse of a federal or state judge, beginning on the date the Office of Court Administration of the Texas Judicial System notifies the appraisal district of the judge's qualification for the judge's office.

(c) A choice made under Subsection (b) remains valid until rescinded in writing by the individual.

(d) This section does not prohibit the public disclosure of information in appraisal records that identifies property according to an address if the information does not identify an individual who has made an election under Subsection (b) in connection with the individual's address.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 119 (S.B. 247), § 4, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 703 (H.B. 2819), § 1, effective June 20, 2003; am. Acts 2007, 80th Leg., ch. 594 (H.B. 41), § 11, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 621 (H.B. 455), § 3, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 851 (H.B. 1141), § 1, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 22.003, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 465 (S.B. 281), § 7, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 732 (S.B. 390), § 3, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1259 (H.B. 559), §§ 3, 4, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 348 (H.B. 3307), § 1, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 953 (H.B. 1046), § 3, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 19.001, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 202 (S.B. 1896), § 1, effective May 25, 2013; am. Acts 2013, 83rd Leg., ch. 996 (H.B. 2267), § 1, effective June 14, 2013; am. Acts 2013, 83rd Leg., ch. 1028 (H.B. 2676), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 527 (H.B. 1311), § 3, effective June 16, 2015; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 16.001, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 34 (S.B. 1576), § 33, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 41 (S.B. 256), § 7, effective May 19, 2017; am. Acts 2017, 85th Leg., ch. 190 (S.B. 42), § 26, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 193 (S.B. 510), § 1, effective May 27, 2017; am. Acts 2017, 85th Leg., ch. 1006 (H.B. 1278), § 3, effective June 15, 2017; am. Acts 2017, 85th Leg., ch. 1145 (H.B. 457), § 1, effective June 15, 2017; am. Acts 2019, 86th Leg., ch. 415 (S.B. 73), § 2, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 633 (S.B. 1494), § 4, effective June 10, 2019; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 14.002, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.65, effective January 1, 2021; am. Acts 2019, 86th Leg., ch. 518 (S.B. 489), § 6, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1213 (S.B. 662), § 4, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1245 (H.B. 2446), § 8, effective June 14, 2019.

Sec. 25.026. Confidentiality of Certain Shelter Center and Sexual Assault Program Address Information.

(a) In this section:

(1) "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(2) "Sexual assault program" has the meaning assigned by Section 420.003, Government Code.

(3) "Victims of trafficking shelter center" means a program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive residential and nonresidential services to victims of trafficking of persons under Section 20A.02, Penal Code.

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the comptroller, and taxing units and political subdivisions of this state if the information

identifies the address of a family violence shelter center, a sexual assault program, or a victims of trafficking shelter center.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 119 (S.B. 247), § 5, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 1008 (H.B. 2329), § 3, effective September 1, 2011.

Sec. 25.027. Restriction on Posting Information on Internet Website.

(a) Information in appraisal records may not be posted on the Internet if the information:

(1) is a photograph, sketch, or floor plan of an improvement to real property that is designed primarily for use as a human residence; or

(2) indicates the age of a property owner, including information indicating that a property owner is 65 years of age or older.

(b) Subsection (a)(1) does not apply to an aerial photograph that depicts five or more separately owned buildings.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 29 (S.B. 541), § 1, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 337 (H.B. 394), § 1, effective September 1, 2015.

Sec. 25.03. Description.

(a) Property shall be described in the appraisal records with sufficient certainty to identify it. The description of a manufactured home shall include the correct identification or serial number of the home or the Department of Housing and Urban Development label number or the state seal number in addition to the information required in Subsection (c) of this Section. A manufactured home shall not be included in the appraisal records unless this identification and descriptive information is included.

(b) The comptroller may adopt rules establishing minimum standards for descriptions of property.

(c) Each description of a manufactured home shall include the approximate square footage, the approximate age, the general physical condition, and any characteristics which distinguish the particular manufactured home.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 42, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 617 (S.B. 1539), § 10, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 274 (H.B. 563), § 13, effective August 30, 1993.

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Interpretation. — School district contended that the failure to issue a tax bill did not affect the validity of the tax under Tex. Tax Code Ann. § 31.01(g); although both of these contentions were true, the school district ignored the Texas Tax Code's additional requirements that appraisal records had to describe the property subject to the tax with sufficient certainty to identify it, and that the tax bill had to identify that property pursuant to Tex. Tax Code Ann. §§ 25.03(a) and 31.01(c)(1). Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Where appraisal records did not identify the property in question with the reasonable certainty as required by Tex. Tax Code Ann. § 25.03(a), a school district could not collect taxes on the property. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

ASSESSMENTS. — Property description was sufficient to put a taxpayer on notice of the appraised property value because the property description as attested to by the Deputy Tax Assessor Collector and referenced on the certified delinquent tax roll records was sufficient to identify the subject property with reasonable certainty. Marrs v. San Jacinto County, No. 09-07-382 CV, 2008 Tex. App. LEXIS 6207 (Tex. App. Beaumont Aug. 14, 2008).

COLLECTION. — Property description was sufficient to put a taxpayer on notice of the appraised property value because the property description as attested to by the Deputy Tax Assessor Collector and referenced on the certified delinquent tax roll records was sufficient to identify the subject property with reasonable certainty. Marrs v. San Jacinto County, No. 09-07-382 CV, 2008 Tex. App. LEXIS 6207 (Tex. App. Beaumont Aug. 14, 2008).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — So long as an appraisal district's records gave a taxpayer notice of what property was included in each tax account (and thus some assurance that it was not included twice), including property under an incorrect category will not exempt them from taxation; therefore, the classification of underground caverns as improvements, even if incorrect, did not mean that they were not properly taxed separate from the land above. Matagorda County Appraisal Dist. v. Coastal Liquids Partners, L.P., 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

Where appraisal records did not identify the property in question with the reasonable certainty as required by Tex. Tax Code Ann. § 25.03(a), a school district could not collect taxes on the property. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d

520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

In the context of property taxes, the purpose of a description in a tax bill is to designate the property in such a manner that it may be identified; a tax bill must furnish within itself, or by reference to some other existing writing, the means or date by which the particular property to be taxed may be identified with reasonable certainty. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

Tax rolls are prima facie evidence of a tax liability and establish every material fact necessary to establish a cause of action for delinquent taxes, pursuant to Tex. Tax Code Ann. § 33.47(a). The failure to issue a tax bill does not affect the validity of the tax under Tex. Tax Code Ann. § 31.01(g); however, there are additional requirements that appraisal records must describe the property subject to the tax with sufficient certainty to identify it and that a tax bill must identify that property, pursuant to Tex. Tax Code Ann. § 25.03(a) and Tex. Tax Code Ann. § 31.01(c)(1). Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

COLLECTION

General Overview. — Where appraisal records did not identify the property in question with the reasonable certainty as required by Tex. Tax Code Ann. § 25.03(a), a school district could not collect taxes on the property. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

ATTORNEY GENERAL OPINIONS

Appraisal Records.

The chief appraiser of an appraisal district determines whether land and improvements are combined into a single taxpayer account or parcel; a taxpayer's separate rendition of land and improvements does not change this conclusion. 2010 Tex. Op. Att'y Gen. GA-0790.

Sec. 25.04. Separate Estates or Interests.

Except as otherwise provided by this chapter, when different persons own land and improvements in separate estates or interests, each separately owned estate or interest shall be listed separately in the name of the owner of each if the estate or interest is described in a duly executed and recorded instrument of title.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

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REAL PROPERTY LAW

Fixtures & Improvements

General Overview. — Summary judgment in lessees' favor ordering the city appraisal district to remove improvements in the lessees' name from the tax rolls was proper as the lessees merely held a leasehold interest in the improvements they constructed for the city at an airport and the city owned the improvements. Travis Cent. Appraisal Dist. v. Signature Flight Support Corp., 140 S.W.3d 833, 2004 Tex. App. LEXIS 5783 (Tex. App. Austin July 1, 2004, no pet.).

TAX LAW

State & Local Taxes

Real Property Tax

Assessment & Valuation

General Overview. — In the tenants' action against the appraisal district challenging the assessments of improvements they made on their leased tracts, summary judgment in favor of the tenants was improper as the lease agreements showed that tenants "owned" the improvements on the leased tracts, for purposes of Tex. Tax Code Ann. § 1.01, until their leases expired. Dallas Cent. Appraisal Dist. v. Mission Aire IV, L.P., 279 S.W.3d 471, 2009 Tex. App. LEXIS 1714 (Tex. App. Dallas Mar. 11, 2009, no pet.).

VALUATION. — Trial court did not err by determining that the taxpayers held an interest in the properties that would subject them to taxation, Tex. Tax Code Ann. § 25.04; the taxpayers owned the hangars and as such, they were not public property, and any exemption applicable to the city did not extend to the taxpayers, Tex. Const. art. VIII, § 2. DeGuerin v. Wash. County Appraisal Dist., No. 01-11-00548-CV, 2012 Tex. App. LEXIS 3031 (Tex. App. Houston 1st Dist. Apr. 19, 2012).

Court did not err when it valued the lessees improvements, because they offered no alternative valuation and did not object to valuation testimony offered by the chief appraiser, who testified that the appraisal district used a multiplier that she described as an economic factor or location modifier. Land v. Palo Pinto Appraisal Dist., 321 S.W.3d 722, 2010 Tex. App. LEXIS 6304 (Tex. App. Eastland Aug. 5, 2010, no pet.).

EXEMPTIONS. — Trial court did not err by determining that the taxpayers held an interest in the properties that would subject them to taxation, Tex. Tax Code Ann. § 25.04; the taxpayers owned the hangars and as such, they were not public property, and any exemption applicable to the city did not extend to the taxpayers, Tex. Const. art. VIII, § 2. DeGuerin v. Wash. County Appraisal Dist., No. 01-11-00548-CV, 2012 Tex. App. LEXIS 3031 (Tex. App. Houston 1st Dist. Apr. 19, 2012).

Sec. 25.05. Life Estates.

Real property owned by a life tenant and remainderman shall be listed in the name of the life tenant.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 25.06. Property Encumbered by Possessory or Security Interest.

(a) Except as provided by Section 25.07, property encumbered by a leasehold or other possessory interest or by a

mortgage, deed of trust, or other interest securing payment or performance of an obligation shall be listed in the name of the owner of the property so encumbered.

(b) Except as otherwise directed in writing under Section 1.111(f), real property that is subject to an installment contract of sale shall be listed in the name of the seller if the installment contract is not filed of record in the real property records of the county.

(c) This section does not apply to:

(1) any portion of a facility owned by the Texas Department of Transportation that is a rail facility or system or is a highway in the state highway system and that is licensed or leased to a private entity by that department under Chapter 91 or 223, Transportation Code; or

(2) a leasehold or other possessory interest granted by the Texas Department of Transportation in a facility owned by that department that is a rail facility or system or is a highway in the state highway system.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1995, 74th Leg., ch. 579 (S.B. 642), § 9, effective January 1, 1996; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 6, effective January 1, 2000; am. Acts 2005, 79th Leg., ch. 281 (H.B. 2702), § 2.96, effective June 14, 2005; am. Acts 2011, 82nd Leg., ch. 259 (H.B. 1201), § 2, effective June 17, 2011.

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TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — In a taxpayer's appeal from an order that summarily dismissed an action for a tax refund, the court affirmed because Tex. Tax Code Ann. § 25.06(a) provided that property taxes were assessed against the fee interest and not against the lien interest, and the taxpayer was responsible for the taxes because the taxpayer held the fee interest in the property at the time the taxes were assessed. Sadeghian v. City of Denton, 49 S.W.3d 403, 2000 Tex. App. LEXIS 8202 (Tex. App. Fort Worth Dec. 7, 2000, no pet.).

PERSONAL PROPERTY TAX
Tangible Property

General Overview. — Under Tex. Tax Code Ann. §§ 25.06, 32.07, a secured party in possession of personal property can be held responsible for ad valorem taxes, and for purposes of ad valorem taxation, the secured party in possession is the equivalent of the title owner. General Elec. Capital Corp. v. Corpus Christi, 850 S.W.2d 596, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 468 (Tex. App. Corpus Christi Feb. 11, 1993, writ denied), modified in part, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 790 (Tex. App. Corpus Christi 1993).

REAL PROPERTY TAX

General Overview. — Generally, under Tex. Tax Code Ann. § 25.06 tax liability rests with the owner of property encumbered by a leasehold or other interest; when non-exempt property is leased, the lessor, not the lessee, is responsible for the taxes that accrue on the full value of the property, the lessor's interest in the property includes the present right to receive income from the property as well as the right to receive the property back upon termination of the lease, and the value of the entire fee necessarily contains the lesser value of the leasehold the fee contains; unless the leasehold involves exempt property, the leasehold is not independently taxed, but rather, it is subsumed within the value of the fee simple estate. County of Dallas Tax Collector v. Roman Catholic Diocese of Dallas, 41 S.W.3d 739, 2001 Tex. App. LEXIS 539 (Tex. App. Dallas Jan. 25, 2001, no pet.).

Lessors were owners of lands which had been leased under lease agreements which had initially provided fair market rental income to the lessors; however, the market rental prices for comparable properties had increased; an appraisal district fixed the property values as though the properties were not subject to the leases, and lessors attacked the constitutionality of Tex. Tax Code Ann. § 25.06; the court held that the appraised market value of the land for ad valorem tax purposes was properly fixed at the market value of the entire fee, including portions leased out at less than market price. Dallas Cent. Appraisal Dist. v. Jagee Corp., 812 S.W.2d 49, 1991 Tex. App. LEXIS 1589 (Tex. App. Dallas Apr. 24, 1991, writ denied).

Sec. 25.07. Leasehold and Other Possessory Interests in Exempt Property.

(a) Except as provided by Subsection (b) of this section, a leasehold or other possessory interest in real property that is exempt from taxation to the owner of the estate or interest encumbered by the possessory interest shall be listed in the name of the owner of the possessory interest if the duration of the interest may be at least one year.

(b) Except as provided by Sections 11.11(b) and (c), a leasehold or other possessory interest in exempt property may not be listed if:

(1) the property is permanent university fund land;

(2) the property is county public school fund agricultural land;

(3) the property is a part of a public transportation facility owned by a municipality or county and:

(A) is an airport passenger terminal building or a building used primarily for maintenance of aircraft or other aircraft services, for aircraft equipment storage, or for air cargo;

(B) is an airport fueling system facility;

(C) is in a foreign-trade zone:

(i) that has been granted to a joint airport board under Subchapter C, Chapter 681, Business & Commerce Code;

(ii) the area of which in the portion of the zone located in the airport operated by the joint airport board does not exceed 2,500 acres; and

(iii) that is established and operating pursuant to federal law; or

(D) (i) is in a foreign trade zone established pursuant to federal law after June 1, 1991, that operates pursuant to federal law;

(ii) is contiguous to or has access via a taxiway to an airport located in two counties, one of which has a population of 500,000 or more according to the federal decennial census most recently preceding the establishment of the foreign trade zone; and

(iii) is owned, directly or through a corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code), by the same municipality that owns the airport;

(4) the interest is in a part of:

(A) a park, market, fairground, or similar public facility that is owned by a municipality; or

(B) a convention center, visitor center, sports facility with permanent seating, concert hall, arena, or stadium that is owned by a municipality as such leasehold or possessory interest serves a governmental, municipal, or public purpose or function when the facility is open to the public, regardless of whether a fee is charged for admission;

(5) the interest involves only the right to use the property for grazing or other agricultural purposes;

(6) the property is:

(A) owned by a municipality, a public port, or a navigation district created or operating under Section 59, Article XVI, Texas Constitution, or under a statute enacted under Section 59, Article XVI, Texas Constitution; and

(B) used as an aid or facility incidental to or useful in the operation or development of a port or waterway or in aid of navigation-related commerce; or

(7) the property is part of a rail facility owned by a rural rail transportation district operating under Chapter 172, Transportation Code.

(c) Subsection (a) does not apply to:

(1) any portion of a facility owned by the Texas Department of Transportation that is a rail facility or system or is a highway in the state highway system and that is licensed or leased to a private entity by that department under Chapter 91 or 223, Transportation Code; or

(2) a leasehold or other possessory interest granted by the Texas Department of Transportation in a facility owned by that department that is a rail facility or system or is a highway in the state highway system.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 99, effective January 1, 1982; am. Acts 1981, 67th Leg., ch. 700 (H.B. 505), § 1, effective January 1, 1982; am. Acts 1989, 71st Leg., ch. 534 (H.B. 2959), § 7, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 582 (S.B. 543), § 18, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 763 (S.B. 637), § 2, effective January 1, 1992; am. Acts 1997, 75th Leg., ch. 829 (S.B. 1739), § 1, effective January 1, 1998; am. Acts 2001, 77th Leg., ch. 1127 (H.B. 2601), § 1, effective August 27, 2001; am. Acts 2005, 79th Leg., ch. 281 (H.B. 2702), § 2.97, effective June 14, 2005; am. Acts 2007, 80th Leg., ch. 609 (H.B. 387), § 7, effective June 15, 2007; am. Acts 2007, 80th Leg., ch. 885 (H.B. 2278), §§ 2.36, 3.70, effective April 1, 2009; am. Acts 2007, 80th Leg., ch. 1169 (H.B. 316), § 1, effective January 1, 2008; am. Acts 2009, 81st Leg., ch. 85 (S.B. 1540), § 4.11, effective April 1, 2011; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 22.004, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 259 (H.B. 1201), § 3, effective June 17, 2011.

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TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property

General Overview. — Where a private business enterprise leased tracts owned by state agencies for compensation for purposes not related to the performance of state duties and functions, a determination whether the tracts should have been assessed as "tax exempt" property under Tex. Tax Code Ann. § 25.07(a), depended on a determination whether the tracts were tax-exempt under Tex. Tax Code Ann. § 11.11, which had to be strictly construed in the taxing authority's favor. Gables Realty L.P. v. Travis Cent. Appraisal Dist., 81 S.W.3d 869, 2002 Tex. App. LEXIS 3935 (Tex. App. Austin May 31, 2002, no pet.).

Where tracts of land owned by state agencies were leased to a private business enterprise for compensation for purposes not related to the performance of state duties and functions, the tracts ceased to be tax exempt property under Tex. Tax Code Ann. § 25.07(a), and the appraisal district properly listed the tracts in each of the fee owner's respective names and assessed taxes based on the tracts fee simple market value. Gables Realty L.P. v. Travis Cent. Appraisal Dist., 81 S.W.3d 869, 2002 Tex. App. LEXIS 3935 (Tex. App. Austin May 31, 2002, no pet.).

Whether state property is exempt in the hands of its owner under Tex. Tax Code Ann. § 25.07 must be determined by applying Tex. Tax Code Ann. § 11.11, taking full account of the lessee's use of the property. Gables Realty L.P. v. Travis Cent. Appraisal Dist., 81 S.W.3d 869, 2002 Tex. App. LEXIS 3935 (Tex. App. Austin May 31, 2002, no pet.).

Tex. Tax Code Ann. § 25.07 permitted the taxation of a leasehold estate in exempt property in the name of the owner of the lease where the lease agreement provided for an initial term of six months, but contained a provision for automatic successive extensions of the term and also provided that the lessor could terminate the lease on six months notice; although the leases were for specific terms, because they contained automatic extension provisions and because they could be renewed without execution of a new agreement, they were not considered periodic tenancies. Panola County Appraisal Review Bd. v. Pepper, 936 S.W.2d 10, 1996 Tex. App. LEXIS 4672 (Tex. App. Texarkana Oct. 22, 1996, no writ).

REAL PROPERTY TAX

Exemptions. — Texas Legislature's decision to pair "aircraft" with "equipment" inherently limits the type of equipment that qualifies under this exemption to that type of equipment used in the creation of aircrafts or used in conjunction with aircraft for the purpose of allowing the aircraft to properly function; moreover, the manner in which the Texas Legislature addresses

aircraft, as well as the equipment used in conjunction with aircraft and aircraft components, in Tex. Tax Code Ann. § 151.328(a), (d), Tex. Tax Code Ann. § 162.115 (j), (k), Tex. Transp. Code Ann. § 22.087, and Tex. Transp. Code Ann. § 22.011(b)(1)(C) supports the conclusion that the Legislature does not intend to include entire aircraft within the phrase "aircraft equipment." Therefore, a tax exemption was properly denied in a case where tax exempt property leased from a city was used to store whole aircrafts because this was not equipment. ICAN Enter. v. Williamson County Appraisal Dist., No. 03-06-00594-CV, 2009 Tex. App. LEXIS 2596 (Tex. App. Austin Apr. 17, 2009).

TRANSPORTATION LAW
Air Transportation

General Overview. — Texas Legislature's decision to pair "aircraft" with "equipment" inherently limits the type of equipment that qualifies under this exemption to that type of equipment used in the creation of aircrafts or used in conjunction with aircraft for the purpose of allowing the aircraft to properly function; moreover, the manner in which the Texas Legislature addresses aircraft, as well as the equipment used in conjunction with aircraft and aircraft components, in Tex. Tax Code Ann. § 151.328(a), (d), Tex. Tax Code Ann. § 162.115 (j), (k), Tex. Transp. Code Ann. § 22.087, and Tex. Transp. Code Ann. § 22.011(b)(1)(C) supports the conclusion that the Legislature does not intend to include entire aircraft within the phrase "aircraft equipment." Therefore, a tax exemption was properly denied in a case where tax exempt property leased from a city was used to store whole aircrafts because this was not equipment. ICAN Enter. v. Williamson County Appraisal Dist., No. 03-06-00594-CV, 2009 Tex. App. LEXIS 2596 (Tex. App. Austin Apr. 17, 2009).

ATTORNEY GENERAL OPINIONS

Analysis

Ad Valorem Tax on Concessions.
Public Transportation Facilities.

Ad Valorem Tax on Concessions.

The concession rights in state park lands may not be exempt from ad valorem taxation. 1983 Tex. Op. Att'y Gen. JM-59.

Public Transportation Facilities.

With respect to the tax exemption of a leasehold interest under Tex. Tax Code Ann. § 25.07, a maintenance hangar intended for the safe and efficient operation of a municipal airport constitutes a public transportation facility. 2010 Tex. Op. Att'y Gen. GA-0827.

Sec. 25.08. Improvements.

(a) Except as provided by Subsections (b) through (f), an improvement may be listed in the name of the owner of the land on which the improvement is located.

(b) If a person who is not entitled to exemption owns an improvement on exempt land, the improvement shall be listed in the name of the owner of the improvement.

(c) When a person other than the owner of an improvement owns the land on which the improvement is located, the land and the improvement shall be listed separately in the name of the owner of each if either owner files with the chief appraiser before May 1 a written request for separate taxation on a form furnished for that purpose together with proof of separate ownership. After an improvement qualifies for taxation separate from land, the qualification remains effective in subsequent tax years and need not be requested again. However, the qualification ceases when ownership of the land or the improvement is transferred or either owner files a request to cancel the separate taxation.

(d) Within 30 days after an owner of land or an improvement qualifies for separate taxation or cancels a qualification, the chief appraiser shall deliver a written notice of the qualification or cancellation to the other owner.

(e) A manufactured home shall be listed together with the land on which the home is located if:

(1) the statement of ownership for the home issued under Section 1201.207, Occupations Code, reflects that the owner has elected to treat the home as real property; and

(2) a copy of the statement of ownership has been filed in the real property records in the county in which the home is located.

(f) A manufactured home shall be listed separately from the land on which the home is located if either of the conditions provided by Subsection (e) is not satisfied.

(g) The chief appraiser shall apportion a residence homestead exemption for property consisting of land and a manufactured home listed separately on the tax roll on a pro rata basis based on the appraised value of the land and the manufactured home.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 100, effective January 1, 1982; am. Acts 2003, 78th Leg., ch. 338 (S.B. 521), § 45, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 221 (H.B. 252), § 2(b), effective January 1, 2012; am. Acts 2017, 85th Leg., ch. 408 (H.B. 2019), § 83, effective September 1, 2017.

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REAL PROPERTY LAW
Fixtures & Improvements

General Overview. — Summary judgment in lessees' favor ordering the city appraisal district to remove improvements in the lessees' name from the tax rolls was proper as the lessees merely held a leasehold interest in the improvements they constructed for the city at an airport and the city owned the improvements. Travis Cent. Appraisal Dist. v. Signature Flight

Support Corp., 140 S.W.3d 833, 2004 Tex. App. LEXIS 5783 (Tex. App. Austin July 1, 2004, no pet.).

TAX LAW
State & Local Taxes
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Assessment & Valuation

General Overview. — In the tenants' action against the appraisal district challenging the assessments of improvements they made on their leased tracts, summary judgment in favor of the tenants was improper as the lease agreements showed that tenants "owned" the improvements on the leased tracts, for purposes of Tex. Tax Code Ann. § 1.01, until their leases expired. Dallas Cent. Appraisal Dist. v. Mission Aire IV, L.P., 279 S.W.3d 471, 2009 Tex. App. LEXIS 1714 (Tex. App. Dallas Mar. 11, 2009, no pet.).

VALUATION. — Court did not err when it valued the lessees improvements, because they offered no alternative valuation and did not object to valuation testimony offered by the chief appraiser, who testified that the appraisal district used a multiplier that she described as an economic factor or location modifier. Land v. Palo Pinto Appraisal Dist., 321 S.W.3d 722, 2010 Tex. App. LEXIS 6304 (Tex. App. Eastland Aug. 5, 2010, no pet.).

ATTORNEY GENERAL OPINIONS

Appraisal Records.

The chief appraiser of an appraisal district determines whether land and improvements are combined into a single taxpayer account or parcel; a taxpayer's separate rendition of land and improvements does not change this conclusion. 2010 Tex. Op. Att'y Gen. GA-0790.

Sec. 25.09. Condominiums and Planned Unit Developments.

(a) A separately owned apartment or unit in a condominium as defined in the Condominium Act shall be listed in the name of the owner of each particular apartment or unit. The value of each apartment or unit shall include the value of its fractional share in the common elements of the condominium.

(b) Property owned by a planned unit development association may be listed and taxes imposed proportionately against each member of the association if the association files with the chief appraiser before May 1 a resolution adopted by vote of a majority of all members of the association authorizing the proportionate imposition of taxes. A resolution adopted as provided by this subsection remains effective in subsequent tax years unless it is revoked by a similar resolution.

(c) If property is listed and taxes imposed proportionately as authorized by Subsection (b) of this section, the amount of tax to be imposed on the association's property shall be divided by the number of parcels of real property in the development. The quotient is the proportionate amount of tax to be imposed on each parcel, and a tax lien attaches to each parcel to secure payment of its proportionate share of the tax on the association's property.

(d) For purposes of this section, "planned unit development association" means an association that owns and maintains property in a real property development project for the benefit of its members, who are owners of individual parcels of real property in the development and are members of the association because of that ownership.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 101, effective January 1, 1982.

Sec. 25.10. Standing Timber.

(a) Except as provided by Subsections (b) and (c) of this section, standing timber may be listed together with the land on which it is located in the name of the owner of the land.

(b) If a person who is not entitled to exemption owns standing timber on exempt land, the timber shall be listed separately in the name of the owner of the timber.

(c) When a person other than the owner of standing timber owns the land on which the timber is located, the land and the timber shall be listed separately in the name of the owner of each if either owner files with the chief appraiser before May 1 a written request for separate taxation on a form furnished for that purpose together with proof of separate ownership. A qualification for separate taxation of timber expires at the end of the tax year.

(d) Within 30 days after an owner of land or timber qualifies for separate taxation, the chief appraiser shall deliver a written notice of the qualification to the other owner.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 102, effective January 1, 1982.

Sec. 25.11. Undivided Interests.

(a) Except as provided by Section 25.12 of this code and by Subsection (b) of this section, a property owned in undivided interests may be listed jointly in the name of all owners of undivided interests in the property or in the name of any one or more owners.

(b) An undivided interest in a property shall be listed separately from other undivided interests in the property in the name of its owner if the interest is described in a duly executed and recorded instrument of title and the owner files with the appraisal office before May 1 a written request for separate taxation on a form furnished for that purpose together with proof of ownership and of the proportion his interest bears to the whole. After an undivided interest qualifies for separate taxation, the qualification remains effective in subsequent tax years and need not be requested again. However, the qualification ceases when ownership is transferred or when any owner files a request to cancel separate taxation.

(c) Within 30 days after an owner qualifies for separate taxation or cancels a qualification, the chief appraiser shall deliver a written notice of the qualification or cancellation to the other owners.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 103, effective January 1, 1982.

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CONSTITUTIONAL LAW
Bill of Rights
Fundamental Rights
Procedural Due Process
Scope of Protection. — While a taxpayer claimed that he was denied due process because a county appraisal district failed to comply with Tex. Tax. Code Ann. § 25.11(c) (2008), the taxpayer was not denied the opportunity to be heard under Tex. Tax Code Ann. § 41.411(a) as he alleged that he appeared before the appraisal review board. Bolkcom v. Cameron Appraisal Dist., No. 13-09-00577-CV, 2010 Tex. App. LEXIS 6596 (Tex. App. Corpus Christi Aug. 12, 2010), reh'g denied, No. 13-09-557-CV, 2010 Tex. App. LEXIS 10233 (Tex. App. Corpus Christi Nov. 9, 2010).

TAX LAW
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Real Property Tax
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General Overview. — While a taxpayer claimed that he was denied due process because a county appraisal district failed to comply with Tex. Tax. Code Ann. § 25.11(c) (2008), the taxpayer was not denied the opportunity to be heard under Tex. Tax Code Ann. § 41.411(a) as he alleged that he appeared before the appraisal review board. Bolkcom v. Cameron Appraisal Dist., No. 13-09-00577-CV, 2010 Tex. App. LEXIS 6596 (Tex. App. Corpus Christi Aug. 12, 2010), reh'g denied, No. 13-09-557-CV, 2010 Tex. App. LEXIS 10233 (Tex. App. Corpus Christi Nov. 9, 2010).

Sec. 25.12. Mineral Interest.

(a) Except as provided by Subsection (b) of this section, each separate interest in minerals in place shall be listed separately from other interests in the minerals in place in the name of the owner of the interest.

(b) Separate interests in minerals in place, other than interests having a taxable value of less than $500, shall be listed jointly in the name of the operator designated with the railroad commission or the name of all owners or any combination of owners if the designated operator files with the appraisal office before May 1 a written request for joint taxation on a form furnished for that purpose. A qualification pursuant to this subsection for joint taxation remains effective in subsequent tax years and need not be requested again. However, the qualification ceases when the designated operator files a request to cancel joint taxation.

(c) **[2 Versions: As added by Acts 1989, 71st Leg., ch. 450]** If a written request for joint taxation has been filed under Subsection (b), the notice of appraised value provided for by Section 25.19 for the owners included in the request for joint taxation shall be delivered to the operator, owner, or owners of the mineral interest in whose name the mineral interest is designated for joint taxation. The chief appraiser is not required to deliver a separate notice of appraised value to each owner included in the request for joint taxation. Provided, however, a mineral interest owner may request a separate notice of appraised value and the chief appraiser shall deliver a separate notice of appraised value to such owner.

(c) **[2 Versions: As added by Acts 1989, 71st Leg., ch. 796]** If a written request for joint taxation has been filed under Subsection (b), the notice of appraised value provided for by Section 25.19 for the owners included in the request for joint taxation shall be delivered to the operator, owner, or owners of the mineral interest in whose name the mineral interest is designated for joint taxation. The chief appraiser is not required to deliver a separate notice of appraised value to each owner included in the request for joint taxation. However, the chief appraiser shall deliver a separate notice of appraised value to an owner of an interest in the property who before May 1 files a written request to receive a separate notice of appraised value with the chief appraiser on a form provided by the appraisal district for that purpose. The request is effective for each subsequent year until revoked by the owner or until the owner no longer owns an interest in the property.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 104, effective January 1, 1982; am. Acts 1989, 71st Leg., ch. 450 (H.B. 1831), § 1, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 22, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 1299 (S.B. 485), § 1, effective January 1, 1998.

Sec. 25.13. Exempt Property Subject to Contract of Sale.

Property that is exempt from taxation to the titleholder but is subject on January 1 to a contract of sale to a person not entitled to exemption shall be listed in the name of the purchaser.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 25.135. Qualifying Trusts.

The interest of a qualifying trust as defined by Section 11.13(j) in a residence homestead shall be listed in the name of the trustor of the trust.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 854 (H.B. 2813), § 3, effective January 1, 1994.

Sec. 25.14. Stock in Banking Corporation [Repealed].

Repealed by Acts 1984, 68th Leg., 2nd C.S., ch. 31 (H.B. 122), art. 3, part A, § 2, effective January 1, 1985.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 25.15. Bank Personal Property Subject to Lease [Repealed].

Repealed by Acts 1984, 68th Leg., 2nd C.S., ch. 31 (H.B. 122), art. 3, part A, § 2, effective January 1, 1985.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 25.16. Property Losing Exemption During Tax Year.

(a) If an exemption applicable to a property on January 1 terminates during the tax year, the property shall be listed in the name of the person who owns or acquires the property on the date applicability of the exemption terminates.

(b) The chief appraiser shall make an entry on the appraisal records showing that taxes on the property are to be calculated as provided by Section 26.10 of this code and showing the date on which exemption terminated.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 105, effective January 1, 1982.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax
Collection

General Overview. — Note maker was obligated to pay taxes on real property he possessed while paying on the note because although the extension of the lien and promissory note contractually released the note maker from personal liability on the note itself, it did not relieve the note maker from the covenant to pay taxes as the true owner of the property. Smart v. Tower Land & Inv. Co., 582 S.W.2d 543, 1979 Tex. App. LEXIS 3614 (Tex. Civ. App. Dallas May 10, 1979), writ granted No. B-8664 (Tex. 1979), rev'd, 597 S.W.2d 333, 1980 Tex. LEXIS 328 (Tex. 1980).

Sec. 25.17. Property Overlapping Taxing Unit or Appraisal District Boundaries.

(a) If real property is located partially outside and partially inside a taxing unit's boundaries, the portion inside the unit's boundaries shall be listed separately from the remaining portion.

(b) If real property is located partially inside the boundaries of more than one appraisal district, the chief appraisers who are responsible for appraising the property shall to the greatest extent practicable coordinate their appraisals of each portion of the property to ensure to the greatest extent possible that the property as a whole is appraised at its market value.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2007, 80th Leg., ch. 648 (H.B. 1010), § 2, effective January 1, 2008.

Sec. 25.18. Periodic Reappraisals.

(a) Each appraisal office shall implement the plan for periodic reappraisal of property approved by the board of directors under Section 6.05(i).

(b) The plan shall provide for the following reappraisal activities for all real and personal property in the district at least once every three years:

(1) identifying properties to be appraised through physical inspection or by other reliable means of identification, including deeds or other legal documentation, aerial photographs, land-based photographs, surveys, maps, and property sketches;

(2) identifying and updating relevant characteristics of each property in the appraisal records;

(3) defining market areas in the district;

(4) identifying property characteristics that affect property value in each market area, including:

(A) the location and market area of property;

(B) physical attributes of property, such as size, age, and condition;

(C) legal and economic attributes; and

(D) easements, covenants, leases, reservations, contracts, declarations, special assessments, ordinances, or legal restrictions;

(5) developing an appraisal model that reflects the relationship among the property characteristics affecting value in each market area and determines the contribution of individual property characteristics;

(6) applying the conclusions reflected in the model to the characteristics of the properties being appraised; and

(7) reviewing the appraisal results to determine value.

(c) A taxing unit by resolution adopted by its governing body may require the appraisal office to appraise all property within the unit or to identify and appraise newly annexed territory and new improvements in the unit as of a date specified in the resolution. On or before the deadline requested by the taxing unit, which deadline may not be less than 30 days after the date the resolution is delivered to the appraisal office, the chief appraiser shall complete the appraisal and deliver to the unit an estimate of the total appraised value of property taxable by the unit as of the date specified in such resolution. The unit must pay the appraisal district for the cost of making the appraisal. The chief appraiser shall provide sufficient personnel to make the appraisals required by this subsection on or before the deadline requested by the taxing unit. An appraisal made pursuant to this subsection may not be used by a taxing unit as the basis for the imposition of taxes.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 106, effective January 1, 1984; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 23, effective September 1, 1989; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), § 10, effective September 1, 2005.

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TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation
Assessment Methods & Timing. — In an ad valorem tax case in which an appraisal district applied rollback taxes to certain parcels of land that landowners were developing as residential subdivisions, there was no merit in the landowners' claim that the appraisal district failed to properly notify them of its determination that a "change of use" had occurred with respect to one of the parcels of land because neither Tex. Tax Code Ann. § 25.18 nor Tex. Tax Code Ann. § 23.55 require that a change of use determination be made within three years after the change of use occurred, and grafting the reappraisal deadlines onto the change of use determination statute is not necessary to give either statute meaning; determining a change of use is not one of the appraisal activities listed in Tex. Tax Code Ann. § 25.18, and there is nothing in Tex. Tax Code Ann. § 23.55 that suggests any intent on the part of the legislature to link change of use determinations to the reappraisal statute. Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist., 234 S.W.3d 809, 2007 Tex. App. LEXIS 7622 (Tex. App. Dallas Sept. 19, 2007, no pet.).

VALUATION. — In an ad valorem tax case in which an appraisal district applied rollback taxes to certain parcels of land that landowners were developing as residential subdivisions, there was no merit in the landowners' claim that the appraisal district failed to properly notify them of its determination that a "change of use" had occurred with respect to one of the parcels of land because neither Tex. Tax Code Ann. § 25.18 nor Tex. Tax Code Ann. § 23.55 require that a change of use determination be made within three years after the change of use occurred, and grafting the reappraisal deadlines onto the change of use determination statute is not necessary to give either statute meaning; determining a change of use is not one of the appraisal activities listed in Tex. Tax Code Ann. § 25.18, and there is nothing in Tex. Tax Code Ann. § 23.55 that suggests any intent on the part of the legislature to link change of use determinations to the reappraisal statute. Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist., 234 S.W.3d 809, 2007 Tex. App. LEXIS 7622 (Tex. App. Dallas Sept. 19, 2007, no pet.).

ATTORNEY GENERAL OPINIONS

Tax Appraisals.
An appraisal district and its participating taxing units are not authorized to submit an issue to the voters for an election to require a particular appraisal schedule, whether initiated by petition or otherwise. Sections 23.01, 23.23, and 25.18 of the Tax Code do not prohibit conducting appraisals every third year rather than annually. 2009 Tex. Op. Att'y Gen. GA-0740, 2009 Tex. AG LEXIS 60.

Sec. 25.19. Notice of Appraised Value.

(a) By April 1 or as soon thereafter as practicable if the property is a single-family residence that qualifies for an exemption under Section 11.13, or by May 1 or as soon thereafter as practicable in connection with any other property, the chief appraiser shall deliver a clear and understandable written notice to a property owner of the appraised value of the property owner's property if:

(1) the appraised value of the property is greater than it was in the preceding year;

(2) the appraised value of the property is greater than the value rendered by the property owner;

(3) the property was not on the appraisal roll in the preceding year; or

(4) an exemption or partial exemption approved for the property for the preceding year was canceled or reduced for the current year.

(b) **[Effective until January 1, 2022]** The chief appraiser shall separate real from personal property and include in the notice for each:

(1) a list of the taxing units in which the property is taxable;

(2) the appraised value of the property in the preceding year;

(3) the taxable value of the property in the preceding year for each taxing unit taxing the property;

(4) the appraised value of the property for the current year, the kind and amount of each exemption and partial exemption, if any, approved for the property for the current year and for the preceding year, and, if an exemption or

partial exemption that was approved for the preceding year was canceled or reduced for the current year, the amount of the exemption or partial exemption canceled or reduced;

(5) if the appraised value is greater than it was in the preceding year, the amount of tax that would be imposed on the property on the basis of the tax rate for the preceding year;

(6) in italic typeface, the following statement: "The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials";

(7) a detailed explanation of the time and procedure for protesting the value;

(8) the date and place the appraisal review board will begin hearing protests; and

(9) a brief explanation that the governing body of each taxing unit decides whether or not taxes on the property will increase and the appraisal district only determines the value of the property.

(b) **[Effective January 1, 2022]** The chief appraiser shall separate real from personal property and include in the notice for each:

(1) a list of the taxing units in which the property is taxable;

(2) the appraised value of the property in the preceding year;

(3) the taxable value of the property in the preceding year for each taxing unit taxing the property;

(4) the appraised value of the property for the current year, the kind and amount of each exemption and partial exemption, if any, approved for the property for the current year and for the preceding year, and, if an exemption or partial exemption that was approved for the preceding year was canceled or reduced for the current year, the amount of the exemption or partial exemption canceled or reduced;

(5) in italic typeface, the following statement: "The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials";

(6) a detailed explanation of the time and procedure for protesting the value;

(7) the date and place the appraisal review board will begin hearing protests; and

(8) a brief explanation that the governing body of each taxing unit decides whether or not taxes on the property will increase and the appraisal district only determines the value of the property.

(b-1) For real property, in addition to the information required by Subsection (b), the chief appraiser shall state in a notice required to be delivered under Subsection (a), the difference, expressed as a percent increase or decrease, as applicable, in the appraised value of the property for the current tax year as compared to the fifth tax year before the current tax year.

(b-2) **[Effective until January 1, 2020]** This subsection applies only to a notice of appraised value for residential real property that has not qualified for a residence homestead exemption in the current tax year. If the records of the appraisal district indicate that the address of the property is also the address of the owner of the property, in addition to containing the applicable information required by Subsections (b), (b-1), and (f), the notice must contain the following statement in boldfaced 12-point type: "According to the records of the appraisal district, the residential real property described in this notice of appraised value is not currently being allowed a residence homestead exemption from ad valorem taxation. If the property is your home and you occupy it as your principal place of residence, the property may qualify for one or more residence homestead exemptions, which will reduce the amount of taxes imposed on the property. The form needed to apply for a residence homestead exemption is enclosed. Although the form may state that the deadline for filing an application for a residence homestead exemption is April 30, a late application for a residence homestead exemption will be accepted if filed before February 1, (insert year application must be filed). There is no fee or charge for filing an application or a late application for a residence homestead exemption." The notice must be accompanied by an application form for a residence homestead exemption.

(b-2) **[Effective January 1, 2020]** [Repealed.]

(b-3) **[Effective January 1, 2021]** This subsection applies only to an appraisal district described by Section 6.41(b-2). In addition to the information required by Subsection (b), the chief appraiser shall state in a notice of appraised value of property described by Section 6.425(b) that the property owner has the right to have a protest relating to the property heard by a special panel of the appraisal review board.

(b-4) **[Effective January 1, 2021]** Subsection (b)(5) applies only to a notice of appraised value required to be delivered by the chief appraiser of an appraisal district established in a county with a population of less than 120,000. This subsection expires January 1, 2022.

(c) In the case of the residence homestead of a person 65 years of age or older or disabled that is subject to the limitation on a tax increase over the preceding year for school tax purposes, the chief appraiser shall indicate on the notice that the preceding year's taxes may not be increased.

(d) Failure to receive a notice required by this section does not affect the validity of the appraisal of the property, the imposition of any tax on the basis of the appraisal, the existence of any tax lien, the deadline for filing an application for a residence homestead exemption, or any proceeding instituted to collect the tax.

(e) The chief appraiser, with the approval of the appraisal district board of directors, may dispense with the notice required by Subsection (a)(1) if the amount of increase in appraised value is $1,000 or less.

(f) In the notice of appraised value for real property, the chief appraiser shall list separately:

(1) the market value of the land; and

(2) the total market value of the structures and other improvements on the property.

(g) By April 1 or as soon thereafter as practicable if the property is a single-family residence that qualifies for an exemption under Section 11.13, or by May 1 or as soon thereafter as practicable in connection with any other property, the chief appraiser shall deliver a written notice to the owner of each property not included in a notice required to be delivered under Subsection (a), if the property was reappraised in the current tax year, if the ownership of the property changed during the preceding year, or if the property owner or the agent of a property owner authorized under Section 1.111 makes a written request for the notice. The chief appraiser shall separate real from personal property and include in the notice for each property:

(1) the appraised value of the property in the preceding year;

(2) the appraised value of the property for the current year and the kind of each partial exemption, if any, approved for the current year;

(3) a detailed explanation of the time and procedure for protesting the value; and

(4) the date and place the appraisal review board will begin hearing protests.

(h) A notice required by Subsection (a) or (g) must be in the form of a letter.

(i) **[Effective until January 1, 2022]** Delivery with a notice required by Subsection (a) or (g) of a copy of the pamphlet published by the comptroller under Section 5.06 or a copy of the notice published by the chief appraiser under Section 41.70 is sufficient to comply with the requirement that the notice include the information specified by Subsection (b)(7) or (g)(3), as applicable.

(i) **[Effective January 1, 2022]** Delivery with a notice required by Subsection (a) or (g) of a copy of the pamphlet published by the comptroller under Section 5.06 or a copy of the notice published by the chief appraiser under Section 41.70 is sufficient to comply with the requirement that the notice include the information specified by Subsection (b)(6) or (g)(3), as applicable.

(j) The chief appraiser shall include with a notice required by Subsection (a) or (g):

(1) a copy of a notice of protest form as prescribed by the comptroller under Section 41.44(d); and

(2) instructions for completing and mailing the form to the appraisal review board and requesting a hearing on the protest.

(k) Notwithstanding any other provision of this section, the chief appraiser may not deliver a written notice concerning property that is required to be rendered or reported under Chapter 22 until after the applicable deadline for filing the rendition statement or property report.

(*l*) **[Effective January 1, 2020]** In addition to the information required by Subsection (b), the chief appraiser shall include with a notice required by Subsection (a) a brief explanation of each total or partial exemption of property from taxation required or authorized by this title that is available to:

(1) a disabled veteran or the veteran's surviving spouse or child;

(2) an individual who is 65 years of age or older or the individual's surviving spouse;

(3) an individual who is disabled or the individual's surviving spouse;

(4) the surviving spouse of a member of the armed services of the United States who is killed in action; or

(5) the surviving spouse of a first responder who is killed or fatally injured in the line of duty.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), §§ 107, 162, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 185 (S.B. 618), § 2, effective January 1, 1988; am. Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 11, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 745 (H.B. 1269), § 1, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 784 (H.B. 1884), § 1, effective January 1, 1990; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 24, effective September 1, 1989; am. Acts 1990, 71st Leg., 6th C.S., ch. 12 (S.B. 51), § 2(32), effective September 6, 1990; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 2.1, effective January 1, 1992; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 24, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 1358 (H.B. 954), § 4, effective January 1, 2000; am. Acts 1999, 76th Leg., ch. 1517 (S.B. 694), § 1, effective January 1, 2000; am. Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 10, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), §§ 11, 12, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1255 (H.B. 1984), § 1, effective January 1, 2006; am. Acts 2007, 80th Leg., ch. 1106 (H.B. 3496), § 1, effective January 1, 2008; am. Acts 2007, 80th Leg., ch. 1112 (H.B. 3630), § 4, effective January 1, 2008; am. Acts 2019, 86th Leg., ch. 672 (S.B. 2060), § 1, effective January 1, 2020; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 29, effective January 1, 2021; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 91(4), effective January 1, 2020.

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CIVIL PROCEDURE

Summary Judgment

Burdens of Production & Proof

Movants. — Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive

jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

TAX LAW
State & Local Taxes
Administration & Proceedings

Assessments. — In a personal property tax dispute, any error by the trial court in describing a notice of appraised value in its findings of fact was harmless because it was undisputed that the appraisal district provided a proper notice. Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 2014 Tex. App. LEXIS 3030 (Tex. App. El Paso Mar. 19, 2014, no pet.).

Taxpayer established that it did not receive notice under Tex. Tax Code Ann. § 25.19 of the inclusion of three radio towers on the 2003 appraisal roll and it did not have an opportunity to protest the appraised values of the property before taxes were assessed on the property, and because the taxpayer did not receive notice prior to the taxes on the property becoming delinquent, the remedy provided by Tex. Tax Code Ann. § 41.411 was unavailable and the Tax Code did not provide any other backward-looking relief to rectify the unconstitutional deprivation; thus, the taxpayer established that its right to due process was violated and the trial court erred by denying the taxpayer's motion for summary judgment on its declaratory judgment action. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Application of Tex. Tax Code Ann. § 25.19(d) is reasonable where a taxpayer has an opportunity to protest a lack of notice pursuant to Tex. Tax Code Ann. § 41.411 and other Tax Code provisions permit the correction of the records and issuance of supplemental tax bills after a taxpayer has been given an opportunity to be heard, but if the court applies Tex. Tax Code Ann. § 25.19(d) literally, this taxpayer is left without a remedy for a due process violation; the pre-2008 version of the Tax Code simply does not provide a remedy for the situation presented by this case, where the taxpayer did not receive notice until after the taxes were delinquent and the remedy afforded by Tex. Tax Code Ann. § 41.411 was not available, and thus the court found that Tex. Tax Code Ann. § 25.19(d) was inapplicable to these unique facts. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Given the unavailability of any remedies provided by the Tax Code, it was appropriate to look to the equitable remedies available in cases decided prior to enactment of Tex. Tax Code Ann. § 41.411; because a taxpayer did not receive notice under Tex. Tax Code Ann. § 25.19 of the inclusion of radio towers on the 2003 tax roll and it did not have an opportunity to protest the 2003 appraisals on that property, the 2003 taxes assessed on the radio towers and the associated penalties were void. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

While it is certainly advisable for a property owner to keep the taxing authorities informed of any change of address, the Tax Code does not require a property owner to inform the appraisal district of his current address nor does it provide that failure to do so waives the right to notice, and the Tax Code does not state that the appraisal district's obligation to provide the notice required by Tex. Tax Code Ann. § 25.19 is contingent upon the property owner notifying the tax assessor of its current address; there are no cases cited that hold that a property owner forfeits his right to due process if he fails to inform the taxing authorities of his current address and the argument is also undercut by Tex. Tax Code Ann. § 41.411. A taxpayer's ability to seek relief pursuant to § 41.411 is not contingent on the property owner keeping the taxing authorities informed of his current address, and if it is correct that a property owner forfeits his right to due process if he does not keep the taxing authorities informed of his current address, the remedy provided by § 41.411 would be limited to those cases where the taxpayer is not at fault. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

TAXPAYER PROTESTS. — County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

PERSONAL PROPERTY TAX
General Overview. — In an action involving a revaluation of agricultural property, the trial court properly refused to set aside defendant's revaluation of plaintiff's property although defendant failed to give plaintiff timely notice of the increase as required by Tex. Tax Code Ann. § 25.19(a). Gruy v. Jim Hogg County Appraisal Dist., 715 S.W.2d 170, 1986 Tex. App. LEXIS 8190 (Tex. App. Texarkana Aug. 5, 1986, no writ).

TANGIBLE PROPERTY
General Overview. — Each of the provisions, Tex. Tax Code Ann. §§ 25.19(a)(3), (d), 41.411 is evidence that the legislature did not intend that the notice required under the former statute be a prerequisite to a taxing district's jurisdiction; therefore, the failure to provide notice of appraised value is not jurisdictional and does not render an appraisal void. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

REAL PROPERTY TAX
General Overview. — County's chief appraiser is required to deliver a written notice to a property owner when the appraised value of his property is greater than it was in the preceding year. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

ASSESSMENT & VALUATION
General Overview. — Where a taxpayer neglected to file a timely written protest of assessed property taxes pursuant to Tex. Tax Code Ann. § 41.44(a)(1) or timely request a hearing pursuant to Tex. Tax Code Ann. § 41.411(a) regarding an alleged failure to provide or timely deliver notice under Tex. Tax Code Ann. § 25.19 of cancellation of ad valorem property tax exemptions, the failure to pursue and exhaust administrative remedies as required by Tex. Tax Code Ann. § 42.09(a) precluded recovery, and the alleged failure of notice did not violate due process; hence, the taxing authorities were entitled to summary judgment. ABT Galveston L.P. v. Galveston Cent. Appraisal Dist., 137 S.W.3d 146, 2004 Tex. App. LEXIS 2940 (Tex. App. Houston 1st Dist. Mar. 30, 2004, no pet.).

Where notices of appraised values for property taxes were properly mailed to taxpayer and met the requirements of Tex. Tax. Code Ann. § 25.19, including advising taxpayer of the right to protest the change in appraised value and that deadline, city met the requirements of Tex. Tax Code Ann. §§ 25.23 and 25.19 because the appraisal form did not have to state the reason for the change in appraised value; there were obvious differences between the "taxes levied" that taxpayer had paid and the "estimated taxes" that corresponded to the increased taxable values on the property, as well as the dramatic increase in the property values compared with previous notices; and taxpayer knew after erecting warehouses that there should be tax consequences due to the value of the improvements. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

County's chief appraiser is required to deliver a written notice to a property owner when the appraised value of his property is greater than it was in the preceding year. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

When a taxpayer properly protested a county valuation of his real property for one year, he was not required under Tex. Tax Code Ann. § 25.19(a)(1) to file a protest the second year if the valuation remained the same. Estepp v. Miller, 731 S.W.2d 677, 1987 Tex. App. LEXIS 7626 (Tex. App. Austin May 13, 1987, writ ref'd n.r.e.).

ASSESSMENT METHODS & TIMING. — Appraisal district properly provided notice of what it was taxing because the tax notices specified the property identification number, the name of the well, and the Texas Railroad Commission identification number. Key Energy Servs., LLC v. Shelby County Appraisal Dist., 428 S.W.3d 133, 2014 Tex. App. LEXIS 439 (Tex. App. Tyler Jan. 15, 2014, no pet.).

VALUATION. — County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

Sec. 25.192. Notice of Residence Homestead Exemption Eligibility. [Effective January 1, 2020]

(a) This section applies only to residential property that has not qualified for a residence homestead exemption in the current tax year.

(b) If the records of the appraisal district indicate that the address of the property is also the address of the owner of the property, the chief appraiser must send to the property owner a notice that contains:

(1) the following statement in boldfaced 18-point type at the top of the first page of the notice: "NOTICE: A residence homestead exemption from ad valorem taxation is NOT currently being allowed on the property listed below. However, our records show that this property may qualify for a residence homestead exemption, which will reduce your taxes.";

(2) following the statement described by Subdivision (1), the following statement in 12-point type: "According to the records of the appraisal district, the property described in this notice may be your primary residence and may qualify for a residence homestead exemption from ad valorem taxation. If the property is your home and you occupy it as your primary residence, the property likely qualifies for one or more residence homestead exemptions, which will reduce the amount of taxes imposed on the property. The form needed to apply for a residence homestead exemption is enclosed. Although the form may state that the deadline for filing an application for a residence homestead exemption is April 30, a late application for a residence homestead exemption will be accepted if filed before February 1, (insert year application must be filed). There is no fee or charge for filing an application or a late application for a residence homestead exemption."; and

(3) following the statement described by Subdivision (2), the address to which the notice is sent.

(c) The notice required by this section must be accompanied by an application form for a residence homestead exemption.

(d) If a property owner has elected to receive notices by e-mail as provided by Section 1.086, the notice required by this section must be sent in that manner separately from any other notice sent to the property owner by the chief appraiser.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 30, effective January 1, 2020.

Sec. 25.193. Notice of Certain Canceled or Reduced Exemptions. [Effective January 1, 2020]

(a) By April 1 or as soon thereafter as practicable if the property is a single-family residence that qualifies for an exemption under Section 11.13, or by May 1 or as soon thereafter as practicable in connection with residential property that does not qualify for an exemption under Section 11.13, the chief appraiser shall deliver a clear and understandable written notice to a property owner if an exemption or partial exemption that was approved for the preceding year was canceled or reduced for the current year.

(b) If a property owner has elected to receive notices by e-mail as provided by Section 1.086, for property described by that section, the notice required by this section must be sent in that manner regardless of whether the information was also included in a notice under Section 25.19 and must be sent separately from any other notice sent to the property owner by the chief appraiser.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 30, effective January 1, 2020.

Sec. 25.195. Inspection by Property Owner.

(a) After the chief appraiser has submitted the appraisal records to the appraisal review board as provided by Section

25.22(a), a property owner or the owner's designated agent is entitled to inspect and copy the appraisal records relating to property of the property owner, together with supporting data, schedules, and, except as provided by Subsection (b), any other material or information held by the chief appraiser or required by Section 25.01(c) to be provided to the appraisal district under a contract for appraisal services, including material or information obtained under Section 22.27, that is obtained or used in making appraisals for the appraisal records relating to that property.

(b) The owner of property other than vacant land or real property used for residential purposes or the owner's agent may not inspect any material or information obtained under Section 22.27.

(c) A property owner or the designated agent of an owner whose property is appraised by a private appraisal firm under a contract for appraisal services with an appraisal district is entitled to inspect and copy, at the office of that firm, all information pertaining to the property that the firm considered in appraising the property, including information showing each method of appraisal used to determine the value of the property and all calculations, personal notes, correspondence, and working papers used in appraising the property. This subsection does not apply to information made confidential by Section 22.27, except that the property owner or agent is entitled to inspect and copy any information relating to the owner's property, including otherwise confidential information.

(d) The appraisal firm shall make information covered by Subsection (c) available for inspection and copying by the owner or agent not later than the 15th day after the date the owner or agent delivers a written request to inspect the information, unless the owner or agent agrees in writing to a later date.

(e) If an owner or agent states under oath in a document filed with an appraisal review board in connection with a proceeding initiated under Section 25.25 or Chapter 41 that the applicable appraisal firm has not complied with a request for inspection or copying under Subsection (c) related to the property that is the subject of the proceeding, the board may not conduct a hearing on the merits of any claim relating to that property and may not approve the appraisal records relating to that property until the board determines in a hearing that:

(1) the appraisal firm has made the information available for inspection and copying as required by Subsection (c); or

(2) the owner or agent has withdrawn the motion or protest that initiated the proceeding.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 920 (H.B. 1655), § 1, effective August 29, 1983; am. Acts 1987, 70th Leg., ch. 38 (S.B. 308), § 1, effective April 29, 1987; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 25, effective January 1, 1998; am. Acts 2001, 77th Leg., ch. 268 (S.B. 1095), § 3, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 372 (S.B. 1737), § 1, effective May 26, 2001.

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CIVIL PROCEDURE
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Methods

Requests for Production & Inspection. — In a dispute involving the appraisal of a refinery, the trial court did not abuse its discretion by denying a motion to compel the production of documents submitted to the appraisal district by other corporations because Tex. Tax. Code Ann. § 25.195 did not permit a commercial property owner such as the refinery to obtain information voluntarily given to a central appraisal district under Tex. Tax. Code Ann. § 22.27, even if one of the enumerated exceptions to the confidentiality of the rendition information was applicable. In re Galveston Cent. Appraisal Dist., 252 S.W.3d 904, 2008 Tex. App. LEXIS 3440 (Tex. App. Houston 14th Dist. May 13, 2008, no pet.).

TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation

Valuation. — In a dispute involving the appraisal of a refinery, the trial court did not abuse its discretion by denying a motion to compel the production of documents submitted to the appraisal district by other corporations because Tex. Tax. Code Ann. § 25.195 did not permit a commercial property owner such as the refinery to obtain information voluntarily given to a central appraisal district under Tex. Tax. Code Ann. § 22.27, even if one of the enumerated exceptions to the confidentiality of the rendition information was applicable. In re Galveston Cent. Appraisal Dist., 252 S.W.3d 904, 2008 Tex. App. LEXIS 3440 (Tex. App. Houston 14th Dist. May 13, 2008, no pet.).

ATTORNEY GENERAL OPINIONS

Access to Appraisal Information.

Section 39.001 of the Util. Code does not affect a property owner's right of access to appraisal information under section 25.195 of the Tax Code. 2001 Tex. Op. Att'y Gen. JC-0424.

Sec. 25.20. Access by Taxing Units.

The chief appraiser shall give the assessor for a taxing unit in the district reasonable access to the appraisal records at any time.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 108, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 312 (H.B. 2301), § 2, effective June 7, 1985; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 25, effective September 1, 1989.

Sec. 25.21. Omitted Property.

(a) If the chief appraiser discovers that real property was omitted from an appraisal roll in any one of the five preceding years or that personal property was omitted from an appraisal roll in one of the two preceding years, he shall appraise the property as of January 1 of each year that it was omitted and enter the property and its appraised value in the appraisal records.

(b) The entry shall show that the appraisal is for property that was omitted from an appraisal roll in a prior year and shall indicate the year and the appraised value for each year.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 109, effective January 1, 1982; am. Acts 1991, 72nd Leg., ch. 367 (H.B. 507), § 1, effective January 1, 1992; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 1.2, effective September 1, 1991.

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Exhaustion of Remedies

Exceptions. — Taxpayers did not have to exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a) in challenging the validity of notices for omitted city tax bills, which purported to be under the authority of Tex. Tax Code Ann. § 25.21, because an exception applied for governmental actions taken without statutory authority. Section 25.21 provides no remedy for omitted taxing units, which have a separate definition from property in Tex. Tax Code Ann. § 1.04; the county's supplemental appraisal records did not specify the omitted years under Tex. Tax Code Ann. § 25.23(a)(10); and Tex. Tax Code Ann. § 11.43(i) was inapplicable because no exemption was involved. Brennan v. City of Willow Park, No. 02-11-00265-CV, 2012 Tex. App. LEXIS 4943 (Tex. App. Fort Worth June 21, 2012), op. withdrawn, sub. op., 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012).

SUMMARY JUDGMENT
Burdens of Production & Proof

Movants. — Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Tax Code provided at least two remedies for any alleged fraud by taxpayers which resulted in undervaluation of property; first, under Tex. Tax Code Ann. § 41.03(a)(1), the taxing units could have filed a challenge to the appraisal review board's valuation of the oil and gas properties; alternatively, the taxing units could have petitioned the chief appraiser to void the original appraisal and back-appraise the properties in accordance with Tex. Tax Code Ann. § 25.21. Jim Wells County v. El Paso Prod. Oil & Gas Co., 189 S.W.3d 861, 162 Oil & Gas Rep. 140, 2006 Tex. App. LEXIS 737 (Tex. App. Houston 1st Dist. Jan. 26, 2006, no pet.).

Where the defendant's personal property was fraudulently undervalued for ad valorem tax assessment purposes, the assessment was void ab initio and the personal property "escaped taxation" within the meaning of Tex. Tax Code Ann. § 25.21, and back-assessment at the proper value was valid. Beck & Masten Pontiac-GMC, Inc. v. Harris County Appraisal Dist., 830 S.W.2d 291, 1992 Tex. App. LEXIS 1045 (Tex. App. Houston 14th Dist. Apr. 30, 1992, writ denied).

Trial court judgment upholding an appraisal district and review board's appraisal of a company's property, which was previously exempt from taxation under Tex. Tax Code Ann. § 11.01(d) and escaped taxation in the two previous tax years because Tex. Tax Code Ann. § 25.21 authorized the appraiser to appraise personal property taxes during a current tax year, which were discovered to have escaped taxation in one of the two preceding years. Friedrich Air Conditioning & Refrigeration Co. v. Bexar Appraisal Dist., 762 S.W.2d 763, 1988 Tex. App. LEXIS 3362 (Tex. App. San Antonio Dec. 30, 1988, no writ).

ASSESSMENTS. — Appraisal district could add omitted personal property that had been disclosed in an amnesty rendition after the assessment date, and it did not act retroactively because it began adding the property in the same tax year. Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 2014 Tex. App. LEXIS 3030 (Tex. App. El Paso Mar. 19, 2014, no pet.).

When appellant homeowners received notices pursuant to Tex. Tax Code Ann. § 25.21 that their properties had been omitted from the appraisal rolls and they owed back taxes for the past five years, appellants pleaded claims for declaratory judgment, injunctive relief, and mandamus against appellees, the city, the county appraisal district, the appraisal review board members,

and the county tax assessor; the trial court erred by granting appellees' plea to the jurisdiction. Sovereign immunity was waived by actions taken by government officials that were outside the scope of their authority because no remedy was provided in § 25.21 for omitted taxing units; appellees acted outside their statutorily authorized power by utilizing Tex. Tax Code Ann. §§ 25.21, 25.23(a)(1) to assess back city taxes against appellants based on the omission of taxing units from the district's appraisal records. Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

DEFICIENCIES. — When appellant homeowners received notices pursuant to Tex. Tax Code Ann. § 25.21 that their properties had been omitted from the appraisal rolls and they owed back taxes for the past five years, appellants pleaded claims for declaratory judgment, injunctive relief, and mandamus against appellees, the city, the county appraisal district, the appraisal review board members, and the county tax assessor; the trial court erred by granting appellees' plea to the jurisdiction. Sovereign immunity was waived by actions taken by government officials that were outside the scope of their authority because no remedy was provided in § 25.21 for omitted taxing units; appellees acted outside their statutorily authorized power by utilizing Tex. Tax Code Ann. §§ 25.21, 25.23(a)(1) to assess back city taxes against appellants based on the omission of taxing units from the district's appraisal records. Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

JUDICIAL REVIEW. — Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

PERSONAL PROPERTY TAX

Tangible Property

General Overview. — Tex. Tax Code Ann. § 22.23(c) abrogated taxing authorities' powers to assess back taxes for omitted property for tax years 2001 and 2002, and the court found no language in the statute that repealed the authorities' power under Tex. Tax Code Ann. §§ 25.21, 25.23 to include previously omitted personal property in the appraisal roll for the current tax year, 2003. The authorities acted within statutory authority under all these sections when they augmented the appraisal roll to reflect omitted property the taxpayers rendered pursuant to Tex. Tax Code Ann. § 22.23(c), and Tex. Tax Code Ann. § 25.25 did not apply to this case. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

REAL PROPERTY TAX

General Overview. — Tax Code provided at least two remedies for any alleged fraud by taxpayers which resulted in undervaluation of property; first, under Tex. Tax Code Ann. § 41.03(a)(1), the taxing units could have filed a challenge to the appraisal review board's valuation of the oil and gas properties; alternatively, the taxing units could have petitioned the chief appraiser to void the original appraisal and back-appraise the properties in accordance with Tex. Tax Code Ann. § 25.21. Jim Wells County v. El Paso Prod. Oil & Gas Co., 189 S.W.3d 861, 162 Oil & Gas Rep. 140, 2006 Tex. App. LEXIS 737 (Tex. App. Houston 1st Dist. Jan. 26, 2006, no pet.).

Tax appraisal of property improvement that was omitted on the appraisal tax roll was proper and the trial court erred by setting aside the tax appraisal; the court held that the appraisal was clearly omitted and that there was a separate and distinct assessment for the land and the improvements. Cameron County Appraisal Review Bd. v. Creditbanc Sav. Asso., 763 S.W.2d 577, 1988 Tex. App. LEXIS 3305 (Tex. App. Corpus Christi Dec. 30, 1988, writ denied).

Under Tex. Tax Code Ann. § 25.21 a property appraiser could subject a taxpayer's property to real property taxes for the previous years in which the property was incorrectly excluded from the tax rolls. El Paso Cent. Appraisal Dist. v. Montrose Partners, 754 S.W.2d 797, 1988 Tex. App. LEXIS 1578 (Tex. App. El Paso July 6, 1988, writ denied).

ASSESSMENT & VALUATION

General Overview. — Provisions of Tex. Tax Code Ann. §§ 6.01, 6.03, 23.01, 25.21 expressly provide the necessary authority for an appraisal review board to ensure that the mineral interests of a county are appraised based on market value, unreduced by fraud, and for local taxing units to bring a challenge, if necessary, to insist that the appraisal review board do so. Therefore, the court issued a writ of mandamus directing a district court to vacate its order denying pleas to jurisdiction and to dismiss an action brought by local taxing units alleging that certain companies owning oil properties in the county committed fraud and conspiracy with respect to the valuation of the oil properties for ad valorem tax purposes. Under Tex. Const. art. V, § 8, the district court did not have subject matter jurisdiction because the legislature had provided that the claim had to be heard before the appraisal review board. In re ExxonMobil Corp., 153 S.W.3d 605, 162 Oil & Gas Rep. 115, 2004 Tex. App. LEXIS 7811 (Tex. App. Amarillo Aug. 26, 2004, no pet.).

Where warehouses taxpayer had built were omitted for tax years from the original appraisals but were properly brought onto the tax rolls for the omitted tax years under Tex. Tax Code Ann. § 25.21, and city mailed taxpayer supplemental tax bills that met the requirements of Tex. Tax Code Ann. §§ 26.15 and 31.01 advising taxpayer of the supplemental ad valorem taxes and the deadline to pay them, city met the requirements of Tex. Tax Code Ann. §§ 25.23 and § 25.19 because the appraisal form did not have to state the reason for the change in appraised value; the dramatic increase in the property values compared with previous notices was obvious, and taxpayer knew after erecting a large improvement that there should be tax consequences due to the value of the improvements. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

Appraiser was required to back-appraise and assess taxes upon the discovery of property erroneously exempted for the past five years under Tex. Tax Code Ann. § 11.43(i) and petitioners were entitled to challenge a refusal to back-appraise under Tex. Tax Code Annotated §§ 11.43(i) and 25.21. Atascosa County v. Atascosa County Appraisal Dist., 990 S.W.2d 255, 1999 Tex. LEXIS 34 (Tex. 1999).

Assessment of back taxes for improvements on property was permissible when appraisal district failed to assess taxes, because Tex. Tax Code Ann. § 25.21 did not prohibit correction of erroneous appraisal if within five-year deadline for collection of back taxes. Harris County Appraisal Dist. v. Reynolds/Texas, J.V., 884 S.W.2d 526, 1994 Tex. App. LEXIS 2090 (Tex. App. El Paso Aug. 18, 1994, no writ).

ASSESSMENT METHODS & TIMING. — Taxpayers did not have to exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a) in challenging the validity of notices for omitted city tax bills, which purported to be under the authority of Tex. Tax Code Ann. § 25.21, because an exception applied for govern-

mental actions taken without statutory authority. Section 25.21 provides no remedy for omitted taxing units, which have a separate definition from property in Tex. Tax Code Ann. § 1.04; the county's supplemental appraisal records did not specify the omitted years under Tex. Tax Code Ann. § 25.23(a)(10); and Tex. Tax Code Ann. § 11.43(i) was inapplicable because no exemption was involved. Brennan v. City of Willow Park, No. 02-11-00265-CV, 2012 Tex. App. LEXIS 4943 (Tex. App. Fort Worth June 21, 2012), op. withdrawn, sub. op., 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012).

VALUATION. — Take-nothing judgment was properly entered against a taxpayer in a dispute regarding the appraisal of certain business personal property because the taxpayer did not carry its burden of showing that a second account, which was created to value omitted property under Tex. Tax Code Ann. § 25.21(a), was unauthorized; the record contained evidence consistent with omitted property. The taxpayer identified property in each of the categories of property that were not included on an appraisal summary; further, the yearly-itemized purchases that were included could have shown appraisers that more property existed than what they observed. Cenveo Corp. v. Dallas Cent. Appraisal Dist., 260 S.W.3d 713, 2008 Tex. App. LEXIS 6188 (Tex. App. Dallas Aug. 15, 2008, no pet.).

EXEMPTIONS. — In a case in which the disabled veteran tax exemption was removed from property that married taxpayers owned after discovering that the husband, a 100 percent permanently disabled United States Army veteran, was no longer a Texas resident, the chief appraiser had legal authority to remove the tax exemption from the taxpayers' property, and he correctly concluded that, as a nonresident of Texas, the husband was not entitled to the disabled veteran tax exemption. Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699, 2012 Tex. App. LEXIS 3837 (Tex. App. San Antonio May 16, 2012, no pet.).

Sec. 25.22. Submission for Review and Protest.

(a) By May 15 or as soon thereafter as practicable, the chief appraiser shall submit the completed appraisal records to the appraisal review board for review and determination of protests. However, the chief appraiser may not submit the records until the chief appraiser has delivered the notices required by Subsection (d) of Section 11.45, Subsection (d) of Section 23.44, Subsection (d) of Section 23.57, Subsection (d) of Section 23.79, Subsection (d) of Section 23.85, Subsection (d) of Section 23.95, Subsection (d) of Section 23.9805, and Section 25.19.

(b) The chief appraiser shall make and subscribe an affidavit on the submission substantially as follows:

"I, ____, (Chief Appraiser) for _____ solemnly swear that I have made or caused to be made a diligent inquiry to ascertain all property in the district subject to appraisal by me and that I have included in the records all property that I am aware of at an appraised value determined as required by law."

(c) The chief appraiser may require of his employees who are engaged in listing and appraising property an affidavit similar to his own.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 110, effective January 1, 1982; am. Acts 1981, 67th Leg., ch. 581 (S.B. 970), § 2, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 312 (H.B. 2301), § 3, effective June 7, 1985; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 26, effective September 1, 1989; am. Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 7, effective September 1, 1999.

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Assessments. — Appraisal review board's order forbidding an appraisal district from changing the applicable appraisal records did not preclude the use of supplemental appraisal records, which were part of the appraisal roll. Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 2014 Tex. App. LEXIS 3030 (Tex. App. El Paso Mar. 19, 2014, no pet.).

TAXPAYER PROTESTS. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

VALUATION. — County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in

writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

Sec. 25.23. Supplemental Appraisal Records.

(a) After submission of appraisal records, the chief appraiser shall prepare supplemental appraisal records listing:

(1) each taxable property the chief appraiser discovers that is not included in the records already submitted, including property that was omitted from an appraisal roll in a prior tax year;

(2) property on which the appraisal review board has not determined a protest at the time of its approval of the appraisal records; and

(3) property that qualifies for an exemption under Section 11.13(n) that was adopted by the governing body of a taxing unit after the date the appraisal records were submitted.

(a-1) **[Expired December 31, 2016]**

(b) Supplemental appraisal records shall be in the form prescribed by the comptroller and shall include the items required by Section 25.02 of this code.

(c) As soon as practicable after determining the appraised value of a property listed in supplemental appraisal records, the chief appraiser shall deliver the notice required by Section 25.19, if applicable, and submit the records for review and determination of protest as provided by Section 25.22.

(d) Supplemental appraisal records are subject to review, protest, and appeal as provided by Chapters 41 and 42 of this code. However, a property owner must file a notice of protest within 30 days after the date notice is delivered as required by Section 25.19. If a property owner files a notice of protest, the appraisal review board shall hear and determine the protest within 30 days after the filing of the protest or as soon thereafter as practicable. If a property owner does not file a protest within the protest deadline, the appraisal review board shall complete its review of the supplemental appraisal records within 30 days after the protest deadline or as soon thereafter as practicable.

(e) The chief appraiser shall add supplemental appraisal records, as changed by the appraisal review board and approved by that board, to the appraisal roll for the district and certify the addition to the taxing units.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 111, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 884 (H.B. 1446), § 2, effective January 1, 1984; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 27, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 43, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 1.3, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1199 (S.B. 435), § 2, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 465 (S.B. 1), § 3, effective June 15, 2015.

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CIVIL PROCEDURE
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Exhaustion of Remedies

Exceptions. — Taxpayers did not have to exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a) in challenging the validity of notices for omitted city tax bills, which purported to be under the authority of Tex. Tax Code Ann. § 25.21, because an exception applied for governmental actions taken without statutory authority. Section 25.21 provides no remedy for omitted taxing units, which have a separate definition from property in Tex. Tax Code Ann. § 1.04; the county's supplemental appraisal records did not specify the omitted years under Tex. Tax Code Ann. § 25.23(a)(10); and Tex. Tax Code Ann. § 11.43(i) was inapplicable because no exemption was involved. Brennan v. City of Willow Park, No. 02-11-00265-CV, 2012 Tex. App. LEXIS 4943 (Tex. App. Fort Worth June 21, 2012), op. withdrawn, sub. op., 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012).

SUMMARY JUDGMENT
Burdens of Production & Proof

Movants. — Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

TAX LAW
State & Local Taxes
Administration & Proceedings

Assessments. — Appraisal district could add omitted personal property that had been disclosed in an amnesty rendition after the assessment date, and it did not act retroactively because it began adding the property in the same tax year. Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 2014 Tex. App. LEXIS 3030 (Tex. App. El Paso Mar. 19, 2014, no pet.).

Appraisal review board's order forbidding an appraisal district from changing the applicable appraisal records did not preclude the use of supplemental appraisal records, which were part of the appraisal roll. Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 2014 Tex. App. LEXIS 3030 (Tex. App. El Paso Mar. 19, 2014, no pet.).

When appellant homeowners received notices pursuant to Tex. Tax Code Ann. § 25.21 that their properties had been omitted from the appraisal rolls and they owed back taxes for the past five years, appellants pleaded claims for declaratory judgment, injunctive relief, and mandamus against appellees, the city, the county appraisal district, the appraisal review board members, and the county tax assessor; the trial court erred by granting appellees' plea to the jurisdiction. Sovereign immunity was waived by actions taken by government officials that were outside the scope of their authority because no remedy was provided in § 25.21 for omitted taxing units; appellees acted outside their statutorily authorized power by utilizing Tex. Tax Code Ann. §§ 25.21, 25.23(a)(1) to assess back city taxes against appellants based on the omission of taxing units from the district's appraisal records. Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

DEFICIENCIES. — When appellant homeowners received notices pursuant to Tex. Tax Code Ann. § 25.21 that their properties had been omitted from the appraisal rolls and they owed back taxes for the past five years, appellants pleaded claims for declaratory judgment, injunctive relief, and mandamus against appellees, the city, the county appraisal district, the appraisal review board members, and the county tax assessor; the trial court erred by granting appellees' plea to the jurisdiction. Sovereign immunity was waived by actions taken by government officials that were outside the scope of their authority because no remedy was provided in § 25.21 for omitted taxing units; appellees acted outside their statutorily authorized power by utilizing Tex. Tax Code Ann. §§ 25.21, 25.23(a)(1) to assess back city taxes against appellants based on the omission of taxing units from the district's appraisal records. Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

JUDICIAL REVIEW. — Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

PERSONAL PROPERTY TAX
Tangible Property

General Overview. — Tex. Tax Code Ann. § 22.23(c) abrogated taxing authorities' powers to assess back taxes for omitted property for tax years 2001 and 2002, and the court found no language in the statute that repealed the authorities' power under Tex. Tax Code Ann. §§ 25.21, 25.23 to include previously omitted personal property in the appraisal roll for the current tax year, 2003. The authorities acted within statutory authority under all these sections when they augmented the appraisal roll to reflect omitted property the taxpayers rendered pursuant to Tex. Tax Code Ann. § 22.23(c), and Tex. Tax Code Ann. § 25.25 did not apply to this case. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

REAL PROPERTY TAX. — Taxpayer was properly held liable for delinquent property taxes on the ground that the county had provided notice to the taxpayer of the change in the reappraisal of the properties as required under Tex. Tax Code Ann. § 25.23(c), to include the new warehouse and the warehouses that had been previously omitted; the taxpayer did not protest the changes, and had constructive notice that a change would occur due to the construction of the new warehouse. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

REAL PROPERTY TAX
Assessment & Valuation

Assessment Methods & Timing. — Taxpayers did not have to exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a) in challenging the validity of notices for omitted city tax bills, which purported to be under the authority of Tex. Tax Code Ann. § 25.21, because an exception applied for governmental actions taken without statutory authority. Section 25.21 provides no remedy for omitted taxing units, which have a separate definition from property in Tex. Tax Code Ann. § 1.04; the county's supplemental appraisal records did not specify the omitted years under Tex. Tax Code Ann. § 25.23(a)(10); and Tex. Tax Code Ann. § 11.43(i) was inapplicable because no exemption was involved. Brennan v. City of Willow Park, No. 02-11-00265-CV, 2012 Tex. App. LEXIS 4943 (Tex. App. Fort Worth June 21, 2012), op. withdrawn, sub. op., 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012).

Sec. 25.24. Appraisal Roll.

The appraisal records, as changed by order of the appraisal review board and approved by that board, constitute the appraisal roll for the district.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 112, effective January 1, 1982.

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TAX LAW
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Administration & Proceedings

Assessments. — Appraisal review board's order forbidding an appraisal district from changing the applicable appraisal records did not preclude the use of supplemental appraisal records, which were part of the appraisal roll as defined in this section. Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 2014 Tex. App. LEXIS 3030 (Tex. App. El Paso Mar. 19, 2014, no pet.).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — Appraisal review board was permitted to change the value of the landowner's property by correcting the square footage contained in the appraisal district's records even though the appraisal roll's description of the property was correct; if a property owner was allowed to correct its "clerical error" in a form that underlay the appraisal rolls, there was no reason why the district could not correct its "clerical errors" in a form that underlay the appraisal rolls. Handy Hardware Wholesale, Inc. v. Harris County Appraisal Dist., 985 S.W.2d 618, 1999 Tex. App. LEXIS 240 (Tex. App. Houston 1st Dist. Jan. 12, 1999, no pet.).

Sec. 25.25. Correction of Appraisal Roll.

(a) Except as provided by Chapters 41 and 42 of this code and by this section, the appraisal roll may not be changed.

(b) The chief appraiser may change the appraisal roll at any time to correct a name or address, a determination of ownership, a description of property, multiple appraisals of a property, an erroneous denial or cancellation of any exemption authorized by Section 11.13 if the applicant or recipient is disabled or is 65 or older or an exemption authorized by Section 11.13(q), 11.131, or 11.22, or a clerical error or other inaccuracy as prescribed by board rule that does not increase the amount of tax liability. Before the 10th day after the end of each calendar quarter, the chief appraiser shall submit to the appraisal review board and to the board of directors of the appraisal district a written report of each change made under this subsection that decreases the tax liability of the owner of the property. The report must include:

(1) a description of each property; and

(2) the name of the owner of that property.

(c) The appraisal review board, on motion of the chief appraiser or of a property owner, may direct by written order changes in the appraisal roll for any of the five preceding years to correct:

(1) clerical errors that affect a property owner's liability for a tax imposed in that tax year;

(2) multiple appraisals of a property in that tax year;

(3) the inclusion of property that does not exist in the form or at the location described in the appraisal roll; or

(4) an error in which property is shown as owned by a person who did not own the property on January 1 of that tax year.

(d) At any time prior to the date the taxes become delinquent, a property owner or the chief appraiser may file a motion with the appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value for the owner's property. However, the error may not be corrected unless it resulted in an appraised value that exceeds by more than:

(1) one-fourth the correct appraised value, in the case of property that qualifies as the owner's residence homestead under Section 11.13; or

(2) one-third the correct appraised value, in the case of property that does not qualify as the owner's residence homestead under Section 11.13.

(d-1) If the appraisal roll is changed under Subsection (d), the property owner must pay to each affected taxing unit a late-correction penalty equal to 10 percent of the amount of taxes as calculated on the basis of the corrected appraised value. Payment of the late-correction penalty is secured by the lien that attaches to the property under Section 32.01 and is subject to enforced collection under Chapter 33. The roll may not be changed under Subsection (d) if:

(1) the property was the subject of a protest brought by the property owner under Chapter 41, a hearing on the protest was conducted in which the property owner offered evidence or argument, and the appraisal review board made a determination of the protest on the merits; or

(2) the appraised value of the property was established as a result of a written agreement between the property owner or the owner's agent and the appraisal district.

(e) If the chief appraiser and the property owner do not agree to the correction before the 15th day after the date the motion is filed, a party bringing a motion under Subsection (c) or (d) is entitled on request to a hearing on and a determination of the motion by the appraisal review board. A party bringing a motion under this section must describe the error or errors that the motion is seeking to correct. Not later than 15 days before the date of the hearing, the board shall deliver written notice of the date, time, and place of the hearing to the chief appraiser, the property owner, and the presiding officer of the governing body of each taxing unit in which the property is located. The chief appraiser, the property owner, and each taxing unit are entitled to present evidence and argument at the hearing and to receive written notice of the board's determination of the motion. The property owner is entitled to elect to present the owner's evidence and argument before, after, or between the cases presented by the chief appraiser and each taxing unit. A

property owner who files the motion must comply with the payment requirements of Section 25.26 or forfeit the right to a final determination of the motion.

(f) The chief appraiser shall certify each change made as provided by this section to the assessor for each unit affected by the change within five days after the date the change is entered.

(g) Within 60 days after receiving notice of the appraisal review board's determination of a motion under this section or of a determination of the appraisal review board that the property owner has forfeited the right to a final determination of a motion under this section for failing to comply with the prepayment requirements of Section 25.26, the property owner or the chief appraiser may file suit to compel the board to order a change in the appraisal roll as required by this section. A taxing unit may not be made a party to a suit filed by a property owner or chief appraiser under this subsection.

(g-1) In a suit filed under Subsection (g), if a hearing to review and determine compliance with Section 25.26 is requested, the movant must mail notice of the hearing by certified mail, return receipt requested, to the collector for each taxing unit that imposes taxes on the property not later than the 45th day before the date of the hearing.

(g-2) Regardless of whether the collector for the taxing unit receives a notice under Subsection (g-1), a taxing unit that imposes taxes on the property may intervene in a suit filed under Subsection (g) and participate in the proceedings for the limited purpose of determining whether the property owner has complied with Section 25.26. The taxing unit is entitled to process for witnesses and evidence and to be heard by the court.

(h) The appraisal review board, on the joint motion of the property owner and the chief appraiser filed at any time prior to the date the taxes become delinquent, shall by written order correct an error that resulted in an incorrect appraised value for the owner's property.

(i) A person who acquires property after January 1 of the tax year at issue is entitled to file any motion that this section authorizes the person who owned the property on January 1 of that year to file, if the deadline for filing the motion has not passed.

(j) If during the pendency of a motion under this section the ownership of property subject to the motion changes, the new owner of the property is entitled to proceed with the motion in the same manner as the property owner who filed the motion.

(k) The chief appraiser shall change the appraisal records and school district appraisal rolls promptly to reflect the detachment and annexation of property among school districts under Subchapter C or G, Chapter 49, Education Code.

(*l*) A motion may be filed under Subsection (c) regardless of whether, for a tax year to which the motion relates, the owner of the property protested under Chapter 41 an action relating to the value of the property that is the subject of the motion.

(m) The hearing on a motion under Subsection (c) or (d) shall be conducted in the manner provided by Subchapter C, Chapter 41.

(n) After a chief appraiser certifies a change under Subsection (b) that corrects multiple appraisals of a property, the liability of a taxing unit for a refund of taxes under Section 26.15(f), and any penalty or interest on those taxes, is limited to taxes paid for the tax year in which the appraisal roll is changed and the four tax years preceding that year.

(o) The failure or refusal of a chief appraiser to change an appraisal roll under Subsection (b) is not:

(1) an action that the appraisal review board is authorized to determine under this section;

(2) an action that may be the subject of a suit to compel filed under Subsection (g);

(3) an action that a property owner is entitled to protest under Section 41.41; or

(4) an action that may be appealed under Chapter 42.

(p) Not later than the 45th day after the date a dispute or error described by Section 72.010(c), Local Government Code, is resolved by an agreement between the taxing units under Section 31.112(c) of this code or by a final order of the supreme court entered under Section 72.010, Local Government Code, the chief appraiser of each applicable appraisal district shall correct the appraisal roll and other appropriate records as necessary to reflect the agreement or order.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 113, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 826 (S.B. 978), § 1, effective June 15, 1985; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 28, effective January 1, 1990; am. Acts 1989, 71st Leg., ch. 829 (S.B. 379), § 1, effective June 14, 1989; am. Acts 1991, 72nd Leg., ch. 367 (H.B. 507), § 2, effective January 1, 1992; am. Acts 1991, 72nd Leg., ch. 393 (S.B. 514), § 2, effective June 10, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.12, effective May 31, 1993; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 2, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(48), effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.76, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 177 (H.B. 581), § 1, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 26, effective January 1, 1998; am. Acts 2001, 77th Leg., ch. 439 (S.B. 865), § 1, effective May 28, 2001; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 6, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 7, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 103 (S.B. 1341), § 1, effective May 20, 2011; am. Acts 2011, 82nd Leg., ch. 445 (S.B. 1404), § 1, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 660 (S.B. 1441), § 1, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 6, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 793 (H.B. 2220), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 19.002, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 65 (S.B. 945), § 1, effective May 22, 2017; am. Acts 2017, 85th Leg., ch. 768 (S.B. 2242), § 2, effective June 12, 2017; am. Acts 2017, 85th Leg., ch. 939 (S.B. 1767), § 1, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.091, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1102 (H.B. 2159), § 1, effective June 14, 2019.

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ADMINISTRATIVE LAW
Judicial Review
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Jurisdiction & Venue. — Because a property owner did not file its motion with the appraisal review board before the yearly taxes became delinquent, as required by Tex. Tax Code Ann. § 25.25(d), the property owner did not satisfy the jurisdictional prerequisites necessary to pursue judicial review of the contested appraised market value, and the trial court lacked jurisdiction to hear the matter despite the fact that the property owner filed its motion within 45 days of the board's order as provided in Tex. Tax Code Ann. § 25.25(g). Tarrant Appraisal Dist. v. Gateway Ctr. Assocs., 34 S.W.3d 712, 2000 Tex. App. LEXIS 8454 (Tex. App. Fort Worth Dec. 21, 2000, no pet.).

In an appraisal dispute, the lower court properly determined that it did not have jurisdiction because corporation sent petition for judicial review by Federal Express on the 45th day after appraisal board's decision, petition was late because it was received 3 days later; therefore corporation did not comply with the requirements of Tex. Tax Code Ann. § 25.25 (g), which also states that the document had to be sent through the United States Postal Service. Fountain Parkway v. Tarrant Appraisal Dist., 920 S.W.2d 799, 1996 Tex. App. LEXIS 1124 (Tex. App. Fort Worth Mar. 21, 1996, writ denied).

PRESERVATION FOR REVIEW. — Taxpayers were properly granted an agricultural-use valuation where they met the jurisdictional requirements for judicial review and timely filed their petition for review after denial due to clerical error. Cooke County Tax Appraisal v. Teel, No. 2-03-115-CV, 2003 Tex. App. LEXIS 10017 (Tex. App. Fort Worth Nov. 26, 2003), op. withdrawn, sub. op., reh'g denied, 129 S.W.3d 724, 2004 Tex. App. LEXIS 1153 (Tex. App. Fort Worth Feb. 5, 2004).

CIVIL PROCEDURE
Declaratory Judgment Actions

General Overview. — Trial court did not abuse its discretion in denying a corporate taxpayer's request for attorney fees under the Texas Uniform Declaratory Judgments Act (UDJA), Tex. Civ. Prac. & Rem. Code Ann. § 37.009, because the taxpayer had availed itself of its administrative remedy under the tax code, and because the UDJA could not be used to circumvent the code; because the taxpayer's declaratory judgment action sought reversal of an appraisal district's determination that the taxpayer had property that was omitted from the appraisal roll and did not challenge the constitutionality of an administrative rule or tax protest statute, or that the district was exercising enforcement powers that were reserved to another agency, the requested declaratory relief was redundant to that sought in the taxpayer's tax protest, with the exception of its request for attorney fees. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

SUMMARY JUDGMENT
Burdens of Production & Proof

Movants. — Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

TRIALS
Judgment as Matter of Law

General Overview. — In a case tried pursuant to Tex. R. Civ. P. 263, Texas case law stated that a prior year's tax appraisal roll could not be corrected under Tex. Tax. Code Ann. § 25.25(c)(3) to reflect previously unrequested interstate allocation of property; thus, the trial court erred in rendering judgment for the taxpayer ordering the county appraisal district to correct the tax rolls for four previous tax years to reflect interstate allocation for the

business aircraft owned by the taxpayer. Harris County Appraisal Dist. v. Panhandle E. Pipeline Co., No. 01-02-00282-CV, 2004 Tex. App. LEXIS 240 (Tex. App. Houston 1st Dist. Jan. 8, 2004).

In a case tried on agreed facts pursuant to Tex. R. Civ. P. 263, the trial court should have applied precedent that a prior year's appraisal roll could not be corrected under Tex. Tax. Code Ann. § 25.25(c)(3) to reflect previously unrequested interstate allocation of property; thus, the trial court erred by rendering judgment for the taxpayer ordering the county appraisal district to correct the tax appraisal rolls for two previous tax years to reflect interstate allocation for the business aircraft owned by the taxpayer. Harris County Appraisal Dist. v. Trunkline Gas Corp., No. 01-02-00289-CV, 2004 Tex. App. LEXIS 241 (Tex. App. Houston 1st Dist. Jan. 8, 2004).

REMEDIES
Costs & Attorney Fees

General Overview. — Trial court did not abuse its discretion in denying a corporate taxpayer's request for attorney fees under the Texas Uniform Declaratory Judgments Act (UDJA), Tex. Civ. Prac. & Rem. Code Ann. § 37.009, because the taxpayer had availed itself of its administrative remedy under the tax code, and because the UDJA could not be used to circumvent the code; because the taxpayer's declaratory judgment action sought reversal of an appraisal district's determination that the taxpayer had property that was omitted from the appraisal roll and did not challenge the constitutionality of an administrative rule or tax protest statute, or that the district was exercising enforcement powers that were reserved to another agency, the requested declaratory relief was redundant to that sought in the taxpayer's tax protest, with the exception of its request for attorney fees. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

APPEALS
Reviewability

General Overview. — Trial court did not err in concluding that Tex. Tax Code Ann. § 25.25(c)(3) could not be used to obtain an interstate allocation of value for business personal property and that Tex. Tax Code Ann. § 21.055 could not be used as the measure to allocate the value of business aircraft used continuously outside of Texas for the tax year 1998; where the appellate court held that Tex. Tax Code Ann. § 25.25(c)(3) did not provide for such an allocation, it did not reach the leasing business's second issue pursuant to Tex. R. App. P. 47.1. CIT Leasing Corp. v. Tarrant Appraisal Review Bd., No. 2-02-294-CV, 2003 Tex. App. LEXIS 6217 (Tex. App. Fort Worth July 17, 2003).

STANDARDS OF REVIEW

De Novo Review. — Trial court erred in ordering a county appraisal district and the county appraisal review board to correct an appraisal roll from a prior year in order to consider the interstate allocation for an airplane in a case submitted under Tex. R. Civ. P. 263, as such allocation was not previously requested; accordingly, pursuant to the appellate court's de novo review of that type of submitted case, it was found that correction under Tex. Tax Code Ann. § 25.25(c)(3) was not proper. Harris County Appraisal Dist. v. Liamaj Aviation, Inc., No. 01-02-01252-CV, 2004 Tex. App. LEXIS 848 (Tex. App. Houston 1st Dist. Jan. 29, 2004).

In an ad valorem tax case, the trial court erroneously granted summary judgment to an appraisal district and review board because the trial court's scope of review under Tex. Tax Code Ann § 25.25(g) was not limited to finding whether the district and review board performed their mandatory duties, the correct standard was substantial evidence de novo, which required the trial court to hear any evidence in existence at the time of the hearing and to determine if the district's and review board's order was tainted by fraud, bad faith, or abuse of discretion, or violated due process. Benmar Place, L.P. v. Harris County Appraisal Dist., 997 S.W.2d 282, 1999 Tex. App. LEXIS 2447 (Tex. App. Houston 14th Dist. Apr. 1, 1999, no pet.).

Substantial evidence de novo was the standard of review that applied in an action brought under Tex. Tax Code Ann. § 25.25(g) to compel an appraisal review board to correct the appraisal role where the taxes at issue were imposed prior to the effective date of Tex. Tax Code Ann. § 42.01. G.E. Am. Commun. v. Galveston Cent. Appraisal Dist., 979 S.W.2d 761, 1998 Tex. App. LEXIS 6451 (Tex. App. Houston 14th Dist. Oct. 15, 1998, no pet.).

CONSTITUTIONAL LAW
Bill of Rights
Fundamental Rights
Procedural Due Process

Scope of Protection. — In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

GOVERNMENTS
Courts

Judicial Precedents. — Where taxpayer did not initially request allocation and the appraisal of taxpayer's aircraft did not allocate value for use outside of Texas, the tax rolls for three prior tax years could not be corrected pursuant to Tex. Tax Code Ann. § 25.25(c)(3). Each of the arguments advanced by taxpayer on appeal had been explicitly rejected in prior caselaw. Harris County Appraisal Dist. v. Transcon. Gas Pipeline Corp., No. 01-02-00911-CV, 2004 Tex. App. LEXIS 639 (Tex. App. Houston 1st Dist. Jan. 22, 2004).

REAL PROPERTY LAW

Property Valuation. — The term "taxes" as used in Tex. Tax Code Ann § 25.25(d) refers only to the yearly property taxes. Any motion made pursuant to § 25.25(d), including a motion to correct the appraised market value of agricultural property, must be filed before the date the yearly property taxes — not the rollback taxes — on the subject land become delinquent. Tarrant Appraisal Dist. v. Gateway Ctr. Assocs., 34 S.W.3d 712, 2000 Tex. App. LEXIS 8454 (Tex. App. Fort Worth Dec. 21, 2000, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

Bankruptcy debtor was not entitled to untimely challenges to appraisals of the debtor's residential real estate development under Tex. Tax Code Ann. § 25.25(c)(3), since the appraisals of each lot in the development rather than appraisals of the development as a unit did not indicate that the property did not exist in the form or at the location described in the appraisal roll; there was real property divided into lots at the designated location, the physical description of the property as listed in the appraisal roll was thus accurate, and the failure to list the property as an inventory unit did not mean that the description was inaccurate. In re Breakwater Shores Partners, L.P., No. 10-61254, 2012 Bankr. LEXIS 1454 (Bankr. E.D. Tex. Apr. 5, 2012).

Hidalgo County Appraisal District's alleged failure to properly assess the market value of the taxpayer's inventory was not

clerical error, Tex. Tax Code Ann. § /Aa1.04(18), but as a result of error in methodology, procedure, and/or computation, and Tex. Tax Code Ann. § /Aa25.25(c) was not available to remedy issues pertaining to disputed property valuations. Lack's Valley Stores, Ltd. v. Hidalgo County Appraisal Dist., No. 13-10-500-CV, 2011 Tex. App. LEXIS 4752 (Tex. App. Corpus Christi June 23, 2011), pet. dism'd w.o.j. No. 11-0590, 2011 Tex. LEXIS 997 (Tex. Dec. 16, 2011).

Trial court did not abuse its discretion in denying a corporate taxpayer's request for attorney fees under the Texas Uniform Declaratory Judgments Act (UDJA), Tex. Civ. Prac. & Rem. Code Ann. § 37.009, because the taxpayer had availed itself of its administrative remedy under the tax code, and because the UDJA could not be used to circumvent the code; because the taxpayer's declaratory judgment action sought reversal of an appraisal district's determination that the taxpayer had property that was omitted from the appraisal roll and did not challenge the constitutionality of an administrative rule or tax protest statute, or that the district was exercising enforcement powers that were reserved to another agency, the requested declaratory relief was redundant to that sought in the taxpayer's tax protest, with the exception of its request for attorney fees. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

Trial court erred by granting an appraisal district's motion to dismiss as to the valuation question in a property owner's declaratory judgment action. Because the owner filed a Tex. Tax Code Ann. § 25.25 motion to correct the appraisal roll, the trial court could decide whether the appraisal review board properly denied the owner's § 25.25 motion. Interstate Apt. Enters., L.C. v. Wichita Appraisal Dist., 164 S.W.3d 448, 2005 Tex. App. LEXIS 3060 (Tex. App. Fort Worth Apr. 21, 2005, no pet.).

In an ad valorem property tax case, summary judgment in the taxing authorities' favor was proper as the taxpayer failed to establish that the alleged errors in the reporting of the value of its inventory was due to clerical error. Thus, the taxpayer did not establish that its alleged errors were subject to correction under Tex. Tax Code Ann. § 25.25(c). Marubeni Am. Corp. v. Harris County Appraisal Dist., 168 S.W.3d 860, 2004 Tex. App. LEXIS 9090 (Tex. App. Houston 1st Dist. Oct. 14, 2004, no pet.).

Grant of summary judgment in favor of the county in the corporation's action to compel the county appraisal review board to hold a hearing on the corporation's motion was improper where an unadjudicated protest did not bar a hearing under Tex. Tax Code Ann. § 25.25(d). Koger Equity, Inc. v. Bexar County Appraisal Review Bd., 123 S.W.3d 502, 2003 Tex. App. LEXIS 8602 (Tex. App. San Antonio Oct. 8, 2003, no pet.).

Allocating the value of the taxpayer's aircraft under Tex. Tax Code Ann. § 21.055 was affirmed because the appraisal roll could not be corrected under Tex. Tax Code Ann. § 25.25(c)(3) for interstate allocation, and the taxpayer's failure to timely submit allocation documentation precluded allocation for tax years 1996, 1997, and 1998 under Tex. Tax Code Ann. § 21.05 or any other section, and for tax year 1999, the aircraft was not a commercial aircraft under Tex. Tax Code Ann. § 21.05, as the record did not show that the aircraft's operator, the taxpayer's lessee, was a certificated air carrier. SLW Aviation v. Harris County Appraisal Dist., 105 S.W.3d 99, 2003 Tex. App. LEXIS 2727 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Judgment rendered in favor of the taxpayer ordering the Harris County (Texas) Appraisal District to correct the appraisal rolls to take into account interstate allocation for two aircraft owned by the taxpayer was reversed because the taxpayer did not provide information showing entitlement to allocation at the time of rendition to be entitled to allocation under the Tax Code, and the appraisal roll could not be corrected for interstate allocation under Tex. Tax Code Ann. § 25.25(c)(3). Harris County Appraisal Dist. & Harris County Appraisal Review Bd. v. JW Charter, Inc., No. 01-02-00063-CV, 2003 Tex. App. LEXIS 2728 (Tex. App. Houston 1st Dist. Mar. 27, 2003).

Under Tex. Tax Code Ann. § 25.25(c)(3), the phrase "does not exist in the form or location described in the appraisal roll" refers to property that does not have any physical location in Texas throughout the entire taxable year; Tex. Tax Code Ann. § 25.25(c)(3) therefore does not permit a change in the appraisal roll for interstate allocation of personal property Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Tex. Tax Code Ann. § 25.25(c)(3) cannot be interpreted to allow a change in the appraisal roll for interstate allocation in any of the preceding five years, without penalty, because such an interpretation would nullify the specific requirements set forth in Tex. Tax Code Ann. § 25.25(d) for changing incorrect appraisal values, in violation of the rule that the court may not interpret one portion of a statute so as to render another portion of the statute meaningless. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Tex. Tax Code Ann. § 25.25(c)(3) does not allow appraisal rolls to be corrected for interstate allocation. SLW Aviation v. Harris County Appraisal Dist., 105 S.W.3d 99, 2003 Tex. App. LEXIS 2727 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Tex. Tax Code Ann. § 25.25(c)(3) did not allow a correction in appraisal rolls to take into account interstate allocation for an aircraft owned by a taxpayer because Tex. Tax Code Ann. § 25.25(c)(3) did not allow appraisal rolls to be corrected for interstate allocation. SLW Aviation v. Harris County Appraisal Dist., 105 S.W.3d 99, 2003 Tex. App. LEXIS 2727 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Under Tex. Tax Code Ann. § 25.25, a correction is allowed only when no property exists in the form or at the location described in the appraisal roll. Harris County Appraisal Dist. v. Tex. E. Transmission Corp., 99 S.W.3d 849, 2003 Tex. App. LEXIS 1699 (Tex. App. Houston 14th Dist. Feb. 27, 2003, no pet.).

If no property exists at the location described, a correction of the appraisal roll is required under Tex. Tax Code Ann. § 25.25. Harris County Appraisal Dist. v. Tex. E. Transmission Corp., 99 S.W.3d 849, 2003 Tex. App. LEXIS 1699 (Tex. App. Houston 14th Dist. Feb. 27, 2003, no pet.).

Tex. Tax Code Ann. § 25.25 does not authorize an allocation just because the property exists at the location for a shorter amount of time than described on the appraisal roll. Harris County Appraisal Dist. v. Tex. E. Transmission Corp., 99 S.W.3d 849, 2003 Tex. App. LEXIS 1699 (Tex. App. Houston 14th Dist. Feb. 27, 2003, no pet.).

To receive a Tex. Tax Code Ann. § 25.25 correction, the appraisal roll must erroneously reflect that a particular form of property exists at a specified location and, in fact, no such property exists at that location. Harris County Appraisal Dist. v. Tex. E. Transmission Corp., 99 S.W.3d 849, 2003 Tex. App. LEXIS 1699 (Tex. App. Houston 14th Dist. Feb. 27, 2003, no pet.).

With regard to location of the property described in the tax rolls, Tex. Tax Code Ann. § 25.25(c)(3) requires that for any change in the tax roll to be allowed, the property must have been included in the tax roll, and if the property exists in the form described in the appraisal roll and at the location described in the appraisal roll, then § 25.25(c)(3) is not the proper remedy for relief. A & S Air Serv. v. Denton Cent. Appraisal Dist., 99 S.W.3d 340, 2003 Tex. App. LEXIS 1397 (Tex. App. Fort Worth Feb. 13, 2003, no pet.).

In a taxpayer's action to contest the appraisal of an aircraft used for business purposes both inside and outside the State of Texas, Tex. Tax Code Ann. § 25.25(c) did not authorize the trial court to correct county appraisal rolls to reflect business usage of the aircraft outside of Texas. A & S Air Serv. v. Denton Cent. Appraisal Dist., 99 S.W.3d 340, 2003 Tex. App. LEXIS 1397 (Tex. App. Fort Worth Feb. 13, 2003, no pet.).

Motion to correct under Tex. Tax Code Ann. § 25.25(c)(3) is not a proper means of seeking allocation of property used in interstate commerce. Kellair Aviation Co. v. Travis Cent. Appraisal Dist., 99 S.W.3d 704, 2003 Tex. App. LEXIS 1085 (Tex. App. Austin Feb. 6, 2003, no pet.).

Where a county appraisal review board denied an aviation company's motion to correct the appraisal roll, whereby the company sought allocation of the market value of its aircraft to reflect its use in Texas during a period from which the district appraised the aircraft, the contention of the company that Tex. Tax Code Ann. § 25.25 provided a remedy for obtaining allocation of the value of the company's aircraft for the years in question,

was without merit; because there was a stipulation that the aircraft did exist at the location, which was a legal situs for tax purposes, and did exist in the form described in the appraisal, the relief was not a proper remedy for the company's protest. Kellair Aviation Co. v. Travis Cent. Appraisal Dist., 99 S.W.3d 704, 2003 Tex. App. LEXIS 1085 (Tex. App. Austin Feb. 6, 2003, no pet.).

Although Tex. Tax Code Ann. §§ 25.25(c) and (d) contemplate the presentation of motions to and corrective action by an appraisal review board, Tex. Tax Code Ann. § 25.25(b) does not (1) contemplate the filing or presentation of any motion or protest, or (2) authorize the appraisal review board to change the appraisal role. Western Athletic Clubs v. Harris County Appraisal Dist., No. 07-00-0328-CV, No. 07-00-00328-CV, 2001 Tex. App. LEXIS 5190 (Tex. App. Amarillo Aug. 1, 2001), op. withdrawn, sub. op., 56 S.W.3d 269, 2001 Tex. App. LEXIS 5340 (Tex. App. Amarillo Aug. 8, 2001).

Although Tex. Tax Code Ann. § 25.25(e) authorizes presentation of motions made under Tex. Tax. Code Ann. §§ 25.25(c) and (d) to the appraisal review board and Tex. Tax Code Ann. § 25.25(m) provides that the hearings shall be conducted in the manner provided by Tex. Tax Code Ann. § 41(C), these provisions that afford access to a hearing by the board do not include a request for change under Tex. Tax Code Ann. § 25.25(b). Western Athletic Clubs v. Harris County Appraisal Dist., No. 07-00-0328-CV, No. 07-00-00328-CV, 2001 Tex. App. LEXIS 5190 (Tex. App. Amarillo Aug. 1, 2001), op. withdrawn, sub. op., 56 S.W.3d 269, 2001 Tex. App. LEXIS 5340 (Tex. App. Amarillo Aug. 8, 2001).

Tex. Tax Code Ann. § 25.25(b) does not give the appraisal review board statutory authority to review the chief appraiser's decision under § 25.25(b). Western Athletic Clubs v. Harris County Appraisal Dist., No. 07-00-0328-CV, No. 07-00-00328-CV, 2001 Tex. App. LEXIS 5190 (Tex. App. Amarillo Aug. 1, 2001), op. withdrawn, sub. op., 56 S.W.3d 269, 2001 Tex. App. LEXIS 5340 (Tex. App. Amarillo Aug. 8, 2001).

Under Tex. Tax Code Ann. § 25.25(d), a taxpayer may have filed a motion with the property tax appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value for the owner's property; however, the error may not have been corrected unless it resulted in an appraised value that exceeded by more than one-third the correct appraised value. Bexar Appraisal Dist. v. Wackenhut Corr. Corp., 52 S.W.3d 795, 2001 Tex. App. LEXIS 3502 (Tex. App. San Antonio May 30, 2001, no pet.).

In plaintiff taxpayer's protest of a tax imposed by defendant appraisal district, plaintiff's personal property could, for tax purposes under Tex. Tax Code Ann. § 25.25, have more than one situs. Aramco Associated Co. v. Harris County Appraisal Dist., 33 S.W.3d 361, 2000 Tex. App. LEXIS 7115 (Tex. App. Texarkana Oct. 24, 2000, no pet.).

A taxpayer that appealed the appraisal of his real estate by the county review board under Tex. Tax Code Ann. § 25.25, a provision that permitted only correction motions, was foreclosed from also pursuing arbitration under Tex. Tax Code Ann. § 41.41, which authorized arbitration as an avenue of appeal; the provisions were mutually exclusive and distinct, and the unambiguous language of § 42.01 foreclosed arbitration under Chapter 42 as an avenue of appeal from the corrective measure listed in § 25.25. Harris County Appraisal Dist. v. World Houston, 905 S.W.2d 594, 1995 Tex. App. LEXIS 2128 (Tex. App. Houston 14th Dist. Aug. 24, 1995, no writ).

Where a railway corporation did not follow the procedures set forth in Tex. Tax Code Ann. chs. 71 or 42, the corporation was not entitled to any correction in the appraisal roll unless the language of Tex. Tax Code Ann. § 25.25(c)(3) applied. Himont U.S.A. v. Harris County Appraisal Dist., 904 S.W.2d 740, 1995 Tex. App. LEXIS 1310 (Tex. App. Houston 1st Dist. June 15, 1995), limited, Robinson v. Budget Rent-A-Car Sys., 51 S.W.3d 425, 2001 Tex. App. LEXIS 3951 (Tex. App. Houston 1st Dist. June 14, 2001), overruled in part, Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003).

Under Tex. Tax Code Ann. § 25.25(c)(1), a county appraisal review board may order changes in the appraisal roll to correct clerical errors that affect a property owner's liability for a tax imposed in that tax year and multiple appraisals of a property in a tax year. Himont U.S.A. v. Harris County Appraisal Dist., 904 S.W.2d 740, 1995 Tex. App. LEXIS 1310 (Tex. App. Houston 1st Dist. June 15, 1995), limited, Robinson v. Budget Rent-A-Car Sys., 51 S.W.3d 425, 2001 Tex. App. LEXIS 3951 (Tex. App. Houston 1st Dist. June 14, 2001), overruled in part, Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003).

In addition to Tex. Tax Code Ann. § 42.23, Tex. Tax Code Ann. §§ 25.25, 26.15, and 31.11, which provide for the payment of a tax refund, indicate the doctrine of estoppel by rendition no longer precludes a refund to a taxpayer who challenges the taxation after submitting a rendition. Brooks County Cent. Appraisal Dist. v. Tipperary Energy Corp., 847 S.W.2d 592, 1992 Tex. App. LEXIS 3287 (Tex. App. San Antonio Nov. 30, 1992, no writ).

In a tax appraisal case, the ownership interests of the pertinent gas wells reflected on the appraisal roll did not constitute a clerical error under Tex. Tax. Code Ann. § 25.25(c) as a matter of law entitling the property owner to a correction because the property owner received a correct tax bill based upon the appraisal roll determination; although the property owner was taxed for a greater percent working interest that it owned, such error, if any existed, was judicial rather than clerical in nature. Matagorda County Appraisal Dist. v. Conquest Exploration Co., 788 S.W.2d 687, 108 Oil & Gas Rep. 402, 1990 Tex. App. LEXIS 930 (Tex. App. Corpus Christi Apr. 19, 1990, no writ).

ASSESSMENTS. — Appraisal district could add omitted personal property that had been disclosed in an amnesty rendition after the assessment date, and it did not act retroactively because it began adding the property in the same tax year. Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 2014 Tex. App. LEXIS 3030 (Tex. App. El Paso Mar. 19, 2014, no pet.).

Even assuming that the appraisal district had appraised the store's inventory incorrectly, evidence of this alone would be insufficient to establish the store's right to summary judgment under its Tex. Tax Code Ann. § 25.25(c) claim, and the store would still have to establish that the appraisal district's error was clerical; the appraisal district's alleged erroneous evaluation of the market value was not the result of an error in its calculation. Stacy Family Enters. v. Tarrant Appraisal Dist., No. 02-13-00170-CV, 2013 Tex. App. LEXIS 15015 (Tex. App. Fort Worth Dec. 12, 2013).

Taxpayer established the right to remove "inventory in transit," inventory located in California, and intangible "work in process" accounts from the appraisal roll for the 2008 tax year and the appraisal roll had be corrected to reflect that the taxpayer owned $29,742,953 worth of taxable personal property and was entitled to a tax refund. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., No. 01-12-00052-CV, 2013 Tex. App. LEXIS 10086 (Tex. App. Houston 1st Dist. Aug. 13, 2013).

Statute should be read and construed in conjunction with Tex. Tax Code Ann. chs. 41 and 42. Cameron Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 443 S.W.3d 212, 2013 Tex. App. LEXIS 9967 (Tex. App. Corpus Christi Aug. 8, 2013, no pet.).

Statute does not give the Appraisal District a complete and unilateral authority to correct issues of ownership, regardless of whether ownership was determined by the Appraisal Review Board. Cameron Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 443 S.W.3d 212, 2013 Tex. App. LEXIS 9967 (Tex. App. Corpus Christi Aug. 8, 2013, no pet.).

Decision in a company's favor was final and appealable subject to statutory procedures, and the district chose not to appeal, but then the district's chief appraiser reversed the review board's order and changed ownership of the property back to the company under his presumed authority; the appraiser's actions amounted to a prohibited collateral attack against the review board's order. Cameron Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 443 S.W.3d 212, 2013 Tex. App. LEXIS 9967 (Tex. App. Corpus Christi Aug. 8, 2013, no pet.).

Based on the language of Tex. Tax Code Ann. § /Aa25.25, the court concludes that sending a corrected tax statement does not alter the delinquency date calculation provided by Tex. Tax Code Ann. § 31.02. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Given that a taxpayer failed to pay taxes before the following February 1 of the tax years, the taxes were delinquent and the taxpayer was subject to penalties and interest, for purposes of Tex. Tax Code Ann. § 33.01(a), (c); Tex. Tax Code Ann. § 25.25 did not postpone the delinquency dates, for purposes of Tex. Tax Code Ann. § 31.02, where the taxpayer failed to pay assessments before the following February 1 of the tax years in question. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Trial court erred in reducing the taxpayer's appraised value of its aircraft where, pursuant to Tex. Tax Code Ann. §§ 1.04(18) and 25.25(c), any error by the taxpayer in determining the value of its aircraft was not a clerical error as contemplated by statute. Dallas Cent. Appraisal Dist. v. Southwest Airlines Co., No. 05-10-00682-CV, 2012 Tex. App. LEXIS 518 (Tex. App. Dallas Jan. 24, 2012).

Because a taxpayer's allegations of error in a county appraisal district's evaluation method amounted to a difference of opinion as to the proper means to evaluate property, not of a clerical mistake, they could not fall within the parameters of Tex. Tax Code Ann. § 25.25, the statute under which the taxpayer sought relief. Lack's Stores, Inc. v. Gregg County Appraisal Dist., No. 06-10-00125-CV, 2011 Tex. App. LEXIS 7364 (Tex. App. Texarkana Sept. 9, 2011).

Executor failed to timely exhaust administrative remedies for tax year 2002 under Tex. Tax. Code Ann. § 25.25 because no motion was filed with the Board seeking correction of the appraisal roll for tax year 2002; therefore, no hearing could be held and there was no determination of the executor's motion from which he could appeal. Canales v. Kleberg County Appraisal Dist., No. 13-07-666-CV, 2008 Tex. App. LEXIS 6165 (Tex. App. Corpus Christi Aug. 14, 2008).

JUDICIAL REVIEW. — Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

TAXPAYER PROTESTS. — Trial court lacked jurisdiction to consider a taxpayer's claims regarding the valuation of two saltwater disposal wells for the 2007 tax year because the taxpayer's Tex. Tax Code Ann. § 25.25(c) motion to correct the appraisal roll raised an issue regarding a substantive reevaluation of the market value and was not the proper vehicle to address the protest. Key Energy Servs., LLC v. Shelby County Appraisal Dist., 428 S.W.3d 133, 2014 Tex. App. LEXIS 439 (Tex. App. Tyler Jan. 15, 2014, no pet.).

Taxpayer failed to exhaust its administrative remedies as to its complaint that its natural gas was exempt from taxation under the interstate commerce clause; thus, trial court lacked jurisdiction to address that complaint, Tex. Tax Code Ann. §§ 41.41, 41.47, and Tex. Tax Code Ann. § 25.25(c)(3) was not the appropriate vehicle for seeking the requested relief. Harris County Appraisal Dist. v. ETC Mktg., 399 S.W.3d 364, 2013 Tex. App. LEXIS 4177 (Tex. App. Houston 14th Dist. Apr. 2, 2013, no pet.).

In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

Trial court erred in reducing the taxpayer's appraised value of its aircraft where, pursuant to Tex. Tax Code Ann. §§ 1.04(18) and 25.25(c), any error by the taxpayer in determining the value of its aircraft was not a clerical error as contemplated by statute. Dallas Cent. Appraisal Dist. v. Southwest Airlines Co., No. 05-10-00682-CV, 2012 Tex. App. LEXIS 518 (Tex. App. Dallas Jan. 24, 2012).

County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

Appraisal review board panel denied taxpayers' protest because it exceeded the statute of limitations; because this case involved a correction motion, this statement most likely referred to Tex. Tax Code Ann. § 25.25(c). U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

As the court already found that taxpayers did not pay any portion of the assessed taxes, to avoid forfeiture, the taxpayers had to have filed an oath of inability to pay before the board considered the correction motions, under Tex. Tax Code Ann. § 25.25(e). U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

Under Tex. Tax Code Ann. § 25.25(e), taxpayers did not file an oath of inability to pay until 2009, more than a month after the board denied the taxpayers' correction motion for the 2003 tax year and dismissed motions regarding 2004 and 2005; because of this, the taxpayers forfeited the right to a final determination on the motions, and the trial court correctly found that the taxpayers did not substantially comply with Tex. Tax Code Ann. § 42.08, which was a prerequisite to the board determining the taxpayers' correction motions. U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

Taxpayers asserted that the appraisal records should be changed pursuant to both Tex. Tax Code Ann. § 25.25(c) and (d), although they classified the correction motion solely as a § 25.25(c) motion; it was undisputed that taxpayers did not file a correction motion pursuant to § 25.25(d) until more than two years after the taxes became delinquent. U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

No language within Tex. Tax Code Ann. § 42.25 limits its application to only Tex. Tax Code Ann. § 41.41(a) excessive appraisal challenges, and, because no such limitation exists within Tex. Tax Code Ann. § 42.25, there is no reason why property owners filing administrative challenges under Tex. Tax Code Ann. § 25.25(d) are precluded from seeking relief under Tex. Tax Code Ann. § 42.25 in a district court; an excessive appraisal challenge brought under Tex. Tax Code Ann. § 25.25(d) must allege the appraisal district over-valued a property by more than one-third; therefore, it logically follows that Tex. Tax Code Ann. § 42.25 applies on judicial review of such administrative chal-

lenge since Tex. Tax Code Ann. § 42.25 explicitly authorizes a court to remedy an excessive valuation by an appraisal district. Benson Chevrolet, Inc. v. Bexar Appraisal Dist., 242 S.W.3d 54, 2007 Tex. App. LEXIS 6452 (Tex. App. San Antonio Aug. 15, 2007), reh'g denied, No. 04-07-00204-CV, 2007 Tex. App. LEXIS 10109 (Tex. App. San Antonio Oct. 1, 2007).

In a case involving a tax reappraisal, a jurisdictional challenge should not have been granted because several property owners were permitted to seek relief under Tex. Tax Code Ann. § 42.25 without filing an administrative protest under Tex. Tax Code Ann. § 41.41(a); they filed a protest under Tex. Tax Code Ann. § 25.25 instead. Benson Chevrolet, Inc. v. Bexar Appraisal Dist., 242 S.W.3d 54, 2007 Tex. App. LEXIS 6452 (Tex. App. San Antonio Aug. 15, 2007), reh'g denied, No. 04-07-00204-CV, 2007 Tex. App. LEXIS 10109 (Tex. App. San Antonio Oct. 1, 2007).

PERSONAL PROPERTY TAX

General Overview. — Appraisal review board panel denied taxpayers' protest because it exceeded the statute of limitations; because this case involved a correction motion, this statement most likely referred to Tex. Tax Code Ann. § 25.25(c). U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

As the court already found that taxpayers did not pay any portion of the assessed taxes, to avoid forfeiture, the taxpayers had to have filed an oath of inability to pay before the board considered the correction motions, under Tex. Tax Code Ann. § 25.25(e). U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

Under Tex. Tax Code Ann. § 25.25(e), taxpayers did not file an oath of inability to pay until 2009, more than a month after the board denied the taxpayers' correction motion for the 2003 tax year and dismissed motions regarding 2004 and 2005; because of this, the taxpayers forfeited the right to a final determination on the motions, and the trial court correctly found that the taxpayers did not substantially comply with Tex. Tax Code Ann. § 42.08, which was a prerequisite to the board determining the taxpayers' correction motions. U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

Taxpayers asserted that the appraisal records should be changed pursuant to both Tex. Tax Code Ann. § 25.25(c) and (d), although they classified the correction motion solely as a § 25.25(c) motion; it was undisputed that taxpayers did not file a correction motion pursuant to § 25.25(d) until more than two years after the taxes became delinquent. U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

EXEMPT PROPERTY

General Overview. — Tex. Tax Code Ann. § 25.25 did not provide a remedy for a taxpayer's failure to request an interstate allocation of business aircraft exemption during the annual protest period, and even if it did, the provision contemplated non-existent property, not property that did exist in some form and at that location during the tax year. WB Summit Props. v. Midland Cent. Appraisal Dist., 122 S.W.3d 374, 2003 Tex. App. LEXIS 10045 (Tex. App. El Paso Nov. 26, 2003, no pet.).

INTANGIBLE PROPERTY

Imposition of Tax. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

TANGIBLE PROPERTY

General Overview. — Taxpayer failed to exhaust its administrative remedies as to its complaint that its natural gas was exempt from taxation under the interstate commerce clause; thus, trial court lacked jurisdiction to address that complaint, Tex. Tax Code Ann. §§ 41.41, 41.47, and Tex. Tax Code Ann. § 25.25(c)(3) was not the appropriate vehicle for seeking the requested relief. Harris County Appraisal Dist. v. ETC Mktg., 399 S.W.3d 364, 2013 Tex. App. LEXIS 4177 (Tex. App. Houston 14th Dist. Apr. 2, 2013, no pet.).

Tex. Tax Code Ann. § 22.23(c) abrogated taxing authorities' powers to assess back taxes for omitted property for tax years 2001 and 2002, and the court found no language in the statute that repealed the authorities' power under Tex. Tax Code Ann. §§ 25.21, 25.23 to include previously omitted personal property in the appraisal roll for the current tax year, 2003. The authorities acted within statutory authority under all these sections when they augmented the appraisal roll to reflect omitted property the taxpayers rendered pursuant to Tex. Tax Code Ann. § 22.23(c), and Tex. Tax Code Ann. § 25.25 did not apply to this case. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

Where taxpayer did not initially request allocation and the appraisal of taxpayer's aircraft did not allocate value for use outside of Texas, the tax rolls for three prior tax years could not be corrected pursuant to Tex. Tax Code Ann. § 25.25(c)(3). Each of the arguments advanced by taxpayer on appeal had been explicitly rejected in prior caselaw. Harris County Appraisal Dist. v. Transcon. Gas Pipeline Corp., No. 01-02-00911-CV, 2004 Tex. App. LEXIS 639 (Tex. App. Houston 1st Dist. Jan. 22, 2004).

Tex. Tax Code Ann. § 25.25(c)(3) did not provide a means to allocate the appraised value of a business aircraft; as such, the trial court erred by ordering changes to the tax roll. Harris County Appraisal Dist. v. Amerada Hess Corp., No. 14-02-01192-CV, 2003 Tex. App. LEXIS 5648 (Tex. App. Houston 14th Dist. July 3, 2003).

Finding in favor of the Harris County Appraisal District was proper where the Tax Code did not permit a change in the appraisal roll for interstate allocation for an aircraft belonging to the corporation and where the corporation had to show entitlement to interstate allocation since the language in Tex. Tax Code Ann. § 25.25(c)(3) refers to property that does not have any physical location in Texas throughout the entire taxable year. Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003, no pet.).

Tex. Tax Code Ann. § 25.25(c)(3) did not provide a means to allocate the appraised value of a business aircraft. Harris County Appraisal Dist. v. Tex. E. Transmission Corp., 99 S.W.3d 849, 2003 Tex. App. LEXIS 1699 (Tex. App. Houston 14th Dist. Feb. 27, 2003, no pet.).

A correction under Tex. Tax Code Ann. § 25.25(c)(3) was allowed only when no property existed in the form or at the location described in the appraisal roll, and if no property existed at the location described, a correction of the appraisal roll was required; however, Tex. Tax Code Ann. § 25.25(c)(3) did not authorize an allocation just because the property existed at the location for a shorter amount of time than described on the appraisal roll, in order to receive a Tex. Tax Code Ann. § 25.25(c)(3) correction, the appraisal roll had to erroneously reflect that a particular form of property existed at a specified location, and in fact, no such property existed at that location. Harris County Appraisal Dist. v. Tex. E. Transmission Corp., 99 S.W.3d 849, 2003 Tex. App. LEXIS 1699 (Tex. App. Houston 14th Dist. Feb. 27, 2003, no pet.).

Tex. Tax Code Ann. § 25.25 did not authorize the correction of the tax appraisal because for each of the years in question, the aircraft at issue was located within the boundaries of Denton County. A & S Air Serv. v. Denton Cent. Appraisal Dist., 99 S.W.3d 340, 2003 Tex. App. LEXIS 1397 (Tex. App. Fort Worth Feb. 13, 2003, no pet.).

Tex. Tax Code § 25.25(c)(1) allowed defendant appraisal review board to correct the appraisal roll for plaintiff taxpayer's clerical errors. Comdisco, Inc. v. Tarrant County Appraisal Dist., 927 S.W.2d 325, 1996 Tex. App. LEXIS 3485 (Tex. App. Fort Worth Aug. 8, 1996), writ ref'd No. 96-1083 (Tex. 1997).

Where a railway corporation operated its railcars in interstate commerce for most of a year, the portion of their value allocable for taxation in Texas was substantially less than reflected on the

appraisal roll, accordingly, the portion of corporation's railcars allocable to interstate commerce did not exist at the location described in the appraisal roll. Himont U.S.A. v. Harris County Appraisal Dist., 904 S.W.2d 740, 1995 Tex. App. LEXIS 1310 (Tex. App. Houston 1st Dist. June 15, 1995), limited, Robinson v. Budget Rent-A-Car Sys., 51 S.W.3d 425, 2001 Tex. App. LEXIS 3951 (Tex. App. Houston 1st Dist. June 14, 2001), overruled in part, Harris County Appraisal Dist. v. Tex. Gas Transmission Corp., 105 S.W.3d 88, 2003 Tex. App. LEXIS 2646 (Tex. App. Houston 1st Dist. Mar. 27, 2003).

LIMITATIONS. — Taxpayer established the right to remove "inventory in transit," inventory located in California, and intangible "work in process" accounts from the appraisal roll for the 2008 tax year and the appraisal roll had be corrected to reflect that the taxpayer owned $29,742,953 worth of taxable personal property and was entitled to a tax refund. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., No. 01-12-00052-CV, 2013 Tex. App. LEXIS 10086 (Tex. App. Houston 1st Dist. Aug. 13, 2013).

REAL PROPERTY TAX

General Overview. — Appellant taxpayer was not entitled to correction of the appraised value of his real property; the evidence was legally and factually sufficient to show that the appraised value of the taxpayer's property did not exceed the market value of the taxpayer's property by more than one-third as required under Tex. Tax Code Ann. § 25.25(d). Azad v. Harris County Appraisal Dist., No. 01-02-00684-CV, 2003 Tex. App. LEXIS 5774 (Tex. App. Houston 1st Dist. July 3, 2003).

A motion under Tex. Tax Code Ann. § 25.25(d) seeking to correct the appraised market value of agricultural land, however, should have been filed before the date the annual property taxes on the subject property became delinquent rather than the date a rollback tax imposed on the property became delinquent. Anderton v. Rockwall Cent. Appraisal Dist., 26 S.W.3d 539, 2000 Tex. App. LEXIS 5614 (Tex. App. Dallas Aug. 22, 2000, no pet.).

Trial court erred in denying appellant construction company's judicial review and correction of appellee appraisal board's valuation of appellant's property and appellant was entitled to a hearing where the notice of protest filed by the prior owners was withdrawn before it was adjudicated. Jim Sowell Constr. Co. v. Dallas Cent. Appraisal Dist., 900 S.W.2d 82, 1995 Tex. App. LEXIS 1463 (Tex. App. Dallas Apr. 4, 1995, writ denied).

ASSESSMENT & VALUATION

General Overview. — Executor failed to timely exhaust administrative remedies for tax year 2002 under Tex. Tax. Code Ann. § 25.25 because no motion was filed with the Board seeking correction of the appraisal roll for tax year 2002; therefore, no hearing could be held and there was no determination of the executor's motion from which he could appeal. Canales v. Kleberg County Appraisal Dist., No. 13-07-666-CV, 2008 Tex. App. LEXIS 6165 (Tex. App. Corpus Christi Aug. 14, 2008).

Business owner's motion to correct a personal property appraisal under Tex. Tax Code Ann. § 25.25(c)(3) was an improper method of seeking commercial aircraft interstate allocations. Curtis C. Gunn, Inc. v. Bexar County Appraisal Dist., 71 S.W.3d 425, 2002 Tex. App. LEXIS 99 (Tex. App. San Antonio Jan. 9, 2002, pet. filed).

Under Tex. Tax Code Ann. § 25.25(d), a taxpayer may have filed a motion with the property tax appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value for the owner's property; however, the error may not have been corrected unless it resulted in an appraised value that exceeded by more than one-third the correct appraised value. Bexar Appraisal Dist. v. Wackenhut Corr. Corp., 52 S.W.3d 795, 2001 Tex. App. LEXIS 3502 (Tex. App. San Antonio May 30, 2001, no pet.).

The term "taxes" as used in Tex. Tax Code Ann § 25.25(d) refers only to the yearly property taxes. Any motion made pursuant to § 25.25(d), including a motion to correct the appraised market value of agricultural property, must be filed before the date the yearly property taxes — not the rollback taxes — on the subject land become delinquent. Tarrant Appraisal Dist. v. Gateway Ctr. Assocs., 34 S.W.3d 712, 2000 Tex. App. LEXIS 8454 (Tex. App. Fort Worth Dec. 21, 2000, no pet.).

Appraisal review board was permitted to change the value of the landowner's property by correcting the square footage contained in the appraisal district's records even though the appraisal roll's description of the property was correct; if a property owner was allowed to correct its "clerical error" in a form that underlay the appraisal rolls, there was no reason why the district could not correct its "clerical errors" in a form that underlay the appraisal rolls. Handy Hardware Wholesale, Inc. v. Harris County Appraisal Dist., 985 S.W.2d 618, 1999 Tex. App. LEXIS 240 (Tex. App. Houston 1st Dist. Jan. 12, 1999, no pet.).

Property owners were not entitled to have their property's appraisal records for the 1989 tax year changed because the request was untimely under Tex. Tax Code Ann. § 25.25(c), as the statute required the property owner's to seek correction of the 1989 appraisal roll prior to January 1, 1994. Dallas Cent. Appraisal Dist. v. Lakeridge Wildwood Ass'n, No. 05-95-01160-CV, 1997 Tex. App. LEXIS 5237 (Tex. App. Dallas Oct. 2, 1997).

Property owners did not have standing under Tex. Tax Code Ann. § 25.25(d) to challenge the appraisal values of their properties for a given year where the previous owners of the property had already challenged the appraisals for that same year and had been afforded due process. Dallas Cent. Appraisal Dist. v. Park Stemmons, 948 S.W.2d 11, 1997 Tex. App. LEXIS 2555 (Tex. App. Dallas May 13, 1997, no writ).

Tex. Tax Code Ann. § 25.25(c)(1) did not provide a method to correct the appraisal roll for clerical or designation errors of the property owner; the legislature intended § 25.25(c)(1) to allow for the correction of clerical errors generated by the appraisal district. Collin County Appraisal Dist. v. Northeast Dallas Assocs., 855 S.W.2d 843, 1993 Tex. App. LEXIS 1907 (Tex. App. Dallas May 18, 1993, no writ).

Under Tex. Tax Code Ann. § 25.25(c)(3), the inclusion of property that did not exist "in the form or at the location" described in the appraisal roll did not mean only nonexistent property; the word "form" referred to the "distinctive appearance," which included boundaries, shape, or configuration of property. Collin County Appraisal Dist. v. Northeast Dallas Assocs., 855 S.W.2d 843, 1993 Tex. App. LEXIS 1907 (Tex. App. Dallas May 18, 1993, no writ).

Where a company challenged the grant of summary judgment in favor of an appraisal district and appraisal review board, summary judgment was improper; the statutory three year statute of limitation provided a right for a party to challenge inclusion of property in an appraisal roll where property was not at a taxable location or did not exist in the form described in the roll. Manitex, Inc. v. Hidalgo County Appraisal Dist., 850 S.W.2d 615, 1993 Tex. App. LEXIS 480 (Tex. App. Corpus Christi Feb. 18, 1993, no writ).

ASSESSMENT METHODS & TIMING. — Even assuming that the appraisal district had appraised the store's inventory incorrectly, evidence of this alone would be insufficient to establish the store's right to summary judgment under its Tex. Tax Code Ann. § 25.25(c) claim, and the store would still have to establish that the appraisal district's error was clerical; the appraisal district's alleged erroneous evaluation of the market value was not the result of an error in its calculation. Stacy Family Enters. v. Tarrant Appraisal Dist., No. 02-13-00170-CV, 2013 Tex. App. LEXIS 15015 (Tex. App. Fort Worth Dec. 12, 2013).

VALUATION. — Trial court lacked jurisdiction to consider a taxpayer's claims regarding the valuation of two saltwater disposal wells for the 2007 tax year because the taxpayer's Tex. Tax Code Ann. § 25.25(c) motion to correct the appraisal roll raised an issue regarding a substantive reevaluation of the market value and was not the proper vehicle to address the protest. Key Energy Servs., LLC v. Shelby County Appraisal Dist., 428 S.W.3d 133, 2014 Tex. App. LEXIS 439 (Tex. App. Tyler Jan. 15, 2014, no pet.).

Bankruptcy debtor was not entitled to untimely challenges to appraisals of the debtor's residential real estate development under Tex. Tax Code Ann. § 25.25(c)(3), since the appraisals of each lot in the development rather than appraisals of the development as a unit did not indicate that the property did not exist in the form or at the location described in the appraisal roll; there was real property divided into lots at the designated location, the

physical description of the property as listed in the appraisal roll was thus accurate, and the failure to list the property as an inventory unit did not mean that the description was inaccurate. In re Breakwater Shores Partners, L.P., No. 10-61254, 2012 Bankr. LEXIS 1454 (Bankr. E.D. Tex. Apr. 5, 2012).

County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

Hidalgo County Appraisal District's alleged failure to properly assess the market value of the taxpayer's inventory was not clerical error, Tex. Tax Code Ann. § /Aa1.04(18), but as a result of error in methodology, procedure, and/or computation, and Tex. Tax Code Ann. § /Aa25.25(c) was not available to remedy issues pertaining to disputed property valuations. Lack's Valley Stores, Ltd. v. Hidalgo County Appraisal Dist., No. 13-10-500-CV, 2011 Tex. App. LEXIS 4752 (Tex. App. Corpus Christi June 23, 2011), pet. dism'd w.o.j. No. 11-0590, 2011 Tex. LEXIS 997 (Tex. Dec. 16, 2011).

No language within Tex. Tax Code Ann. § 42.25 limits its application to only Tex. Tax Code Ann. § 41.41(a) excessive appraisal challenges, and, because no such limitation exists within Tex. Tax Code Ann. § 42.25, there is no reason why property owners filing administrative challenges under Tex. Tax Code Ann. § 25.25(d) are precluded from seeking relief under Tex. Tax Code Ann. § 42.25 in a district court; an excessive appraisal challenge brought under Tex. Tax Code Ann. § 25.25(d) must allege the appraisal district over-valued a property by more than one-third; therefore, it logically follows that Tex. Tax Code Ann. § 42.25 applies on judicial review of such administrative challenge since Tex. Tax Code Ann. § 42.25 explicitly authorizes a court to remedy an excessive valuation by an appraisal district. Benson Chevrolet, Inc. v. Bexar Appraisal Dist., 242 S.W.3d 54, 2007 Tex. App. LEXIS 6452 (Tex. App. San Antonio Aug. 15, 2007), reh'g denied, No. 04-07-00204-CV, 2007 Tex. App. LEXIS 10109 (Tex. App. San Antonio Oct. 1, 2007).

In a case involving a tax reappraisal, a jurisdictional challenge should not have been granted because several property owners were permitted to seek relief under Tex. Tax Code Ann. § 42.25 without filing an administrative protest under Tex. Tax Code Ann. § 41.41(a); they filed a protest under Tex. Tax Code Ann. § 25.25 instead. Benson Chevrolet, Inc. v. Bexar Appraisal Dist., 242 S.W.3d 54, 2007 Tex. App. LEXIS 6452 (Tex. App. San Antonio Aug. 15, 2007), reh'g denied, No. 04-07-00204-CV, 2007 Tex. App. LEXIS 10109 (Tex. App. San Antonio Oct. 1, 2007).

ATTORNEY GENERAL OPINIONS

Correcting Charitable Organization Tax Exemption.

Seeking to have a property owned by a non-profit organization removed from an appraisal roll for the improper denial of an exemption does not constitute a correction under 25.25 of the Tax Code. 2007 Tex. Op. Att'y Gen. GA-0537.

Sec. 25.26. Forfeiture of Remedy for Nonpayment of Taxes.

(a) The pendency of a motion filed under Section 25.25 does not affect the delinquency date for the taxes on the property that is the subject of the motion. However, that delinquency date applies only to the amount of taxes required to be paid under Subsection (b). If the property owner complies with Subsection (b), the delinquency date for any additional amount of taxes due on the property is determined in the manner provided by Section 42.42(c) for the determination of the delinquency date for additional taxes finally determined to be due in an appeal under Chapter 42, and that additional amount is not delinquent before that date.

(b) Except as provided by Subsection (d), a property owner who files a motion under Section 25.25 must pay the amount of taxes due on the portion of the taxable value of the property that is the subject of the motion that is not in dispute before the delinquency date or the property owner forfeits the right to proceed to a final determination of the motion.

(c) A property owner who pays an amount of taxes greater than that required by Subsection (b) does not forfeit the property owner's right to a final determination of the motion by making the payment. If the property owner files a timely motion under Section 25.25, taxes paid on the property are considered paid under protest, even if paid before the motion is filed.

(d) After filing an oath of inability to pay the taxes at issue, a property owner may be excused from the requirement of prepayment of tax as a prerequisite to the determination of a motion if the appraisal review board, after notice and hearing, finds that such prepayment would constitute an unreasonable restraint on the property owner's right of access to the board. On the motion of a party, the board shall determine compliance with this section in the same manner and by the same procedure as provided by Section 41.4115(d) and may set such terms and conditions on any grant of relief as may be reasonably required by the circumstances.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 7, effective September 1, 2011; Enacted by Acts 2011, 82nd Leg., ch. 793 (H.B. 2220), § 2, effective June 17, 2011.

CHAPTER 26

Assessment

Section		Section	
26.01.	Submission of Rolls to Taxing Units.	26.02.	Assessment Ratios Prohibited.
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Sec. 26.01. Submission of Rolls to Taxing Units.

(a) By July 25, the chief appraiser shall prepare and certify to the assessor for each taxing unit participating in the district that part of the appraisal roll for the district that lists the property taxable by the unit. The part certified to the assessor is the appraisal roll for the unit. The chief appraiser shall consult with the assessor for each taxing unit and notify each unit in writing by April 1 of the form in which the roll will be provided to each unit.

(a-1) **[Effective January 1, 2020]** If by July 20 the appraisal review board for an appraisal district has not approved the appraisal records for the district as required under Section 41.12, the chief appraiser shall not later than July 25 prepare and certify to the assessor for each taxing unit participating in the district an estimate of the taxable value of property in that taxing unit.

(b) When a chief appraiser submits an appraisal roll for county taxes to a county assessor-collector, the chief appraiser also shall certify the appraisal district appraisal roll to the comptroller. However, the comptroller by rule may provide for submission of only a summary of the appraisal roll. The chief appraiser shall certify the district appraisal roll or the summary of that roll in the form and manner prescribed by the comptroller's rule.

(c) The chief appraiser shall prepare and certify to the assessor for each taxing unit a listing of those properties which are taxable by that unit but which are under protest and therefore not included on the appraisal roll approved by the appraisal review board and certified by the chief appraiser. This listing shall include the appraised market value, productivity value (if applicable), and taxable value as determined by the appraisal district and shall also include the market value, taxable value, and productivity value (if applicable) as claimed by the property owner filing the protest if available. If the property owner does not claim a value and the appraised value of the property in the current year

is equal to or less than its value in the preceding year, the listing shall include a reasonable estimate of the market value, taxable value, and productivity value (if applicable) that would be assigned to the property if the taxpayer's claim is upheld. If the property owner does not claim a value and the appraised value of the property is higher than its appraised value in the preceding year, the listing shall include the appraised market value, productivity value (if applicable) and taxable value of the property in the preceding year, except that if there is a reasonable likelihood that the appraisal review board will approve a lower appraised value for the property than its appraised value in the preceding year, the chief appraiser shall make a reasonable estimate of the taxable value that would be assigned to the property if the property owner's claim is upheld. The taxing unit shall use the lower value for calculations as prescribed in Sections 26.04 and 26.041 of this code.

(d) The chief appraiser shall prepare and certify to the assessor for each taxing unit a list of those properties of which the chief appraiser has knowledge that are reasonably likely to be taxable by that unit but that are not included on the appraisal roll certified to the assessor under Subsection (a) or included on the listing certified to the assessor under Subsection (c). The chief appraiser shall include on the list for each property the market value, appraised value, and kind and amount of any partial exemptions as determined by the appraisal district for the preceding year and a reasonable estimate of the market value, appraised value, and kind and amount of any partial exemptions for the current year. Until the property is added to the appraisal roll, the assessor for the taxing unit shall include each property on the list in the calculations prescribed by Sections 26.04 and 26.041, and for that purpose shall use the lower market value, appraised value, or taxable value, as appropriate, included on or computed using the information included on the list for the property.

(e) Except as provided by Subsection (f), not later than April 30, the chief appraiser shall prepare and certify to the assessor for each county, municipality, and school district participating in the appraisal district an estimate of the taxable value of property in that taxing unit. The chief appraiser shall assist each county, municipality, and school district in determining values of property in that taxing unit for the taxing unit's budgetary purposes.

(f) Subsection (e) does not apply to a county or municipality that notifies the chief appraiser that the county or municipality elects not to receive the estimate or assistance described by that subsection.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 114, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 786 (H.B. 647), § 1, effective August 29, 1983; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 17, effective August 29, 1983; am. Acts 1983, 68th Leg., ch. 884 (H.B. 1446), § 3, effective January 1, 1984; am. Acts 1985, 69th Leg., ch. 312 (H.B. 2301), § 6, effective June 7, 1985; am. Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 1, effective January 1, 1988; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 44, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 1040 (S.B. 862), § 67, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 643 (H.B. 98), § 2, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 898 (H.B. 3526), § 2, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1087 (H.B. 2226), § 1, effective January 1, 2002; am. Acts 2007, 80th Leg., ch. 55 (S.B. 1405), § 1, effective January 1, 2008; am. Acts 2009, 81st Leg., ch. 1328 (H.B. 3646), § 85, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 31, effective January 1, 2020.

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Claims By & Against. — Residents did not have taxpayer standing to challenge a town's annexation of property or a boundary agreement because the tax roll prepared by the appraisal district showed that the property was owned by a company, and the residents did not prove that they were contractually obligated to pay the taxes. Town of Flower Mound v. Sanford, No. 2-07-032-CV, 2007 Tex. App. LEXIS 7134 (Tex. App. Fort Worth Aug. 31, 2007).

Sec. 26.011. Limitation on Application of Reappraised Values [Expired].

Expired pursuant to Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 115, effective January 1, 1987.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 115, effective August 14, 1981.

Sec. 26.012. Definitions.

In this chapter:

(1) "Additional sales and use tax" means an additional sales and use tax imposed by:

(A) a city under Section 321.101(b);

(B) a county under Chapter 323; or

(C) a hospital district, other than a hospital district:

(i) created on or after September 1, 2001, that:

(a) imposes the sales and use tax under Subchapter I, Chapter 286, Health and Safety Code; or

(b) imposes the sales and use tax under Subchapter L, Chapter 285, Health and Safety Code; or

(ii) that imposes the sales and use tax under Subchapter G, Chapter 1061, Special District Local Laws Code.

(2) "Collection rate" means the amount, expressed as a percentage, calculated by:

(A) adding together estimates of the following amounts:

(i) the total amount of taxes to be levied in the current year and collected before July 1 of the next year, including any penalties and interest on those taxes that will be collected during that period;

(ii) any additional taxes imposed under Chapter 23 collected between July 1 of the current year and June 30 of the following year; and

(iii) the total amount of delinquent taxes levied in any preceding year that will be collected between July 1 of the current year and June 30 of the following year, including any penalties and interest on those taxes that will be collected during that period; and

(B) dividing the amount calculated under Paragraph (A) by the total amount of taxes that will be levied in the current year.

(3) "Current debt" means debt service for the current year.

(4) "Current debt rate" means a rate expressed in dollars per $100 of taxable value and calculated according to the following formula:

CURRENT DEBT RATE = [(CURRENT DEBT SERVICE - EXCESS COLLECTIONS) / (CURRENT TOTAL VALUE x COLLECTION RATE)] + CURRENT JUNIOR COLLEGE LEVY / CURRENT TOTAL VALUE

(5) "Current junior college levy" means the amount of taxes the governing body proposes to dedicate in the current year to a junior college district under Section 45.105(e), Education Code.

(6) "Current total value" means the total taxable value of property listed on the appraisal roll for the current year, including all appraisal roll supplements and corrections as of the date of the calculation, less the taxable value of property exempted for the current tax year for the first time under Section 11.31 or 11.315, except that:

(A) the current total value for a school district excludes:

(i) the total value of homesteads that qualify for a tax limitation as provided by Section 11.26; and

(ii) new property value of property that is subject to an agreement entered into under Chapter 313; and

(B) the current total value for a county, municipality, or junior college district excludes the total value of homesteads that qualify for a tax limitation provided by Section 11.261.

(7) "Debt" means a bond, warrant, certificate of obligation, or other evidence of indebtedness owed by a taxing unit that is payable solely from property taxes in installments over a period of more than one year, not budgeted for payment from maintenance and operations funds, and secured by a pledge of property taxes, or a payment made under contract to secure indebtedness of a similar nature issued by another political subdivision on behalf of the taxing unit.

(8) "Debt service" means the total amount expended or to be expended by a taxing unit from property tax revenues to pay principal of and interest on debts or other payments required by contract to secure the debts and, if the unit is created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, payments on debts that the unit anticipates incurring in the next calendar year.

(8–a) **[Effective January 1, 2020]** "De minimis rate" means the rate equal to the sum of:

(A) a taxing unit's no-new-revenue maintenance and operations rate;

(B) the rate that, when applied to a taxing unit's current total value, will impose an amount of taxes equal to $500,000; and

(C) a taxing unit's current debt rate.

(9) **[Effective until January 1, 2020]** "Effective maintenance and operations rate" means a rate expressed in dollars per $100 of taxable value and calculated according to the following formula:

$$\text{EFFECTIVE MAINTENANCE AND OPERATIONS RATE} = \frac{(\text{LAST YEAR'S LEVY} - \text{LAST YEAR'S DEBT LEVY} - \text{LAST YEAR'S JUNIOR COLLEGE LEVY})}{(\text{CURRENT TOTAL VALUE} - \text{NEW PROPERTY VALUE})}$$

(9) **[Effective January 1, 2020]** Redesignated and amended by Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 33, eff. January 1, 2020.

(10) **[Effective until January 1, 2020]** "Excess collections" means the amount, if any, by which debt taxes collected in the preceding year exceeded the amount anticipated in the preceding year's calculation of the rollback rate, as certified by the collector under Section 26.04(b) of this code.

(10) **[Effective January 1, 2020]** "Excess collections" means the amount, if any, by which debt taxes collected in the preceding year exceeded the amount anticipated in the preceding year's calculation of the voter-approval tax rate, as certified by the collector under Section 26.04(b).

(11) "Last year's debt levy" means the total of:

(A) the amount of taxes that would be generated by multiplying the total taxable value of property on the appraisal roll for the preceding year, including all appraisal roll supplements and corrections, other than corrections made pursuant to Section 25.25(d) of this code, as of the date of calculation, by the debt rate adopted by the governing body in the preceding year under Section 26.05(a)(1) of this code; and

(B) the amount of debt taxes refunded by the taxing unit in the preceding year for tax years before that year.

(12) "Last year's junior college levy" means the amount of taxes dedicated by the governing body in the preceding year for use of a junior college district under Section 45.105(e), Education Code.

(13) **[Effective until January 1, 2020]** "Last year's levy" means the total of:

(A) the amount of taxes that would be generated by multiplying the total tax rate adopted by the governing body in the preceding year by the total taxable value of property on the appraisal roll for the preceding year, including:

(i) taxable value that was reduced in an appeal under Chapter 42; and

(ii) all appraisal roll supplements and corrections other than corrections made pursuant to Section 25.25(d), as of the date of the calculation, except that last year's taxable value for a school district excludes the total value of homesteads that qualified for a tax limitation as provided by Section 11.26 and last year's taxable value for a county, municipality, or junior college district excludes the total value of homesteads that qualified for a tax limitation as provided by Section 11.261; and

(B) the amount of taxes refunded by the taxing unit in the preceding year for tax years before that year.

(13) **[Effective January 1, 2020]** "Last year's levy" means the total of:

(A) the amount of taxes that would be generated by multiplying the total tax rate adopted by the governing body in the preceding year by the total taxable value of property on the appraisal roll for the preceding year, including:

(i) taxable value that was reduced in an appeal under Chapter 42;

(ii) all appraisal roll supplements and corrections other than corrections made pursuant to Section 25.25(d), as of the date of the calculation, except that last year's taxable value for a school district excludes the total value of homesteads that qualified for a tax limitation as provided by Section 11.26 and last year's taxable value for a county, municipality, or junior college district excludes the total value of homesteads that qualified for a tax limitation as provided by Section 11.261; and

(iii) the portion of taxable value of property that is the subject of an appeal under Chapter 42 on July 25 that is not in dispute; and

(B) the amount of taxes refunded by the taxing unit in the preceding year for tax years before that year.

(14) "Last year's total value" means the total taxable value of property listed on the appraisal roll for the preceding year, including all appraisal roll supplements and corrections, other than corrections made pursuant to Section 25.25(d), as of the date of the calculation, except that:

(A) last year's taxable value for a school district excludes the total value of homesteads that qualified for a tax limitation as provided by Section 11.26; and

(B) last year's taxable value for a county, municipality, or junior college district excludes the total value of homesteads that qualified for a tax limitation as provided by Section 11.261.

(15) **[2 Versions: Effective unless and until Acts 2019, 86th Leg., H.J.R. No. 34 is approved by the voters and the ballot certified]** "Lost property levy" means the amount of taxes levied in the preceding year on property value that was taxable in the preceding year but is not taxable in the current year because the property is exempt in the current year under a provision of this code other than Section 11.251 or 11.253, the property has qualified for special appraisal under Chapter 23 in the current year, or the property is located in territory that has ceased to be a part of the unit since the preceding year.

(15) **[2 Versions: Proposed Amendment by Acts 2019, 86th Leg., H.J.R. No. 34, contingent on Voter Approval]** "Lost property levy" means the amount of taxes levied in the preceding year on property value that was taxable in the preceding year but is not taxable in the current year because the property is exempt in the current year under a provision of this code other than Section 11.251, 11.253, or 11.35, the property has qualified for special appraisal under Chapter 23 in the current year, or the property is located in territory that has ceased to be a part of the taxing unit since the preceding year.

(16) "Maintenance and operations" means any lawful purpose other than debt service for which a taxing unit may spend property tax revenues.

(17) "New property value" means:

(A) the total taxable value of property added to the appraisal roll in the current year by annexation and improvements listed on the appraisal roll that were made after January 1 of the preceding tax year, including personal property located in new improvements that was brought into the unit after January 1 of the preceding tax year;

(B) property value that is included in the current total value for the tax year succeeding a tax year in which any portion of the value of the property was excluded from the total value because of the application of a tax abatement agreement to all or a portion of the property, less the value of the property that was included in the total value for the preceding tax year; and

(C) for purposes of an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, property value that is included in the current total value for the tax year succeeding a tax year in which the following occurs:

(i) the subdivision of land by plat;
(ii) the installation of water, sewer, or drainage lines; or
(iii) the paving of undeveloped land.

(18) **[Effective January 1, 2020]** "No-new-revenue maintenance and operations rate" means a rate expressed in dollars per $100 of taxable value and calculated according to the following formula:

$$\text{NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE} = \frac{(\text{LAST YEAR'S LEVY} - \text{LAST YEAR'S DEBT LEVY} - \text{LAST YEAR'S JUNIOR COLLEGE LEVY})}{(\text{CURRENT TOTAL VALUE} - \text{NEW PROPERTY VALUE})}$$

(19) **[Effective January 1, 2020]** "Special taxing unit" means:

(A) a taxing unit, other than a school district, for which the maintenance and operations tax rate proposed for the current tax year is 2.5 cents or less per $100 of taxable value;
(B) a junior college district; or
(C) a hospital district.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 2, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), §§ 14.27(d)(1), 14.28(1), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 66 (H.B. 575), § 4, effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 534 (H.B. 2959), § 3, effective January 1, 1990; am. Acts 1993, 73rd Leg., ch. 285 (H.B. 1920), § 3, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 696 (H.B. 361), § 1, effective January 1, 1994; am. Acts 1995, 74th Leg., ch. 506 (H.B. 1537), §§ 1—3, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), §§ 29.01, 29.02, 6.77, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1070 (S.B. 1865), § 53, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1290 (H.B. 602), § 15, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 3, effective January 1, 2002; am. Acts 2003, 78th Leg., ch. 396 (H.B. 136), § 3, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 830 (H.B. 621), § 2, effective January 1, 2008; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 19.003, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1030 (H.B. 2712), § 3, effective January 1, 2014; Acts 2019, 86th Leg., Ch. 560 (S.B. 1621), § 7, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 714 (H.B. 279), § 4, effective June 10, 2019; am. Acts 2019, 86th Leg., ch. 1034 (H.B. 492), § 5; 2019, 86th Leg., ch. 944 (S.B. 2), §§ 32, 33, effective January 1, 2020.

ATTORNEY GENERAL OPINIONS

New Property Value.

The value of importance to real property exempted for a period of years pursuant to a tax abatement agreement is not "[n]ew property value" for purposes of chapter 26 of the Tax Code unless the improvements were made after January 1 of the preceding tax year. 1992 Tex. Op. Att'y Gen. DM-94.

Sec. 26.013. Unused Increment Rate. [Effective January 1, 2020]

(a) In this section:

(1) "Actual tax rate" means a taxing unit's actual tax rate used to levy taxes in the applicable preceding tax year.
(2) "Voter-approval tax rate" means a taxing unit's voter-approval tax rate in the applicable preceding tax year less the unused increment rate for that preceding tax year.
(3) "Year 1" means the third tax year preceding the current tax year.
(4) "Year 2" means the second tax year preceding the current tax year.
(5) "Year 3" means the tax year preceding the current tax year.

(b) In this chapter, "unused increment rate" means the greater of:

(1) zero; or
(2) the rate expressed in dollars per $100 of taxable value calculated according to the following formula:

UNUSED INCREMENT RATE = (YEAR 1 VOTER-APPROVAL TAX RATE - YEAR 1 ACTUAL TAX RATE) + (YEAR 2 VOTER-APPROVAL TAX RATE - YEAR 2 ACTUAL TAX RATE) + (YEAR 3 VOTER-APPROVAL TAX RATE - YEAR 3 ACTUAL TAX RATE)

(c) Notwithstanding Subsection (b)(2), for each tax year before the 2020 tax year, the difference between the taxing unit's voter-approval tax rate and actual tax rate is considered to be zero. This subsection expires December 31, 2022.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 34, effective January 1, 2020.

Sec. 26.02. Assessment Ratios Prohibited.

The assessment of property for taxation on the basis of a percentage of its appraised value is prohibited. All property shall be assessed on the basis of 100 percent of its appraised value.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 18, effective August 29, 1983.

Sec. 26.03. Treatment of Captured Appraised Value and Tax Increment.

(a) In this section, "captured appraised value," "reinvestment zone," "tax increment," and "tax increment fund" have the meanings assigned by Chapter 311.

(b) This section does not apply to a school district.

(c) The portion of the captured appraised value of real property taxable by a taxing unit that corresponds to the portion of the tax increment of the unit from that property that the unit has agreed to pay into the tax increment fund for a reinvestment zone and that is not included in the calculation of "new property value" as defined by Section 26.012 is excluded from the value of property taxable by the unit in any tax rate calculation under this chapter.

(d) The portion of the tax increment of a taxing unit that the unit has agreed to pay into the tax increment fund for a reinvestment zone is excluded from the amount of taxes imposed or collected by the unit in any tax rate calculation under this chapter, except that the portion of the tax increment is not excluded if in the same tax rate calculation there is no portion of captured appraised value excluded from the value of property taxable by the unit under Subsection (c) for the same reinvestment zone.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 503 (H.B. 1468), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 150 (S.B. 657), § 1, effective January 1, 2004; am. Acts 2003, 78th Leg., ch. 426 (H.B. 390), § 1, effective January 1, 2004.

Sec. 26.04. Submission of Roll to Governing Body; Effective and Rollback Tax Rates. [Effective until January 1, 2020]
Submission of Roll to Governing Body; No-New-Revenue and Voter-Approval Tax Rates. [Effective January 1, 2020]

(a) On receipt of the appraisal roll, the assessor for a taxing unit shall determine the total appraised value, the total assessed value, and the total taxable value of property taxable by the unit. He shall also determine, using information provided by the appraisal office, the appraised, assessed, and taxable value of new property.

(b) **[Effective until January 1, 2020]** The assessor shall submit the appraisal roll for the unit showing the total appraised, assessed, and taxable values of all property and the total taxable value of new property to the governing body of the unit by August 1 or as soon thereafter as practicable. By August 1 or as soon thereafter as practicable, the taxing unit's collector shall certify an estimate of the collection rate for the current year to the governing body. If the collector certified an anticipated collection rate in the preceding year and the actual collection rate in that year exceeded the anticipated rate, the collector shall also certify the amount of debt taxes collected in excess of the anticipated amount in the preceding year.

(b) **[Effective January 1, 2020]** The assessor shall submit the appraisal roll for the taxing unit showing the total appraised, assessed, and taxable values of all property and the total taxable value of new property to the governing body of the taxing unit by August 1 or as soon thereafter as practicable. By August 1 or as soon thereafter as practicable, the taxing unit's collector shall certify the anticipated collection rate as calculated under Subsections (h), (h-1), and (h-2) for the current year to the governing body. If the collector certified an anticipated collection rate in the preceding year and the actual collection rate in that year exceeded the anticipated rate, the collector shall also certify the amount of debt taxes collected in excess of the anticipated amount in the preceding year.

(c) **[Effective until January 1, 2020]** An officer or employee designated by the governing body shall calculate the effective tax rate and the rollback tax rate for the unit, where:

(1) "Effective tax rate" means a rate expressed in dollars per $100 of taxable value calculated according to the following formula:

EFFECTIVE TAX RATE = (LAST YEAR'S LEVY - LOST PROPERTY LEVY) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE)

; and

(2) "Rollback tax rate" means a rate expressed in dollars per $100 of taxable value calculated according to the following formula:

ROLLBACK TAX RATE = (EFFECTIVE MAINTENANCE AND OPERATIONS RATE x 1.08) + CURRENT DEBT RATE

(c) **[Effective January 1, 2020]** After the assessor for the taxing unit submits the appraisal roll for the taxing unit to the governing body of the taxing unit as required by Subsection (b), an officer or employee designated by the governing body shall calculate the no-new-revenue tax rate and the voter-approval tax rate for the taxing unit, where:

(1) "No-new-revenue tax rate" means a rate expressed in dollars per $100 of taxable value calculated according to the following formula:

NO-NEW–REVENUE TAX RATE = (LAST YEAR'S LEVY - LOST PROPERTY LEVY) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE)

; and

(2) "Voter-approval tax rate" means a rate expressed in dollars per $100 of taxable value calculated according to the following applicable formula:

(A) for a special taxing unit:

VOTER–APPROVAL TAX RATE = (NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE x 1.08) + CURRENT DEBT RATE

; or

(B) for a taxing unit other than a special taxing unit:

VOTER-APPROVAL TAX RATE = (NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE x 1.035) + (CURRENT DEBT RATE + UNUSED INCREMENT RATE)

(c-1) **[Effective January 1, 2020]** Notwithstanding any other provision of this section, the governing body of a taxing unit other than a special taxing unit may direct the designated officer or employee to calculate the voter-approval tax rate of the taxing unit in the manner provided for a special taxing unit if any part of the taxing unit is located in an area declared a disaster area during the current tax year by the governor or by the president of the United States. The designated officer or employee shall continue calculating the voter-approval tax rate in the manner provided by this subsection until the earlier of:

(1) the second tax year in which the total taxable value of property taxable by the taxing unit as shown on the appraisal roll for the taxing unit submitted by the assessor for the taxing unit to the governing body exceeds the total taxable value of property taxable by the taxing unit on January 1 of the tax year in which the disaster occurred; or

(2) the third tax year after the tax year in which the disaster occurred.

(c-2) **[Effective January 1, 2020]** Notwithstanding any other provision of this section, if the assessor for a taxing unit receives a certified estimate of the taxable value of property in the taxing unit under Section 26.01(a-1), the officer or employee designated by the governing body of the taxing unit shall calculate the no-new-revenue tax rate and voter-approval tax rate using the certified estimate of taxable value.

(d) **[Effective until January 1, 2020]** The effective tax rate for a county is the sum of the effective tax rates calculated for each type of tax the county levies and the rollback tax rate for a county is the sum of the rollback tax rates calculated for each type of tax the county levies.

(d) **[Effective January 1, 2020]** The no-new-revenue tax rate for a county is the sum of the no-new-revenue tax rates calculated for each type of tax the county levies and the voter-approval tax rate for a county is the sum of the voter-approval tax rates calculated for each type of tax the county levies.

(d-1) **[Effective January 1, 2021]** The designated officer or employee shall use the tax rate calculation forms prescribed by the comptroller under Section 5.07 in calculating the no-new-revenue tax rate and the voter-approval tax rate.

(d-2) **[Effective January 1, 2021]** The designated officer or employee may not submit the no-new-revenue tax rate and the voter-approval tax rate to the governing body of the taxing unit and the taxing unit may not adopt a tax rate until the designated officer or employee certifies on the tax rate calculation forms that the designated officer or employee has accurately calculated the tax rates and has used values that are the same as the values shown in the taxing unit's certified appraisal roll in performing the calculations.

(d-3) **[Effective January 1, 2021]** As soon as practicable after the designated officer or employee calculates the no-new-revenue tax rate and the voter-approval tax rate of the taxing unit, the designated officer or employee shall submit the tax rate calculation forms used in calculating the rates to the county assessor-collector for each county in which all or part of the territory of the taxing unit is located.

(e) **[Effective until January 1, 2020]** By August 7 or as soon thereafter as practicable, the designated officer or employee shall submit the rates to the governing body. He shall deliver by mail to each property owner in the unit or publish in a newspaper in the form prescribed by the comptroller:

(1) the effective tax rate, the rollback tax rate, and an explanation of how they were calculated;

(2) the estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding existing debt obligation;

(3) a schedule of the unit's debt obligations showing:

(A) the amount of principal and interest that will be paid to service the unit's debts in the next year from property tax revenue, including payments of lawfully incurred contractual obligations providing security for the payment of the principal of and interest on bonds and other evidences of indebtedness issued on behalf of the unit by another political subdivision and, if the unit is created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, payments on debts that the unit anticipates to incur in the next calendar year;

(B) the amount by which taxes imposed for debt are to be increased because of the unit's anticipated collection rate; and

(C) the total of the amounts listed in Paragraphs (A)—(B), less any amount collected in excess of the previous year's anticipated collections certified as provided in Subsection (b);

(4) the amount of additional sales and use tax revenue anticipated in calculations under Section 26.041;

(5) a statement that the adoption of a tax rate equal to the effective tax rate would result in an increase or decrease, as applicable, in the amount of taxes imposed by the unit as compared to last year's levy, and the amount of the increase or decrease;

(6) in the year that a taxing unit calculates an adjustment under Subsection (i) or (j), a schedule that includes the following elements:

(A) the name of the unit discontinuing the department, function, or activity;

(B) the amount of property tax revenue spent by the unit listed under Paragraph (A) to operate the discontinued department, function, or activity in the 12 months preceding the month in which the calculations required by this chapter are made; and

(C) the name of the unit that operates a distinct department, function, or activity in all or a majority of the territory of a taxing unit that has discontinued operating the distinct department, function, or activity; and

(7) in the year following the year in which a taxing unit raised its rollback rate as required by Subsection (j), a schedule that includes the following elements:

(A) the amount of property tax revenue spent by the unit to operate the department, function, or activity for which the taxing unit raised the rollback rate as required by Subsection (j) for the 12 months preceding the month in which the calculations required by this chapter are made; and

(B) the amount published by the unit in the preceding tax year under Subdivision (6)(B).

(e) **[Effective January 1, 2020]** By August 7 or as soon thereafter as practicable, the designated officer or employee shall submit the rates to the governing body. The designated officer or employee shall post prominently on the home page of the taxing unit's Internet website in the form prescribed by the comptroller:

(1) the no-new-revenue tax rate, the voter-approval tax rate, and an explanation of how they were calculated;

(2) the estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding existing debt obligation; and

(3) a schedule of the taxing unit's debt obligations showing:

(A) the amount of principal and interest that will be paid to service the taxing unit's debts in the next year from property tax revenue, including payments of lawfully incurred contractual obligations providing security for the payment of the principal of and interest on bonds and other evidences of indebtedness issued on behalf of the taxing unit by another political subdivision and, if the taxing unit is created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, payments on debts that the taxing unit anticipates to incur in the next calendar year;

(B) the amount by which taxes imposed for debt are to be increased because of the taxing unit's anticipated collection rate; and

(C) the total of the amounts listed in Paragraphs (A)—(B), less any amount collected in excess of the previous year's anticipated collections certified as provided in Subsection (b).

(e-1) **[Effective until January 1, 2021]** The notice requirements imposed by Subsections (e)(1)—(6) do not apply to a school district.

(e-1) **[Effective January 1, 2021]** The tax rate certification requirements imposed by Subsection (d-2) and the notice requirements imposed by Subsections (e)(1)-(3) do not apply to a school district.

(e-2) **[Effective January 1, 2020]** By August 7 or as soon thereafter as practicable, the chief appraiser of each appraisal district shall deliver by regular mail or e-mail to each owner of property located in the appraisal district a notice that the estimated amount of taxes to be imposed on the owner's property by each taxing unit in which the property is located may be found in the property tax database maintained by the appraisal district under Section 26.17. The notice must include:

(1) a statement directing the property owner to an Internet website from which the owner may access information related to the actions taken or proposed to be taken by each taxing unit in which the property is located that may affect the taxes imposed on the owner's property;

(2) a statement that the property owner may request from the county assessor-collector for the county in which the property is located or, if the county assessor-collector does not assess taxes for the county, the person who assesses taxes for the county under Section 6.24(b), contact information for the assessor for each taxing unit in which the property is located, who must provide the information described by this subsection to the owner on request; and

(3) the name, address, and telephone number of the county assessor-collector for the county in which the property is located or, if the county assessor-collector does not assess taxes for the county, the person who assesses taxes for the county under Section 6.24(b).

(e-3) **[Effective January 1, 2020]** The statement described by Subsection (e-2)(1) must include a heading that is in bold, capital letters in type larger than that used in the other provisions of the notice.

(e-4) **[Effective January 1, 2020]** The comptroller:

(1) with the advice of the property tax administration advisory board, shall adopt rules prescribing the form of the notice required by Subsection (e-2); and

(2) may adopt rules regarding the format and delivery of the notice.

(e-5) **[Effective January 1, 2021]** The governing body of a taxing unit shall include as an appendix to the taxing unit's budget for a fiscal year the tax rate calculation forms used by the designated officer or employee of the taxing unit to calculate the no-new-revenue tax rate and the voter-approval tax rate of the taxing unit for the tax year in which the fiscal year begins.

(f) **[Effective until January 1, 2020]** If as a result of consolidation of taxing units a taxing unit includes territory that was in two or more taxing units in the preceding year, the amount of taxes imposed in each in the preceding year is combined for purposes of calculating the effective and rollback tax rates under this section.

(f) **[Effective January 1, 2020]** If as a result of consolidation of taxing units a taxing unit includes territory that was in two or more taxing units in the preceding year, the amount of taxes imposed in each in the preceding year is combined for purposes of calculating the no-new-revenue and voter-approval tax rates under this section.

(g) **[Effective until January 1, 2021]** A person who owns taxable property is entitled to an injunction prohibiting the taxing unit in which the property is taxable from adopting a tax rate if the assessor or designated officer or employee

of the unit, as applicable, has not complied with the computation or publication requirements of this section and the failure to comply was not in good faith.

(g) **[Effective January 1, 2021]** A person who owns taxable property is entitled to an injunction prohibiting the taxing unit in which the property is taxable from adopting a tax rate if the assessor or designated officer or employee of the taxing unit, the chief appraiser of the applicable appraisal district, or the taxing unit, as applicable, has not complied with the computation, publication, or posting requirements of this section or Section 26.16, 26.17, or 26.18. It is a defense in an action for an injunction under this subsection that the failure to comply was in good faith.

(h) For purposes of this section, the anticipated collection rate of a taxing unit is the percentage relationship that the total amount of estimated tax collections for the current year bears to the total amount of taxes imposed for the current year. The total amount of estimated tax collections for the current year is the sum of the collector's estimate of:

(1) the total amount of property taxes imposed in the current year that will be collected before July 1 of the following year, including any penalties and interest on those taxes that will be collected during that period; and

(2) the total amount of delinquent property taxes imposed in previous years that will be collected on or after July 1 of the current year and before July 1 of the following year, including any penalties and interest on those taxes that will be collected during that period.

(h-1) **[Effective January 1, 2020]** Notwithstanding Subsection (h), if the anticipated collection rate of a taxing unit as calculated under that subsection is lower than the lowest actual collection rate of the taxing unit for any of the preceding three years, the anticipated collection rate of the taxing unit for purposes of this section is equal to the lowest actual collection rate of the taxing unit for any of the preceding three years.

(h-2) **[Effective January 1, 2020]** The anticipated collection rate of a taxing unit for purposes of this section is the rate calculated under Subsection (h) as modified by Subsection (h-1), if applicable, regardless of whether that rate exceeds 100 percent.

(i) **[Effective until January 1, 2020]** This subsection applies to a taxing unit that has agreed by written contract to transfer a distinct department, function, or activity to another taxing unit and discontinues operating that distinct department, function, or activity if the operation of that department, function, or activity in all or a majority of the territory of the taxing unit is continued by another existing taxing unit or by a new taxing unit. The rollback tax rate of a taxing unit to which this subsection applies in the first tax year in which a budget is adopted that does not allocate revenue to the discontinued department, function, or activity is calculated as otherwise provided by this section, except that last year's levy used to calculate the effective maintenance and operations rate of the unit is reduced by the amount of maintenance and operations tax revenue spent by the taxing unit to operate the department, function, or activity for the 12 months preceding the month in which the calculations required by this chapter are made and in which the unit operated the discontinued department, function, or activity. If the unit did not operate that department, function, or activity for the full 12 months preceding the month in which the calculations required by this chapter are made, the unit shall reduce last year's levy used for calculating the effective maintenance and operations rate of the unit by the amount of the revenue spent in the last full fiscal year in which the unit operated the discontinued department, function, or activity.

(i) **[Effective January 1, 2020]** This subsection applies to a taxing unit that has agreed by written contract to transfer a distinct department, function, or activity to another taxing unit and discontinues operating that distinct department, function, or activity if the operation of that department, function, or activity in all or a majority of the territory of the taxing unit is continued by another existing taxing unit or by a new taxing unit. The voter-approval tax rate of a taxing unit to which this subsection applies in the first tax year in which a budget is adopted that does not allocate revenue to the discontinued department, function, or activity is calculated as otherwise provided by this section, except that last year's levy used to calculate the no-new-revenue maintenance and operations rate of the taxing unit is reduced by the amount of maintenance and operations tax revenue spent by the taxing unit to operate the department, function, or activity for the 12 months preceding the month in which the calculations required by this chapter are made and in which the taxing unit operated the discontinued department, function, or activity. If the taxing unit did not operate that department, function, or activity for the full 12 months preceding the month in which the calculations required by this chapter are made, the taxing unit shall reduce last year's levy used for calculating the no-new-revenue maintenance and operations rate of the taxing unit by the amount of the revenue spent in the last full fiscal year in which the taxing unit operated the discontinued department, function, or activity.

(j) **[Effective until January 1, 2020]** This subsection applies to a taxing unit that had agreed by written contract to accept the transfer of a distinct department, function, or activity from another taxing unit and operates a distinct department, function, or activity if the operation of a substantially similar department, function, or activity in all or a majority of the territory of the taxing unit has been discontinued by another taxing unit, including a dissolved taxing unit. The rollback tax rate of a taxing unit to which this subsection applies in the first tax year after the other taxing unit discontinued the substantially similar department, function, or activity in which a budget is adopted that allocates revenue to the department, function, or activity is calculated as otherwise provided by this section, except that last year's levy used to calculate the effective maintenance and operations rate of the unit is increased by the amount of maintenance and operations tax revenue spent by the taxing unit that discontinued operating the substantially similar department, function, or activity to operate that department, function, or activity for the 12 months preceding the month in which the calculations required by this chapter are made and in which the unit operated the discontinued department, function, or activity. If the unit did not operate the discontinued department, function, or activity for the

full 12 months preceding the month in which the calculations required by this chapter are made, the unit may increase last year's levy used to calculate the effective maintenance and operations rate by an amount not to exceed the amount of property tax revenue spent by the discontinuing unit to operate the discontinued department, function, or activity in the last full fiscal year in which the discontinuing unit operated the department, function, or activity.

(j) **[Effective January 1, 2020]** This subsection applies to a taxing unit that had agreed by written contract to accept the transfer of a distinct department, function, or activity from another taxing unit and operates a distinct department, function, or activity if the operation of a substantially similar department, function, or activity in all or a majority of the territory of the taxing unit has been discontinued by another taxing unit, including a dissolved taxing unit. The voter-approval tax rate of a taxing unit to which this subsection applies in the first tax year after the other taxing unit discontinued the substantially similar department, function, or activity in which a budget is adopted that allocates revenue to the department, function, or activity is calculated as otherwise provided by this section, except that last year's levy used to calculate the no-new-revenue maintenance and operations rate of the taxing unit is increased by the amount of maintenance and operations tax revenue spent by the taxing unit that discontinued operating the substantially similar department, function, or activity to operate that department, function, or activity for the 12 months preceding the month in which the calculations required by this chapter are made and in which the taxing unit operated the discontinued department, function, or activity. If the taxing unit did not operate the discontinued department, function, or activity for the full 12 months preceding the month in which the calculations required by this chapter are made, the taxing unit may increase last year's levy used to calculate the no-new-revenue maintenance and operations rate by an amount not to exceed the amount of property tax revenue spent by the discontinuing taxing unit to operate the discontinued department, function, or activity in the last full fiscal year in which the discontinuing taxing unit operated the department, function, or activity.

(k) to (q) [Expired pursuant to Acts 1999, 76th Leg., ch. 1561 (S.B. 1804), § 1, effective January 1, 2001.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 116, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 400 (S.B. 1345), § 1, effective June 17, 1983; am. Acts 1983, 68th Leg., ch. 987 (H.B. 2076), § 3, effective June 19, 1983; am. Acts 1983, 68th Leg., ch. 1001 (H.B. 2134), § 1, effective January 1, 1984; am. Acts 1985, 69th Leg., 1st C.S., ch. 1 (S.B. 1), § 2(b), effective September 1, 1985; am. Acts 1985, 69th Leg., ch. 657 (S.B. 1125), §§ 1, 2, effective June 14, 1985; am. Acts 1986, 69th Leg., 3rd C.S., ch. 10 (H.B. 79), art. 1, § 36, effective January 1, 1987; am. Acts 1987, 70th Leg., ch. 699 (S.B. 1420), § 1, 3, effective June 19, 1987; am. Acts 1987, 70th Leg., ch. 849 (H.B. 1650), § 2, effective August 31, 1987; am. Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 3, effective January 1, 1988; am. Acts 1987, 70th Leg., ch. 988 (S.B. 1420), § 1, 3, effective June 18, 1987; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 45, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 81 (H.B. 155), § 2, effective May 4, 1993; am. Acts 1993, 73rd Leg., ch. 611 (S.B. 668), §§ 1, 2, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 29.03, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1070 (S.B. 1865), § 54, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 398 (H.B. 2075), § 2, effective August 30, 1999; am. Acts 1999, 76th Leg., ch. 1358 (H.B. 954), § 1, effective January 1, 2000; am. Acts 1999, 76th Leg., ch. 1561 (S.B. 1804), § 1, effective August 30, 1999; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 36, effective January 1, 2021.

NOTES TO DECISIONS

Analysis

Civil Procedure
•Justiciability
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Tax Law
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CIVIL PROCEDURE
Justiciability
Standing

General Overview. — Tax paying property owners had standing to seek declaratory relief regarding the hospital district's levying of property tax; the property owners had a justiciable interest in the controversy which arose from the hospital district's non-compliance with the publication requirements of Tex. Tax Code Ann. § 26.04(g). El Paso County Hosp. Dist. v. Gilbert, 64 S.W.3d 200, 2001 Tex. App. LEXIS 8401 (Tex. App. El Paso Oct. 25, 2001, pet. filed).

Taxpayers had standing to seek declaratory relief regarding hospital district's levying of property tax because under Tex. Tax Code Ann. § 26.04(g), the taxpayers had justiciable interest in the controversy from the hospital district's non-compliance with publication requirements. El Paso County Hosp. Dist. v. Gilbert, 64 S.W.3d 200, 2001 Tex. App. LEXIS 8401 (Tex. App. El Paso Oct. 25, 2001, pet. filed).

Tex. Tax Code Ann. § 26.04(g) confers standing on property owners to seek injunctive relief for non-compliance with publication and computation requirements, and therefore, they need not demonstrate a particularized injury. El Paso County Hosp. Dist. v. Gilbert, 64 S.W.3d 200, 2001 Tex. App. LEXIS 8401 (Tex. App. El Paso Oct. 25, 2001, pet. filed).

REMEDIES
Injunctions

General Overview. — Citizens who sued a city, its mayor, and its city councilmen were not entitled to an immediate temporary restraining order and injunction under Tex. Tax. Code Ann. § 26.04(g) to prevent the parties being sued from adopting a tax rate in violation of the city's home rule charter and Tex. Tax Code Ann. § 26.04(e)(2) upon an allegation that the parties being sued maintained a slush fund that had not been properly disclosed in the process of setting a budget and in levying taxes because the declaratory relief requested by the citizens, which included, among other things, a request for the return of the slush money to the budget process of the city, was not authorized by, nor related to, the injunction authorized in Tex. Tax. Code Ann. § 26.04(g). Hairgrove v. City of Pasadena, 80 S.W.3d 703, 2002 Tex. App. LEXIS 4634 (Tex. App. Houston 1st Dist. June 27, 2002, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Assessor or designated officer or employee of a taxing unit acts in good faith when he subjectively believes that he has complied with the computation or publication requirements of Tex. Tax Code Ann. § 26.04, if that belief is

reasonable in light of existing law. El Paso County Hosp. Dist. v. Gilbert, 64 S.W.3d 200, 2001 Tex. App. LEXIS 8401 (Tex. App. El Paso Oct. 25, 2001, pet. filed).

Hospital district acted in bad faith where it knew that a district court had previously determined that a tax rate notice, similar to the district's notice did not comply with Tex. Tax Code Ann. § 26.04(g). El Paso County Hosp. Dist. v. Gilbert, 64 S.W.3d 200, 2001 Tex. App. LEXIS 8401 (Tex. App. El Paso Oct. 25, 2001, pet. filed).

Although Tex. Tax Code Ann. § 26.04(e) does not require the Comptroller to create forms for taxing units to use in their truth-in-taxation disclosures, it does not authorize the Comptroller to change the substance of those disclosures. Gilbert v. El Paso County Hosp. Dist., 38 S.W.3d 85, 2001 Tex. LEXIS 1 (Tex. 2001).

Pursuant to Tex. Tax Code Ann. § 26.04(e)(2), taxing units must report their entire unencumbered maintenance and operations and general fund balances, including money received from sources other than property taxes. Gilbert v. El Paso County Hosp. Dist., 38 S.W.3d 85, 2001 Tex. LEXIS 1 (Tex. 2001).

In an action by taxpayers to contest a notice under Tex. Tax Code Ann. § 26.04(g), which authorizes a court to enjoin a taxing unit's adoption of a tax rate if the unit has not made a good-faith effort to comply with the truth-in-taxation requirements of Tex. Tax Code Ann. § 26.04, the court held that Tex. Tax Code Ann. § 26.04(e)(2) requires a taxing unit to report all of its estimated unencumbered fund balances regardless of the revenue source. Gilbert v. El Paso County Hosp. Dist., 38 S.W.3d 85, 2001 Tex. LEXIS 1 (Tex. 2001).

In a suit brought by a taxpayer, the city's calculation of the effective tax rate, based on estimated tax amounts, substantially complied with procedures set forth in Tex. Tax Code Ann. § 26.04 and did not exceed the limits for the total allowable tax rate, provided by Tex. Tax Code Ann. § 26.05; there was no evidence to refute the presumption that there was a valid levy and assessment of the taxpayer's liability, made by a legally constituted taxing authority, that all conditions precedent to the levy and assessment were performed, and that the city complied with all of the notice and hearing requirements of Tex. Const. art. 8, § 21. Corpus Christi Taxpayer's Asso. v. Corpus Christi, 716 S.W.2d 578, 1986 Tex. App. LEXIS 8357 (Tex. App. Corpus Christi Aug. 29, 1986, writ ref'd n.r.e.).

Pursuant to Tex. Tax Code Ann. § 26.04, the statutory duties and the duties imposed upon a county tax assessor-collector by its intergovernmental contract with a school district to assess and collect taxes for the school district, as well as those provided in a crucial stipulation, were ministerial and nondiscretionary. Lampson v. South Park Independent School Dist., 698 S.W.2d 407, 1985 Tex. App. LEXIS 12225 (Tex. App. Beaumont Sept. 25, 1985, writ ref'd n.r.e.), writ granted 742 S.W.2d 275, 1987 Tex. LEXIS 423 (Tex. 1987).

ATTORNEY GENERAL OPINIONS

Analysis

Rollback Elections.
Tax Calculations.
Tax Rate Calculations.

Rollback Elections.

Chapter 26 of the Tax Code authorizes a petition for a rollback election when the sum of a county's individually adopted tax rates exceeds the combined rollback rate; however, under chapter 26's plain terms, the right to petition for a rollback election is not automatically triggered when a county adopts a rate for a particular tax that is above the rollback rate for that particular tax. 2012 Tex. Op. Att'y Gen. GA-0954.

Tax Calculations.

Pursuant to Tex. Water Code Ann. § 49.107(g), the Legislature has prohibited the South Texas Water Authority from utilizing the procedures and calculations in Tex. Tax Code Ann. §§ 26.04, 26.05, 26.07 to adopt its tax rate. 2010 Tex. Op. Att'y Gen. GA-0758.

Tax Rate Calculations.

A person designated to make the tax rate calculations under Tax Code section 26.04 must register with and proceed to certification by the Board of Tax Professional Examiners if the county tax assessor-collector so requires. 1989 Tex. Op. Att'y Gen. JM-1020.

Sec. 26.041. Tax Rate of Unit Imposing Additional Sales and Use Tax. [Effective until January 1, 2020]

(a) In the first year in which an additional sales and use tax is required to be collected, the effective tax rate and rollback tax rate for the unit are calculated according to the following formulas:

EFFECTIVE TAX RATE = (LAST YEAR'S LEVY - LOST PROPERTY LEVY) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE) - SALES TAX GAIN RATE

and

ROLLBACK RATE = (EFFECTIVE MAINTENANCE AND OPERATIONS RATE x 1.08) + CURRENT DEBT RATE - SALES TAX GAIN RATE

where "sales tax gain rate" means a number expressed in dollars per $100 of taxable value, calculated by dividing the revenue that will be generated by the additional sales and use tax in the following year as calculated under Subsection (d) of this section by the current total value.

(b) Except as provided by Subsections (a) and (c) of this section, in a year in which a taxing unit imposes an additional sales and use tax the rollback tax rate for the unit is calculated according to the following formula, regardless of whether the unit levied a property tax in the preceding year:

ROLLBACK RATE = [(LAST YEAR'S MAINTENANCE AND OPERATIONS EXPENSE x 1.08) / (TOTAL CURRENT VALUE - NEW PROPERTY VALUE)] + (CURRENT DEBT RATE - SALES TAX REVENUE RATE)

where "last year's maintenance and operations expense" means the amount spent for maintenance and operations from property tax and additional sales and use tax revenues in the preceding year, and "sales tax revenue rate" means a number expressed in dollars per $100 of taxable value, calculated by dividing the revenue that will be generated by the additional sales and use tax in the current year as calculated under Subsection (d) of this section by the current total value.

(c) In a year in which a taxing unit that has been imposing an additional sales and use tax ceases to impose an additional sales and use tax the effective tax rate and rollback tax rate for the unit are calculated according to the following formulas:

EFFECTIVE TAX RATE = (LAST YEAR'S LEVY - LOST PROPERTY LEVY) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE) + SALES TAX GAIN RATE

and

ROLLBACK RATE = [(LAST YEAR'S MAINTENANCE AND OPERATIONS EXPENSE x 1.08)) / (TOTAL CURRENT VALUE - NEW PROPERTY VALUE)] + CURRENT DEBT RATE

where "sales tax loss rate" means a number expressed in dollars per $100 of taxable value, calculated by dividing the amount of sales and use tax revenue generated in the last four quarters for which the information is available by the current total value and "last year's maintenance and operations expense" means the amount spent for maintenance and operations from property tax and additional sales and use tax revenues in the preceding year.

(d) In order to determine the amount of additional sales and use tax revenue for purposes of this section, the designated officer or employee shall use the sales and use tax revenue for the last preceding four quarters for which the information is available as the basis for projecting the additional sales and use tax revenue for the current tax year. If the rate of the additional sales and use tax is increased or reduced, the projection to be used for the first tax year after the effective date of the sales and use tax change shall be adjusted to exclude any revenue gained or lost because of the sales and use tax rate change. If the unit did not impose an additional sales and use tax for the last preceding four quarters, the designated officer or employee shall request the comptroller of public accounts to provide to the officer or employee a report showing the estimated amount of taxable sales and uses within the unit for the previous four quarters as compiled by the comptroller, and the comptroller shall comply with the request. The officer or employee shall prepare the estimate of the additional sales and use tax revenue for the first year of the imposition of the tax by multiplying the amount reported by the comptroller by the appropriate additional sales and use tax rate and by multiplying that product by .95.

(e) If a city that imposes an additional sales and use tax receives payments under the terms of a contract executed before January 1, 1986, in which the city agrees not to annex certain property or a certain area and the owners or lessees of the property or of property in the area agree to pay at least annually to the city an amount determined by reference to all or a percentage of the property tax rate of the city and all or a part of the value of the property subject to the agreement or included in the area subject to the agreement, the governing body, by order adopted by a majority vote of the governing body, may direct the designated officer or employee to add to the effective and rollback tax rates the amount that, when applied to the total taxable value submitted to the governing body, would produce an amount of taxes equal to the difference between the total amount of payments for the tax year under contracts described by this subsection under the rollback tax rate calculated under this section and the total amount of payments for the tax year that would have been obligated to the city if the city had not adopted an additional sales and use tax.

(f) An estimate made by the comptroller under Subsection (d) of this section need not be adjusted to take into account any projection of additional revenue attributable to increases in the total value of items taxable under the state sales and use tax because of amendments of Chapter 151, Tax Code.

(g) If the rate of the additional sales and use tax is increased, the designated officer or employee shall make two projections, in the manner provided by Subsection (d) of this section, of the revenue generated by the additional sales and use tax in the following year. The first projection must take into account the increase and the second projection must not take into account the increase. The officer or employee shall then subtract the amount of the result of the second projection from the amount of the result of the first projection to determine the revenue generated as a result of the increase in the additional sales and use tax. In the first year in which an additional sales and use tax is increased, the effective tax rate for the unit is the effective tax rate before the increase minus a number the numerator of which is the revenue generated as a result of the increase in the additional sales and use tax, as determined under this subsection, and the denominator of which is the current total value minus the new property value.

(h) If the rate of the additional sales and use tax is decreased, the designated officer or employee shall make two projections, in the manner provided by Subsection (d) of this section, of the revenue generated by the additional sales and use tax in the following year. The first projection must take into account the decrease and the second projection must not take into account the decrease. The officer or employee shall then subtract the amount of the result of the first projection from the amount of the result of the second projection to determine the revenue lost as a result of the decrease in the additional sales and use tax. In the first year in which an additional sales and use tax is decreased, the effective

tax rate for the unit is the effective tax rate before the decrease plus a number the numerator of which is the revenue lost as a result of the decrease in the additional sales and use tax, as determined under this subsection, and the denominator of which is the current total value minus the new property value.

(i) Any amount derived from the sales and use tax that is or will be distributed by a county to the recipient of an economic development grant made under Chapter 381, Local Government Code, is not considered to be sales and use tax revenue for purposes of this section.

(j) Any amount derived from the sales and use tax that is retained by the comptroller under Section 4 or 5, Chapter 1507, Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes), is not considered to be sales and use tax revenue for purposes of this section.

HISTORY: Enacted by Acts 1986, 69th Leg., 3rd C.S., ch. 10 (H.B. 79), art. 1, § 17, effective January 1, 1987; am. Acts 1987, 70th Leg., ch. 11 (S.B. 299), § 11, effective April 2, 1987; am. Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 4, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 256 (H.B. 2624), § 3, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 184 (H.B. 916), § 8, effective May 24, 1991; am. Acts 1995, 74th Leg., ch. 1012 (S.B. 1136), § 1, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 29.04, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 814 (S.B. 275), § 5.08, effective September 1, 2003.

Sec. 26.041. Tax Rate of Unit Imposing Additional Sales and Use Tax. [Effective January 1, 2020]

(a) In the first year in which an additional sales and use tax is required to be collected, the no-new-revenue tax rate and voter-approval tax rate for the taxing unit are calculated according to the following formulas:

NO-NEW-REVENUE TAX RATE = [(LAST YEAR'S LEVY - LOST PROPERTY LEVY) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE)] - SALES TAX GAIN RATE

and

VOTER-APPROVAL TAX RATE FOR SPECIAL TAXING UNIT = (NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE x 1.08) + (CURRENT DEBT RATE - SALES TAX GAIN RATE)

or

VOTER-APPROVAL TAX RATE FOR TAXING UNIT OTHER THAN SPECIAL TAXING UNIT = (NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE x 1.035) + (CURRENT DEBT RATE + UNUSED INCREMENT RATE - SALES TAX GAIN RATE)

where "sales tax gain rate" means a number expressed in dollars per $100 of taxable value, calculated by dividing the revenue that will be generated by the additional sales and use tax in the following year as calculated under Subsection (d) by the current total value.

(b) Except as provided by Subsections (a) and (c), in a year in which a taxing unit imposes an additional sales and use tax, the voter-approval tax rate for the taxing unit is calculated according to the following formula, regardless of whether the taxing unit levied a property tax in the preceding year:

VOTER-APPROVAL TAX RATE FOR SPECIAL TAXING UNIT = [(LAST YEAR'S MAINTENANCE AND OPERATIONS EXPENSE x 1.08) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE)] + (CURRENT DEBT RATE - SALES TAX REVENUE RATE)

or

VOTER-APPROVAL TAX RATE FOR TAXING UNIT OTHER THAN SPECIAL TAXING UNIT = [(LAST YEAR'S MAINTENANCE AND OPERATIONS EXPENSE x 1.035) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE)] + (CURRENT DEBT RATE + UNUSED INCREMENT RATE - SALES TAX REVENUE RATE)

where "last year's maintenance and operations expense" means the amount spent for maintenance and operations from property tax and additional sales and use tax revenues in the preceding year, and "sales tax revenue rate" means a number expressed in dollars per $100 of taxable value, calculated by dividing the revenue that will be generated by the additional sales and use tax in the current year as calculated under Subsection (d) by the current total value.

(c) In a year in which a taxing unit that has been imposing an additional sales and use tax ceases to impose an additional sales and use tax, the no-new-revenue tax rate and voter-approval tax rate for the taxing unit are calculated according to the following formulas:

NO-NEW-REVENUE TAX RATE = [(LAST YEAR'S LEVY - LOST PROPERTY LEVY) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE)] + SALES TAX LOSS RATE and

VOTER-APPROVAL TAX RATE FOR SPECIAL TAXING UNIT = [(LAST YEAR'S MAINTENANCE AND OPERATIONS EXPENSE x 1.08) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE)] + CURRENT DEBT RATE

or

VOTER-APPROVAL TAX RATE FOR TAXING UNIT OTHER THAN SPECIAL TAXING UNIT = [(LAST YEAR'S MAINTENANCE AND OPERATIONS EXPENSE x 1.035) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE)] + (CURRENT DEBT RATE + UNUSED INCREMENT RATE)

where "sales tax loss rate" means a number expressed in dollars per $100 of taxable value, calculated by dividing the amount of sales and use tax revenue generated in the last four quarters for which the information is available by the current total value and "last year's maintenance and operations expense" means the amount spent for maintenance and operations from property tax and additional sales and use tax revenues in the preceding year.

(c-1) Notwithstanding any other provision of this section, the governing body of a taxing unit other than a special taxing unit may direct the designated officer or employee to calculate the voter-approval tax rate of the taxing unit in the manner provided for a special taxing unit if any part of the taxing unit is located in an area declared a disaster area

during the current tax year by the governor or by the president of the United States. The designated officer or employee shall continue calculating the voter-approval tax rate in the manner provided by this subsection until the earlier of:

(1) the second tax year in which the total taxable value of property taxable by the taxing unit as shown on the appraisal roll for the taxing unit submitted by the assessor for the taxing unit to the governing body exceeds the total taxable value of property taxable by the taxing unit on January 1 of the tax year in which the disaster occurred; or

(2) the third tax year after the tax year in which the disaster occurred.

(d) In order to determine the amount of additional sales and use tax revenue for purposes of this section, the designated officer or employee shall use the sales and use tax revenue for the last preceding four quarters for which the information is available as the basis for projecting the additional sales and use tax revenue for the current tax year. If the rate of the additional sales and use tax is increased or reduced, the projection to be used for the first tax year after the effective date of the sales and use tax change shall be adjusted to exclude any revenue gained or lost because of the sales and use tax rate change. If the unit did not impose an additional sales and use tax for the last preceding four quarters, the designated officer or employee shall request the comptroller of public accounts to provide to the officer or employee a report showing the estimated amount of taxable sales and uses within the unit for the previous four quarters as compiled by the comptroller, and the comptroller shall comply with the request. The officer or employee shall prepare the estimate of the additional sales and use tax revenue for the first year of the imposition of the tax by multiplying the amount reported by the comptroller by the appropriate additional sales and use tax rate and by multiplying that product by .95.

(e) If a city that imposes an additional sales and use tax receives payments under the terms of a contract executed before January 1, 1986, in which the city agrees not to annex certain property or a certain area and the owners or lessees of the property or of property in the area agree to pay at least annually to the city an amount determined by reference to all or a percentage of the property tax rate of the city and all or a part of the value of the property subject to the agreement or included in the area subject to the agreement, the governing body, by order adopted by a majority vote of the governing body, may direct the designated officer or employee to add to the no-new-revenue and voter-approval tax rates the amount that, when applied to the total taxable value submitted to the governing body, would produce an amount of taxes equal to the difference between the total amount of payments for the tax year under contracts described by this subsection under the voter-approval tax rate calculated under this section and the total amount of payments for the tax year that would have been obligated to the city if the city had not adopted an additional sales and use tax.

(f) An estimate made by the comptroller under Subsection (d) of this section need not be adjusted to take into account any projection of additional revenue attributable to increases in the total value of items taxable under the state sales and use tax because of amendments of Chapter 151, Tax Code.

(g) If the rate of the additional sales and use tax is increased, the designated officer or employee shall make two projections, in the manner provided by Subsection (d), of the revenue generated by the additional sales and use tax in the following year. The first projection must take into account the increase and the second projection must not take into account the increase. The designated officer or employee shall then subtract the amount of the result of the second projection from the amount of the result of the first projection to determine the revenue generated as a result of the increase in the additional sales and use tax. In the first year in which an additional sales and use tax is increased, the no-new-revenue tax rate for the taxing unit is the no-new-revenue tax rate before the increase minus a number the numerator of which is the revenue generated as a result of the increase in the additional sales and use tax, as determined under this subsection, and the denominator of which is the current total value minus the new property value.

(h) If the rate of the additional sales and use tax is decreased, the designated officer or employee shall make two projections, in the manner provided by Subsection (d), of the revenue generated by the additional sales and use tax in the following year. The first projection must take into account the decrease and the second projection must not take into account the decrease. The designated officer or employee shall then subtract the amount of the result of the first projection from the amount of the result of the second projection to determine the revenue lost as a result of the decrease in the additional sales and use tax. In the first year in which an additional sales and use tax is decreased, the no-new-revenue tax rate for the taxing unit is the no-new-revenue tax rate before the decrease plus a number the numerator of which is the revenue lost as a result of the decrease in the additional sales and use tax, as determined under this subsection, and the denominator of which is the current total value minus the new property value.

(i) Any amount derived from the sales and use tax that is or will be distributed by a county to the recipient of an economic development grant made under Chapter 381, Local Government Code, is not considered to be sales and use tax revenue for purposes of this section.

(j) **[Effective until April 1, 2021]** Any amount derived from the sales and use tax that is retained by the comptroller under Section 4 or 5, Chapter 1507, Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes), is not considered to be sales and use tax revenue for purposes of this section.

(j) **[Effective April 1, 2021]** Any amount derived from the sales and use tax that is retained by the comptroller under Chapters 476 or 477, Government Code, is not considered to be sales and use tax revenue for purposes of this section.

HISTORY: Enacted by Acts 1986, 69th Leg., 3rd C.S., ch. 10 (H.B. 79), art. 1, § 17, effective January 1, 1987; am. Acts 1987, 70th Leg., ch. 11 (S.B. 299), § 11, effective April 2, 1987; am. Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 4, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 256 (H.B. 2624), § 3, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 184 (H.B. 916), § 8, effective May

24, 1991; am. Acts 1995, 74th Leg., ch. 1012 (S.B. 1136), § 1, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 29.04, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 814 (S.B. 275), § 5.08, effective September 1, 2003; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 37, effective January 1, 2020; am. Acts 2019, 86th Leg., ch. 301 (H.B. 4174), § 2.02, effective April 1, 2021.

Sec. 26.042. Effective Tax Rate in County Imposing Sales and Use Tax [Repealed].

Repealed by Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 5, effective January 1, 1988 and by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 29.09, effective September 1, 1997.

HISTORY: Enacted by Acts 1986, 69th Leg., 3rd C.S., ch. 10 (H.B. 79), Art. 1, § 33, effective January 1, 1987; am. Acts 1987, 70th Leg., ch. 11 (S.B. 299), § 12, effective April 2, 1987.

Sec. 26.043. Effective Tax Rate in City Imposing Mass Transit Sales and Use Tax. [Effective until January 1, 2020]

(a) In the tax year in which a city has set an election on the question of whether to impose a local sales and use tax under Subchapter H, Chapter 453, Transportation Code, the officer or employee designated to make the calculations provided by Section 26.04 may not make those calculations until the outcome of the election is determined. If the election is determined in favor of the imposition of the tax, the representative shall subtract from the city's rollback and effective tax rates the amount that, if applied to the city's current total value, would impose an amount equal to the amount of property taxes budgeted in the current tax year to pay for expenses related to mass transit services.

(b) In a tax year to which this section applies, a reference in this chapter to the city's effective or rollback tax rate refers to that rate as adjusted under this section.

(c) For the purposes of this section, "mass transit services" does not include the construction, reconstruction, or general maintenance of municipal streets.

Sec. 26.043. Voter-Approval and No-New-Revenue Tax Rates in City Imposing Mass Transit Sales and Use Tax. [Effective January 1, 2020]

(a) In the tax year in which a city has set an election on the question of whether to impose a local sales and use tax under Subchapter H, Chapter 453, Transportation Code, the officer or employee designated to make the calculations provided by Section 26.04 may not make those calculations until the outcome of the election is determined. If the election is determined in favor of the imposition of the tax, the designated officer or employee shall subtract from the city's voter-approval and no-new-revenue tax rates the amount that, if applied to the city's current total value, would impose an amount equal to the amount of property taxes budgeted in the current tax year to pay for expenses related to mass transit services.

(b) In a tax year to which this section applies, a reference in this chapter to the city's no-new-revenue or voter-approval tax rate refers to that rate as adjusted under this section.

(c) For the purposes of this section, "mass transit services" does not include the construction, reconstruction, or general maintenance of municipal streets.

HISTORY: Enacted by Acts 1986, 69th Leg., 3rd C.S., ch. 10 (H.B. 79), art. 1, § 35, effective January 1, 1987; am. Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 6, effective January 1, 1988; am. Acts 1991, 72nd Leg., ch. 736 (S.B. 788), § 1, effective June 15, 1991; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 29.05, effective September 1, 1997; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), §§ 38, 39, effective January 1, 2020.

Sec. 26.044. Effective Tax Rate to Pay for State Criminal Justice Mandate. [Effective until January 1, 2020]

(a) The first time that a county adopts a tax rate after September 1, 1991, in which the state criminal justice mandate applies to the county, the effective maintenance and operation rate for the county is increased by the rate calculated according to the following formula:

$$\frac{\text{(State Criminal Justice Mandate)}}{\text{(Current Total Value - New Property Value)}}$$

(b) In the second and subsequent years that a county adopts a tax rate, if the amount spent by the county for the state criminal justice mandate increased over the previous year, the effective maintenance and operation rate for the county is increased by the rate calculated according to the following formula:

$$\frac{\text{(This Year's State Criminal Justice Mandate - Previous Year's State Criminal Justice Mandate)}}{\text{(Current Total Value - New Property Value)}}$$

(c) The county shall include a notice of the increase in the effective maintenance and operation rate provided by this section, including a description and amount of the state criminal justice mandate, in the information published under Section 26.04(e) and Section 26.06(b) of this code.

(d) In this section, "state criminal justice mandate" means the amount spent by the county in the previous 12 months providing for the maintenance and operation cost of keeping inmates in county-paid facilities after they have been

sentenced to the Texas Department of Criminal Justice as certified by the county auditor based on information provided by the county sheriff, minus the amount received from state revenue for reimbursement of such costs.

Sec. 26.044. No-New-Revenue Tax Rate to Pay for State Criminal Justice Mandate. [Effective January 1, 2020]

(a) The first time that a county adopts a tax rate after September 1, 1991, in which the state criminal justice mandate applies to the county, the no-new-revenue maintenance and operation rate for the county is increased by the rate calculated according to the following formula:

(State Criminal Justice Mandate) / (Current Total Value - New Property Value)

(b) In the second and subsequent years that a county adopts a tax rate, if the amount spent by the county for the state criminal justice mandate increased over the previous year, the no-new-revenue maintenance and operation rate for the county is increased by the rate calculated according to the following formula:

(This Year's State Criminal Justice Mandate - Previous Year's State Criminal Justice Mandate) / (Current Total Value - New Property Value)

(c) The county shall include a notice of the increase in the no-new-revenue maintenance and operation rate provided by this section, including a description and amount of the state criminal justice mandate, in the information published under Section 26.04(e) and, as applicable, in the notice prescribed by Section 26.06 or 26.061.

(d) In this section, "state criminal justice mandate" means the amount spent by the county in the previous 12 months providing for the maintenance and operation cost of keeping inmates in county-paid facilities after they have been sentenced to the Texas Department of Criminal Justice as certified by the county auditor based on information provided by the county sheriff, minus the amount received from state revenue for reimbursement of such costs.

HISTORY: Enacted by Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 11.10, effective August 29, 1991; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.153, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), §§ 40, 41, effective January 1, 2020.

Sec. 26.0441. Tax Rate Adjustment for Indigent Health Care. [Effective until January 1, 2020]

(a) In the first tax year in which a taxing unit adopts a tax rate after January 1, 2000, and in which the enhanced minimum eligibility standards for indigent health care established under Section 61.006, Health and Safety Code, apply to the taxing unit, the effective maintenance and operations rate for the taxing unit is increased by the rate computed according to the following formula:

$$\text{Amount of Increase} = \frac{\text{Enhanced Indigent Health Care Expenditures}}{\text{(Current Total Value - New Property Value)}}$$

(b) In each subsequent tax year, if the taxing unit's enhanced indigent health care expenses exceed the amount of those expenses for the preceding year, the effective maintenance and operations rate for the taxing unit is increased by the rate computed according to the following formula:

$$\text{Amount of Increase} = \frac{\text{(Current Tax Year's Enhanced Indigent Health Care Expenditures - Preceding Tax Year's Indigent Health Care Expenditures)}}{\text{(Current Total Value - New Property Value)}}$$

(c) The taxing unit shall include a notice of the increase in its effective maintenance and operations rate provided by this section, including a brief description and the amount of the enhanced indigent health care expenditures, in the information published under Section 26.04(e) and, if applicable, Section 26.06(b).

(d) In this section, "enhanced indigent health care expenditures" for a tax year means the amount spent by the taxing unit for the maintenance and operation costs of providing indigent health care at the increased minimum eligibility standards established under Section 61.006, Health and Safety Code, effective on or after January 1, 2000, in the period beginning on July 1 of the year preceding the tax year for which the tax is adopted and ending on June 30 of the tax year for which the tax is adopted, less the amount of state assistance received by the taxing unit in accordance with Chapter 61, Health and Safety Code, that is attributable to those costs.

(e) [Expired pursuant to Acts 1999, 76th Leg., ch. 1377 (H.B. 1398), § 1.27, effective January 1, 2002.]

Sec. 26.0441. Tax Rate Adjustment for Indigent Health Care. [Effective January 1, 2020]

(a) In the first tax year in which a taxing unit adopts a tax rate after January 1, 2000, and in which the enhanced minimum eligibility standards for indigent health care established under Section 61.006, Health and Safety Code, apply to the taxing unit, the no-new-revenue maintenance and operations rate for the taxing unit is increased by the rate computed according to the following formula:

Amount of Increase = Enhanced Indigent Health Care Expenditures / (Current Total Value - New Property Value)

(b) In each subsequent tax year, if the taxing unit's enhanced indigent health care expenses exceed the amount of those expenses for the preceding year, the no-new-revenue maintenance and operations rate for the taxing unit is increased by the rate computed according to the following formula:

Amount of Increase = (Current Tax Year's Enhanced Indigent Health Care Expenditures - Preceding Tax Year's Indigent Health Care Expenditures) / (Current Total Value - New Property Value)

(c) The taxing unit shall include a notice of the increase in its no-new-revenue maintenance and operations rate provided by this section, including a brief description and the amount of the enhanced indigent health care expenditures, in the information published under Section 26.04(e) and, as applicable, in the notice prescribed by Section 26.06 or 26.061.

(d) In this section, "enhanced indigent health care expenditures" for a tax year means the amount spent by the taxing unit for the maintenance and operation costs of providing indigent health care at the increased minimum eligibility standards established under Section 61.006, Health and Safety Code, effective on or after January 1, 2000, in the period beginning on July 1 of the year preceding the tax year for which the tax is adopted and ending on June 30 of the tax year for which the tax is adopted, less the amount of state assistance received by the taxing unit in accordance with Chapter 61, Health and Safety Code, that is attributable to those costs.

(e) [Expired pursuant to Acts 1999, 76th Leg., ch. 1377 (H.B. 1398), § 1.27, effective January 1, 2002.]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1377 (H.B. 1398), § 1.27, effective September 1, 1999; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 42, effective January 1, 2020.

Sec. 26.0442. Tax Rate Adjustment for County Indigent Defense Compensation Expenditures. [Effective January 1, 2020]

(a) In this section, "indigent defense compensation expenditures" for a tax year means the amount paid by a county to provide appointed counsel for indigent individuals in criminal or civil proceedings in accordance with the schedule of fees adopted under Article 26.05, Code of Criminal Procedure, in the period beginning on July 1 of the tax year preceding the tax year for which the tax is adopted and ending on June 30 of the tax year for which the tax is adopted, less the amount of any state grants received by the county during that period for the same purpose.

(b) If a county's indigent defense compensation expenditures exceed the amount of those expenditures for the preceding tax year, the no-new-revenue maintenance and operations rate for the county is increased by the lesser of the rates computed according to the following formulas:

(Current Tax Year's Indigent Defense Compensation Expenditures - Preceding Tax Year's Indigent Defense Compensation Expenditures) / (Current Total Value - New Property Value)

or

(Preceding Tax Year's Indigent Defense Compensation Expenditures x 0.05) / (Current Total Value - New Property Value)

(c) The county shall include a notice of the increase in the no-new-revenue maintenance and operations rate provided by this section, including a description and the amount of indigent defense compensation expenditures, in the information published under Section 26.04(e) and, as applicable, in the notice prescribed by Section 26.06 or 26.061.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 43, effective January 1, 2020.

Sec. 26.0443. Tax Rate Adjustment for Eligible County Hospital Expenditures. [Effective January 1, 2020]

(a) In this section:

(1) "Eligible county hospital" means a hospital that:

(A) is:

(i) owned or leased by a county and operated in accordance with Chapter 263, Health and Safety Code; or

(ii) owned or leased jointly by a municipality and a county and operated in accordance with Chapter 265, Health and Safety Code; and

(B) is located in an area not served by a hospital district created under Sections 4 through 11, Article IX, Texas Constitution.

(2) "Eligible county hospital expenditures" for a tax year means the amount paid by a county or municipality in the period beginning on July 1 of the tax year preceding the tax year for which the tax is adopted and ending on June 30 of the tax year for which the tax is adopted to maintain and operate an eligible county hospital.

(b) If a county's or municipality's eligible county hospital expenditures exceed the amount of those expenditures for the preceding tax year, the no-new-revenue maintenance and operations rate for the county or municipality, as applicable, is increased by the lesser of the rates computed according to the following formulas:

(Current Tax Year's Eligible County Hospital Expenditures - Preceding Tax Year's Eligible County Hospital Expenditures) / (Current Total Value - New Property Value)

or

(Preceding Tax Year's Eligible County Hospital Expenditures x 0.08) / (Current Total Value - New Property Value)

(c) The county or municipality shall include a notice of the increase in the no-new-revenue maintenance and operations rate provided by this section, including a description and amount of eligible county hospital expenditures, in the information published under Section 26.04(e) and, as applicable, in the notice prescribed by Section 26.06 or 26.061.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 43, effective January 1, 2020.

Sec. 26.045. Rollback Relief for Pollution Control Requirements. [Effective until January 1, 2020]
Voter-Approval Tax Rate Relief for Pollution Control Requirements. [Effective January 1, 2020]

(a) **[Effective until January 1, 2020]** The rollback tax rate for a political subdivision of this state is increased by the rate that, if applied to the total current value, would impose an amount of taxes equal to the amount the political subdivision will spend out of its maintenance and operation funds under Section 26.012(16) to pay for a facility, device, or method for the control of air, water, or land pollution that is necessary to meet the requirements of a permit issued by the Texas Commission on Environmental Quality.

(a) **[Effective January 1, 2020]** The voter-approval tax rate for a political subdivision of this state is increased by the rate that, if applied to the current total value, would impose an amount of taxes equal to the amount the political subdivision will spend out of its maintenance and operation funds under Section 26.012(16) to pay for a facility, device, or method for the control of air, water, or land pollution that is necessary to meet the requirements of a permit issued by the Texas Commission on Environmental Quality.

(b) In this section, "facility, device, or method for control of air, water, or land pollution" means any land, structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States or this state for the prevention, monitoring, control, or reduction of air, water, or land pollution.

(c) **[Effective until January 1, 2020]** To receive an adjustment to the rollback tax rate under this section, a political subdivision shall present information to the executive director of the Texas Commission on Environmental Quality in a permit application or in a request for any exemption from a permit that would otherwise be required detailing:

(1) the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution;

(2) the estimated cost of the pollution control facility, device, or method; and

(3) the purpose of the installation of the facility, device, or method, and the proportion of the installation that is pollution control property.

(c) **[Effective January 1, 2020]** To receive an adjustment to the voter-approval tax rate under this section, a political subdivision shall present information to the executive director of the Texas Commission on Environmental Quality in a permit application or in a request for any exemption from a permit that would otherwise be required detailing:

(1) the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution;

(2) the estimated cost of the pollution control facility, device, or method; and

(3) the purpose of the installation of the facility, device, or method, and the proportion of the installation that is pollution control property.

(d) Following submission of the information required by Subsection (c), the executive director of the Texas Commission on Environmental Quality shall determine whether the facility, device, or method is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. If the executive director determines that the facility, device, or method is used wholly or partly to control pollution, the director shall issue a letter to the political subdivision stating that determination and the portion of the cost of the installation that is pollution control property.

(e) The Texas Commission on Environmental Quality may charge a political subdivision seeking a determination that property is pollution control property an additional fee not to exceed its administrative costs for processing the information, making the determination, and issuing the letter required by this section. The commission may adopt rules to implement this section.

(f) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:

(1) coal cleaning or refining facilities;

(2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification fluidized bed combustion combined cycle systems;

(3) ultra-supercritical pulverized coal boilers;

(4) flue gas recirculation components;

(5) syngas purification systems and gas-cleanup units;

(6) enhanced heat recovery systems;

(7) exhaust heat recovery boilers;

(8) heat recovery steam generators;

(9) superheaters and evaporators;

(10) enhanced steam turbine systems;

(11) methanation;

(12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;

(13) biomass cofiring storage, distribution, and firing systems;

(14) coal cleaning or drying processes such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;

(15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;

(16) if the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;

(17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and

(18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

(g) The Texas Commission on Environmental Quality by rule shall update the list adopted under Subsection (f) at least once every three years. An item may be removed from the list if the commission finds compelling evidence to support the conclusion that the item does not render pollution control benefits.

(h) Notwithstanding the other provisions of this section, if the facility, device, or method for the control of air, water, or land pollution described in a permit application or in a request for any exemption from a permit that would otherwise be required is a facility, device, or method included on the list adopted under Subsection (f), the executive director of the Texas Commission on Environmental Quality, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the permit application or in the request for an exemption from a permit that would otherwise be required is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the action that is required by Subsection (d) in the event such a determination is made.

(i) **[Effective until January 1, 2020]** A political subdivision of the state seeking an adjustment in its rollback tax rate under this section shall provide to its tax assessor a copy of the letter issued by the executive director of the Texas Commission on Environmental Quality under Subsection (d). The tax assessor shall accept the copy of the letter from the executive director as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property and shall adjust the rollback tax rate for the political subdivision as provided for by Subsection (a).

(i) **[Effective January 1, 2020]** A political subdivision of the state seeking an adjustment in its voter-approval tax rate under this section shall provide to its tax assessor a copy of the letter issued by the executive director of the Texas Commission on Environmental Quality under Subsection (d). The tax assessor shall accept the copy of the letter from the executive director as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property and shall adjust the voter-approval tax rate for the political subdivision as provided for by Subsection (a).

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 285 (H.B. 1920), § 4, effective August 30, 1993; am. Acts 2007, 80th Leg., ch. 1277 (H.B. 3732), § 5, effective September 1, 2007; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), §§ 44, 45, effective January 1, 2020.

ATTORNEY GENERAL OPINIONS

Rule Making Authority of TCEQ.

Neither section 11.31(k) nor section 26.045(f) of the Tax Code restricts the rule-making authority of the Texas Commission on Environmental Quality to only those pollution control facilities, devices, or methods associated with advanced clean energy projects. 2007 Tex. Op. Att'y Gen. GA-0587.

Sec. 26.05. Tax Rate.

(a) **[Effective until January 1, 2020]** The governing body of each taxing unit, before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit, shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted. The tax rate consists of two components, each of which must be approved separately. The components are:

(1) for a taxing unit other than a school district, the rate that, if applied to the total taxable value, will impose the total amount published under Section 26.04(e)(3)(C), less any amount of additional sales and use tax revenue that will be used to pay debt service, or, for a school district, the rate calculated under Section 44.004(c)(5)(A)(ii)(b), Education Code; and

(2) the rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the next year.

(a) **[Effective January 1, 2020]** The governing body of each taxing unit shall adopt a tax rate for the current tax year and shall notify the assessor for the taxing unit of the rate adopted. The governing body must adopt a tax rate before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit, except that the governing body must adopt a tax rate that exceeds the voter-approval tax rate not later than the 71st day before the next uniform election date prescribed by Section 41.001, Election Code, that occurs in November of that year. The tax rate consists of two components, each of which must be approved separately. The components are:

(1) for a taxing unit other than a school district, the rate that, if applied to the total taxable value, will impose the total amount described by Section 26.04(e)(3)(C), less any amount of additional sales and use tax revenue that will be used to pay debt service, or, for a school district, the rate calculated under Section 44.004(c)(5)(A)(ii)(b), Education Code; and

(2) the rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures of the taxing unit for the next year.

(b) **[Effective until January 1, 2020]** A taxing unit may not impose property taxes in any year until the governing body has adopted a tax rate for that year, and the annual tax rate must be set by ordinance, resolution, or order, depending on the method prescribed by law for adoption of a law by the governing body. The vote on the ordinance, resolution, or order setting the tax rate must be separate from the vote adopting the budget. For a taxing unit other than a school district, the vote on the ordinance, resolution, or order setting a tax rate that exceeds the effective tax rate must be a record vote, and at least 60 percent of the members of the governing body must vote in favor of the ordinance, resolution, or order. For a school district, the vote on the ordinance, resolution, or order setting a tax rate that exceeds the sum of the effective maintenance and operations tax rate of the district as determined under Section 26.08(i) and the district's current debt rate must be a record vote, and at least 60 percent of the members of the governing body must vote in favor of the ordinance, resolution, or order. A motion to adopt an ordinance, resolution, or order setting a tax rate that exceeds the effective tax rate must be made in the following form: "I move that the property tax rate be increased by the adoption of a tax rate of (specify tax rate), which is effectively a (insert percentage by which the proposed tax rate exceeds the effective tax rate) percent increase in the tax rate." If the ordinance, resolution, or order sets a tax rate that, if applied to the total taxable value, will impose an amount of taxes to fund maintenance and operation expenditures of the taxing unit that exceeds the amount of taxes imposed for that purpose in the preceding year, the taxing unit must:

(1) include in the ordinance, resolution, or order in type larger than the type used in any other portion of the document:

(A) the following statement: "THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE."; and

(B) if the tax rate exceeds the effective maintenance and operations rate, the following statement: "THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE EFFECTIVE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A $100,000 HOME BY APPROXIMATELY $(Insert amount)."; and

(2) include on the home page of any Internet website operated by the unit:

(A) the following statement: "(Insert name of unit) ADOPTED A TAX RATE THAT WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE"; and

(B) if the tax rate exceeds the effective maintenance and operations rate, the following statement: "THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE EFFECTIVE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A $100,000 HOME BY APPROXIMATELY $(Insert amount)."

(b) **[Effective January 1, 2020]** A taxing unit may not impose property taxes in any year until the governing body has adopted a tax rate for that year, and the annual tax rate must be set by ordinance, resolution, or order, depending on the method prescribed by law for adoption of a law by the governing body. The vote on the ordinance, resolution, or order setting the tax rate must be separate from the vote adopting the budget. For a taxing unit other than a school district, the vote on the ordinance, resolution, or order setting a tax rate that exceeds the no-new-revenue tax rate must be a record vote, and at least 60 percent of the members of the governing body must vote in favor of the ordinance, resolution, or order. For a school district, the vote on the ordinance, resolution, or order setting a tax rate that exceeds the sum of the no-new-revenue maintenance and operations tax rate of the district as determined under Section 26.08(i) and the district's current debt rate must be a record vote, and at least 60 percent of the members of the governing body must vote in favor of the ordinance, resolution, or order. A motion to adopt an ordinance, resolution, or order setting a tax rate that exceeds the no-new-revenue tax rate must be made in the following form: "I move that the property tax rate be increased by the adoption of a tax rate of (specify tax rate), which is effectively a (insert percentage by which the proposed tax rate exceeds the no-new-revenue tax rate) percent increase in the tax rate." If the ordinance, resolution, or order sets a tax rate that, if applied to the total taxable value, will impose an amount of taxes to fund maintenance and operation expenditures of the taxing unit that exceeds the amount of taxes imposed for that purpose in the preceding year, the taxing unit must:

(1) include in the ordinance, resolution, or order in type larger than the type used in any other portion of the document:

(A) the following statement: "THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE."; and

(B) if the tax rate exceeds the no-new-revenue maintenance and operations rate, the following statement: "THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A $100,000 HOME BY APPROXIMATELY $(Insert amount)."; and

(2) include on the home page of the Internet website of the taxing unit:

(A) the following statement: "(Insert name of taxing unit) ADOPTED A TAX RATE THAT WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE"; and

(B) if the tax rate exceeds the no-new-revenue maintenance and operations rate, the following statement: "THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE

EXCEEDS THE NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A $100,000 HOME BY APPROXIMATELY $(Insert amount)."

(c) **[Effective until January 1, 2020]** If the governing body of a taxing unit does not adopt a tax rate before the date required by Subsection (a), the tax rate for the taxing unit for that tax year is the lower of the effective tax rate calculated for that tax year or the tax rate adopted by the taxing unit for the preceding tax year. A tax rate established by this subsection is treated as an adopted tax rate. Before the fifth day after the establishment of a tax rate by this subsection, the governing body of the taxing unit must ratify the applicable tax rate in the manner required by Subsection (b).

(c) **[Effective January 1, 2020]** If the governing body of a taxing unit does not adopt a tax rate before the date required by Subsection (a), the tax rate for the taxing unit for that tax year is the lower of the no-new-revenue tax rate calculated for that tax year or the tax rate adopted by the taxing unit for the preceding tax year. A tax rate established by this subsection is treated as an adopted tax rate. Before the fifth day after the establishment of a tax rate by this subsection, the governing body of the taxing unit must ratify the applicable tax rate in the manner required by Subsection (b).

(d) **[Effective until January 1, 2020]** The governing body of a taxing unit other than a school district may not adopt a tax rate that exceeds the lower of the rollback tax rate or the effective tax rate calculated as provided by this chapter until the governing body has held two public hearings on the proposed tax rate and has otherwise complied with Section 26.06 and Section 26.065. The governing body of a taxing unit shall reduce a tax rate set by law or by vote of the electorate to the lower of the rollback tax rate or the effective tax rate and may not adopt a higher rate unless it first complies with Section 26.06.

(d) **[Effective January 1, 2020]** The governing body of a taxing unit other than a school district may not adopt a tax rate that exceeds the lower of the voter-approval tax rate or the no-new-revenue tax rate calculated as provided by this chapter until the governing body has held a public hearing on the proposed tax rate and has otherwise complied with Section 26.06 and Section 26.065. The governing body of a taxing unit shall reduce a tax rate set by law or by vote of the electorate to the lower of the voter-approval tax rate or the no-new-revenue tax rate and may not adopt a higher rate unless it first complies with Section 26.06.

(d-1) **[Effective January 1, 2020]** The governing body of a taxing unit other than a school district may not hold a public hearing on a proposed tax rate or a public meeting to adopt a tax rate until the fifth day after the date the chief appraiser of each appraisal district in which the taxing unit participates has:

(1) delivered the notice required by Section 26.04(e-2); and

(2) complied with Section 26.17(f).

(d-2) **[Effective January 1, 2020]** Notwithstanding Subsection (a), the governing body of a taxing unit other than a school district may not adopt a tax rate until the chief appraiser of each appraisal district in which the taxing unit participates has complied with Subsection (d-1).

(e) **[Effective until January 1, 2021]** A person who owns taxable property is entitled to an injunction restraining the collection of taxes by a taxing unit in which the property is taxable if the taxing unit has not complied with the requirements of this section and the failure to comply was not in good faith. An action to enjoin the collection of taxes must be filed prior to the date a taxing unit delivers substantially all of its tax bills.

(e) **[Effective January 1, 2021]** A person who owns taxable property is entitled to an injunction restraining the collection of taxes by a taxing unit in which the property is taxable if the taxing unit has not complied with the requirements of this section or Section 26.04. It is a defense in an action for an injunction under this subsection that the failure to comply was in good faith. An action to enjoin the collection of taxes must be filed not later than the 15th day after the date the taxing unit adopts a tax rate. A property owner is not required to pay the taxes imposed by a taxing unit on the owner's property while an action filed by the property owner to enjoin the collection of taxes imposed by the taxing unit on the owner's property is pending. If the property owner pays the taxes and subsequently prevails in the action, the property owner is entitled to a refund of the taxes paid, together with reasonable attorney's fees and court costs. The property owner is not required to apply to the collector for the taxing unit to receive the refund.

(e-1) **[Effective January 1, 2020]** The governing body of a taxing unit that imposes an additional sales and use tax may not adopt the component of the tax rate of the taxing unit described by Subsection (a)(1) of this section until the chief financial officer or the auditor for the taxing unit submits to the governing body of the taxing unit a written certification that the amount of additional sales and use tax revenue that will be used to pay debt service has been deducted from the total amount described by Section 26.04(e)(3)(C) as required by Subsection (a)(1) of this section. The comptroller shall prescribe the form of the certification required by this subsection and the manner in which it is required to be submitted.

(f) Except as required by the law under which an obligation was created, the governing body may not apply any tax revenues generated by the rate described in Subsection (a)(1) of this section for any purpose other than the retirement of debt.

(g) **[Effective until January 1, 2020]** Notwithstanding Subsection (a), the governing body of a school district that elects to adopt a tax rate before the adoption of a budget for the fiscal year that begins in the current tax year may adopt a tax rate for the current tax year before receipt of the certified appraisal roll for the school district if the chief appraiser of the appraisal district in which the school district participates has certified to the assessor for the school district an

estimate of the taxable value of property in the school district as provided by Section 26.01(e). If a school district adopts a tax rate under this subsection, the effective tax rate and the rollback tax rate of the district shall be calculated based on the certified estimate of taxable value.

(g) **[Effective January 1, 2020]** Notwithstanding Subsection (a), the governing body of a school district that elects to adopt a tax rate before the adoption of a budget for the fiscal year that begins in the current tax year may adopt a tax rate for the current tax year before receipt of the certified appraisal roll for the school district if the chief appraiser of the appraisal district in which the school district participates has certified to the assessor for the school district an estimate of the taxable value of property in the school district as provided by Section 26.01(e). If a school district adopts a tax rate under this subsection, the no-new-revenue tax rate and the voter-approval tax rate of the district shall be calculated based on the certified estimate of taxable value.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 117, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 657 (S.B. 1125), § 3, effective June 14, 1985; am. Acts 1987, 70th Leg., ch. 699 (S.B. 1420), § 2, effective June 19, 1987; am. Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 7, effective January 1, 1988; am. Acts 1987, 70th Leg., ch. 988 (S.B. 1420), § 2, effective June 18, 1987; am. Acts 1991, 72nd Leg., ch. 404 (S.B. 293), § 1, effective January 1, 1992; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 29.06, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 27, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 398 (H.B. 2075), § 3, effective August 30, 1999; am. Acts 1999, 76th Leg., ch. 423 (S.B. 1118), § 1, effective January 1, 2000; am. Acts 1999, 76th Leg., ch. 1358 (H.B. 954), § 2, effective January 1, 2000; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), § 13, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1368 (S.B. 18), §§ 1, 5, effective June 18, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.001, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 668 (H.B. 2291), § 1, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1328 (H.B. 3646), § 86, effective September 1, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 57.28, effective September 28, 2011; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 46, effective January 1, 2021.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — In a suit brought by a taxpayer, the city's calculation of the effective tax rate, based on estimated tax amounts, substantially complied with procedures set forth in Tex. Tax Code Ann. § 26.04 and did not exceed the limits for the total allowable tax rate, provided by Tex. Tax Code Ann. § 26.05; there was no evidence to refute the presumption that there was a valid levy and assessment of the taxpayer's liability, made by a legally constituted taxing authority, that all conditions precedent to the levy and assessment were performed, and that the city complied with all of the notice and hearing requirements of Tex. Const. art. 8, § 21. Corpus Christi Taxpayer's Asso. v. Corpus Christi, 716 S.W.2d 578, 1986 Tex. App. LEXIS 8357 (Tex. App. Corpus Christi Aug. 29, 1986, writ ref'd n.r.e.).

Power company was liable to tax authority for the disputed property tax, because the taxing authority properly assessed the property under former Tex. Rev. Civ. Stat. Ann. art. 7244c (now Tex. Tax. Code Ann. § 26.05), power company failed to show that that property valuation was excessive, and the record showed that the taxing authority complied with former Tex. Rev. Civ. Stat. Ann. art. 7244c, § 2. Houston Lighting & Power Co. v. Dickinson Indep. Sch. Dist., 641 S.W.2d 302, 1982 Tex. App. LEXIS 5011 (Tex. App. Houston 14th Dist. Aug. 5, 1982, writ ref'd n.r.e.).

ATTORNEY GENERAL OPINIONS

Analysis

Adoption of Tax.
Constitutionality.
Taxing Authority.
Tax Calculations.

Adoption of Tax.

The Tax Code does not provide a special method for a tax rate to be adopted by a hospital district that has not adopted a tax rate or levied a tax since 1996, and it is not possible to predict whether a court would uphold the adoption of a tax rate without following the rollback procedures mandated by ch. 26 of the Tax Code. 2010 Tex. Op. Att'y Gen. GA-0798.

Constitutionality.

Tax Code section 26.05(d), which requires public notice and hearing of intended property tax increases by political subdivisions, is not prohibited by article VIII, section 21 of the Texas Constitution. 1999 Tex. Op. Att'y Gen. JC-0009.

Taxing Authority.

Tex. Educ. Code Ann. § 44.004(j) and Tex. Tax Code Ann. § 26.05(g) do not authorize an independent school district to use the certified estimate of property tax values to adopt a tax rate after adopting its budget. 2015 Tex. Op. Att'y Gen. KP-0001.

Tax Calculations.

Pursuant to Tex. Water Code Ann. § 49.107(g), the Legislature has prohibited the South Texas Water Authority from utilizing the procedures and calculations in Tex. Tax Code Ann. §§ 26.04, 26.05, 26.07 to adopt its tax rate. 2010 Tex. Op. Att'y Gen. GA-0758.

Sec. 26.051. Evidence of Unrecorded Tax Rate Adoption.

(a) If a taxing unit does not make a proper record of the adoption of a tax rate for a year but the tax rate can be determined by examining the tax rolls for that year, the governing body of the taxing unit may take testimony or make other inquiry to determine whether a tax rate was properly adopted for that year. If the governing body determines that a tax rate was properly adopted, it may order that its official records for that year be amended nunc pro tunc to reflect the adoption of the rate.

(b) An amendment of the official records made under Subsection (a) of this section is prima facie evidence that the tax rate entered into the records was properly and regularly adopted for that year.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.01(a), effective August 28, 1989.

Sec. 26.052. Simplified Tax Rate Notice for Taxing Units with Low Tax Levies.

(a) This section applies only to a taxing unit for which the total tax rate proposed for the current tax year:

(1) is 50 cents or less per $100 of taxable value; and

(2) would impose taxes of $500,000 or less when applied to the current total value for the taxing unit.

(b) A taxing unit to which this section applies is exempt from the notice and publication requirements of Section 26.04(e) and is not subject to an injunction under Section 26.04(g) for failure to comply with those requirements.

(c) A taxing unit to which this section applies may provide public notice of its proposed tax rate in either of the following methods not later than the seventh day before the date on which the tax rate is adopted:

(1) mailing a notice of the proposed tax rate to each owner of taxable property in the taxing unit; or

(2) publishing notice of the proposed tax rate in the legal notices section of a newspaper having general circulation in the taxing unit.

(d) A taxing unit that provides public notice of a proposed tax rate under Subsection (c) is exempt from Sections 26.05(d) and 26.06 and is not subject to an injunction under Section 26.05(e) for failure to comply with Section 26.05(d). A taxing unit that provides public notice of a proposed tax rate under Subsection (c) may not adopt a tax rate that exceeds the rate set out in the notice unless the taxing unit provides additional public notice under Subsection (c) of the higher rate or complies with Sections 26.05(d) and 26.06, as applicable, in adopting the higher rate.

(e) **[Effective until January 1, 2020]** Public notice provided under Subsection (c) must specify:

(1) the tax rate that the governing body proposes to adopt;

(2) the date, time, and location of the meeting of the governing body of the taxing unit at which the governing body will consider adopting the proposed tax rate; and

(3) if the proposed tax rate for the taxing unit exceeds the unit's effective tax rate calculated as provided by Section 26.04, a statement substantially identical to the following: "The proposed tax rate would increase total taxes in (name of taxing unit) by (percentage by which the proposed tax rate exceeds the effective tax rate)."

(e) **[Effective January 1, 2020]** Public notice provided under Subsection (c) must specify:

(1) the tax rate that the governing body proposes to adopt;

(2) the date, time, and location of the meeting of the governing body of the taxing unit at which the governing body will consider adopting the proposed tax rate; and

(3) if the proposed tax rate for the taxing unit exceeds the taxing unit's no-new-revenue tax rate calculated as provided by Section 26.04, a statement substantially identical to the following: "The proposed tax rate would increase total taxes in (name of taxing unit) by (percentage by which the proposed tax rate exceeds the no-new-revenue tax rate)."

(f) **[Effective January 1, 2020]** A taxing unit to which this section applies that elects to provide public notice of its proposed tax rate under Subsection (c)(2) must also provide public notice of its proposed tax rate by posting notice of the proposed tax rate, including the information prescribed by Subsection (e), prominently on the home page of the Internet website of the taxing unit.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 255 (H.B. 1520), § 1, effective May 28, 1999; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 47, effective January 1, 2020.

Sec. 26.06. Notice, Hearing, and Vote on Tax Increase.

(a) **[Effective until January 1, 2020]** A public hearing required by Section 26.05 may not be held before the seventh day after the date the notice of the public hearing is given. The second hearing may not be held earlier than the third day after the date of the first hearing. Each hearing must be on a weekday that is not a public holiday. Each hearing must be held inside the boundaries of the unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access. At the hearings, the governing body must afford adequate opportunity for proponents and opponents of the tax increase to present their views.

(a) **[Effective January 1, 2020]** A public hearing required by Section 26.05 may not be held before the fifth day after the date the notice of the public hearing is given. The hearing must be on a weekday that is not a public holiday. The hearing must be held inside the boundaries of the unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access. At the hearing, the governing body must afford adequate opportunity for proponents and opponents of the tax increase to present their views.

(b) **[Effective until January 1, 2020]** The notice of a public hearing may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 24-point or larger type. The notice must contain a statement in the following form:

"NOTICE OF PUBLIC HEARING ON TAX INCREASE

"The (name of the taxing unit) will hold two public hearings on a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by (percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax rate calculated under this chapter) percent. Your individual taxes may increase at a greater or lesser rate, or even decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property and the tax rate that is adopted.

"The first public hearing will be held on (date and time) at (meeting place).

"The second public hearing will be held on (date and time) at (meeting place).

"(Names of all members of the governing body, showing how each voted on the proposal to consider the tax increase or, if one or more were absent, indicating the absences.)

"The average taxable value of a residence homestead in (name of taxing unit) last year was $_____ (average taxable value of a residence homestead in the taxing unit for the preceding tax year, disregarding residence homestead exemptions available only to disabled persons or persons 65 years of age or older). Based on last year's tax rate of $_____ (preceding year's adopted tax rate) per $100 of taxable value, the amount of taxes imposed last year on the average home was $_____ (tax on average taxable value of a residence homestead in the taxing unit for the preceding tax year, disregarding residence homestead exemptions available only to disabled persons or persons 65 years of age or older).

"The average taxable value of a residence homestead in (name of taxing unit) this year is $_____ (average taxable value of a residence homestead in the taxing unit for the current tax year, disregarding residence homestead exemptions available only to disabled persons or persons 65 years of age or older). If the governing body adopts the effective tax rate for this year of $_____ (effective tax rate) per $100 of taxable value, the amount of taxes imposed this year on the average home would be $_____ (tax on average taxable value of a residence homestead in the taxing unit for the current tax year, disregarding residence homestead exemptions available only to disabled persons or persons 65 years of age or older).

"If the governing body adopts the proposed tax rate of $_____ (proposed tax rate) per $100 of taxable value, the amount of taxes imposed this year on the average home would be $_____ (tax on the average taxable value of a residence in the taxing unit for the current year disregarding residence homestead exemptions available only to disabled persons or persons 65 years of age or older).

"Members of the public are encouraged to attend the hearings and express their views."

(b) **[Effective January 1, 2020]** The notice of a public hearing may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 24-point or larger type.

(b-1) **[Effective January 1, 2020]** If the proposed tax rate exceeds the no-new-revenue tax rate and the voter-approval tax rate of the taxing unit, the notice must contain a statement in the following form:

"NOTICE OF PUBLIC HEARING ON TAX INCREASE

"PROPOSED TAX RATE	$_____ per $100
"NO-NEW-REVENUE TAX RATE	$_____ per $100
"VOTER-APPROVAL TAX RATE	$_____ per $100

"The no-new-revenue tax rate is the tax rate for the (current tax year) tax year that will raise the same amount of property tax revenue for (name of taxing unit) from the same properties in both the (preceding tax year) tax year and the (current tax year) tax year.

"The voter-approval tax rate is the highest tax rate that (name of taxing unit) may adopt without holding an election to seek voter approval of the rate.

"The proposed tax rate is greater than the no-new-revenue tax rate. This means that (name of taxing unit) is proposing to increase property taxes for the (current tax year) tax year.

"A public hearing on the proposed tax rate will be held on (date and time) at (meeting place).

"The proposed tax rate is also greater than the voter-approval tax rate. If (name of taxing unit) adopts the proposed tax rate, (name of taxing unit) is required to hold an election so that the voters may accept or reject the proposed tax rate. If a majority of the voters reject the proposed tax rate, the tax rate of the (name of taxing unit) will be the voter-approval tax rate. The election will be held on (date of election). You may contact the (name of office responsible for administering the election) for information about voting locations. The hours of voting on election day are (voting hours).

"Your taxes owed under any of the tax rates mentioned above can be calculated as follows:

"Property tax amount = tax rate x taxable value of your property / 100

"(Names of all members of the governing body, showing how each voted on the proposal to consider the tax increase or, if one or more were absent, indicating the absences.)

"The 86th Texas Legislature modified the manner in which the voter-approval tax rate is calculated to limit the rate of growth of property taxes in the state."

(b-2) **[Effective January 1, 2020]** If the proposed tax rate exceeds the no-new-revenue tax rate but does not exceed the voter-approval tax rate of the taxing unit, the notice must contain a statement in the following form:

"NOTICE OF PUBLIC HEARING ON TAX INCREASE

"PROPOSED TAX RATE	$_____ per $100
"NO-NEW-REVENUE TAX RATE	$_____ per $100
"VOTER-APPROVAL TAX RATE	$_____ per $100

"The no-new-revenue tax rate is the tax rate for the (current tax year) tax year that will raise the same amount of property tax revenue for (name of taxing unit) from the same properties in both the (preceding tax year) tax year and the (current tax year) tax year.

"The voter-approval tax rate is the highest tax rate that (name of taxing unit) may adopt without holding an election to seek voter approval of the rate.

"The proposed tax rate is greater than the no-new-revenue tax rate. This means that (name of taxing unit) is proposing to increase property taxes for the (current tax year) tax year.

"A public hearing on the proposed tax rate will be held on (date and time) at (meeting place).

"The proposed tax rate is not greater than the voter-approval tax rate. As a result, (name of taxing unit) is not required to hold an election at which voters may accept or reject the proposed tax rate. However, you may express your support for or opposition to the proposed tax rate by contacting the members of the (name of governing body) of (name of taxing unit) at their offices or by attending the public hearing mentioned above.

"Your taxes owed under any of the tax rates mentioned above can be calculated as follows:

"Property tax amount = tax rate x taxable value of your property / 100

"(Names of all members of the governing body, showing how each voted on the proposal to consider the tax increase or, if one or more were absent, indicating the absences.)

"The 86th Texas Legislature modified the manner in which the voter-approval tax rate is calculated to limit the rate of growth of property taxes in the state."

(b-3) **[Effective January 1, 2020]** If the proposed tax rate does not exceed the no-new-revenue tax rate but exceeds the voter-approval tax rate of the taxing unit, the notice must contain a statement in the following form:

"NOTICE OF PUBLIC HEARING ON TAX INCREASE

"PROPOSED TAX RATE	$_____ per $100
"NO-NEW-REVENUE TAX RATE	$_____ per $100
"VOTER-APPROVAL TAX RATE	$_____ per $100

"The no-new-revenue tax rate is the tax rate for the (current tax year) tax year that will raise the same amount of property tax revenue for (name of taxing unit) from the same properties in both the (preceding tax year) tax year and the (current tax year) tax year.

"The voter-approval tax rate is the highest tax rate that (name of taxing unit) may adopt without holding an election to seek voter approval of the rate.

"The proposed tax rate is not greater than the no-new-revenue tax rate. This means that (name of taxing unit) is not proposing to increase property taxes for the (current tax year) tax year.

"A public hearing on the proposed tax rate will be held on (date and time) at (meeting place).

"The proposed tax rate is greater than the voter-approval tax rate. If (name of taxing unit) adopts the proposed tax rate, (name of taxing unit) is required to hold an election so that the voters may accept or reject the proposed tax rate. If a majority of the voters reject the proposed tax rate, the tax rate of the (name of taxing unit) will be the voter-approval tax rate. The election will be held on (date of election). You may contact the (name of office responsible for administering the election) for information about voting locations. The hours of voting on election day are (voting hours).

"Your taxes owed under any of the tax rates mentioned above can be calculated as follows:

"Property tax amount = tax rate x taxable value of your property / 100

"(Names of all members of the governing body, showing how each voted on the proposal to consider the tax rate or, if one or more were absent, indicating the absences.)

"The 86th Texas Legislature modified the manner in which the voter-approval tax rate is calculated to limit the rate of growth of property taxes in the state."

(b-4) **[Effective January 1, 2020]** In addition to including the information described by Subsection (b-1), (b-2), or (b-3), as applicable, the notice must include the information described by Section 26.062.

(c) **[Effective until January 1, 2020]** The notice of a public hearing under this section may be delivered by mail to each property owner in the unit, or may be published in a newspaper. If the notice is published in a newspaper, it may not be in the part of the paper in which legal notices and classified advertisements appear. If the taxing unit operates an Internet website, the notice must be posted on the website from the date the notice is first published until the second public hearing is concluded.

(c) **[Effective January 1, 2020]** The notice of a public hearing under this section may be delivered by mail to each property owner in the taxing unit, or may be published in a newspaper. If the notice is published in a newspaper, it may not be in the part of the paper in which legal notices and classified advertisements appear. If the taxing unit publishes the notice in a newspaper, the taxing unit must also post the notice prominently on the home page of the Internet website of the taxing unit from the date the notice is first published until the public hearing is concluded.

(d) **[Effective until January 1, 2020]** At the public hearings the governing body shall announce the date, time, and place of the meeting at which it will vote on the proposed tax rate. After each hearing the governing body shall give notice of the meeting at which it will vote on the proposed tax rate and the notice shall be in the same form as prescribed by Subsections (b) and (c), except that it must state the following:

"NOTICE OF TAX REVENUE INCREASE

"The (name of the taxing unit) conducted public hearings on (date of first hearing) and (date of second hearing) on a proposal to increase the total tax revenues of the (name of the taxing unit) from properties on the tax roll in the preceding year by (percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax rate calculated under this chapter) percent.

"The total tax revenue proposed to be raised last year at last year's tax rate of (insert tax rate for the preceding year) for each $100 of taxable value was (insert total amount of taxes imposed in the preceding year).

"The total tax revenue proposed to be raised this year at the proposed tax rate of (insert proposed tax rate) for each $100 of taxable value, excluding tax revenue to be raised from new property added to the tax roll this year, is (insert amount computed by multiplying proposed tax rate by the difference between current total value and new property value).

"The total tax revenue proposed to be raised this year at the proposed tax rate of (insert proposed tax rate) for each $100 of taxable value, including tax revenue to be raised from new property added to the tax roll this year, is (insert amount computed by multiplying proposed tax rate by current total value).

"The (governing body of the taxing unit) is scheduled to vote on the tax rate that will result in that tax increase at a public meeting to be held on (date of meeting) at (location of meeting, including mailing address) at (time of meeting).

"The (governing body of the taxing unit) proposes to use the increase in total tax revenue for the purpose of (description of purpose of increase)."

(d) **[Effective January 1, 2020]** The governing body may vote on the proposed tax rate at the public hearing. If the governing body does not vote on the proposed tax rate at the public hearing, the governing body shall announce at the public hearing the date, time, and place of the meeting at which it will vote on the proposed tax rate.

(e) **[Effective until January 1, 2020]** The meeting to vote on the tax increase may not be earlier than the third day or later than the 14th day after the date of the second public hearing. The meeting must be held inside the boundaries of the taxing unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access. If the governing body does not adopt a tax rate that exceeds the lower of the rollback tax rate or the effective tax rate by the 14th day, it must give a new notice under Subsection (d) before it may adopt a rate that exceeds the lower of the rollback tax rate or the effective tax rate.

(e) **[Effective January 1, 2020]** A meeting to vote on the tax increase may not be held later than the seventh day after the date of the public hearing. The meeting must be held inside the boundaries of the taxing unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access.

(f) [Repealed by Acts 2005, 79th Leg., ch. 1368 (S.B. 18), § 6, effective June 18, 2005.]

(g) This section does not apply to a school district. A school district shall provide notice of a public hearing on a tax increase as required by Section 44.004, Education Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 118, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 1029 (H.B. 2285), § 1, effective September 1, 1983; am. Acts 1985, 69th Leg., 1st C.S., ch. 1 (S.B. 1), § 3, effective September 1, 1986; am. Acts 1985, 69th Leg., ch. 657 (S.B. 1125), § 4, effective June 14, 1985; am. Acts 1987, 70th Leg., ch. 456 (H.B. 328), § 1, effective August 31, 1987; am. Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 8, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 940 (H.B. 108), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 46, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 29.07, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), §§ 28, 29, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 398 (H.B. 2075), § 4, effective August 30, 1999; am. Acts 1999, 76th Leg., ch. 1358 (H.B. 954), § 3, effective January 1, 2000; am. Acts 2005, 79th Leg., ch. 807 (S.B. 567), § 1, effective June 17, 2005; am. Acts 2005, 79th Leg., ch. 1368 (S.B. 18), §§ 2, 6, effective June 18, 2005; am. Acts 2007, 80th Leg., ch. 1105 (H.B. 3495), § 1, effective January 1, 2008; am. Acts 2007, 80th Leg., ch. 1112 (H.B. 3630), § 5(a)—(c), effective January 1, 2008; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 22.005, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 48, effective January 1, 2020.

ATTORNEY GENERAL OPINIONS

Community College Tax Rate.

The only method by which the Tax Code authorizes a community college district to reduce a tax rate that exceeds the rollback rate is an election timely initiated by a valid voter petition. 2001 Tex. Op. Att'y Gen. JC-0360.

Sec. 26.061. Notice of Meeting to Vote on Proposed Tax Rate That Does Not Exceed Lower of No-New-Revenue or Voter-Approval Tax Rate. [Effective January 1, 2020]

(a) This section applies only to the governing body of a taxing unit other than a school district that proposes to adopt a tax rate that does not exceed the lower of the no-new-revenue tax rate or the voter-approval tax rate calculated as provided by this chapter.

(b) The notice of the meeting at which the governing body of the taxing unit will vote on the proposed tax rate must contain a statement in the following form:

"NOTICE OF MEETING TO VOTE ON TAX RATE

"PROPOSED TAX RATE	$_____	per $100
"NO-NEW-REVENUE TAX RATE	$_____	per $100
"VOTER-APPROVAL TAX RATE	$_____	per $100

"The no-new-revenue tax rate is the tax rate for the (current tax year) tax year that will raise the same amount of property tax revenue for (name of taxing unit) from the same properties in both the (preceding tax year) tax year and the (current tax year) tax year.

"The voter-approval tax rate is the highest tax rate that (name of taxing unit) may adopt without holding an election to seek voter approval of the rate.

"The proposed tax rate is not greater than the no-new-revenue tax rate. This means that (name of taxing unit) is not proposing to increase property taxes for the (current tax year) tax year.

"A public meeting to vote on the proposed tax rate will be held on (date and time) at (meeting place).

"The proposed tax rate is also not greater than the voter-approval tax rate. As a result, (name of taxing unit) is not required to hold an election to seek voter approval of the rate. However, you may express your support for or opposition to the proposed tax rate by contacting the members of the (name of governing body) of (name of taxing unit) at their offices or by attending the public meeting mentioned above.

"Your taxes owed under any of the above rates can be calculated as follows:

"Property tax amount = tax rate x taxable value of your property / 100

"(Names of all members of the governing body, showing how each voted on the proposed tax rate or, if one or more were absent, indicating the absences.)

"The 86th Texas Legislature modified the manner in which the voter-approval tax rate is calculated to limit the rate of growth of property taxes in the state."

(c) In addition to including the information described by Subsection (b), the notice must include the information described by Section 26.062.

(d) The notice required under this section must be provided in the manner required under Section 26.06(c).

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 49, effective January 1, 2020.

Sec. 26.062. Additional Information to Be Included in Tax Rate Notice. [Effective January 1, 2020]

(a) In addition to the information described by Section 26.06(b-1), (b-2), or (b-3) or 26.061, as applicable, a notice required by that provision must include at the end of the notice:

(1) a statement in the following form:

"The following table compares the taxes imposed on the average residence homestead by (name of taxing unit) last year to the taxes proposed to be imposed on the average residence homestead by (name of taxing unit) this year:";

(2) a table in the form required by this section following the statement described by Subdivision (1); and

(3) a statement in the following form following the table:

(A) if the tax assessor for the taxing unit maintains an Internet website: "For assistance with tax calculations, please contact the tax assessor for (name of taxing unit) at (telephone number) or (e-mail address), or visit (Internet website address) for more information."; or

(B) if the tax assessor for the taxing unit does not maintain an Internet website: "For assistance with tax calculations, please contact the tax assessor for (name of taxing unit) at (telephone number) or (e-mail address)."

(b) The table must contain five rows and four columns.

(c) The first row must appear as follows:

(1) the first column of the first row must be left blank;

(2) the second column of the first row must state the year corresponding to the preceding tax year;

(3) the third column of the first row must state the year corresponding to the current tax year; and

(4) the fourth column of the first row must be entitled "Change".

(d) The second row must appear as follows:

(1) the first column of the second row must be entitled "Total tax rate (per $100 of value)";

(2) the second column of the second row must state the adopted tax rate for the preceding tax year;

(3) the third column of the second row must state the proposed tax rate for the current tax year; and

(4) the fourth column of the second row must state the nominal and percentage difference between the adopted tax rate for the preceding tax year and the proposed tax rate for the current tax year as follows: "(increase or decrease, as applicable) of (nominal difference between tax rate stated in second column of second row and tax rate stated in third column of second row) per $100, or (percentage difference between tax rate stated in second column of second row and tax rate stated in third column of second row)%".

(e) The third row must appear as follows:

(1) the first column of the third row must be entitled "Average homestead taxable value";

(2) the second column of the third row must state the average taxable value of a residence homestead in the taxing unit for the preceding tax year;

(3) the third column of the third row must state the average taxable value of a residence homestead in the taxing unit for the current tax year; and

(4) the fourth column of the third row must state the percentage difference between the average taxable value of a residence homestead in the taxing unit for the preceding tax year and the average taxable value of a residence homestead in the taxing unit for the current tax year as follows: "(increase or decrease, as applicable) of (percentage difference between amount stated in second column of third row and amount stated in third column of third row)%".

(f) The fourth row must appear as follows:

(1) the first column of the fourth row must be entitled "Tax on average homestead";

(2) the second column of the fourth row must state the amount of taxes imposed by the taxing unit in the preceding tax year on a residence homestead with a taxable value equal to the average taxable value of a residence homestead in the taxing unit in the preceding tax year;

(3) the third column of the fourth row must state the amount of taxes that would be imposed by the taxing unit in the current tax year on a residence homestead with a taxable value equal to the average taxable value of a residence homestead in the taxing unit in the current tax year if the taxing unit adopted the proposed tax rate; and

(4) the fourth column of the fourth row must state the nominal and percentage difference between the amount of taxes imposed by the taxing unit in the preceding tax year on a residence homestead with a taxable value equal to the average taxable value of a residence homestead in the taxing unit in the preceding tax year and the amount of taxes that would be imposed by the taxing unit in the current tax year on a residence homestead with a taxable value equal to the average taxable value of a residence homestead in the taxing unit in the current tax year if the taxing unit adopted the proposed tax rate, as follows: "(increase or decrease, as applicable) of (nominal difference between amount stated in second column of fourth row and amount stated in third column of fourth row), or (percentage difference between amount stated in second column of fourth row and amount stated in third column of fourth row)%".

(g) The fifth row must appear as follows:

(1) the first column of the fifth row must be entitled "Total tax levy on all properties";

(2) the second column of the fifth row must state the amount equal to last year's levy;

(3) the third column of the fifth row must state the amount computed by multiplying the proposed tax rate by the current total value and dividing the product by 100; and

(4) the fourth column of the fifth row must state the nominal and percentage difference between the total amount of taxes imposed by the taxing unit in the preceding tax year and the amount that would be imposed by the taxing unit in the current tax year if the taxing unit adopted the proposed tax rate, as follows: "(increase or decrease, as applicable) of (nominal difference between amount stated in second column of fifth row and amount stated in third column of fifth row), or (percentage difference between amount stated in second column of fifth row and amount stated in third column of fifth row)%".

(h) In calculating the average taxable value of a residence homestead in the taxing unit for the preceding tax year and the current tax year for purposes of Subsections (e) and (f), any residence homestead exemption available only to disabled persons, persons 65 years of age or older, or their surviving spouses must be disregarded.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 49, effective January 1, 2020.

Sec. 26.063. Alternate Provisions for Tax Rate Notice When De Minimis Rate Exceeds Voter-Approval Tax Rate. [Effective January 1, 2020]

(a) This section applies only to a taxing unit:

(1) that is:

(A) a taxing unit other than a special taxing unit; or

(B) a municipality with a population of less than 30,000, regardless of whether it is a special taxing unit;

(2) that is required to provide notice under Section 26.06(b-1) or (b-3); and

(3) for which the de minimis rate exceeds the voter-approval tax rate.

(b) This subsection applies only to a taxing unit that is required to hold an election under Section 26.07. In the notice required to be provided by the taxing unit under Section 26.06(b-1) or (b-3), as applicable, the taxing unit shall:

(1) add the following to the end of the list of rates included in the notice:

DE MINIMIS RATE $_____ per $100;

(2) substitute the following for the definition of "voter-approval tax rate": "The voter-approval tax rate is the highest tax rate that (name of taxing unit) may adopt without holding an election to seek voter approval of the rate, unless the de minimis rate for (name of taxing unit) exceeds the voter-approval tax rate for (name of taxing unit).";

(3) add the following definition of "de minimis rate": "The de minimis rate is the rate equal to the sum of the no-new-revenue maintenance and operations rate for (name of taxing unit), the rate that will raise $500,000, and the current debt rate for (name of taxing unit).."; and

(4) substitute the following for the provision that provides notice that an election is required: "The proposed tax rate is greater than the voter-approval tax rate and the de minimis rate. If (name of taxing unit) adopts the proposed tax rate, (name of taxing unit) is required to hold an election so that the voters may accept or reject the proposed tax rate. If a majority of the voters reject the proposed tax rate, the tax rate of the (name of taxing unit) will be the voter-approval tax rate of the (name of taxing unit). The election will be held on (date of election). You may contact the (name of office responsible for administering the election) for information about voting locations. The hours of voting on election day are (voting hours).".

(c) This subsection applies only to a taxing unit for which the qualified voters of the taxing unit may petition to hold an election under Section 26.075. In the notice required to be provided by the taxing unit under Section 26.06(b-1) or (b-3), as applicable, the taxing unit shall:

(1) add the following to the end of the list of rates included in the notice:

DE MINIMIS RATE $_____ per $100;

(2) substitute the following for the definition of "voter-approval tax rate": "The voter-approval tax rate is the highest tax rate that (name of taxing unit) may adopt without holding an election to seek voter approval of the rate, unless the de minimis rate for (name of taxing unit) exceeds the voter-approval tax rate for (name of taxing unit).";

(3) add the following definition of "de minimis rate": "The de minimis rate is the rate equal to the sum of the no-new-revenue maintenance and operations rate for (name of taxing unit), the rate that will raise $500,000, and the current debt rate for (name of taxing unit).."; and

(4) substitute the following for the provision that provides notice that an election is required: "The proposed tax rate is greater than the voter-approval tax rate but not greater than the de minimis rate. However, the proposed tax rate exceeds the rate that allows voters to petition for an election under Section 26.075, Tax Code. If (name of taxing unit) adopts the proposed tax rate, the qualified voters of the (name of taxing unit) may petition the (name of taxing unit) to require an election to be held to determine whether to reduce the proposed tax rate. If a majority of the voters reject the proposed tax rate, the tax rate of the (name of taxing unit) will be the voter-approval tax rate of the (name of taxing unit).".

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 49, effective January 1, 2020.

Sec. 26.065. Supplemental Notice of Hearing on Tax Rate Increase.

(a) In addition to the notice required under Section 26.06, the governing body of a taxing unit required to hold a public hearing by Section 26.05(d) shall give notice of the hearing in the manner provided by this section.

(b) **[Effective until January 1, 2020]** If the taxing unit owns, operates, or controls an Internet website, the unit shall post notice of the public hearing on the website continuously for at least seven days immediately before the public hearing on the proposed tax rate increase and at least seven days immediately before the date of the vote proposing the increase in the tax rate.

(b) **[Effective January 1, 2020]** The taxing unit shall post notice of the public hearing prominently on the home page of the Internet website of the taxing unit continuously for at least seven days immediately before the public hearing on the proposed tax rate increase and at least seven days immediately before the date of the vote proposing the increase in the tax rate.

(c) If the taxing unit has free access to a television channel, the taxing unit shall request that the station carry a 60-second notice of the public hearing at least five times a day between the hours of 7 a.m. and 9 p.m. for at least seven days immediately before the public hearing on the proposed tax rate increase and at least seven days immediately before the date of the vote proposing the increase in the tax rate.

(d) The notice of the public hearing required by Subsection (b) must contain a statement that is substantially the same as the statement required by Section 26.06(b).

(e) This section does not apply to a taxing unit if the taxing unit:

(1) is unable to comply with the requirements of this section because of the failure of an electronic or mechanical device, including a computer or server; or

(2) is unable to comply with the requirements of this section due to other circumstances beyond its control.

(f) A person who owns taxable property is not entitled to an injunction restraining the collection of taxes by a taxing unit in which the property is taxable if the taxing unit has, in good faith, attempted to comply with the requirements of this section.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1358 (H.B. 954), § 5, effective January 1, 2001; am. Acts 2005, 79th Leg., ch. 1368 (S.B. 18), § 3, effective June 18, 2005; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 50, effective January 1, 2020.

Sec. 26.07. Election to Repeal Increase. [Effective until January 1, 2020] Automatic Election to Approve Tax Rate of Taxing Unit Other Than School District. [Effective January 1, 2020]

(a) **[Effective until January 1, 2020]** If the governing body of a taxing unit other than a school district adopts a tax rate that exceeds the rollback tax rate calculated as provided by this chapter, the qualified voters of the taxing unit by petition may require that an election be held to determine whether or not to reduce the tax rate adopted for the current year to the rollback tax rate calculated as provided by this chapter.

(a) **[Effective January 1, 2020]** This section applies to a taxing unit other than a school district.

(b) **[Effective until January 1, 2020]** A petition is valid only if:

(1) it states that it is intended to require an election in the taxing unit on the question of reducing the tax rate for the current year;

(2) it is signed by a number of registered voters of the taxing unit equal to at least:

(A) seven percent of the number of registered voters of the taxing unit according to the most recent list of registered voters if the tax rate adopted for the current tax year would impose taxes for maintenance and operations in an amount of at least $5 million; or

(B) 10 percent of the number of registered voters of the taxing unit according to the most recent official list of registered voters if the tax rate adopted for the current tax year would impose taxes for maintenance and operations in an amount of less than $5 million; and

(3) it is submitted to the governing body on or before the 90th day after the date on which the governing body adopted the tax rate for the current year.

(b) **[Effective January 1, 2020]** If the governing body of a special taxing unit or a municipality with a population of 30,000 or more adopts a tax rate that exceeds the taxing unit's voter-approval tax rate, or the governing body of a taxing unit other than a special taxing unit or a municipality with a population of less than 30,000 regardless of whether it is a special taxing unit adopts a tax rate that exceeds the greater of the taxing unit's voter-approval tax rate or de minimis rate, the registered voters of the taxing unit at an election held for that purpose must determine whether to approve the adopted tax rate. When increased expenditure of money by a taxing unit is necessary to respond to a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought, that has impacted the taxing unit and the governor has declared any part of the area in which the taxing unit is located as a disaster area, an election is not required under this section to approve the tax rate adopted by the governing body for the year following the year in which the disaster occurs.

(c) **[Effective until January 1, 2020]** Not later than the 20th day after the day a petition is submitted, the governing body shall determine whether or not the petition is valid and pass a resolution stating its finding. If the governing body fails to act within the time allowed, the petition is treated as if it had been found valid.

(c) **[Effective January 1, 2020]** The governing body shall order that the election be held in the taxing unit on the uniform election date prescribed by Section 41.001, Election Code, that occurs in November of the applicable tax year. The order calling the election may not be issued later than the 71st day before the date of the election. At the election, the ballots shall be prepared to permit voting for or against the proposition: Approving the ad valorem tax rate of $_____ per $100 valuation in (name of taxing unit) for the current year, a rate that is $_____ higher per $100 valuation than the voter-approval tax rate of (name of taxing unit), for the purpose of (description of purpose of increase). Last year, the ad valorem tax rate in (name of taxing unit) was $_____ per $100 valuation. The ballot proposition must include the adopted tax rate, the difference between the adopted tax rate and the voter-approval tax rate, and the taxing unit's tax rate for the preceding tax year in the appropriate places.

(d) **[Effective until January 1, 2020]** If the governing body finds that the petition is valid (or fails to act within the time allowed), it shall order that an election be held in the taxing unit on a date not less than 30 or more than 90 days after the last day on which it could have acted to approve or disapprove the petition. A state law requiring local elections to be held on a specified date does not apply to the election unless a specified date falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Reducing the tax rate in (name of taxing unit) for the current year from (the rate adopted) to (the rollback tax rate calculated as provided by this chapter)."

(d) **[Effective January 1, 2020]** If a majority of the votes cast in the election favor the proposition, the tax rate for the current year is the rate that was adopted by the governing body.

(e) **[Effective until January 1, 2020]** If a majority of the qualified voters voting on the question in the election favor the proposition, the tax rate for the taxing unit for the current year is the rollback tax rate calculated as provided by this chapter; otherwise, the tax rate for the current year is the one adopted by the governing body.

(e) **[Effective January 1, 2020]** If the proposition is not approved as provided by Subsection (d), the taxing unit's tax rate for the current tax year is the taxing unit's voter-approval tax rate.

(f) **[Effective until January 1, 2020]** If the tax rate is reduced by an election called under this section after tax bills for the unit are mailed, the assessor for the unit shall prepare and mail corrected tax bills. He shall include with the bill a brief explanation of the reason for and effect of the corrected bill. The date on which the taxes become delinquent for the year is extended by a number of days equal to the number of days between the date the first tax bills were sent and the date the corrected tax bills were sent.

(f) **[Effective January 1, 2020]** If, after tax bills for the taxing unit have been mailed, a proposition to approve the taxing unit's adopted tax rate is not approved by the voters of the taxing unit at an election held under this section, the assessor for the taxing unit shall prepare and mail corrected tax bills. The assessor shall include with the bill a brief explanation of the reason for and effect of the corrected bill.

(g) **[Effective until January 1, 2020]** If a property owner pays taxes calculated using the higher tax rate when the rate is reduced by an election called under this section, the taxing unit shall refund the difference between the amount of taxes paid and the amount due under the reduced rate if the difference between the amount of taxes paid and the amount due under the reduced rate is $1 or more. If the difference between the amount of taxes paid and the amount due under the reduced rate is less than $1, the taxing unit shall refund the difference on request of the taxpayer. An application for a refund of less than $1 must be made within 90 days after the date the refund becomes due or the taxpayer forfeits the right to the refund.

(g) **[Effective January 1, 2020]** If a property owner pays taxes calculated using the originally adopted tax rate of the taxing unit and the proposition to approve the adopted tax rate is not approved by voters, the taxing unit shall refund the difference between the amount of taxes paid and the amount due under the voter-approval tax rate if the difference between the amount of taxes paid and the amount due under the voter-approval tax rate is $1 or more. If the difference between the amount of taxes paid and the amount due under the voter-approval tax rate is less than $1, the taxing unit shall refund the difference on request of the taxpayer. An application for a refund of less than $1 must be made within 90 days after the date the refund becomes due or the taxpayer forfeits the right to the refund.

(h) to (j) [Expired pursuant to Acts 1987, 70th Leg., ch. 457 (H.B. 344), § 13, effective June 1, 1989.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 119, effective January 1, 1982; am. Acts 1985, 69th Leg., 1st C.S., ch. 1 (S.B. 1), § 2(a), effective September 1, 1985;

am. Acts 1987, 70th Leg., ch. 457 (H.B. 344), § 13, effective September 1, 1987; am. Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 9, effective January 1, 1988; am. Acts 1993, 73rd Leg., ch. 292 (H.B. 366), § 1, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 728 (H.B. 75), § 84, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 29.08, effective September 1, 1997; am. Acts 2005, 79th Leg., ch. 1368 (S.B. 18), § 4, effective June 18, 2005; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 51, effective January 1, 2020.

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Declaratory Judgment Actions

General Overview. — Under the Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code Ann. §§ 37.001—37.011, a taxpayers' action for a declaration that a municipality erroneously rejected their petition for a tax roll back election pursuant to Tex. Tax Code Ann. § 26.07 did not present a justiciable controversy, where a subsequent petition was granted prior to trial of the declaratory judgment action. Port Isabel/South Padre Island Taxpayers Asso. v. South Padre Island, 721 S.W.2d 405, 1986 Tex. App. LEXIS 8903 (Tex. App. Corpus Christi Oct. 30, 1986, no writ).

CONSTITUTIONAL LAW

Separation of Powers. — Tex. Const. art. VIII, § 21(a) does not authorize the tax rollback system of Tex. Tax Code § 26.07 because if the legislature may not delegate the powers conferred upon it by the constitution to the people to exercise by direct election, even in view of Tex. Const. art. I, § 2, and Tex. Const. art. I, § 27, then the legislature also has no power, based on the same principles, to delegate the powers conferred upon other governmental bodies, such as commissioners courts, to the people to exercise by direct election. Vinson v. Burgess, 755 S.W.2d 481, 1988 Tex. App. LEXIS 2279 (Tex. App. Fort Worth Aug. 18, 1988, no writ).

GOVERNMENTS

Local Governments

Elections. — Tex. Tax Code Ann. § 26.07 does not require that the qualified voter who signs a petition to sign his or her name exactly as the name appears on the voter registration list. Vinson v. Burgess, 775 S.W.2d 509, 1989 Tex. App. LEXIS 2378 (Tex. App. Fort Worth Sept. 7, 1989, no writ).

STATE & TERRITORIAL GOVERNMENTS

Elections. — Tex. Tax Code § 26.07 did not require a qualified voter who signed a petition to sign exactly as his or her name appeared on the voter registration list. Vinson v. Burgess, 755 S.W.2d 481, 1988 Tex. App. LEXIS 2277 (Tex. App. Fort Worth Jan. 14, 1988), set aside, 755 S.W.2d 481, 1988 Tex. App. LEXIS 2268 (Tex. App. Fort Worth May 12, 1988), writ granted No. C-7942 (Tex. 1989), rev'd, 773 S.W.2d 263, 1989 Tex. LEXIS 53 (Tex. 1989).

TAX LAW

State & Local Taxes. — Tex. Tax Code Ann. § 26.07, authorizing an election to roll back tax rates set by a commissioner's court, was unconstitutional and unenforceable because it conflicted with constitutional sections allowing such courts to set the tax rates subject only to specified ceilings. Vinson v. Burgess, 755 S.W.2d 481, 1988 Tex. App. LEXIS 2268 (Tex. App. Fort Worth May 12, 1988), reh'g denied, 755 S.W.2d 481, 1988 Tex. App. LEXIS 2279 (Tex. App. Fort Worth Aug. 18, 1988).

STATE & LOCAL TAXES

Administration & Proceedings

General Overview. — Commissioners' finding that a taxpayer's petition to hold a tax rollback election was invalid on grounds other than those listed in Tex. Tax Code Ann. § 26.07 did not relieve the taxpayer of his burden to prove by a preponderance of the evidence that the rollback petition was valid. Parker v. White, 852 S.W.2d 748, 1993 Tex. App. LEXIS 1227 (Tex. App. Tyler Apr. 28, 1993, no writ).

Signatures appearing on a petition form calling for an election to rollback taxes, which appeared in a newspaper advertisement, were not invalidated under Tex. Tax Code Ann. § 26.07(b)(2) because none of the individuals who gathered the signatures were paid for their services. Citizens for Fair Taxes v. Sweetwater Independent School Dist. Bd. of Trustees, 807 S.W.2d 451, 1991 Tex. App. LEXIS 855 (Tex. App. Eastland Apr. 4, 1991, no writ).

REAL PROPERTY TAX

General Overview. — Where a county was not aggrieved by an increased tax rate and asserted no justiciable interest, the court lacked authority to issue an advisory opinion on the propriety of the trial court's decision invalidating a tax rate rollback election. County of El Paso v. Ortega, 847 S.W.2d 436, 1993 Tex. App. LEXIS 466 (Tex. App. El Paso Feb. 10, 1993, no writ).

Where a commissioners' court adopted a tax rate in excess of that permitted by statute, a writ of mandamus compelling the commissioner's court to order a "rollback" election was improperly denied. Winborne v. Commissioners' Court of Ellis County, 757 S.W.2d 876, 1988 Tex. App. LEXIS 2258 (Tex. App. Waco Sept. 1, 1988), writ granted No. C-8101 (Tex. 1989), aff'd, 773 S.W.2d 263, 1989 Tex. LEXIS 53 (Tex. 1989).

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Constitutionality.

Section 26.07 of the Tax Code, which authorizes ad valorem tax rate rollback elections for taxing units other than school districts, is constitutional insofar as it applies to hospital districts. 1988 Tex. Op. Att'y Gen. JM-0859.

Rollback Elections.

Chapter 26 of the Tax Code authorizes a petition for a rollback election when the sum of a county's individually adopted tax rates exceeds the combined rollback rate; however, under chapter 26's plain terms, the right to petition for a rollback election is not automatically triggered when a county adopts a rate for a particular tax that is above the rollback rate for that particular tax. 2012 Tex. Op. Att'y Gen. GA-0954.

Signatures.

A petition for a tax rollback election that consists in part of copies of signatures comprising a previously submitted and

rejected petition does not comport with the requirement of section 26.07 of the Tax Code that such petition be signed by a requisite number of voters. 1986 Tex. Op. Att'y Gen. JM-574.

Tax Calculations.

Pursuant to Tex. Water Code Ann. § 49.107(g), the Legislature has prohibited the South Texas Water Authority from utilizing the procedures and calculations in Tex. Tax Code Ann. §§ 26.04, 26.05, 26.07 to adopt its tax rate. 2010 Tex. Op. Att'y Gen. GA-0758.

Sec. 26.075. Petition Election to Reduce Tax Rate of Taxing Unit Other Than School District. [Effective January 1, 2020]

(a) This section applies only to a taxing unit other than:

(1) a special taxing unit;

(2) a school district; or

(3) a municipality with a population of 30,000 or more.

(b) This section applies to a taxing unit only in a tax year in which the taxing unit's:

(1) de minimis rate exceeds the taxing unit's voter-approval tax rate; and

(2) adopted tax rate is:

(A) equal to or lower than the taxing unit's de minimis rate; and

(B) greater than the greater of the taxing unit's:

(i) voter-approval tax rate calculated as if the taxing unit were a special taxing unit; or

(ii) voter-approval tax rate.

(c) The qualified voters of a taxing unit by petition may require that an election be held to determine whether to reduce the tax rate adopted by the governing body of the taxing unit for the current tax year to the voter-approval tax rate.

(d) A petition is valid only if the petition:

(1) states that it is intended to require an election in the taxing unit on the question of reducing the taxing unit's adopted tax rate for the current tax year;

(2) is signed by a number of registered voters of the taxing unit equal to at least three percent of the registered voters of the taxing unit determined according to the most recent list of those voters; and

(3) is submitted to the governing body of the taxing unit not later than the 90th day after the date on which the governing body adopts the tax rate for the current tax year.

(e) Not later than the 20th day after the date on which a petition is submitted, the governing body shall determine whether the petition is valid and must by resolution state the governing body's determination. If the governing body fails to make the determination in the time and manner required by this subsection, the petition is considered to be valid for the purposes of this section.

(f) If the governing body determines that the petition is valid or fails to make the determination in the time and manner required by Subsection (e), the governing body shall order that an election be held in the taxing unit on the next uniform election date that allows sufficient time to comply with the requirements of other law.

(g) At the election, the ballots shall be prepared to permit voting for or against the proposition: "Reducing the tax rate in (name of taxing unit) for the current year from (insert tax rate adopted for current year) to (insert voter-approval tax rate)."

(h) If a majority of the votes cast in the election favor the proposition, the tax rate for the current tax year is the voter-approval tax rate.

(i) If the proposition is not approved as provided by Subsection (h), the tax rate for the taxing unit for the current tax year is the tax rate adopted by the governing body of the taxing unit for the current tax year.

(j) If the tax rate is reduced by an election held under this section after tax bills for the taxing unit have been mailed, the assessor for the taxing unit shall prepare and mail corrected tax bills. The assessor shall include with the bill a brief explanation of the reason for and effect of the corrected bill. The date on which the taxes become delinquent for the tax year is extended by a number of days equal to the number of days between the date the first tax bills were sent and the date the corrected tax bills were sent.

(k) If a property owner pays taxes calculated using the higher tax rate when the tax rate is reduced by an election held under this section, the taxing unit shall refund the difference between the amount of taxes paid and the amount due under the reduced tax rate if the difference between the amount of taxes paid and the amount due under the reduced tax rate is $1 or more. If the difference between the amount of taxes paid and the amount due under the reduced rate is less than $1, the taxing unit shall refund the difference on request of the taxpayer. An application for a refund of less than $1 must be made within 90 days after the date the refund becomes due or the taxpayer forfeits the right to the refund.

(*l*) Except as otherwise expressly provided by law, this section does not apply to a tax imposed by a taxing unit if a provision of an uncodified local or special law enacted by the 86th Legislature, Regular Session, 2019, or by an earlier legislature provides that Section 26.07 does not apply to a tax imposed by the taxing unit.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 52, effective January 1, 2020.

Sec. 26.08. Election to Ratify School Taxes. [Effective until January 1, 2020]
Automatic Election to Approve Tax Rate of School District. [Effective January 1, 2020]

(a) If the governing body of a school district adopts a tax rate that exceeds the district's voter-approval tax rate, the

registered voters of the district at an election held for that purpose must determine whether to approve the adopted tax rate.

(a-1) When increased expenditure of money by a school district is necessary to respond to a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought, that has impacted a school district and the governor has requested federal disaster assistance for the area in which the school district is located, an election is not required under this section to approve the tax rate adopted by the governing body for the year following the year in which the disaster occurs. A tax rate adopted under this subsection applies only in the year for which the rate is adopted. If a district adopts a tax rate under this subsection, the amount by which that rate exceeds the district's voter-approval tax rate for that tax year may not be considered when calculating the district's voter-approval tax rate for the tax year following the year in which the district adopts the rate.

(b) The governing body shall order that the election be held in the school district on the next uniform election date prescribed by Section 41.001, Election Code, that occurs after the date of the election order and that allows sufficient time to comply with the requirements of other law. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Ratifying the ad valorem tax rate of ___ (insert adopted tax rate) in (name of school district) for the current year, a rate that will result in an increase of _____ (insert percentage increase in maintenance and operations tax revenue under the adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year) percent in maintenance and operations tax revenue for the district for the current year as compared to the preceding year, which is an additional $____ (insert dollar amount of increase in maintenance and operations tax revenue under the adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year)."

(c) If a majority of the votes cast in the election favor the proposition, the tax rate for the current year is the rate that was adopted by the governing body.

(d) **[Effective until January 1, 2020]** If the proposition is not approved as provided by Subsection (c), the governing body may not adopt a tax rate for the school district for the current year that exceeds the school district's rollback tax rate.

(d) **[Effective January 1, 2020]** If the proposition is not approved as provided by Subsection (c), the governing body may not adopt a tax rate for the school district for the current year that exceeds the school district's voter-approval tax rate.

(d-1) If, after tax bills for the school district have been mailed, a proposition to approve the school district's adopted tax rate is not approved by the voters of the district at an election held under this section, on subsequent adoption of a new tax rate by the governing body of the district, the assessor for the school shall prepare and mail corrected tax bills. The assessor shall include with each bill a brief explanation of the reason for and effect of the corrected bill. The date on which the taxes become delinquent for the year is extended by a number of days equal to the number of days between the date the first tax bills were sent and the date the corrected tax bills were sent.

(d-2) If a property owner pays taxes calculated using the originally adopted tax rate of the school district and the proposition to approve the adopted tax rate is not approved by voters, the school district shall refund the difference between the amount of taxes paid and the amount due under the subsequently adopted rate if the difference between the amount of taxes paid and the amount due under the subsequent rate is $1 or more. If the difference between the amount of taxes paid and the amount due under the subsequent rate is less than $1, the school district shall refund the difference on request of the taxpayer. An application for a refund of less than $1 must be made within 90 days after the date the refund becomes due or the taxpayer forfeits the right to the refund.

(e) For purposes of this section, local tax funds dedicated to a junior college district under Section 45.105(e), Education Code, shall be eliminated from the calculation of the tax rate adopted by the governing body of the school district. However, the funds dedicated to the junior college district are subject to Section 26.085.

(f) [Repealed by Acts 1999, 76th Leg., ch. 396 (S.B. 4), § 3.01(c), effective September 1, 1999.]

(g) **[Effective until January 1, 2020]** In a school district that received distributions from an equalization tax imposed under former Chapter 18, Education Code, the effective rate of that tax as of the date of the county unit system's abolition is added to the district's rollback tax rate.

(g) **[Effective January 1, 2020]** In a school district that received distributions from an equalization tax imposed under former Chapter 18, Education Code, the no-new-revenue rate of that tax as of the date of the county unit system's abolition is added to the district's voter-approval tax rate.

(h) For purposes of this section, increases in taxable values and tax levies occurring within a reinvestment zone under Chapter 311 (Tax Increment Financing Act), in which the district is a participant, shall be eliminated from the calculation of the tax rate adopted by the governing body of the school district.

(i) For purposes of this section, "enrichment tax rate" has the meaning assigned by Section 45.0032, Education Code.

(i-1) [Repealed September 1, 2017]

(j) [Repealed September 1, 2017]

(k) to (m) [Expired pursuant to Acts 2001, 77th Leg., ch. 1187 (H.B. 3343), § 2.11, effective January 1, 2009.]

(n) **[Effective until January 1, 2020]** For purposes of this section, the voter-approval tax rate of a school district is:

(1) for the 2019 tax year, the sum of the following:

(A) the rate per $100 of taxable value that is equal to the product of the state compression percentage, as determined under Section 48.255, Education Code, for the 2019 tax year and $1.00;

(B) the greater of:

(i) the district's maintenance and operations tax rate for the 2018 tax year, less the sum of:

(a) $1.00; and

(b) any amount by which the district is required to reduce the district's enrichment tax rate under Section 48.202(f), Education Code, in the 2019 tax year; or

(ii) the rate of $0.04 per $100 of taxable value; and

(C) the district's current debt rate; and

(2) for the 2020 and subsequent tax years, the sum of the following:

(A) the rate per $100 of taxable value that is equal to the product of the state compression percentage, as determined under Section 48.255, Education Code, for the current year and $1.00;

(B) the greater of:

(i) the district's enrichment tax rate for the preceding tax year, less any amount by which the district is required to reduce the district's enrichment tax rate under Section 48.202(f), Education Code, in the current tax year; or

(ii) the rate of $0.05 per $100 of taxable value; and

(C) the district's current debt rate.

(n) **[Effective January 1, 2020]** For purposes of this section, the voter-approval tax rate of a school district is the sum of the following:

(1) the rate per $100 of taxable value that is equal to the district's maximum compressed tax rate, as determined under Section 48.2551, Education Code, for the current year;

(2) the greater of:

(A) the district's enrichment tax rate for the preceding tax year, less any amount by which the district is required to reduce the district's enrichment tax rate under Section 48.202(f), Education Code, in the current tax year; or

(B) the rate of $0.05 per $100 of taxable value; and

(3) the district's current debt rate.

(n-1) For the 2020 tax year, a school district shall substitute "$0.04" for "$0.05" in Subsection (n)(2)(B)(ii) if the governing body of the district does not adopt by unanimous vote for that tax year a maintenance and operations tax rate at least equal to the sum of the rate described by Subsection (n)(2)(A) and the rate of $0.05 per $100 of taxable value.

(o) [Repealed September 1, 2019]

(p) [Repealed September 1, 2019]

(q) [Expired December 31, 2016]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 120, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 987 (H.B. 2076), § 4, effective June 19, 1983; am. Acts 1984, 68th Leg., 2nd C.S., ch. 28 (H.B. 72), § II(14), effective September 1, 1984; am. Acts 1987, 70th Leg., ch. 947 (H.B. 1866), § 10, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 816 (S.B. 1019), § 22, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), §§ 20, 26, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 2.04, effective May 31, 1993; am. Acts 1993, 73rd Leg., ch. 728 (H.B. 75), § 85, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 47, effective May 30, 1995; am. Acts 1995, 74th Leg., ch. 506 (H.B. 1537), § 4, effective August 28, 1995; am. Acts 1995, 74th Leg., ch. 828 (H.B. 2610), § 4, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 592 (H.B. 4), § 2.03, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 396 (S.B. 4), §§ 1.40, 3.01, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1187 (H.B. 3343), § 2.11, effective September 1, 2001; am. Acts 2006, 79th Leg., 3rd C.S., ch. 5 (H.B. 1), § 1.14, effective May 31, 2006; am. Acts 2009, 81st Leg., ch. 777 (S.B. 1024), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1240 (S.B. 2274), § 1, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1328 (H.B. 3646), § 87(a), effective June 19, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), §§ 57.29, 57.32(b), effective September 1, 2017; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 23.002, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 465 (S.B. 1), § 5, effective June 15, 2015; am. Acts 2015, 84th Leg., ch. 481 (S.B. 1760), § 8, effective January 1, 2016; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), §§ 1.063, 4.001(c), effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), §§ 1.065, 1A.008, effective January 1, 2020; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), §§ 53, 54, effective January 1, 2020.

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Tax Rates.

Rate calculations.

Tex. Tax Code Ann. § 26.08(a) requires the registered voters of an independent school district to approve an adopted tax rate if the governing body of the district adopts a tax rate that exceeds the district's rollback tax rate; the rollback rate calculation, defined in section 26.08(n), includes a maximum maintenance and operations tax rate component and a current debt service tax rate component; the debt service component of the rollback rate does not reflect the debt service tax rate of the preceding year but of the current year. Therefore, the rollback tax rate effectively measures only the maintenance and operations component of the tax rate. 2017 Tex. Op. Att'y Gen. KP-0154.

Tax rates.

An independent school district may not increase a maintenance and operations tax rate above the maximum maintenance and operations tax rate component calculated for purposes of the rollback tax rate without voter approval through a tax ratification election. 2017 Tex. Op. Att'y Gen. KP-0154.

Constitutionality.

Sections 26.08 and 26.085 of the Tax Code, which authorize ad valorem tax rate rollback elections for school taxes, are constitutional. 1987 Tex. Op. Att'y Gen. JM-835.

Tax Rates.

Tex. Tax Code Ann. § 26.08(a) prohibits a school district from adopting a tax rate (the "adopted rate") that exceeds the rollback

tax rate (the "rollback rate") for the district unless the adopted rate is approved by the district's registered voters at an election held for that purpose, except in the event of certain disasters; the rollback rate is calculated in accordance with Tex. Tax Code Ann. § 26.08(n) and has a maximum maintenance and operation ("M&O") tax rate component and a current debt rate component. 2010 Tex. Op. Att'y Gen. GA-0775.

Tex. Tax Code Ann. § 26.08(a) and Tex. Tax Code Ann. § 26.08(n), considered together, do not authorize a school district to increase the adopted maintenance and operation ("M&O") tax rate above the maximum M&O tax rate component calculated for the purposes of the rollback rate without a rollback election. 2010 Tex. Op. Att'y Gen. GA-0775.

Tex. Tax Code Ann. § 26.08(a) requires a school district to hold a rollback election to approve a rate previously adopted under the disaster exception in order to adopt that rate in a year subsequent to the year following the year in which the disaster occurred, if the rate exceeds the district's rollback rate for that subsequent year. 2010 Tex. Op. Att'y Gen. GA-0775.

Tex. Tax Code Ann. § 26.08(b) and (c) require the voters in a school district to approve the district's adopted rate if it exceeds the rollback rate, i.e., a specific tax rate rather than a maximum rate; accordingly, these subsections do not authorize a school district to adopt a tax rate that is lower than the adopted rate approved by the district's registered voters at a rollback election. 2010 Tex. Op. Att'y Gen. GA-0775.

Under Tex. Tax Code Ann. § 26.08(n) voter-approved increases to the maintenance and operation ("M&O") tax rate become part of the rollback rate calculation and potentially increase the M&O tax rate component of the rollback rate; however, a school district's authority to adopt a particular M&O tax rate in subsequent years will necessarily depend on a district's maximum M&O tax rate calculated for the purposes of the rollback rate for those subsequent years. 2010 Tex. Op. Att'y Gen. GA-0775.

A school district is not expressly or impliedly authorized to calculate its rollback rate based on a district-generated projection of taxable value of property in the district when the district has not received the certified appraisal roll from the appraisal district. 2010 Tex. Op. Att'y Gen. GA-0775.

Sec. 26.081. Petition Signatures.

(a) A voter's signature on a petition filed in connection with an election under this chapter is not required to appear exactly as the voter's name appears on the most recent official list of registered voters for the signature to be valid.

(b) If the governing body reviewing the petition is unable to verify the validity of a particular voter's signature, and the petition does not contain any reasonable means by which they might otherwise do so, such as the voter's registration number, home address, or telephone number, the governing body may then require the organizer of the petition to provide such information for that particular voter if the organizer wishes for the signature to be counted.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 319 (H.B. 2423), § 1, effective September 1, 1989.

Sec. 26.085. Election to Limit Dedication of School Funds to Junior College.

(a) If the percentage of the total tax levy of a school district dedicated by the governing body of the school district to a junior college district under Section 45.105(e), Education Code, exceeds the percentage of the total tax levy of the school district for the preceding year dedicated to the junior college district under that section, the qualified voters of the school district by petition may require that an election be held to determine whether to limit the percentage of the total tax levy dedicated to the junior college district to the same percentage as the percentage of the preceding year's total tax levy dedicated to the junior college district.

(b) A petition is valid only if:

(1) it states that it is intended to require an election on the question of limiting the amount of school district tax funds to be dedicated to the junior college district for the current year;

(2) it is signed by a number of registered voters of the school district equal to at least 10 percent of the number of registered voters of the school district according to the most recent official list of registered voters; and

(3) it is submitted to the governing body on or before the 90th day after the date on which the governing body made the dedication to the junior college district.

(c) Not later than the 20th day after the day a petition is submitted, the governing body shall determine whether the petition is valid and pass a resolution stating its finding. If the governing body fails to act within the time allowed, the petition is treated as if it had been found valid.

(d) If the governing body finds that the petition is valid (or fails to act within the time allowed), it shall order that an election be held in the school district on a date not less than 30 or more than 90 days after the last day on which it could have acted to approve or disapprove the petition. A state law requiring local elections to be held on a specified date does not apply to the election unless a specified date falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Limiting the portion of the (name of school district) tax levy dedicated to the (name of junior college district) for the current year to the same portion that was dedicated last year."

(e) If a majority of the qualified voters voting on the question in the election favor the proposition, the percentage of the total tax levy of the school district for the year to which the election applies dedicated to the junior college district is reduced to the same percentage of the total tax levy that was dedicated to the junior college district by the school district in the preceding year. If the proposition is approved by a majority of the qualified voters voting in an election to limit the dedication to the junior college district in a year following a year in which there was no dedication of local tax funds to the junior college district under Section 45.105(e), Education Code, the school district may not dedicate any local tax funds to the junior college district in the year to which the election applies. If the proposition is not approved by a majority of the qualified voters voting in the election, the percentage of the total tax levy dedicated to the junior college district is the percentage adopted by the governing body.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 987 (H.B. 2076), § 2, effective June 19, 1983; am. Acts 1993, 73rd Leg., ch. 728 (H.B. 75), § 86, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.78, effective September 1, 1997.

ATTORNEY GENERAL OPINIONS

Constitutionality.
Sections 26.08 and 26.085 of the Tax Code, which authorize ad valorem tax rate rollback elections for school taxes, are constitutional. 1987 Tex. Op. Att'y Gen. JM-835.

Sec. 26.09. Calculation of Tax.

(a) On receipt of notice of the tax rate for the current tax year, the assessor for a taxing unit other than a county shall calculate the tax imposed on each property included on the appraisal roll for the unit.

(b) The county assessor-collector shall add the properties and their values certified to him as provided by Chapter 24 of this code to the appraisal roll for county tax purposes. The county assessor-collector shall use the appraisal roll certified to him as provided by Section 26.01 with the added properties and values to calculate county taxes.

(c) The tax is calculated by:

(1) subtracting from the appraised value of a property as shown on the appraisal roll for the unit the amount of any partial exemption allowed the property owner that applies to appraised value to determine net appraised value;

(2) multiplying the net appraised value by the assessment ratio to determine assessed value;

(3) subtracting from the assessed value the amount of any partial exemption allowed the property owner to determine taxable value; and

(4) multiplying the taxable value by the tax rate.

(c-1) **[Expired December 31, 2016]**

(d) If a property is subject to taxation for a prior year in which it escaped taxation, the assessor shall calculate the tax for each year separately. In calculating the tax, the assessor shall use the assessment ratio and tax rate in effect in the unit for the year for which back taxes are being imposed. Except as provided by Subsection (d-1), the amount of back taxes due incurs interest calculated at the rate provided by Section 33.01(c) from the date the tax would have become delinquent had the tax been imposed in the proper tax year.

(d-1) For purposes of this subsection, an appraisal district has constructive notice of the presence of an improvement if a building permit for the improvement has been issued by an appropriate governmental entity. Back taxes assessed under Subsection (d) on an improvement to real property do not incur interest if:

(1) the land on which the improvement is located did not escape taxation in the year in which the improvement escaped taxation;

(2) the appraisal district had actual or constructive notice of the presence of the improvement in the year in which the improvement escaped taxation; and

(3) the property owner pays all back taxes due on the improvement not later than the 120th day after the date the tax bill for the back taxes on the improvement is sent.

(d-2) For purposes of Subsection (d-1)(3), if an appeal under Chapter 41A or 42 relating to the taxes imposed on the omitted improvement is pending on the date prescribed by that subdivision, the property owner is considered to have paid the back taxes due by that date if the property owner pays the amount of taxes required by Section 41A.10 or 42.08, as applicable.

(e) The assessor shall enter the amount of tax determined as provided by this section in the appraisal roll and submit it to the governing body of the unit for approval. The appraisal roll with amounts of tax entered as approved by the governing body constitutes the unit's tax roll.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 121, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 19, effective August 29, 1983; am. Acts 2011, 82nd Leg., ch. 138 (S.B. 551), § 1, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 465 (S.B. 1), § 6, effective June 15, 2015.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings
General Overview. — Whether each parcel of owner's property tract was required to have been individually assessed or not, a "bulk assessment" of the entire tract as a whole was validated by former Tex. Rev. Civ. Stat. Ann. art. 7351. Duval County Ranch Co. v. State, 587 S.W.2d 436, 63 Oil & Gas Rep. 549, 1979 Tex. App. LEXIS 3889 (Tex. Civ. App. San Antonio July 11, 1979, writ ref'd n.r.e.), cert. denied, 449 U.S. 1077, 101 S. Ct. 856, 66 L. Ed. 2d 800, 1981 U.S. LEXIS 292 (U.S. 1981).

Sec. 26.10. Prorating Taxes—Loss of Exemption.

(a) If the appraisal roll shows that a property is eligible for taxation for only part of a year because an exemption, other than a residence homestead exemption, applicable on January 1 of that year terminated during the year, the tax due against the property is calculated by multiplying the tax due for the entire year as determined as provided by Section 26.09 of this code by a fraction, the denominator of which is 365 and the numerator of which is the number of days the exemption is not applicable.

(b) If the appraisal roll shows that a residence homestead exemption under Section 11.13(c) or (d), 11.132, 11.133, or 11.134 applicable to a property on January 1 of a year terminated during the year and if the owner of the property

qualifies a different property for one of those residence homestead exemptions during the same year, the tax due against the former residence homestead is calculated by:

(1) subtracting:

(A) the amount of the taxes that otherwise would be imposed on the former residence homestead for the entire year had the owner qualified for the residence homestead exemption for the entire year; from

(B) the amount of the taxes that otherwise would be imposed on the former residence homestead for the entire year had the owner not qualified for the residence homestead exemption during the year;

(2) multiplying the remainder determined under Subdivision (1) by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed after the date the exemption terminated; and

(3) adding the product determined under Subdivision (2) and the amount described by Subdivision (1)(A).

(c) If the appraisal roll shows that a residence homestead exemption under Section 11.131 applicable to a property on January 1 of a year terminated during the year, the tax due against the residence homestead is calculated by multiplying the amount of the taxes that otherwise would be imposed on the residence homestead for the entire year had the individual not qualified for the exemption under Section 11.131 during the year by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed after the date the exemption terminated.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 896 (H.B. 1502), § 1, effective January 1, 1984; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 30, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1059 (S.B. 1437), § 5, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 16.06, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1061 (H.B. 1940), § 1, effective January 1, 2002; am. Acts 2003, 78th Leg., ch. 411 (H.B. 217), § 5, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 597 (S.B. 201), § 2, effective January 1, 2012; am. Acts 2013, 83rd Leg., ch. 122 (H.B. 97), § 5, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 138 (S.B. 163), § 5, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.002(28), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 511 (S.B. 15), § 5, effective January 1, 2018.

ATTORNEY GENERAL OPINIONS

Analysis

Loss of Exemption.
Veterans' Benefits.

Loss of Exemption.

If the owner of property subject to the tax abatement agreement is elected to the municipality's governing body, the tax exemption created by the agreement is lost on the date the property owner assumes office as a member of the governing body. The tax due on the property for the year is determined according to the method set out in section 26.10 of the Tax Code. 2000 Tex. Op. Att'y Gen. JC-0236.

Veterans' Benefits.

The homestead tax exemption in Tex. Tax Code Ann. § 11.131(b) for a fully disabled veteran who died in 2011 continues for the remainder of the 2011 tax year. 2012 Tex. Op. Att'y Gen. GA-0918.

Sec. 26.11. Prorating Taxes—Acquisition by Government.

(a) If the federal government, the state, or a political subdivision of the state acquires the right to possession of taxable property under a court order issued in condemnation proceedings, takes possession of taxable property under a possession and use agreement or under Section 21.021, Property Code, or acquires title to taxable property, the amount of the tax due on the property is calculated by multiplying the amount of taxes imposed on the property for the entire year as determined as provided by Section 26.09 of this code by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed prior to the date of the conveyance, the effective date of the possession and use agreement, the date the entity took possession under Section 21.021, Property Code, or the date of the order granting the right of possession, as applicable.

(b) If the amount of taxes to be imposed on the property for the year of transfer has not been determined at the time of transfer, the assessor for each taxing unit in which the property is taxable may use the taxes imposed on the property for the preceding tax year as the basis for determining the amount of taxes to be imposed for the current tax year.

(c) If the amount of prorated taxes determined to be due as provided by this section is tendered to the collector for the unit, the collector shall accept the tender. The payment absolves:

(1) the transferor of liability for taxes by the unit on the property for the year of the transfer; and

(2) the taxing unit of liability for a refund in connection with taxes on the property for the year of the transfer.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 8, effective September 1, 2005; am. Acts 2019, 86th Leg., ch. 674 (S.B. 2083), § 1, effective June 10, 2019.

Sec. 26.111. Prorating Taxes—Acquisition by Charitable Organization.

(a) If an organization acquires taxable property that qualifies for and is granted an exemption under Section 11.181(a) or 11.182(a) for the year in which the property was acquired, the amount of tax due on the property for that year is calculated by multiplying the amount of taxes imposed on the property for the entire year as provided by Section 26.09 by a fraction, the denominator of which is 365 and the numerator of which is the number of days in that year before the date the charitable organization acquired the property.

(b) If the exemption terminates during the year of acquisition, the tax due is calculated by multiplying the taxes imposed for the entire year as provided by Section 26.09 by a fraction, the denominator of which is 365 and the numerator of which is the number of days the property does not qualify for the exemption.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 345 (H.B. 1096), § 4, effective January 1, 1994; am. Acts 1997, 75th Leg., ch. 715 (H.B. 137), § 4, effective January 1, 1998.

Sec. 26.112. Calculation of Taxes on Residence Homestead of Certain Persons.

(a) Except as provided by Section 26.10(b), if at any time during a tax year property is owned by an individual who qualifies for an exemption under Section 11.13(c) or (d), 11.133, or 11.134, the amount of the tax due on the property for the tax year is calculated as if the individual qualified for the exemption on January 1 and continued to qualify for the exemption for the remainder of the tax year.

(b) If an individual qualifies for an exemption under Section 11.13(c) or (d), 11.133, or 11.134 with respect to the property after the amount of the tax due on the property is calculated and the effect of the qualification is to reduce the amount of the tax due on the property, the assessor for each taxing unit shall recalculate the amount of the tax due on the property and correct the tax roll. If the tax bill has been mailed and the tax on the property has not been paid, the assessor shall mail a corrected tax bill to the person in whose name the property is listed on the tax roll or to the person's authorized agent. If the tax on the property has been paid, the tax collector for the taxing unit shall refund to the person who was the owner of the property on the date the tax was paid the amount by which the payment exceeded the tax due.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 31, effective January 1, 1998; enacted by Acts 1997, 75th Leg., ch. 1059 (S.B. 1437), § 6, effective June 19, 1997; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 8, effective January 1, 2000; am. Acts 2001, 77th Leg., ch. 1061 (H.B. 1940), § 2, effective January 1, 2002; am. Acts 2003, 78th Leg., ch. 411 (H.B. 217), § 6, effective January 1, 2004; am. Acts 2013, 83rd Leg., ch. 138 (S.B. 163), § 6, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.002(29), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 511 (S.B. 15), § 6, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 448 (S.B. 1856), § 4, effective September 1, 2019.

Sec. 26.1125. Calculation of Taxes on Residence Homestead of 100 Percent or Totally Disabled Veteran.

(a) If a person qualifies for an exemption under Section 11.131 after the beginning of a tax year, the amount of the taxes on the residence homestead of the person for the tax year is calculated by multiplying the amount of the taxes that otherwise would be imposed on the residence homestead for the entire year had the person not qualified for the exemption under Section 11.131 by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed before the date the person qualified for the exemption under Section 11.131.

(b) If a person qualifies for an exemption under Section 11.131 with respect to the property after the amount of the tax due on the property is calculated and the effect of the qualification is to reduce the amount of the tax due on the property, the assessor for each taxing unit shall recalculate the amount of the tax due on the property and correct the tax roll. If the tax bill has been mailed and the tax on the property has not been paid, the assessor shall mail a corrected tax bill to the person in whose name the property is listed on the tax roll or to the person's authorized agent. If the tax on the property has been paid, the tax collector for the taxing unit shall refund to the person who was the owner of the property on the date the tax was paid the amount by which the payment exceeded the tax due.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 597 (S.B. 201), § 3, effective January 1, 2012; am. Acts 2019, 86th Leg., ch. 448 (S.B. 1856), § 5, effective September 1, 2019.

Sec. 26.1127. Calculation of Taxes on Donated Residence Homestead of Disabled Veteran or Surviving Spouse of Disabled Veteran.

(a) Except as provided by Section 26.10(b), if at any time during a tax year property is owned by an individual who qualifies for an exemption under Section 11.132, the amount of the tax due on the property for the tax year is calculated as if the individual qualified for the exemption on January 1 and continued to qualify for the exemption for the remainder of the tax year.

(b) If an individual qualifies for an exemption under Section 11.132 with respect to the property after the amount of the tax due on the property is calculated and the effect of the qualification is to reduce the amount of the tax due on the property, the assessor for each taxing unit shall recalculate the amount of the tax due on the property and correct the tax roll. If the tax bill has been mailed and the tax on the property has not been paid, the assessor shall mail a corrected tax bill to the individual in whose name the property is listed on the tax roll or to the individual's authorized agent. If the tax on the property has been paid, the tax collector for the taxing unit shall refund to the individual who was the owner of the property on the date the tax was paid the amount by which the payment exceeded the tax due.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 122 (H.B. 97), § 6, effective January 1, 2014; am. Acts 2019, 86th Leg., ch. 448 (S.B. 1856), § 6, effective September 1, 2019.

Sec. 26.113. Prorating Taxes—Acquisition by Nonprofit Organization.

(a) If a person acquires taxable property that qualifies for and is granted an exemption covered by Section 11.42(d) for a portion of the year in which the property was acquired, the amount of tax due on the property for that year is computed by multiplying the amount of taxes imposed on the property for the entire year as provided by Section 26.09 by a fraction, the denominator of which is 365 and the numerator of which is the number of days in that year before the date the property qualified for the exemption.

(b) If the exemption terminates during the year of acquisition, the tax due is computed by multiplying the taxes imposed for the entire year as provided by Section 26.09 by a fraction, the denominator of which is 365 and the numerator of which is the number of days the property does not qualify for the exemption.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 31, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1155 (S.B. 95), § 3, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 9, effective January 1, 2000.

Sec. 26.12. Units Created During Tax Year.

(a) If a taxing unit is created after January 1 and before July 1, the chief appraiser shall prepare and deliver an appraisal roll for the unit as provided by Section 26.01 of this code as if the unit had existed on January 1.

(b) If the taxing unit created after January 1 and before July 1 imposes taxes for the year, it shall do so as provided by this chapter as if it had existed on January 1.

(c) If a taxing unit is created too late for observance of the deadline provided by Section 26.01 of this code for certification of the appraisal roll to the assessor for the unit, the chief appraiser shall submit the appraisal roll as provided by Section 26.01 as soon as practicable.

(d) Except as provided by Subsection (e), a taxing unit created after June 30 may not impose property taxes in the year in which the unit is created.

(e) [Repealed by Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.13(2), effective May 31, 1993.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 39 (S.B. 309), § 1, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 29, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), § 21, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.13(2), effective May 31, 1993.

Sec. 26.13. Taxing Unit Consolidation During Tax Year.

(a) If two or more taxing units consolidate into a single taxing unit after January 1, the governing body of the consolidated unit may elect to impose taxes for the current tax year either as if the unit as consolidated had existed on January 1 or as if the consolidation had not occurred.

(b) The chief appraiser shall prepare and deliver an appraisal roll for the unit or units in accordance with the election made by the governing body.

(c) Whatever the election, the assessor and collector for the unit, as consolidated shall assess and collect taxes on property that is taxable by the unit as consolidated.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 26.135. Tax Dates for Certain School Districts.

(a) A school district that before January 1, 1989, has for at least 10 years followed a practice of adopting its tax rate at a different date than as provided by this chapter and of billing for and collecting its taxes at different dates than as provided by Chapters 31 and 33 may continue to follow that practice.

(b) This section does not affect the dates provided by this title for other purposes, including those relating to the appraisal and taxability of property, the attachment of tax liens and personal liability for taxes, and administrative and judicial review under Chapters 41 and 42.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 813 (S.B. 417), § 6.11, effective September 1, 1989.

Sec. 26.14. Annexation of Property During Tax Year.

(a) Except as provided by Subsection (b) of this section, a taxing unit may not impose a tax on property annexed by the unit after January 1.

(b) If a taxing unit annexes territory during a tax year that was located in another taxing unit of like kind on January 1, each unit shall impose taxes on property located within its boundaries on the date the appraisal review board approves the appraisal roll for the district. The chief appraiser shall prepare and deliver an appraisal roll for each unit in accordance with the requirements of this subsection.

(c) For purposes of this section, "taxing units of like kind" are taxing units that are authorized by the laws by or pursuant to which they are created to perform essentially the same services.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — Under Tex. Tax. Code Ann. §§ 21.02, 26.14, and former Tex. Rev. Civ. Stat. Ann. art. 1026, art. 1027 (now Tex. Tax Code Ann. § 0302.001), ad valorem property taxes assessed upon land need not be prorated on the basis of the number of days out of the tax year that the property was within the corporate limits of the city, when that the property was disannexed from within the corporate limits of a city. Heath v. King, 705 S.W.2d 812, 1986 Tex. App. LEXIS 12393 (Tex. App. Dallas Feb. 13, 1986, no writ).

Sec. 26.15. Correction of Tax Roll.

(a) Except as provided by Chapters 41 and 42 of this code and in this section, the tax roll for a taxing unit may not be changed after it is completed.

(b) The assessor for a unit shall enter on the tax roll the changes made in the appraisal roll as provided by Section 25.25 of this code.

(c) At any time, the governing body of a taxing unit, on motion of the assessor for the unit or of a property owner, shall direct by written order changes in the tax roll to correct errors in the mathematical computation of a tax. The assessor shall enter the corrections ordered by the governing body.

(d) Except as provided by Subsection (e) of this section, if a correction in the tax roll that changes the tax liability of a property owner is made after the tax bill is mailed, the assessor shall prepare and mail a corrected tax bill in the manner provided by Chapter 31 of this code for tax bills generally. He shall include with the bill a brief explanation of the reason for and effect of the corrected bill.

(e) If a correction that increases the tax liability of a property owner is made after the tax is paid, the assessor shall prepare and mail a supplemental tax bill in the manner provided by Chapter 31 of this code for tax bills generally. He shall include with the supplemental bill a brief explanation of the reason for and effect of the supplemental bill. The additional tax is due on receipt of the supplemental bill and becomes delinquent if not paid before the delinquency date prescribed by Chapter 31 of this code or before the first day of the next month after the date of the mailing that will provide at least 21 days for payment of the tax, whichever is later.

(f) If a correction that decreases the tax liability of a property owner is made after the owner has paid the tax, the taxing unit shall refund to the property owner who paid the tax the difference between the tax paid and the tax legally due, except as provided by Section 25.25(n). A property owner is not required to apply for a refund under this subsection to receive the refund.

(g) A taxing unit that determines a taxpayer is delinquent in ad valorem tax payments on property other than the property for which liability for a refund arises or for a tax year other than the tax year for which liability for a refund arises may apply the amount of an overpayment to the payment of the delinquent taxes if the taxpayer was the sole owner of the property:

(1) for which the refund is sought on January 1 of the tax year in which the taxes that were overpaid were assessed; and

(2) on which the taxes are delinquent on January 1 of the tax year for which the delinquent taxes were assessed.

(h) **[Expired December 31, 2016]**

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., ch. 418 (S.B. 1041), § 1, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 198 (H.B. 71), § 2, effective September 1, 1993; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 7, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 643 (H.B. 709), § 1, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 465 (S.B. 1), § 7, effective June 15, 2015; am. Acts 2015, 84th Leg., ch. 481 (S.B. 1760), § 7, effective January 1, 2016; am. Acts 2017, 85th Leg., ch. 172 (H.B. 2989), § 1, effective May 26, 2017.

NOTES TO DECISIONS

Analysis

Tax Law
•State & Local Taxes
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•••General Overview
••Real Property Tax
•••Assessment & Valuation
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TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Tex. Tax Code Ann. §26.15(d) does not incorporate all of Texas tax code chapter 31; instead, it only incorporates those parts of chapter 31 concerning the preparation and mailing of corrected tax bills, and thus, does not involve postponement of the delinquency date and does not apply to Tex. Tax Code §31.04. Richardson Indep. Sch. Dist. v. GE Capital Corp., 58 S.W.3d 290, 2001 Tex. App. LEXIS 6876 (Tex. App. Dallas Oct. 12, 2001, no pet.).

In addition to Tex. Tax Code Ann. § 42.23, Tex. Tax Code Ann. §§ 25.25, 26.15, and 31.11, which provide for the payment of a tax refund, indicate the doctrine of estoppel by rendition no longer precludes a refund to a taxpayer who challenges the taxation after submitting a rendition. Brooks County Cent. Appraisal Dist. v. Tipperary Energy Corp., 847 S.W.2d 592, 1992 Tex. App. LEXIS 3287 (Tex. App. San Antonio Nov. 30, 1992, no writ).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — Where warehouses taxpayer had built were omitted for tax years from the original appraisals but were properly brought onto the tax rolls for the omitted tax years under Tex. Tax Code Ann. § 25.21, and city mailed taxpayer supplemental tax bills that met the requirements of Tex. Tax Code Ann. §§ 26.15 and 31.01 advising taxpayer of the supplemental ad valorem taxes and the deadline to pay them, city met the requirements of Tex. Tax Code Ann. §§ 25.23 and § 25.19 because the appraisal form did not have to state the reason for the change in appraised value; there were obvious differences between the "taxes levied" that taxpayer had paid and the "estimated taxes" that corresponded to the increased taxable values on the property, as well as the dramatic increase in the property values compared with previous notices; and taxpayer knew after erecting a large improvement that there should be tax consequences due to the value of the improvements. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

COLLECTION

General Overview. — Trial court erred in holding statutory requirement involving preparation and mailing of a corrected tax bill under Tex. Tax Code Ann. § 26.15(d) and (e) incorporated a separate postponement of the delinquency provision contained in Tex. Tax Code Ann. § 31.04 and in assuming corrected tax bill completely voided the original tax bill; the court concluded that the taxpayer was required to pay the interest and penalties under

Tex. Tax Code Ann. § 33.01 because there was no evidence explaining why the taxpayer did not pay the taxes prior to delinquency despite the corrected tax bill. Richardson Indep. Sch. Dist. v. GE Capital Corp., 58 S.W.3d 290, 2001 Tex. App. LEXIS 6876 (Tex. App. Dallas Oct. 12, 2001, no pet.).

City and school district did not file suit prematurely where the taxes were billed to taxpayer under the omitted property provision of the tax code, Tex. Tax Code Ann. § 26.15(d), which conferred a 21-day grace period before the new taxes became delinquent. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

Where, as required by Tex. Tax. Code Ann. § 26.15 the assessor mailed a supplemental tax bill in accordance with Tex. Tax Code Ann. § 31.01, and the letters accompanying the tax bills explained to taxpayer that the corrected tax bills stemmed from omitted property, and the accompanying letters also referenced a particular case number that indicated a "correction order," city and school district complied with the requirements of Tex. Tax Code Ann. § 31.01. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

Sec. 26.151. Escrow Account for Property Taxes.

(a) In this section:

(1) "Home loan" has the meaning assigned by Section 343.001, Finance Code.

(2) "Home loan servicer" means a person who:

(A) receives scheduled payments from a borrower under the terms of a home loan, including amounts for escrow accounts; and

(B) makes the payments of principal and interest to the owner of the loan or other third party and makes any other payments with respect to the amounts received from the borrower as may be required under the terms of the servicing loan document or servicing contract.

(3) "Property tax escrow account" means an escrow account maintained by a lender or loan servicer to hold funds prepaid by the borrower on a loan for the payment of property taxes on real property securing the loan as the taxes become due.

(b) To the extent that H.B. 3, 86th Legislature, Regular Session, 2019, has the effect of reducing property taxes in this state, a lender or home loan servicer of a home loan that maintains a property tax escrow account must take into account the effect of that legislation in establishing the borrower's annual property tax payments to be held in that account and immediately adjust the borrower's monthly payments accordingly.

(c) This section expires September 1, 2023.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 1.064, effective September 1, 2019.

Sec. 26.16. Posting of Tax Rates on County's Internet Website. [Effective until January 1, 2020] Posting of Tax-Related Information on County's Internet Website. [Effective January 1, 2020]

(a) **[Effective until January 1, 2020]** The county assessor-collector for each county that maintains an Internet website shall post on the website of the county the following information for the most recent five tax years beginning with the 2012 tax year for each taxing unit all or part of the territory of which is located in the county:

(1) the adopted tax rate;

(2) the maintenance and operations rate;

(3) the debt rate;

(4) the effective tax rate;

(5) the effective maintenance and operations rate; and

(6) the rollback tax rate.

(a) **[Effective January 1, 2020]** Each county shall maintain an Internet website. The county assessor-collector for each county shall post on the Internet website maintained by the county the following information for the most recent five tax years for each taxing unit all or part of the territory of which is located in the county:

(1) the adopted tax rate;

(2) the maintenance and operations rate;

(3) the debt rate;

(4) the no-new-revenue tax rate;

(5) the no-new-revenue maintenance and operations rate; and

(6) the voter-revenue tax rate.

(a-1) **[Effective January 1, 2020]** For purposes of Subsection (a), a reference to the no-new-revenue tax rate or the no-new-revenue maintenance and operations rate includes the equivalent effective tax rate or effective maintenance and operations rate for a preceding year. This subsection expires January 1, 2026.

(b) Each taxing unit all or part of the territory of which is located in the county shall provide the information described by Subsection (a) pertaining to the taxing unit to the county assessor-collector annually following the adoption of a tax rate by the taxing unit for the current tax year. The chief appraiser of the appraisal district established in the county may assist the county assessor-collector in identifying the taxing units required to provide information to the assessor-collector.

(c) The information described by Subsection (a) must be presented in the form of a table under the heading "Truth in Taxation Summary."

(d) **[Effective until January 1, 2020]** The county assessor-collector shall post immediately below the table prescribed by Subsection (c) the following statement:

"The county is providing this table of property tax rate information as a service to the residents of the county. Each individual taxing unit is responsible for calculating the property tax rates listed in this table pertaining to that taxing unit and providing that information to the county.

"The adopted tax rate is the tax rate adopted by the governing body of a taxing unit.

"The maintenance and operations rate is the component of the adopted tax rate of a taxing unit that will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the following year.

"The debt rate is the component of the adopted tax rate of a taxing unit that will impose the amount of taxes needed to fund the unit's debt service for the following year.

"The effective tax rate is the tax rate that would generate the same amount of revenue in the current tax year as was generated by a taxing unit's adopted tax rate in the preceding tax year from property that is taxable in both the current tax year and the preceding tax year.

"The effective maintenance and operations rate is the tax rate that would generate the same amount of revenue for maintenance and operations in the current tax year as was generated by a taxing unit's maintenance and operations rate in the preceding tax year from property that is taxable in both the current tax year and the preceding tax year.

"The rollback tax rate is the highest tax rate a taxing unit may adopt before requiring voter approval at an election. In the case of a taxing unit other than a school district, the voters by petition may require that a rollback election be held if the unit adopts a tax rate in excess of the unit's rollback tax rate. In the case of a school district, an election will automatically be held if the district wishes to adopt a tax rate in excess of the district's rollback tax rate."

(d) **[Effective January 1, 2020]** The county assessor-collector shall post immediately below the table prescribed by Subsection (c) the following statement:

"The county is providing this table of property tax rate information as a service to the residents of the county. Each individual taxing unit is responsible for calculating the property tax rates listed in this table pertaining to that taxing unit and providing that information to the county.

"The adopted tax rate is the tax rate adopted by the governing body of a taxing unit.

"The maintenance and operations rate is the component of the adopted tax rate of a taxing unit that will impose the amount of taxes needed to fund maintenance and operation expenditures of the taxing unit for the following year.

"The debt rate is the component of the adopted tax rate of a taxing unit that will impose the amount of taxes needed to fund the taxing unit's debt service for the following year.

"The no-new-revenue tax rate is the tax rate that would generate the same amount of revenue in the current tax year as was generated by a taxing unit's adopted tax rate in the preceding tax year from property that is taxable in both the current tax year and the preceding tax year.

"The no-new-revenue maintenance and operations rate is the tax rate that would generate the same amount of revenue for maintenance and operations in the current tax year as was generated by a taxing unit's maintenance and operations rate in the preceding tax year from property that is taxable in both the current tax year and the preceding tax year.

"The voter-approval tax rate is the highest tax rate a taxing unit may adopt before requiring voter approval at an election. An election will automatically be held if a taxing unit wishes to adopt a tax rate in excess of the taxing unit's voter-approval tax rate."

(d-1) **[Effective January 1, 2020]** In addition to posting the information described by Subsection (a), the county assessor-collector shall post on the Internet website of the county for each taxing unit all or part of the territory of which is located in the county:

(1) the tax rate calculation forms used by the designated officer or employee of each taxing unit to calculate the no-new-revenue and voter-approval tax rates of the taxing unit for the most recent five tax years beginning with the 2020 tax year, as certified by the designated officer or employee under Section 26.04(d-2); and

(2) the name and official contact information for each member of the governing body of the taxing unit.

(d-2) **[Effective January 1, 2020]** By August 7 or as soon thereafter as practicable, the county assessor-collector shall post on the website the tax rate calculation forms described by Subsection (d-1)(1) for the current tax year.

(e) The comptroller by rule shall prescribe the manner in which the information described by this section is required to be presented.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 803 (H.B. 2338), § 1, effective September 1, 2011; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), §§ 55, 56, effective January 1, 2020.

Sec. 26.17. Database of Property-Tax-Related Information. [Effective January 1, 2020]

(a) The chief appraiser of each appraisal district shall create and maintain a property tax database that:

(1) is identified by the name of the county in which the appraisal district is established instead of the name of the appraisal district;

(2) contains information that is provided by designated officers or employees of the taxing units that are located in the appraisal district in the manner required by the comptroller;

(3) is continuously updated as preliminary and revised data become available to and are provided by the designated officers or employees of taxing units;

(4) is accessible to the public;

(5) is searchable by property address and owner, except to the extent that access to the information in the database is restricted by Section 25.025 or 25.026; and

(6) includes the following statement: "The 86th Texas Legislature modified the manner in which the voter-approval tax rate is calculated to limit the rate of growth of property taxes in the state.".

(b) The database must include, with respect to each property listed on the appraisal roll for the appraisal district:

(1) the property's identification number;

(2) the property's market value;

(3) the property's taxable value;

(4) the name of each taxing unit in which the property is located;

(5) for each taxing unit other than a school district in which the property is located:

(A) the no-new-revenue tax rate; and

(B) the voter-approval tax rate;

(6) for each school district in which the property is located:

(A) the tax rate that would maintain the same amount of state and local revenue per weighted student that the district received in the school year beginning in the preceding tax year; and

(B) the voter-approval tax rate;

(7) the tax rate proposed by the governing body of each taxing unit in which the property is located;

(8) for each taxing unit other than a school district in which the property is located, the taxes that would be imposed on the property if the taxing unit adopted a tax rate equal to:

(A) the no-new-revenue tax rate; and

(B) the proposed tax rate;

(9) for each school district in which the property is located, the taxes that would be imposed on the property if the district adopted a tax rate equal to:

(A) the tax rate that would maintain the same amount of state and local revenue per weighted student that the district received in the school year beginning in the preceding tax year; and

(B) the proposed tax rate;

(10) for each taxing unit other than a school district in which the property is located, the difference between the amount calculated under Subdivision (8)(A) and the amount calculated under Subdivision (8)(B);

(11) for each school district in which the property is located, the difference between the amount calculated under Subdivision (9)(A) and the amount calculated under Subdivision (9)(B);

(12) the date, time, and location of the public hearing, if applicable, on the proposed tax rate to be held by the governing body of each taxing unit in which the property is located;

(13) the date, time, and location of the public meeting, if applicable, at which the tax rate will be adopted to be held by the governing body of each taxing unit in which the property is located; and

(14) for each taxing unit in which the property is located, an e-mail address at which the taxing unit is capable of receiving written comments regarding the proposed tax rate of the taxing unit.

(c) The database must provide a link to the Internet website used by each taxing unit in which the property is located to post the information described by Section 26.18.

(d) The database must allow the property owner to electronically complete and submit to a taxing unit in which the owner's property is located a form on which the owner may provide the owner's opinion as to whether the tax rate proposed by the governing body of the taxing unit should be adopted. The form must require the owner to provide the owner's name and contact information and the physical address of the owner's property located in the taxing unit. The database must allow a property owner to complete and submit the form at any time during the period beginning on the date the governing body of the taxing unit proposes the tax rate for that tax year and ending on the date the governing body adopts a tax rate for that tax year.

(e) The officer or employee designated by the governing body of each taxing unit in which the property is located to calculate the no-new-revenue tax rate and the voter-approval tax rate for the taxing unit must electronically incorporate into the database:

(1) the information described by Subsections (b)(5), (6), (7), (12), and (13), as applicable, as the information becomes available; and

(2) the tax rate calculation forms prepared under Section 26.04(d-1) at the same time the designated officer or employee submits the tax rates to the governing body of the taxing unit under Section 26.04(e).

(f) The chief appraiser shall make the information described by Subsection (e)(1) and the tax rate calculation forms described by Subsection (e)(2) available to the public not later than the third business day after the date the information and forms are incorporated into the database.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 57, effective January 1, 2020.

Sec. 26.18. Posting of Tax Rate and Budget Information by Taxing Unit on Website. [Effective January 1, 2020]

Each taxing unit shall maintain an Internet website or have access to a generally accessible Internet website that may be used for the purposes of this section. Each taxing unit shall post or cause to be posted on the Internet website the following information in a format prescribed by the comptroller:

(1) the name of each member of the governing body of the taxing unit;

(2) the mailing address, e-mail address, and telephone number of the taxing unit;

(3) the official contact information for each member of the governing body of the taxing unit, if that information is different from the information described by Subdivision (2);

(4) the taxing unit's budget for the preceding two years;

(5) the taxing unit's proposed or adopted budget for the current year;

(6) the change in the amount of the taxing unit's budget from the preceding year to the current year, by dollar amount and percentage;

(7) in the case of a taxing unit other than a school district, the amount of property tax revenue budgeted for maintenance and operations for:

(A) the preceding two years; and

(B) the current year;

(8) in the case of a taxing unit other than a school district, the amount of property tax revenue budgeted for debt service for:

(A) the preceding two years; and

(B) the current year;

(9) the tax rate for maintenance and operations adopted by the taxing unit for the preceding two years;

(10) in the case of a taxing unit other than a school district, the tax rate for debt service adopted by the taxing unit for the preceding two years;

(11) in the case of a school district, the interest and sinking fund tax rate adopted by the district for the preceding two years;

(12) the tax rate for maintenance and operations proposed by the taxing unit for the current year;

(13) in the case of a taxing unit other than a school district, the tax rate for debt service proposed by the taxing unit for the current year;

(14) in the case of a school district, the interest and sinking fund tax rate proposed by the district for the current year; and

(15) the most recent financial audit of the taxing unit.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 57, effective January 1, 2020.

CHAPTERS 27 TO 30

[Reserved for expansion]

SUBTITLE E

COLLECTIONS AND DELINQUENCY

CHAPTER 31

Collections

Section	
31.01.	Tax Bills.
31.015.	Certain Tax Bills: Penalty and Interest Excluded [Renumbered].
31.02.	Delinquency Date.
31.03.	Split Payment of Taxes.
31.031.	Installment Payments of Certain Homestead Taxes.
31.032.	Installment Payments of Taxes on Property in Disaster Area.
31.035.	Performance of Service in Lieu of Payment of Taxes on Homestead of Elderly Person.
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31.04.	Postponement of Delinquency Date.
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31.06.	Medium of Payment.
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31.07.	Certain Payments Accepted.
31.071.	Conditional Payments.
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31.075.	Tax Receipt.
31.08.	Tax Certificate.
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31.09.	Reports and Remittances of State Taxes [Repealed].
31.10.	Reports and Remittances of Other Taxes.
31.11.	Refunds of Overpayments or Erroneous Payments.
31.111.	Refunds of Duplicate Payments.
31.112.	Refunds of Payments Made to Multiple Like Taxing Units.
31.115.	Payment of Tax Under Protest.
31.12.	Payment of Tax Refunds; Interest.

Sec. 31.01. Tax Bills.

(a) Except as provided by Subsections (f), (i-1), and (k), the assessor for each taxing unit shall prepare and mail a tax

bill to each person in whose name the property is listed on the tax roll and to the person's authorized agent. The assessor shall mail tax bills by October 1 or as soon thereafter as practicable. The assessor shall mail to the state agency or institution the tax bill for any taxable property owned by the agency or institution. The agency or institution shall pay the taxes from funds appropriated for payment of the taxes or, if there are none, from funds appropriated for the administration of the agency or institution. The exterior of the tax bill must show the return address of the taxing unit. If the assessor wants the United States Postal Service to return the tax bill if it is not deliverable as addressed, the exterior of the tax bill may contain, in all capital letters, the words "RETURN SERVICE REQUESTED," or another appropriate statement directing the United States Postal Service to return the tax bill if it is not deliverable as addressed.

(b) The county assessor-collector shall mail the tax bill for Permanent University Fund land to the comptroller. The comptroller shall pay all county tax bills on Permanent University Fund land with warrants drawn on the General Revenue Fund and mailed to the county assessors-collectors before February 1.

(c) The tax bill or a separate statement accompanying the tax bill shall:

(1) identify the property subject to the tax;

(2) state the appraised value, assessed value, and taxable value of the property;

(3) if the property is land appraised as provided by Subchapter C, D, E, or H, Chapter 23, state the market value and the taxable value for purposes of deferred or additional taxation as provided by Section 23.46, 23.55, 23.76, or 23.9807, as applicable;

(4) state the assessment ratio for the unit;

(5) state the type and amount of any partial exemption applicable to the property, indicating whether it applies to appraised or assessed value;

(6) state the total tax rate for the unit;

(7) state the amount of tax due, the due date, and the delinquency date;

(8) explain the payment option and discounts provided by Sections 31.03 and 31.05, if available to the unit's taxpayers, and state the date on which each of the discount periods provided by Section 31.05 concludes, if the discounts are available;

(9) state the rates of penalty and interest imposed for delinquent payment of the tax;

(10) include the name and telephone number of the assessor for the unit and, if different, of the collector for the unit;

(11) for real property, state for the current tax year and each of the preceding five tax years:

(A) the appraised value and taxable value of the property;

(B) the total tax rate for the unit;

(C) the amount of taxes imposed on the property by the unit; and

(D) the difference, expressed as a percent increase or decrease, as applicable, in the amount of taxes imposed on the property by the unit compared to the amount imposed for the preceding tax year; and

(12) for real property, state the differences, expressed as a percent increase or decrease, as applicable, in the following for the current tax year as compared to the fifth tax year before that tax year:

(A) the appraised value and taxable value of the property;

(B) the total tax rate for the unit; and

(C) the amount of taxes imposed on the property by the unit.

(c-1) If for any of the preceding six tax years any information required by Subsection (c)(11) or (12) to be included in a tax bill or separate statement is unavailable, the tax bill or statement must state that the information is not available for that year.

(c-2) For a tax bill that includes back taxes on an improvement that escaped taxation in a prior year, the tax bill or separate statement described by Subsection (c) must state that no interest is due on the back taxes if those back taxes are paid not later than the 120th day after the date the tax bill is sent.

(d) Each tax bill shall also state the amount of penalty, if any, imposed pursuant to Sections 23.431, 23.54, 23.541, 23.75, 23.751, 23.87, 23.97, and 23.9804.

(d-1) This subsection applies only to a school district. In addition to stating the total tax rate for the school district, the tax bill or the separate statement shall separately state:

(1) the maintenance and operations rate of the school district;

(2) if the school district has outstanding debt, as defined by Section 26.012, the debt rate of the district;

(3) the maintenance and operations rate of the school district for the preceding tax year;

(4) if for the current tax year the school district imposed taxes for debt, as defined by Section 26.012, the debt rate of the district for the current tax year;

(5) if for the preceding tax year the school district imposed taxes for debt, as defined by Section 26.012, the debt rate of the district for that year; and

(6) the total tax rate of the district for the preceding tax year.

(d-2) [Expired December 31, 2016]

(d-3) [Expired December 31, 2016]

(d-4) [Expired December 31, 2016]

(d-5) [Expired December 31, 2016]

(e) An assessor may include taxes for more than one taxing unit in the same tax bill, but he shall include the information required by Subsection (c) of this section for the tax imposed by each unit included in the bill.

(f) A collector may provide that a tax bill not be sent until the total amount of unpaid taxes the collector collects on the property for all taxing units the collector serves is $15 or more. A collector may not send a tax bill for an amount of taxes less than $15 if before the tax bill is prepared the property owner files a written request with the collector that a tax bill not be sent until the total amount of unpaid taxes the collector collects on the property is $15 or more. The request applies to all subsequent taxes the collector collects on the property until the property owner in writing revokes the request or the person no longer owns the property.

(g) Except as provided by Subsection (f), failure to send or receive the tax bill required by this section, including a tax bill that has been requested to be sent by electronic means under Subsection (k), does not affect the validity of the tax, penalty, or interest, the due date, the existence of a tax lien, or any procedure instituted to collect a tax.

(h) An assessor who assesses taxes for more than one taxing unit may prepare and deliver separate bills for the taxes of a taxing unit that does not adopt a tax rate for the year before the 60th day after the date the chief appraiser certifies the appraisal roll for the unit under Section 26.01 of this code or, if the taxing unit participates in more than one appraisal district, before the 60th day after the date it receives a certified appraisal roll from any of the appraisal districts in which it participates. If separate tax bills are prepared and delivered under this subsection, the taxing unit or taxing units that failed to adopt the tax rate before the prescribed deadline must pay the additional costs incurred in preparing and mailing the separate bills in addition to any other compensation required or agreed to be paid for the appraisal services rendered.

(i) For a city or town that imposes an additional sales and use tax under Section 321.101(b) of this code, or a county that imposes a sales and use tax under Chapter 323 of this code, the tax bill shall indicate the amount of additional ad valorem taxes, if any, that would have been imposed on the property if additional ad valorem taxes had been imposed in an amount equal to the amount of revenue estimated to be collected from the additional city sales and use tax or from the county sales and use tax, as applicable, for the year determined as provided by Section 26.041 of this code.

(i-1) If an assessor mails a tax bill under Subsection (a) or delivers a tax bill by electronic means under Subsection (k) to a mortgagee of a property, the assessor is not required to mail or deliver by electronic means a copy of the bill to any mortgagor under the mortgage or to the mortgagor's authorized agent.

(j) If a tax bill is mailed under Subsection (a) or delivered by electronic means under Subsection (k) to a mortgagee of a property, the mortgagee shall mail a copy of the bill to the owner of the property not more than 30 days following the mortgagee's receipt of the bill.

(k) The assessor for a taxing unit shall deliver a tax bill as required by this section by electronic means if on or before September 15 the individual or entity entitled to receive a tax bill under this section and the assessor enter into an agreement for delivery of a tax bill by electronic means. An assessor who delivers a tax bill electronically under this subsection is not required to mail the same bill under Subsection (a). An agreement entered into under this subsection:

(1) must:

(A) be in writing or in an electronic format;

(B) be signed by the assessor and the individual or entity entitled to receive the tax bill under this section;

(C) be in a format acceptable to the assessor;

(D) specify the electronic means by which the tax bill is to be delivered; and

(E) specify the e-mail address to which the tax bill is to be delivered; and

(2) remains in effect for all subsequent tax bills until revoked by an authorized individual in a written revocation filed with the assessor.

(*l*) The comptroller may:

(1) prescribe acceptable media, formats, content, and methods for the delivery of tax bills by electronic means under Subsection (k); and

(2) provide a model form agreement.

HISTORY: am; Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 122, effective January 1, 1982; am. Acts 1981, 67th Leg., ch. 581 (S.B. 970), § 3, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 5 (H.B. 426), § 1, effective March 14, 1983; am. Acts 1985, 69th Leg., ch. 429 (S.B. 623), § 1, effective June 11, 1985; am. Acts 1987, 70th Leg., ch. 11 (S.B. 299), § 13, effective April 2, 1987; am. Acts 1987, 70th Leg., ch. 834 (H.B. 1051), § 1, effective June 18, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), §§ 14.27(d)(2), 14.28(2), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 969 (H.B. 603), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 47, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 9.1, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 926 (H.B. 1158), § 2, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 1012 (S.B. 1136), § 2, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 1, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 32, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 547 (S.B. 307), § 1, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 8, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 846 (S.B. 898), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1255 (H.B. 1984), § 2, effective January 1, 2006; am. Acts 2005, 79th Leg., ch. 1368 (S.B. 18), § 5, effective June 18, 2005; am. Acts 2006, 79th Leg., 3rd C.S., ch. 5 (H.B. 1), § 1.15(a)—(c), effective May 31, 2006; am. Acts 2007, 80th Leg., ch. 107 (H.B. 923), § 1, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1106 (H.B. 3496), § 2, effective January 1, 2008; am. Acts 2009, 81st Leg., ch. 1205 (S.B. 562), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 138 (S.B. 551), § 2, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 483 (H.B. 843), § 2, effective January 1, 2012; am. Acts 2015, 84th Leg., ch. 465 (S.B. 1), § 8, effective June 15, 2015.

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GOVERNMENTS
Legislation

Interpretation. — School district contended that the failure to issue a tax bill did not affect the validity of the tax under Tex. Tax Code Ann. § 31.01(g); although both of these contentions were true, the school district ignored the Texas Tax Code's additional requirements that appraisal records had to describe the property subject to the tax with sufficient certainty to identify it, and that the tax bill had to identify that property pursuant to Tex. Tax Code Ann. §§ 25.03(a) and 31.01(c)(1). Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — In instances in which the taxpayer's name or address is unknown, the failure to send or receive the tax bill required by Tex. Tax Code Ann. § 31.01 does not affect the validity of the tax, penalty, or interest, the due date, the existence of a tax lien, or any procedure instituted to collect a tax, under Tex. Tax Code Ann. § 31.01(g). Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

Under Tex. Tax Code Ann. § 31.01(g), the failure to send or receive a tax bill does not affect the validity of the tax, the penalty, the interest, or the date due. Thus, when taxpayers claimed that a town had not sent them notice of supplemental taxes due in 2000, but had not otherwise contradicted the town's prima facie case, the town was entitled to summary judgment. Freeman v. Town of Flower Mound, No. 03-02-00032-CV, 2002 Tex. App. LEXIS 3463 (Tex. App. Austin May 16, 2002).

COLLECTION. — Tex. Tax Code Ann. § 33.05's limitations period was inapplicable, because the district's suit alleging breach of the tax abatement agreement and recovery of lost ad valorem tax revenue as damages was not a suit to collect delinquent taxes; it was undisputed that the county and district did not impose the abated taxes during either ten-year abatement period, consequently, the abated taxes were not due on February 1 of each tax applicable tax year and the taxes did not become delinquent. Stanley Works v. Wichita Falls Indep. Sch. Dist., 366 S.W.3d 816, 2012 Tex. App. LEXIS 3230 (Tex. App. El Paso Apr. 25, 2012), reh'g denied, No. 08-11-00015-CV, 2012 Tex. App. LEXIS 5373 (Tex. App. El Paso May 23, 2012).

JUDICIAL REVIEW. — Property owners' challenge to the appraised value of two commercial properties was properly dismissed where they failed to substantially comply with the statutory prepayment requirement because no portion of the assessed tax was paid on either property in dispute prior to the delinquency deadline. The owners were not excused from the prepayment requirement because they failed to demonstrate an inability to pay, and because the prepayment requirement would not constitute an unreasonable restraint on their right of access to the courts. Welling v. Harris County Appraisal Dist., 429 S.W.3d 28, 2014 Tex. App. LEXIS 1228 (Tex. App. Houston 1st Dist. Feb. 4, 2014, no pet.).

TAXPAYER PROTESTS. — Property owners' challenge to the appraised value of two commercial properties was properly dismissed where they failed to substantially comply with the statutory prepayment requirement because no portion of the assessed tax was paid on either property in dispute prior to the delinquency deadline. The owners were not excused from the prepayment requirement because they failed to demonstrate an inability to pay, and because the prepayment requirement would not constitute an unreasonable restraint on their right of access to the courts. Welling v. Harris County Appraisal Dist., 429 S.W.3d 28, 2014 Tex. App. LEXIS 1228 (Tex. App. Houston 1st Dist. Feb. 4, 2014, no pet.).

PERSONAL PROPERTY TAX

General Overview. — Tex. Tax Code Ann. § 33.05's limitations period was inapplicable, because the district's suit alleging breach of the tax abatement agreement and recovery of lost ad valorem tax revenue as damages was not a suit to collect delinquent taxes; it was undisputed that the county and district did not impose the abated taxes during either ten-year abatement period, consequently, the abated taxes were not due on February 1 of each tax applicable tax year and the taxes did not become delinquent. Stanley Works v. Wichita Falls Indep. Sch. Dist., 366 S.W.3d 816, 2012 Tex. App. LEXIS 3230 (Tex. App. El Paso Apr. 25, 2012), reh'g denied, No. 08-11-00015-CV, 2012 Tex. App. LEXIS 5373 (Tex. App. El Paso May 23, 2012).

REAL PROPERTY TAX

General Overview. — County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

ASSESSMENT & VALUATION

General Overview. — County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

Tax rolls are prima facie evidence of a tax liability and establish every material fact necessary to establish a cause of action for delinquent taxes, pursuant to Tex. Tax Code Ann. § 33.47(a). The failure to issue a tax bill does not affect the validity of the tax under Tex. Tax Code Ann. § 31.01(g); however, there are additional requirements that appraisal records must describe the property subject to the tax with sufficient certainty to identify it and that a tax bill must identify that property, pursuant to Tex. Tax Code Ann. § 25.03(a) and Tex. Tax Code Ann. § 31.01(c)(1). Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

Where notices of appraised values for property taxes were properly mailed to taxpayer and met the requirements of Tex.

Tax. Code Ann. 25.19, including advising taxpayer of the right to protest the change in appraised value and that deadline, and city mailed taxpayer supplemental tax bills that met the requirements of Tex. Tax Code Ann. §§ 26.15 and 31.01 advising taxpayer of the supplemental ad valorem taxes and the deadline to pay them, city met the requirements of Tex. Tax Code Ann. §§ 25.23 and 25.19. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

Taxpayer was properly held liable for delinquent property taxes where county had provided notice to the taxpayer of change in reappraisal of properties to include a new warehouse and warehouses that had been previously omitted, as was required under Tex. Tax Code Ann. § 31.01; the taxpayer did not protest the changes, and had constructive notice that a change would occur due to the construction of the new warehouse. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

COLLECTION

General Overview. — Where, as required by Tex. Tax. Code Ann. § 26.15 the assessor mailed a supplemental tax bill in accordance with Tex. Tax Code Ann. § 31.01, and the letters accompanying the tax bills explained to taxpayer that the corrected tax bills stemmed from omitted property, and the accompanying letters also referenced a particular case number that indicated a "correction order," city and school district complied with the requirements of Tex. Tax Code Ann. § 31.01. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

Sec. 31.015. Certain Tax Bills: Penalty and Interest Excluded [Renumbered].

Redesignated as Tex. Tax Code § 33.011(b) through (g) by Acts 1995, 74th Leg., ch. 579 (S.B. 642), § 11, effective January 1, 1996.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 926 (H.B. 1158), § 1, effective September 1, 1993.

Sec. 31.02. Delinquency Date.

(a) Except as provided by Subsection (b) of this section and by Sections 31.03 and 31.04 of this code, taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed.

(a-1) [Expired December 31, 2016]

(b) An eligible person serving on active duty in any branch of the United States armed forces may pay delinquent property taxes on property in which the person owns any interest without penalty or interest no later than the 60th day after the date on which the earliest of the following occurs:

(1) the person is discharged from active military service;

(2) the person returns to the state for more than 10 days; or

(3) the person returns to non-active duty status in the reserves.

(c) "Eligible person" means a person on active military duty in this state who was transferred out of this state or a person in the reserve forces who was placed on active military duty and transferred out of this state.

(d) A person eligible under Subsection (b) or any co-owner of property that is owned by an eligible person may notify the county tax assessor or collector or central appraisal district for the county in which the property is located of the person's eligibility for exemption under Subsection (b). The county tax assessor or collector or central appraisal district shall provide the forms necessary for those individuals giving notice under this subsection. If the notice is timely given, a taxing unit in the county may not bring suit for delinquent taxes for the tax year in which the notice is given. Failure to file a notice does not affect eligibility for the waiver of penalties and interest.

(e) On verification that notice was properly filed under Subsection (d), a suit for delinquent taxes must be abated without cost to the defendant. The exemptions provided for under this section shall immediately stop all actions against eligible persons until the person's eligibility expires as provided in Subsection (b).

(f) This section applies only to property in which the person eligible for the exemption owned an interest on the date the person was transferred out of this state as described by Subsection (c) or in which the person acquired the interest by gift, devise, or inheritance after that date.

(g) For the purposes of this section, a person is considered to be on active military duty if the person is covered by the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C. Section 501 et seq.) or the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.), as amended.

(h) [Repealed by Acts 2003, 78th Leg., ch. 129 (S.B. 173), § 2, effective May 28, 2003.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., ch. 381 (H.B. 1629), § 1, effective August 26, 1991; am. Acts 2003, 78th Leg., ch. 129 (S.B. 173), §§ 1, 2, effective May 27, 2003; am. Acts 2019, 86th Leg., ch. 788 (H.B. 1883), § 1, effective September 1, 2019.

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CIVIL PROCEDURE
Class Actions
Prerequisites

General Overview. — Review of the tax codes of several states, including Texas, Arizona, California, and Florida, indicated that a homeowner was unable to represent other Texas homeowners in a suit against a mortgage company, based on the company's alleged scheme to induce them to take improper tax deductions while allowing the company to collect an extra month of interest on escrowed funds, much less homeowners in all of America, because the tax bills for the various states were due at different times. Class certification was denied. Smith v. Countrywide Credit Indus., No. H-02-1989, 2004 U.S. Dist. LEXIS 20092 (S.D. Tex. Aug. 31, 2004), aff'd, 133 Fed. Appx. 976, 2005 U.S. App. LEXIS 11102 (5th Cir. Tex. 2005).

SUMMARY JUDGMENT
Standards

General Overview. — Where receipt of a corrected tax bills was at issue and one party contended that it mailed the tax bills and the other contended it did not receive the tax bills, the appeals court held that a lower court summary judgment order was reversible error and remanded for further proceedings. Houston Indep. Sch. Dist. v. Westbury Village, No. 01-96-00707-CV, 1997 Tex. App. LEXIS 5486 (Tex. App. Houston 1st Dist. Oct. 16, 1997).

REMEDIES
Costs & Attorney Fees
Costs

General Overview. — Where the district did not have the property owners' mailing address, the taxes for those years became "delinquent" on February 1 of the year after the taxes were imposed and the district was entitled to attorney's fees, court costs, and title search fees associated with the collection of delinquent taxes for those years. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

CONTRACTS LAW
Breach
Causes of Action

General Overview. — Loan servicer was entitled to summary judgment in a borrower's breach of contract claim, concerning an escrow waiver agreement, because the borrower breached the escrow waiver by failing to timely pay her 2006 property taxes, and therefore, the servicer was entitled to revoke the waiver and pay the borrower's 2007 and 2008 property taxes. Forbes v. Citimortgage, Inc., 2014 U.S. Dist. LEXIS 21762 (S.D. Tex. Feb. 20, 2014).

REAL PROPERTY LAW
Financing
Mortgages & Other Security Instruments

General Overview. — Bank was entitled to summary judgment in a borrower's action alleging breach of an escrow waiver agreement; the borrower failed to fulfill his obligation under the agreement because he did not pay property taxes timely under Tex. Tax Code Ann. § 31.02 and, thus, the bank was entitled to increase the borrower's monthly payment to establish escrow funds for taxes. White v. Wells Fargo Bank NA, No. 3:09-CV-1266-B, 2010 U.S. Dist. LEXIS 127524 (N.D. Tex. Dec. 1, 2010).

TAX LAW
State & Local Taxes
Administration & Proceedings

Collection. — Tex. Tax Code Ann. § 33.05's limitations period was inapplicable, because the district's suit alleging breach of the tax abatement agreement and recovery of lost ad valorem tax revenue as damages was not a suit to collect delinquent taxes; it was undisputed that the county and district did not impose the abated taxes during either ten-year abatement period, consequently, the abated taxes were not due on February 1 of each tax applicable tax year and the taxes did not become delinquent. Stanley Works v. Wichita Falls Indep. Sch. Dist., 366 S.W.3d 816, 2012 Tex. App. LEXIS 3230 (Tex. App. El Paso Apr. 25, 2012), reh'g denied, No. 08-11-00015-CV, 2012 Tex. App. LEXIS 5373 (Tex. App. El Paso May 23, 2012).

Taxpayer failed to pay taxes by the deadlines under Tex. Tax Code Ann. § 31.02 and the exclusive remedies provision, Tex. Tax Code Ann. § 42.09, deprived the taxpayer of equitable defenses it raised to avoid summary judgment; the trial court properly found that the taxpayer owed penalties and interest on the tax years in question, for purposes of Tex. Tax Code Ann. § 33.41. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Given that a taxpayer failed to pay taxes before the following February 1 of the tax years, the taxes were delinquent and the taxpayer was subject to penalties and interest, for purposes of Tex. Tax Code Ann. § 33.01(a), (c); Tex. Tax Code Ann. § 25.25 did not postpone the delinquency dates, for purposes of Tex. Tax Code Ann. § 31.02, where the taxpayer failed to pay assessments before the following February 1 of the tax years in question. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Based on the language of Tex. Tax Code Ann. § /Aa25.25, the court concludes that sending a corrected tax statement does not alter the delinquency date calculation provided by Tex. Tax Code Ann. § 31.02. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Trial court could have found the taxpayer delinquent in its tax payments, for purposes of Tex. Tax Code Ann. § 31.02(a), and because the county had a right to sue for such taxes under Tex. Tax Code Ann. § 33.41, and the taxpayer did not specifically challenge the constitutionality of the payment deadline, the trial court did not err in granting summary judgment on the taxpayer's claims under Tex. Const. art. I, §§ 3, 17, 19 and Tex. Const. VIII, §§ 1, 2. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Under Tex. Tax Code Ann. § 31.02(a), the taxpayer's 2005 taxes were due before February 1, 2006, and its 2006 and 2007 taxes were due on February 1, 2007 and 2008. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

FAILURE TO PAY TAX. — Taxpayer's suit for judicial review was properly dismissed for lack of subject-matter jurisdiction because the taxpayer did not pay any portion of the property taxes before the delinquency dates and did not substantially comply by paying an undisputed amount of taxes or stating an amount he would pay; compliance is jurisdictional, and no additional findings were necessary because the trial court implicitly determined the jurisdictional facts regarding the taxpayer's noncompliance. Sonne v. Harris County Appraisal Dist., No. 01-12-00749-CV, 2014 Tex. App. LEXIS 6859 (Tex. App. Houston 1st Dist. June 26, 2014).

JUDICIAL REVIEW. — Property owners' challenge to the appraised value of two commercial properties was properly dismissed where they failed to substantially comply with the statu-

tory prepayment requirement because no portion of the assessed tax was paid on either property in dispute prior to the delinquency deadline. The owners were not excused from the prepayment requirement because they failed to demonstrate an inability to pay, and because the prepayment requirement would not constitute an unreasonable restraint on their right of access to the courts. Welling v. Harris County Appraisal Dist., 429 S.W.3d 28, 2014 Tex. App. LEXIS 1228 (Tex. App. Houston 1st Dist. Feb. 4, 2014, no pet.).

TAXPAYER PROTESTS. — Property owners' challenge to the appraised value of two commercial properties was properly dismissed where they failed to substantially comply with the statutory prepayment requirement because no portion of the assessed tax was paid on either property in dispute prior to the delinquency deadline. The owners were not excused from the prepayment requirement because they failed to demonstrate an inability to pay, and because the prepayment requirement would not constitute an unreasonable restraint on their right of access to the courts. Welling v. Harris County Appraisal Dist., 429 S.W.3d 28, 2014 Tex. App. LEXIS 1228 (Tex. App. Houston 1st Dist. Feb. 4, 2014, no pet.).

PERSONAL PROPERTY TAX

General Overview. — Tex. Tax Code Ann. § 33.05's limitations period was inapplicable, because the district's suit alleging breach of the tax abatement agreement and recovery of lost ad valorem tax revenue as damages was not a suit to collect delinquent taxes; it was undisputed that the county and district did not impose the abated taxes during either ten-year abatement period, consequently, the abated taxes were not due on February 1 of each tax applicable tax year and the taxes did not become delinquent. Stanley Works v. Wichita Falls Indep. Sch. Dist., 366 S.W.3d 816, 2012 Tex. App. LEXIS 3230 (Tex. App. El Paso Apr. 25, 2012), reh'g denied, No. 08-11-00015-CV, 2012 Tex. App. LEXIS 5373 (Tex. App. El Paso May 23, 2012).

REAL PROPERTY TAX

Assessment & Valuation

Assessment Methods & Timing. — Taxpayer who sought judicial review of an appraisal board's decision met the requirements of Tex. Tax Code Ann. § 42.08(d) to be excused from the payment requirement of § 42.08(b) by filing an oath of inability to pay and presenting bank records showing that he lacked adequate funds to pay his property taxes by the date they were due under Tex. Tax Code Ann. § 31.02(a). An oath of inability to pay does not have to be filed before the due date; and because the taxpayer did not elect to pay a smaller undisputed amount before the due date, he owed the full amount of the taxes and was not required under § 42.08(b-1) to specify the amount he would pay. Carter v. Harris County Appraisal Dist., 409 S.W.3d 26, 2013 Tex. App. LEXIS 7123 (Tex. App. Houston 1st Dist. June 11, 2013, no pet.).

While a taxpayer claimed that any property taxes assessed were not delinquent because he had been making payments, property taxes became delinquent by February 1 of the year following the year in which they were imposed under Tex. Tax Code Ann. § 31.02(a), and the taxpayer had not paid property taxes timely since approximately 1993. Bello v. Tarrant County, No. 02-09-00462-CV, 2010 Tex. App. LEXIS 9763 (Tex. App. Fort Worth Dec. 9, 2010), reh'g denied, No. 2-09-462-CV, 2011 Tex. App. LEXIS 289 (Tex. App. Fort Worth Jan. 6, 2011).

COLLECTION

Methods & Timing. — Taxpayer's suit for judicial review was properly dismissed for lack of subject-matter jurisdiction because the taxpayer did not pay any portion of the property taxes before the delinquency dates and did not substantially comply by paying an undisputed amount of taxes or stating an amount he would pay; compliance is jurisdictional, and no additional findings were necessary because the trial court implicitly determined the jurisdictional facts regarding the taxpayer's noncompliance. Sonne v. Harris County Appraisal Dist., No. 01-12-00749-CV, 2014 Tex. App. LEXIS 6859 (Tex. App. Houston 1st Dist. June 26, 2014).

Loan servicer was entitled to summary judgment in a borrower's breach of contract claim, concerning an escrow waiver agreement, because the borrower breached the escrow waiver by failing to timely pay her 2006 property taxes, and therefore, the servicer was entitled to revoke the waiver and pay the borrower's 2007 and 2008 property taxes. Forbes v. Citimortgage, Inc., 2014 U.S. Dist. LEXIS 21762 (S.D. Tex. Feb. 20, 2014).

Bank was entitled to summary judgment in a borrower's action alleging breach of an escrow waiver agreement; the borrower failed to fulfill his obligation under the agreement because he did not pay property taxes timely under Tex. Tax Code Ann. § 31.02 and, thus, the bank was entitled to increase the borrower's monthly payment to establish escrow funds for taxes. White v. Wells Fargo Bank NA, No. 3:09-CV-1266-B, 2010 U.S. Dist. LEXIS 127524 (N.D. Tex. Dec. 1, 2010).

ATTORNEY GENERAL OPINIONS

Delinquency Date.

Section 31.04 of the Tax Code does not operate to forbid the establishment of the delinquency date and the imposition of penalties and interest on taxes due in a situation in which no tax bill is sent because the name or address of the delinquent taxpayer is unknown. In an instance in which no tax bill can be mailed because the address of the taxpayer is unknown, section 31.02 of the Tax Code, which provides that the delinquency date is February 1 of the year after the taxes are imposed, controls the establishment of a delinquency date. 1990 Tex. Op. Att'y Gen. JM-1192.

Sec. 31.03. Split Payment of Taxes.

(a) The governing body of a taxing unit that collects its own taxes may provide, in the manner required by law for official action by the body, that a person who pays one-half of the unit's taxes before December 1 may pay the remaining one-half of the taxes without penalty or interest before July 1 of the following year.

(b) Except as provided by Subsection (d), the split-payment option, if adopted, applies to taxes for all units for which the adopting taxing unit collects taxes.

(c) If one or more taxing units contract with the appraisal district for collection of taxes, the split-payment option provided by Subsection (a) of this section does not apply to taxes collected by the district unless approved by resolution adopted by a majority of the governing bodies of the taxing units whose taxes the district collects and filed with the secretary of the appraisal district board of directors. After an appraisal district provides for the split-payment option, the option applies to all taxes collected by the district until revoked. It may be revoked in the same manner as provided for adoption.

(d) This subsection applies only to a taxing unit located in a county having a population of not less than 285,000 and not more than 300,000 that borders a county having a population of 3.3 million or more and the Gulf of Mexico. The governing body of a taxing unit that has its taxes collected by another taxing unit that has adopted the split-payment option under Subsection (a) may provide, in the manner required by law for official action by the body, that the split-payment option does not apply to the taxing unit's taxes collected by the other taxing unit.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 123, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 20, effective August 29, 1983; am. Acts 1983, 68th Leg., ch. 862 (H.B. 1282), § 1, effective September 1, 1983; am. Acts 2007, 80th Leg., ch. 395 (S.B. 796), § 1, effective June 15, 2007; am. Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 115, effective September 1, 2011.

NOTES TO DECISIONS

CIVIL PROCEDURE
Class Actions
Prerequisites

General Overview. — Review of the tax codes of several states, including Texas, Arizona, California, and Florida, indicated that a homeowner was unable to represent other Texas homeowners in a suit against a mortgage company, based on the company's alleged scheme to induce them to take improper tax deductions while allowing the company to collect an extra month of interest on escrowed funds, much less homeowners in all of America, because the tax bills for the various states were due at different times. Class certification was denied. Smith v. Countrywide Credit Indus., No. H-02-1989, 2004 U.S. Dist. LEXIS 20092 (S.D. Tex. Aug. 31, 2004), aff'd, 133 Fed. Appx. 976, 2005 U.S. App. LEXIS 11102 (5th Cir. Tex. 2005).

Sec. 31.031. Installment Payments of Certain Homestead Taxes.

(a) This section applies only to:
(1) an individual who is:
(A) disabled or at least 65 years of age; and
(B) qualified for an exemption under Section 11.13(c); or
(2) an individual who is:
(A) a disabled veteran or the unmarried surviving spouse of a disabled veteran; and
(B) qualified for an exemption under Section 11.132 or 11.22.

(a-1) An individual to whom this section applies may pay a taxing unit's taxes imposed on property that the person owns and occupies as a residence homestead in four equal installments without penalty or interest if the first installment is paid before the delinquency date and is accompanied by notice to the taxing unit that the person will pay the remaining taxes in three equal installments. If the delinquency date is February 1, the second installment must be paid before April 1, the third installment must be paid before June 1, and the fourth installment must be paid before August 1. If the delinquency date is a date other than February 1, the second installment must be paid before the first day of the second month after the delinquency date, the third installment must be paid before the first day of the fourth month after the delinquency date, and the fourth installment must be paid before the first day of the sixth month after the delinquency date.

(a-2) Notwithstanding the deadline prescribed by Subsection (a-1) for payment of the first installment, an individual to whom this section applies may pay the taxes in four equal installments as provided by Subsection (a-1) if the first installment is paid and the required notice is provided before the first day of the first month after the delinquency date.

(b) If the individual fails to make a payment, including the first payment, before the applicable date provided by Subsection (a-1), the unpaid installment is delinquent and incurs a penalty of six percent and interest as provided by Section 33.01(c). The penalty provided by Section 33.01(a) does not apply to the unpaid installment.

(c) An individual may pay more than the amount due for each installment and the amount in excess of the amount due shall be credited to the next installment. An individual may not pay less than the total amount due for each installment unless the collector provides for the acceptance of partial payments under this section. If the collector accepts a partial payment, penalties and interest are incurred only by the amount of each installment that remains unpaid on the applicable date provided by Subsection (a-1).

(d) [Repealed by Acts 2015, 84th Leg., ch. 226 (H.B. 1933), § 6, effective September 1, 2015.]

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 746 (H.B. 1270), § 1, effective September 1, 1990; am. Acts 1993, 73rd Leg., ch. 171 (H.B. 1270), § 1, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 510 (H.B. 1882), § 1, effective August 28, 1995; am. Acts 2005, 79th Leg., ch. 1274 (H.B. 2254), § 1, effective September 1, 2005; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 36.01, effective January 1, 2012; am. Acts 2013, 83rd Leg., ch. 122 (H.B. 97), § 7, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 19.004, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 643 (H.B. 709), § 2, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 935 (H.B. 1597), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 226 (H.B. 1933), §§ 1, 6, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 725 (S.B. 1047), § 1, effective January 1, 2018.

Sec. 31.032. Installment Payments of Taxes on Property in Disaster Area.

(a) This section applies only to:
(1) real property that:
(A) is:
(i) the residence homestead of the owner or consists of property that is used for residential purposes and that has fewer than five living units; or
(ii) owned or leased by a business entity that had not more than the amount calculated as provided by Subsection (h) in gross receipts in the entity's most recent federal tax year or state franchise tax annual period, according to the applicable federal income tax return or state franchise tax report of the entity;
(B) is located in a disaster area; and
(C) has been damaged as a direct result of the disaster;

(2) tangible personal property that is owned or leased by a business entity described by Subdivision (1)(A)(ii); and

(3) taxes that are imposed on the property by a taxing unit before the first anniversary of the disaster.

(b) A person may pay a taxing unit's taxes imposed on property that the person owns in four equal installments without penalty or interest if the first installment is paid before the delinquency date and is accompanied by notice to the taxing unit that the person will pay the remaining taxes in three equal installments. If the delinquency date is February 1, the second installment must be paid before April 1, the third installment must be paid before June 1, and the fourth installment must be paid before August 1. If the delinquency date is a date other than February 1, the second installment must be paid before the first day of the second month after the delinquency date, the third installment must be paid before the first day of the fourth month after the delinquency date, and the fourth installment must be paid before the first day of the sixth month after the delinquency date.

(b-1) Notwithstanding the deadline prescribed by Subsection (b) for payment of the first installment, a person to whom this section applies may pay the taxes in four equal installments as provided by Subsection (b) if the first installment is paid and the required notice is provided before the first day of the first month after the delinquency date.

(c) If the person fails to make a payment before the applicable date provided by Subsection (b), the unpaid installment is delinquent and incurs a penalty of six percent and interest as provided by Section 33.01(c).

(d) A person may pay more than the amount due for each installment and the amount in excess of the amount due shall be credited to the next installment. A person may not pay less than the total amount due for each installment unless the collector provides for the acceptance of partial payments under this section. If the collector accepts a partial payment, penalties and interest are incurred only by the amount of each installment that remains unpaid on the applicable date provided by Subsection (b).

(e) [Repealed by Acts 2015, 84th Leg., ch. 226 (H.B. 1933), § 6, effective September 1, 2015.]

(f) The comptroller shall adopt rules to implement this section.

(g) In this section:

(1) "Disaster" has the meaning assigned by Section 418.004, Government Code.

(2) "Disaster area" has the meaning assigned by Section 151.350.

(h) For the 2009 tax year, the limit on gross receipts under Subsection (a)(1)(A)(ii) is $5 million. For each subsequent tax year, the comptroller shall adjust the limit to reflect inflation by using the index that the comptroller considers to most accurately report changes in the purchasing power of the dollar for consumers in this state and shall publicize the adjusted limit. Each collector shall use the adjusted limit as calculated by the comptroller under this subsection to determine whether property is owned or leased by a business entity described by Subsection (a)(1)(A)(ii).

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 1041 (H.B. 2197), § 1, effective June 17, 1995; am. Acts 2009, 81st Leg., ch. 359 (H.B. 1257), § 2, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 387 (S.B. 432), § 1, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 226 (H.B. 1933), §§ 2, 6, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 725 (S.B. 1047), § 2, effective January 1, 2018.

Sec. 31.035. Performance of Service in Lieu of Payment of Taxes on Homestead of Elderly Person.

(a) The governing body of a taxing unit by order or resolution may permit an individual who is at least 65 years of age to perform service for the taxing unit in lieu of paying taxes imposed by the taxing unit on property owned by the individual and occupied as the individual's residence homestead.

(b) The governing body of the taxing unit shall determine:

(1) the number of property owners who will be permitted to perform service for the taxing unit under this section; and

(2) the maximum number of hours of service that a property owner may perform for the taxing unit under this section.

(c) The governing body shall require that each property owner permitted to perform service for the taxing unit under this section execute a contract with the taxing unit. The contract must be executed before the delinquency date and must:

(1) specify:

(A) the nature of the service that the property owner will perform for the taxing unit;

(B) the facility or location where the service will be performed;

(C) the number of hours of service the property owner will perform; and

(D) when the property owner will perform the service; and

(2) set out or describe the provisions of Subsections (d), (e), and (f).

(d) For each hour of service performed for the taxing unit, the property owner receives a credit against the taxes owed in an amount equal to the amount that would be earned by working one hour at the federal hourly minimum wage rate. The contract must require the property owner to perform the service not later than one year after the delinquency date for the taxes against which the property owner receives credit.

(e) Taxes for which the property owner is to receive credit under the contract do not become delinquent on the delinquency date otherwise provided by this chapter as long as the contract is in effect and are considered paid when the service is performed. If the property owner fails to perform the service, or if the taxing unit determines that the service of the property owner is unsatisfactory, the taxing unit shall terminate the contract and notify the property

owner of the termination. The unpaid taxes for which the property owner was to receive credit under the contract for service not yet performed become delinquent and incur penalty and interest provided by Section 33.01 on the later of:

(1) the delinquency date otherwise provided by this chapter for the unpaid taxes; or

(2) the first day of the next calendar month that begins at least 21 days after the date the taxing unit delivers notice to the property owner that the contract has been terminated.

(f) While performing service for a taxing unit, the property owner:

(1) is not an employee of the taxing unit; and

(2) is not entitled to any benefit, including workers' compensation coverage, that the taxing unit provides to an employee of the taxing unit.

(g) Property owners performing services for a taxing unit under this section may only supplement or complement the regular personnel of the taxing unit. A taxing unit may not reduce the number of persons the taxing unit employs or reduce the number of hours to be worked by employees of the taxing unit because the taxing unit permits property owners to perform services for the taxing unit under this section.

(h) A person performing service for a taxing unit under this section is not entitled to indemnification from the taxing unit for injury or property damage the person sustains or liability the person incurs in performing service under this section. The taxing unit is not liable for any damages arising from an act or omission of the person in performing service under this section.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 637 (H.B. 51), § 1, effective August 30, 1999.

Sec. 31.036. Performance of Teaching Services in Lieu of Payment of School Taxes on Homestead.

(a) The governing body of a school district by resolution may permit qualified individuals to perform teaching services for the school district at a junior high school or high school of the district in lieu of paying taxes imposed by the district on property owned and occupied by the individual as a residence homestead.

(b) The governing body of the school district shall determine:

(1) the number of qualified individuals who will be permitted to perform teaching services for the district under this section;

(2) the courses that a qualified individual may teach for the district under this section; and

(3) the amount of the tax credit that a qualified individual may earn.

(c) The governing body shall require that each qualified individual permitted to perform teaching services for the district under this section execute a contract with the district. The contract must be executed before the delinquency date and must:

(1) specify:

(A) the course or courses that the qualified individual will teach for the district;

(B) the high school or junior high school of the district where the qualified individual will perform the teaching services;

(C) the semester in which the qualified individual will perform the teaching services; and

(D) the amount of the tax credit that the qualified individual will receive on successful completion of the individual's contractual obligations; and

(2) set out or describe the provisions of Subsections (d)—(g).

(d) A qualified individual who teaches a course for an entire school semester is entitled to a maximum credit of $500 against the taxes imposed, except that if the qualified individual teaches a course for which a student receives a full year's credit for one semester, the qualified individual is entitled to a maximum credit of $1,000 for each such course taught for one semester by the qualified individual. A qualified individual may not receive credits for teaching more than two courses in any school year.

(e) The district shall terminate the contract if:

(1) the qualified individual fails to perform the teaching services; or

(2) the district determines that the teaching services of the qualified individual are unsatisfactory.

(f) If the contract is terminated under Subsection (e), on the termination date the district may grant the individual a portion of the tax credit based on the portion of the teaching services performed.

(g) While performing teaching services for a school district, the qualified individual:

(1) is not an employee of the district; and

(2) is not entitled to any benefit, including workers' compensation coverage, that the district provides to an employee of the district.

(h) An individual is qualified to perform teaching services for a school district under this section only if the individual holds a baccalaureate or more advanced degree in a field related to each course to be taught and:

(1) is certified as a classroom teacher under Subchapter B, Chapter 21, Education Code; or

(2) obtains a school district teaching permit under Section 21.055, Education Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 637 (H.B. 51), § 2, effective August 30, 1999.

Sec. 31.037. Performance of Teaching Services by Employee in Lieu of Payment of School Taxes on Property of Business Entity.

(a) The governing body of a school district by resolution may authorize a corporation or other business entity to

permit a qualified individual employed by the business entity to perform teaching services in a high school or a junior high school for the school district in lieu of paying taxes imposed by the district on property owned by the business entity.

(b) The governing body of the school district shall determine:

(1) the number of business entities that will be eligible for a tax credit under this section;

(2) the courses that an employee of the business entity may teach for the district under this section; and

(3) the amount of the tax credit that a business entity may earn.

(c) The governing body shall require that each business entity permitted to provide an employee to perform teaching services for the district under this section execute a contract with the district. The contract must be executed before the delinquency date and must:

(1) specify:

(A) the course or courses that the employee will teach for the district;

(B) the high school or junior high school of the district where the employee will perform the teaching services;

(C) the semester in which the employee will perform the teaching services; and

(D) the amount of the tax credit that the business entity will receive on successful completion of the contractual obligations of the business entity and its employee; and

(2) set out or describe the provisions of Subsections (d)—(h).

(d) For each course taught for the entire school semester by an employee of the business entity for the school district, the business entity is entitled to a maximum credit of $500 against the taxes imposed, except that if the employee teaches a course for which a student receives a full year's credit for one semester, the business entity is entitled to a maximum credit of $1,000 for each such course taught for one semester by the employee.

(e) The district shall terminate the contract if:

(1) the employee fails to perform the teaching services; or

(2) the district determines that the teaching services of the employee of the business entity are unsatisfactory.

(f) If the contract is terminated under Subsection (e), on the termination date the district may grant the business entity a portion of the tax credit based on the portion of the teaching services performed.

(g) While performing teaching services for a school district, the employee of the business entity:

(1) is not an employee of the district; and

(2) is not entitled to any benefit, including workers' compensation coverage, that the district provides to an employee of the district.

(h) An individual may not perform teaching services for which a business entity receives a tax credit under this section if the individual enters into a contract with the same school district to provide teaching services for a tax credit for the same tax year under Section 31.036.

(i) An individual is qualified to perform teaching services for a school district under this section only if the individual holds a baccalaureate or more advanced degree in a field related to the course to be taught and:

(1) is certified as a classroom teacher under Subchapter B, Chapter 21, Education Code; or

(2) obtains a school district teaching permit under Section 21.055, Education Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 637 (H.B. 51), § 2, effective August 30, 1999.

Sec. 31.04. Postponement of Delinquency Date.

(a) If a tax bill is mailed after January 10, the delinquency date provided by Section 31.02 of this code is postponed to the first day of the next month that will provide a period of at least 21 days after the date of mailing for payment of taxes before delinquent unless the taxing unit has adopted the discounts provided by Section 31.05(c) of this code, in which case the delinquency date is determined by Subsection (d) of this section.

(a-1) If a tax bill is mailed that includes taxes for one or more preceding tax years because the property was erroneously omitted from the tax roll in those tax years, the delinquency date provided by Section 31.02 is postponed to February 1 of the first year that will provide a period of at least 180 days after the date the tax bill is mailed in which to pay the taxes before they become delinquent.

(b) If the delinquency date is postponed as provided by this section, the assessor who mails the bills shall notify the governing body of each taxing unit whose taxes are included in the bills of the postponement.

(c) A payment option provided by Section 31.03 of this code or a discount adopted under Section 31.05(b) of this code does not apply to taxes that are calculated too late for it to be available.

(d) If a taxing unit mails its tax bills after September 30 and adopts the discounts provided by Section 31.05(c) of this code, the delinquency date is postponed to the first day of the next month following the fourth full calendar month following the date the tax bills were mailed.

(e) If the delinquency date for a tax is postponed under Subsection (a) or (a-1), that postponed delinquency date is the date on which penalties and interest begin to be incurred on the tax as provided by Section 33.01.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 5 (H.B. 426), § 2, effective March 14, 1983; am. Acts 1985, 69th Leg., ch. 753 (H.B. 2043), § 1, effective June 14, 1985; am. Acts 2003, 78th Leg., ch. 151 (S.B. 725), § 1, effective September 1, 2003.

NOTES TO DECISIONS

Analysis

Tax Law
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••••Assessment Methods & Timing
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TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Tex. Tax Code Ann. § 31.04 applies in situations in which the taxing unit has the name and mailing address for the taxpayer, but either neglects to mail the tax bill or mails it late; however, Tex. Tax Code Ann. § 31.04 will not apply in instances in which the taxing unit cannot send the tax bill because it does not have the taxpayer's name or address. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

Tex. Tax Code Ann. § 31.04(e) provides that, in the event the delinquency date is postponed, as under Tex. Tax Code Ann. § 31.04(a), the date on which interest and penalties are due is also postponed to that date; if no tax bill is ever mailed to the taxpayer, the taxes never become delinquent and, thus, penalties and interest never accrue; where the taxing unit failed to deliver the required tax bills to the subject taxpayer for several years, the taxes never became delinquent and the taxing unit was not entitled to penalties and interest for those years. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

PERSONAL PROPERTY TAX

General Overview. — Taxpayers did not raise issue of fact as to their affirmative defense based on Tex. Tax Code Ann. sec. 31.04(a) because they failed to raise an issue of fact as to whether they were entitled to a postponement of the delinquency date; furthermore, because Tex. Tax. Code Ann. sec. 33.011 was discretionary, they failed to raise an issue of fact because they were not entitled to waiver of the penalties and interest. Amoroso v. Aldine Independent School Dist., 808 S.W.2d 118, 1991 Tex. App. LEXIS 475 (Tex. App. Houston 1st Dist. Feb. 28, 1991, writ denied).

REAL PROPERTY TAX
Assessment & Valuation

Assessment Methods & Timing. — Fact that a tax roll was supplemented in 2008 did not turn a late appraisal into an omitted one and, thus, because the property was not erroneously omitted from the tax roll in 2007, Tex. Tax Code Ann. § 31.04(a-1) did not apply; § 31.04(a) applied, making the delinquency date April 1, 2008, not February 1, 2009, as claimed by the taxpayer. Key Energy Servs., LLC v. Shelby County Appraisal Dist., 428 S.W.3d 133, 2014 Tex. App. LEXIS 439 (Tex. App. Tyler Jan. 15, 2014, no pet.).

COLLECTION

General Overview. — Trial court erred in holding statutory requirement involving preparation and mailing of a corrected tax bill under Tex. Tax Code Ann. § 26.15(d) and (e) incorporated a separate postponement of the delinquency provision contained in Tex. Tax Code Ann. § 31.04 and in assuming corrected tax bill completely voided the original tax bill; the court concluded that the taxpayer was required to pay the interest and penalties under Tex. Tax Code Ann. § 33.01 because there was no evidence explaining why the taxpayer did not pay the taxes prior to delinquency despite the corrected tax bill. Richardson Indep. Sch. Dist. v. GE Capital Corp., 58 S.W.3d 290, 2001 Tex. App. LEXIS 6876 (Tex. App. Dallas Oct. 12, 2001, no pet.).

ATTORNEY GENERAL OPINIONS

Delinquency Date.

Section 31.04 of the Tax Code does not operate to forbid the establishment of the delinquency date and the imposition of penalties and interest on taxes due in a situation in which no tax bill is sent because the name or address of the delinquent taxpayer is unknown. In an instance in which no tax bill can be mailed because the address of the taxpayer is unknown, section 31.02 of the Tax Code, which provides that the delinquency date is February 1 of the year after the taxes are imposed, controls the establishment of a delinquency date. 1990 Tex. Op. Att'y Gen. JM-1192.

Sec. 31.05. Discounts.

(a) The governing body of a taxing unit may adopt the discounts provided by Subsection (b) or Subsection (c), or both, in the manner required by law for official action by the body. The discounts, if adopted, apply only to that taxing unit's taxes. If a taxing unit adopts both discounts under Subsections (b) and (c), the discounts adopted under Subsection (b) apply unless the tax bills for the unit are mailed after September 30, in which case only the discounts under Subsection (c) apply. A taxing unit that collects taxes for another taxing unit that adopts the discounts may prepare and mail separate tax bills on behalf of the adopting taxing unit and may charge an additional fee for preparing and mailing the separate tax bills and for collecting the taxes imposed by the adopting taxing unit. If under an intergovernmental contract a county assessor-collector collects taxes for a taxing unit that adopts the discounts, the county assessor-collector may terminate the contract if the county has adopted a discount policy that is different from the discount policy adopted by the adopting taxing unit.

(b) A taxing unit may adopt the following discounts to apply regardless of the date on which it mails its tax bills:

(1) three percent if the tax is paid in October or earlier;

(2) two percent if the tax is paid in November; and

(3) one percent if the tax is paid in December.

(c) A taxing unit may adopt the following discounts to apply when it mails its tax bills after September 30:

(1) three percent if the tax is paid before or during the next full calendar month following the date on which the tax bills were mailed;

(2) two percent if the tax is paid during the second full calendar month following the date on which the tax bills were mailed; and

(3) one percent if the tax is paid during the third full calendar month following the date on which the tax bills were mailed.

(d) The governing body of a taxing unit may rescind a discount adopted by the governing body in the manner required by law for official action by the body. The rescission of a discount takes effect in the tax year following the year in which the discount is rescinded.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 124, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 5 (H.B. 426), § 2, effective March 14, 1983; am. Acts 1983, 68th Leg., ch. 862 (H.B. 1282), §§ 2, 3, effective September 1, 1983; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 9, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 999 (H.B. 2169), § 1, effective June 17, 2011.

ATTORNEY GENERAL OPINIONS

Analysis

Applicability.
Discounts.
Early Payment Discounts.

Applicability.
Under Tex. Tax Code Ann. § 31.05(a), the board of trustees of a county education district may adopt the discounts provided for the timely payment of taxes under subsections (b) and (c) of that section only if all of the taxing units that collect the county education district's taxes have adopted the discounts; the board of trustees of an independent school district that is a component of a county education district and collects its own taxes as well as the county education district's taxes may adopt the discounts. 1992 Tex. Op. Att'y Gen. DM-171 (Superseded in part by GA-0373 (2005)).

Discounts.
Under Tex. Tax Code Ann. section 31.05(a), as amended during the regular session of the 79th Legislature, an independent school district may offer such a discount regardless of the entity that collects its taxes; whether the discount applies to the 2005 tax year or the 2006 tax year depends on whether the district's tax bills were mailed on or after September 1, 2005. 2005 Tex. Op. Att'y Gen. GA-0373.

Early Payment Discounts.
A school district may not offer an early payment discount to its taxpayers if the school district contracts with a county for tax collection services and the county does not offer early payment discounts for county taxes. 2004 Tex. Op. Att'y Gen. GA-0225 (Superseded in part by GA-0373 (2005)).

Sec. 31.06. Medium of Payment.

(a) Except as provided by Section 31.061, taxes are payable only as provided by this section. A collector shall accept United States currency or a check or money order in payment of taxes and shall accept payment by credit card or electronic funds transfer.

(b) Acceptance by a collector of a check or money order or of payment by credit card constitutes payment of a tax as of the date of acceptance if the check, money order, or credit card invoice is duly paid or honored. If the check, money order, or credit card invoice is not duly paid or honored, the collector shall deliver written notice of nonpayment to the person who attempted payment by check, money order, or credit card. Until payment is made in full by cash or by a check, money order, or credit card that is duly paid or honored, the lien securing payment of the tax remains in effect, whether or not the person receives notice of nonpayment.

(c) If a tax is paid by credit card, the collector may collect a fee for processing the payment. The collector shall set the fee in an amount that is reasonably related to the expense incurred by the collector or taxing unit in processing the payment by credit card, not to exceed five percent of the amount of taxes and any penalties or interest being paid. The fee is in addition to the amount of taxes, penalties, or interest.

(d) If a check or money order accepted in payment of taxes or the invoice for a payment of taxes by credit card is not duly paid or honored, the amount of any charge against the taxing unit for processing the check, order, or credit card invoice is added to the amount of tax due in the same manner as penalties and interest are added for taxes that are delinquent. The tax lien on the property also secures payment of the amount of the charge.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 125, effective January 1, 1982; am. Acts 1989, 71st Leg., ch. 737 (H.B. 1225), § 1, effective August 28, 1989; am. Acts 1993, 73rd Leg., ch. 697 (H.B. 737), § 1, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 606 (S.B. 779), § 1, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 529 (H.B. 2185), § 2, effective June 11, 2001; am. Acts 2009, 81st Leg., ch. 1328 (H.B. 3646), § 88, effective September 1, 2009.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax
General Overview. — Property owner's action against the appraisal district board to obtain an adjudication of a pure, just, and sure measurement of the dollar failed to state a legal claim or cause of action because the board's appraisal was stated in the only medium by which taxes were payable under Tex. Tax Code Ann. § 31.06(a) and, as a matter of law, the board was legally incapable of determining whether the dollar, having a fluctuating value, violated the law of pure and just weights and measurements constructed on species of gold and silver, a matter that was within the control of Congress. Barclay v. Ochiltree Appraisal Dist. Bd., 730 S.W.2d 878, 1987 Tex. App. LEXIS 7429 (Tex. App. Amarillo May 29, 1987, no writ).

Sec. 31.061. Payment of Taxes Assessed Against Real Property by Conveyance to Taxing Unit of Property.

(a) An owner of real property may, subject to the approval of the governing body of all of the taxing units, by deed convey the property to the taxing unit that is owed the largest amount of the taxes, penalties, and interest assessed against the property in payment of the taxes, including delinquent taxes, penalties, and interest assessed against the

property by each taxing unit. The taxing unit acquiring the property holds title to the property on behalf of each taxing unit. The lien of each taxing unit on the property conveyed is extinguished at the time of the conveyance. The taxing unit acquiring the property may, subject to the approval of the governing body of another taxing unit, by deed convey the property to that taxing unit. The taxing unit acquiring the property holds title to the property on behalf of each taxing unit.

(b) A taxing unit acquiring property under this section may sell the property. The sale may be conducted in a manner provided by Section 34.05. If the taxing unit sells the property within six months after the date the owner conveys the property, the taxing unit shall pay to each taxing unit its proportionate share of the sale proceeds according to each taxing unit's share of the total amount of the taxes, penalties, and interest owed at the time of the acquisition.

(c) A taxing unit that does not sell property acquired under this section within six months after the date the owner conveys the property shall pay to each taxing unit its proportionate share, as determined under Subsection (b), of the appraised market value of the property as shown on the most recent tax roll, less the value of all encumbrances burdening the property. On making the payment provided by this subsection, the taxing unit owns the property outright and not on behalf of each taxing unit. The period during which a taxing unit may hold title to the property on behalf of each taxing unit may be extended subject to the approval of the governing body of each taxing unit.

(d) The collector shall credit against the taxes, penalties, and interest owed each taxing unit:

(1) the taxing unit's share, as determined under Subsection (b), of the sale price if the property is sold within six months after the date the owner conveys the property; or

(2) the taxing unit's share, as determined under Subsection (b), of the appraised market value of the property as shown on the most recent tax roll, less the value of all encumbrances burdening the property, if the property is not sold within six months after the date the owner conveys the property.

(e) The owner remains personally liable to each taxing unit to the extent the amount of the taxes, penalties, and interest owed each taxing unit exceeds the amount credited under Subsection (d). The owner is entitled to a refund from each taxing unit to the extent the amount credited under Subsection (d) exceeds the amount of the taxes, penalties, and interest owed the taxing unit.

(f) A conveyance of property to a taxing unit under this section is voidable by the taxing unit at any time that the taxing unit owns the property and determines that the condition of the property on the date the owner conveyed it was or may have been in violation of a federal or state law, regulation, rule, or order. If the taxing unit voids the conveyance:

(1) the taxing unit shall execute a quitclaim deed of the property to the owner, file the deed in the county records, and give notice of the deed and its filing to the owner;

(2) the collector shall remove the credit against the taxes, penalties, and interest owed each taxing unit made under this section;

(3) a taxing unit that does not acquire the property shall refund the payment made to it by the taxing unit that acquires the property and reinstate the taxes, penalties, and interest owed the taxing unit; and

(4) the lien of each taxing unit is reinstated as of the date it originally attached.

(g) [Repealed by Acts 1997, 75th Leg., ch. 1111 (H.B. 2587), § 8, effective September 1, 1997.]

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 697 (H.B. 737), § 2, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 1111 (H.B. 2587), §§ 1, 8, effective September 1, 1997.

Sec. 31.07. Certain Payments Accepted.

(a) A person may pay the tax imposed on any one property without simultaneously paying taxes imposed on other property he owns.

(b) A collector shall accept payment of the tax imposed on a property by a taxing unit that has adopted the discounts under Section 31.05 of this code separately from taxes imposed on that property by other taxing units using the same collector, even if the taxes are included in the same bill. The collector may adopt a policy of accepting separate payments in other circumstances. If the tax paid is included in the same bill as other taxes that are not paid, the collector shall send a revised bill or receipt to reflect the tax payment, if a discount applies to the payment, and may send a revised bill or receipt to reflect the tax payment in other circumstances. The sending of a revised bill does not affect the date on which the unpaid taxes become delinquent.

(c) A collector may adopt a policy of accepting partial payments of property taxes. A payment option provided by Section 31.03 of this code or a discount adopted under Section 31.05 of this code does not apply to any portion of a partial payment. If a collector accepts a partial payment on a tax bill that includes taxes for more than one taxing unit, the collector shall allocate the partial payment among all the taxing units included in the bill in proportion to the amount of tax included in the bill for each taxing unit, unless the collector under Subsection (b) has adopted a policy of accepting payments of a taxing unit's taxes separate from the taxes of other taxing units included in the same bill and the taxpayer directs that the partial payment be allocated in specific amounts to one or more specific taxing units. Acceptance of a partial payment does not affect the date that the tax becomes delinquent, but the penalties and interest provided by Section 33.01 of this code are incurred only by the portion of a tax that remains unpaid on the date the tax becomes delinquent.

(d) Notwithstanding Subsection (c), a collector shall accept a partial payment of property taxes on a tax bill that includes taxes for more than one taxing unit if one or more of the taxing units has adopted the discounts under Section

31.05 of this code, the taxpayer directs that the partial payment be allocated first to the payment of the taxes owed one or more of the taxing units that have adopted the discounts, and the amount of the payment is equal to or greater than the amount of the taxes owed the taxing units designated by the taxpayer.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 21, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 493 (S.B. 607), § 1, effective June 12, 1985; am. Acts 1989, 71st Leg., ch. 745 (H.B. 1269), § 2, effective September 1, 1989; am. Acts 1993, 73rd Leg., ch. 539 (H.B. 1374), § 1, effective September 1, 1993.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings

Collection. — Effect of a declaration in the taxpayers' favor ignored the language of a confirmed bankruptcy plan and extinguished appellants' lien on the real property, which diminished appellants' rights under the plan, which was an impermissible collateral attack; the taxpayers could not now invoke the Texas Tax Code and seek a declaration that would require the trial court to interpret the bankruptcy court's treatment and result in a modification of appellants' claims under the confirmed plan, and any theory concerning the application of Tex. Tax Code Ann. § 31.07 to the tax claims should have been raised in the bankruptcy proceedings prior to confirmation. Thus, the taxpayers were not entitled to summary judgment. Dallas County Tax Collector v. Andolina, 303 S.W.3d 926, 2010 Tex. App. LEXIS 430 (Tex. App. Dallas Jan. 26, 2010, no pet.).

Sec. 31.071. Conditional Payments.

(a) The collector of a taxing unit shall accept conditional payments of taxes before the delinquency date for property taxes that are subject to a pending challenge or protest.

(b) A property owner whose property is subject to a pending protest or challenge may pay the tax due on the amount of value of the property involved in the pending action that is not in dispute or the amount of tax paid on the property in the preceding year, whichever is greater, but not to exceed the amount of tax that would be due on the appraised value that is subject to protest or challenge. The collector of the taxing unit shall provide the property owner with a temporary receipt of taxes paid under this section.

(c) If the property is no longer subject to a challenge, protest, or appeal at any time before the delinquency date, the collector shall apply the amount paid by the property owner under this section to the tax imposed on the property and shall refund the remainder, if any, to the property owner. If the property is still subject to an appeal on the last working day before the delinquency date, or at an earlier date if so requested by the property owner, the collector shall apply the amount paid under this section to the payment required by Section 42.08(b) of this code and shall retain the remainder, if any, until the appeal is completed. When the appeal is completed, the collector shall apply any amount retained under this section to the tax ultimately imposed on the property that is not covered by the payment under Section 42.08(b) and shall refund the remainder, if any, to the property owner.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 999 (H.B. 2151), § 1, effective August 31, 1987.

Sec. 31.072. Escrow Accounts.

(a) The collector for a taxing unit may enter a contract with a property owner under which the property owner deposits money in an escrow account maintained by the collector to provide for the payment of property taxes collected by the collector on any property the person owns.

(b) A contract may not be made before October 1 of the year preceding the tax year for which the account is established. The collector may agree to establish a combined account for more than one item of property having the same owner on the property owner's request. If a collector collects taxes for more than one taxing unit, an account must apply to taxes on the affected property for each of the taxing units.

(c) A contract under this section must require the property owner to make monthly deposits to the escrow account until the amount set in the contract under Subsection (d) of this section accrues in the account or until the tax bill for the property is prepared, whichever occurs earlier.

(d) On request by a property owner to establish an escrow account under this section, the collector shall estimate the amount of taxes to be imposed on the property by the affected taxing units in that year. A contract to establish an escrow account must provide for deposits that would provide, as of the date the collector estimates the tax bill for the property will be prepared, a total deposit that is not less than the amount of taxes estimated by the collector or the amount of taxes imposed on the property by the affected taxing units in the preceding year, whichever is less. The collector may agree to a deposit of a greater amount on the property owner's request.

(e) The county tax assessor-collector shall maintain the escrow account in the county depository. Any other collector shall maintain the escrow account in the depository of the taxing unit or other entity that employs the collector. The collector is not required to maintain a separate account in the depository for each escrow account but shall maintain separate records for each escrow account.

(f) The property owner may withdraw from the collector the money the owner deposited in an escrow account only if the withdrawal is made before the date the tax bill is prepared or October 1 of the tax year, whichever occurs earlier. On and after that date and until the taxes are paid, the collector must agree to a withdrawal by the taxpayer. The property owner may not withdraw less than the total amount deposited in the escrow account.

(g) When the tax bill is prepared for property for which an escrow account is established, the collector shall apply the money in the account to the taxes imposed and deliver a tax receipt to the taxpayer together with a refund of any amount in the account in excess of the amount of taxes paid. If the amount in the escrow account is not sufficient to pay the taxes in full, the collector shall apply the money to the taxes and deliver to the taxpayer a tax receipt for the partial payment and a tax bill for the unpaid amount. If the escrow account applies to more than one taxing unit or to more than one item of property, the collector shall apply the amount to each taxing unit or item of property in proportion to the amount of taxes imposed unless the contract provides otherwise.

(h) Notwithstanding Subsection (a), if the property owner requesting a collector to establish an escrow account under this section is a disabled veteran as defined by Section 11.22 or a recipient of the Purple Heart, the Congressional Medal of Honor, the Bronze Star Medal, the Silver Star, the Legion of Merit, or a service cross awarded by a branch of the United States armed forces and the escrow account is to be used solely to provide for the payment of property taxes collected by the collector on the property owner's residence homestead, the collector shall enter into a contract with the property owner under this section.

(i) Notwithstanding Subsection (a), if the property owner requesting a collector to establish an escrow account under this section is the owner of a manufactured home and the escrow account is to be used solely to provide for the payment of property taxes collected by the collector on the property owner's manufactured home, the collector shall enter into a contract with the property owner under this section.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 737 (H.B. 1225), § 2, effective August 28, 1989; am. Acts 2005, 79th Leg., ch. 85 (S.B. 580), § 1, effective May 17, 2005; am. Acts 2007, 80th Leg., ch. 863 (H.B. 1460), § 71, effective January 1, 2008.

Sec. 31.073. Restricted or Conditional Payments Prohibited.

A restriction or condition placed on a check in payment of taxes, penalties, or interest by the maker that limits the amount of taxes, penalties, or interest owed to an amount less than that stated in the tax bill or shown by the tax collector's records is void unless the restriction or condition is authorized by this code.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 539 (H.B. 1374), § 2, effective September 1, 1993; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 10, effective September 1, 2005.

NOTES TO DECISIONS

Analysis

Tax Law
•State & Local Taxes
••Administration & Proceedings
•••Collection
•••Failure to Pay Tax

TAX LAW
State & Local Taxes
Administration & Proceedings

Collection. — Taxpayer was properly ordered to pay delinquencies owed on two parcels of property because the evidence was legally and factually sufficient based on the certified copies of the delinquencies offered under Tex. Tax Code Ann. § 33.47; moreover, the taxpayer's direction regarding the application of his payments was invalid under Tex. Tax. Code Ann. § 31.073, so his defense of payment was not successful. Reinmiller v. County of Dallas, 212 S.W.3d 835, 2006 Tex. App. LEXIS 10350 (Tex. App. Eastland Nov. 30, 2006, no pet.).

FAILURE TO PAY TAX. — Although a taxpayer instructed the county to apply payments for the years at issue to its taxes, Tex. Tax Code Ann. § 33.10 did not permit the taxpayer to control the manner in which its payments were applied by the county to the taxpayer's past tax, penalty, and interest; furthermore, Tex. Tax Code Ann. § 31.073 did not allow one to direct his payments to be applied to taxes and not interest and penalties, and thus Tax Code sections rendered the taxpayer's conditions void. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Sec. 31.075. Tax Receipt.

(a) At the request of a property owner or a property owner's agent, the collector for a taxing unit shall issue a receipt showing the taxable value and the amount of tax imposed by the unit on the property in one or more tax years for which the information is requested, the tax rate for each of those tax years, and the amount of tax paid in each of those years. The receipt must describe the property in the manner prescribed by the comptroller. If the amount of the tax for the current year has not been calculated when the request is made, the collector shall on request issue to the property owner or agent a statement indicating that taxes for the current year have not been calculated.

(b) In any judicial proceeding, including a suit to collect delinquent taxes under Chapter 33 of this code, a tax receipt issued under this section that states that a tax has been paid constitutes prima facie evidence that the tax has been paid as stated by the receipt.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 52 (S.B. 83), § 1, effective May 6, 1987; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 48, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 5.5, effective August 26, 1991; am. Acts 2005, 79th Leg., ch. 1154 (H.B. 3101), § 2, effective September 1, 2005.

Sec. 31.08. Tax Certificate.

(a) At the request of any person, a collector for a taxing unit shall issue a certificate showing the amount of delinquent taxes, penalties, interest, and any known costs and expenses under Section 33.48 due the unit on a property

according to the unit's current tax records. If the collector collects taxes for more than one taxing unit, the certificate must show the amount of delinquent taxes, penalties, interest, and any known costs and expenses under Section 33.48 due on the property to each taxing unit for which the collector collects the taxes. The collector shall charge a fee not to exceed $10 for each certificate issued. The collector shall pay all fees collected under this section into the treasury of the taxing unit that employs the collector.

(b) Except as provided by Subsection (c) of this section, if a person transfers property accompanied by a tax certificate that erroneously indicates that no delinquent taxes, penalties, or interest are due a taxing unit on the property or that fails to include property because of its omission from an appraisal roll as described under Section 25.21, the unit's tax lien on the property is extinguished and the purchaser of the property is absolved of liability to the unit for delinquent taxes, penalties, or interest on the property or for taxes based on omitted property. The person who was liable for the tax for the year the tax was imposed or the property was omitted remains personally liable for the tax and for any penalties or interest.

(c) A tax certificate issued through fraud or collusion is void.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 149 (S.B. 221), § 1, effective September 1, 1983; am. Acts 1987, 70th Leg., ch. 105 (S.B. 267), § 1, effective September 1, 1987; am. Acts 2005, 79th Leg., ch. 846 (S.B. 898), § 2, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 11, effective September 1, 2005.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax
Collection

General Overview. — Tax certificates guaranteed that only the amounts listed were due, and no indication of delinquent taxes were shown; thus, the certificates erroneously indicated that no delinquent taxes were due under Tex. Tax Code Ann. § 31.08(b), with regard to any improvements, and the landowner was entitled to summary judgment. City of Clarksville v. Drilltech, Inc., 353 S.W.3d 183, 2011 Tex. App. LEXIS 9059 (Tex. App. Texarkana Nov. 15, 2011, no pet.).

Title company requested that tax certificates be issues on the property and gave the property address; thus, the taxing units were required to issue a tax certificate showing the amounts due based on current tax records for the improvements and the value of the land, for purposes of Tex. Tax Code Ann. § 31.08(a). City of Clarksville v. Drilltech, Inc., 353 S.W.3d 183, 2011 Tex. App. LEXIS 9059 (Tex. App. Texarkana Nov. 15, 2011, no pet.).

ATTORNEY GENERAL OPINIONS

Liability for Late Tax Bill.

In an instance in which a tax certificate on a parcel of property was erroneously issued to a property owner stating that no taxes were then due, the property was later sold to another person who then received an amended statement showing tax due for the period before the land sale, there is no lien against the second property owner and the person who was liable for the tax for the year in which it was imposed is personally liable for the amount due. 1987 Tex. Op. Att'y Gen. JM-679.

Sec. 31.081. Property Tax Withholding on Purchase of Business or Inventory.

(a) This section applies only to a person who purchases a business, an interest in a business, or the inventory of a business from a person who is liable under this title for the payment of taxes imposed on personal property used in the operation of that business.

(b) The purchaser shall withhold from the purchase price an amount sufficient to pay all of the taxes imposed on the personal property of the business, plus any penalties and interest incurred, until the seller provides the purchaser with:

(1) a receipt issued by each appropriate collector showing that the taxes due the applicable taxing unit, plus any penalties and interest, have been paid; or

(2) a tax certificate issued under Section 31.08 stating that no taxes, penalties, or interest is due the applicable taxing unit.

(c) A purchaser who fails to withhold the amount required by this section is liable for that amount to the applicable taxing units to the extent of the value of the purchase price, including the value of a promissory note given in consideration of the sale to the extent of the note's market value on the effective date of the purchase, regardless of whether the purchaser has been required to make any payments on that note.

(d) The purchaser may request each appropriate collector to issue a tax certificate under Section 31.08 or a statement of the amount of the taxes, penalties, and interest that are due to each taxing unit for which the collector collects taxes. The collector shall issue the certificate or statement before the 10th day after the date the request is made. If a collector does not timely provide or mail the certificate or statement to the purchaser, the purchaser is released from the duties and liabilities imposed by Subsections (b) and (c) in connection with taxes, penalties, and interest due the applicable taxing unit.

(e) An action to enforce a duty or liability imposed on a purchaser by Subsection (b) or (c) must be brought before the fourth anniversary of the effective date of the purchase. An action to enforce the purchaser's duty or liability is subject to a limitation plea by the purchaser as to any taxes that have been delinquent at least four years as of the date the collector issues the statement under Subsection (d).

(f) This section does not release a person who sells a business or the inventory of a business from any personal

liability imposed on the person for the payment of taxes imposed on the personal property of the business or for penalties or interest on those taxes.

(g) For purposes of this section:

(1) a person is considered to have purchased a business if the person purchases the name of the business or the goodwill associated with the business; and

(2) a person is considered to have purchased the inventory of a business if the person purchases inventory of a business, the value of which is at least 50 percent of the value of the total inventory of the business on the date of the purchase.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 10, effective January 1, 2000.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Intangible Property

General Overview. — Tex. Tax Code Ann. § 31.081 required a purchaser of a business to withhold an amount sufficient to pay all of the taxes imposed on the business's personal property and the appellate court would not read into the statute any pro rata limitation on that statutory liability; therefore, the business's argument that when a buyer purchased a business sometime after January 1, it was liable only for a pro rata share of that year's ad valorem tax was meritless. Dan's Big & Tall Shop, Inc. v. County of Dallas, 160 S.W.3d 307, 2005 Tex. App. LEXIS 2805 (Tex. App. Dallas Apr. 13, 2005, no pet.).

Sec. 31.09. Reports and Remittances of State Taxes [Repealed].

Repealed by Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 28, effective August 29, 1983.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 31.10. Reports and Remittances of Other Taxes.

(a) Each month the collector of taxes for a taxing unit shall prepare and submit to the governing body of the unit a written report made under oath accounting for all taxes collected for the unit during the preceding month. Reports of collections made in the months of October through January are due on the 25th day of the month following the month that is the subject of the report. Reports of collections made in all other months are due on the 15th day of the month following the month that is the subject of the report. A collector for more than one taxing unit may prepare one report accounting for taxes collected for all units, and he may submit a certified copy of the report as his monthly report to the governing body of each unit.

(b) The collector for a taxing unit shall prepare and submit to the governing body of the unit an annual report made under oath accounting for all taxes of the unit collected or delinquent on property taxed by the unit during the preceding 12-month period. Annual reports are due on the 60th day following the last day of the fiscal year.

(c) Except as otherwise provided by Subsection (d) of this section, at least monthly the collector for a taxing unit shall deposit in the unit's depository all taxes collected for the unit. The governing body of a unit may require deposits to be made more frequently.

(d) If the taxes of a taxing unit are collected by the collector or other officer or employee of another taxing unit or by an appraisal district as provided by the law creating or authorizing creation of the unit or as the result of an election held under Section 6.26 of this code, the entity that collects the taxes shall deposit the taxes in the unit's depository daily, unless the governing body of that unit by official action provides that those deposits may be made less often than daily.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 1027 (H.B. 2282), § 1, effective August 29, 1983; am. Acts 1987, 70th Leg., ch. 488 (H.B. 1716), § 1, effective January 1, 1988.

Sec. 31.11. Refunds of Overpayments or Erroneous Payments.

(a) If a taxpayer applies to the tax collector of a taxing unit for a refund of an overpayment or erroneous payment of taxes, the collector for the unit determines that the payment was erroneous or excessive, and the auditor for the unit agrees with the collector's determination, the collector shall refund the amount of the excessive or erroneous payment from available current tax collections or from funds appropriated by the unit for making refunds. However, the collector may not make the refund unless:

(1) in the case of a collector who collects taxes for one taxing unit, the governing body of the taxing unit also determines that the payment was erroneous or excessive and approves the refund if the amount of the refund exceeds:

(A) $5,000 for a refund to be paid by a county with a population of two million or more; or

(B) $500 for a refund to be paid by any other taxing unit; or

(2) in the case of a collector who collects taxes for more than one taxing unit, the governing body of the taxing unit that employs the collector also determines that the payment was erroneous or excessive and approves the refund if the amount of the refund exceeds:

(A) $5,000 for a refund to be paid by a county with a population of two million or more; or

(B) $2,500 for a refund to be paid by any other taxing unit.

(b) A taxing unit that determines a taxpayer is delinquent in ad valorem tax payments on property other than the property for which liability for a refund arises or for a tax year other than the tax year for which liability for a refund arises may apply the amount of an overpayment or erroneous payment to the payment of the delinquent taxes if the taxpayer was the sole owner of the property:

(1) for which the refund is sought on January 1 of the tax year in which the taxes that were overpaid or erroneously paid were assessed; and

(2) on which the taxes are delinquent on January 1 of the tax year for which the delinquent taxes were assessed.

(c) Except as provided by Subsection (c-1), an application for a refund must be made within three years after the date of the payment or the taxpayer waives the right to the refund. A taxpayer may apply for a refund by filing:

(1) an application on a form prescribed by the comptroller by rule; or

(2) a written request that includes information sufficient to enable the collector and the auditor for the taxing unit and, if applicable, the governing body of the taxing unit to determine whether the taxpayer is entitled to the refund.

(c-1) The governing body of the taxing unit may extend the deadline provided by Subsection (c) for a single period not to exceed two years on a showing of good cause by the taxpayer.

(d) The collector for a taxing unit shall provide a copy of the refund application form without charge on request of a taxpayer or a taxpayer's representative.

(e) An application for a refund must:

(1) include an affirmation by the taxpayer that the information in the application is true and correct; and

(2) be signed by the taxpayer.

(f) This subsection applies only to a refund that is required to be approved by the governing body of a taxing unit. The presiding officer of the governing body of the taxing unit is not required to sign the application for the refund or any document accompanying the application to indicate the governing body's approval or disapproval of the refund. The collector for the taxing unit shall indicate on the application whether the governing body approved or disapproved the refund and the date of the approval or disapproval.

(g) If a taxpayer submits a payment of taxes that exceeds by $5 or more the amount of taxes owed for a tax year to a taxing unit, the collector for the taxing unit, without charge, shall mail to the taxpayer or the taxpayer's representative a written notice of the amount of the overpayment accompanied by a refund application form.

(h) This section does not apply to an overpayment caused by a change of exemption status or correction of a tax roll. Such an overpayment is covered by Section 26.15 or 42.43, as applicable.

(i) Notwithstanding the other provisions of this section, in the case of an overpayment or erroneous payment of taxes submitted by a taxpayer to a collector who collects taxes for one or more taxing units one of which is a county with a population of two million or more:

(1) a taxpayer is not required to apply to the collector for the refund to be entitled to receive the refund if the amount of the refund is at least $5 but does not exceed $5,000; and

(2) the collector is not required to comply with Subsection (g) unless the amount of the payment exceeds by more than $5,000 the amount of taxes owed for a tax year to a taxing unit for which the collector collects taxes.

(j) If the collector for a taxing unit does not respond to an application for a refund on or before the 90th day after the date the application is filed with the collector, the application is presumed to have been denied.

(k) Not later than the 60th day after the date the collector for a taxing unit denies an application for a refund, the taxpayer may file suit against the taxing unit in district court to compel the payment of the refund. If the collector collects taxes for more than one taxing unit, the taxpayer shall join in the suit each taxing unit on behalf of which the collector denied the refund. If the taxpayer prevails in the suit, the taxpayer may be awarded:

(1) costs of court; and

(2) reasonable attorney's fees in an amount not to exceed the greater of:

(A) $1,500; or

(B) 30 percent of the total amount of the refund determined by the court to be due.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 126, effective January 1, 1982; am. Acts 1993, 73rd Leg., ch. 198 (H.B. 71), § 1, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 565 (S.B. 446), § 1, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 915 (H.B. 2220), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 673 (H.B. 2832), § 1, effective January 1, 2002; am. Acts 2001, 77th Leg., ch. 843 (H.B. 1393), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 8, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 756 (H.B. 3540), § 1, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 464 (H.B. 1210), § 1, effective June 16, 2007; am. Acts 2009, 81st Leg., ch. 69 (H.B. 1205), § 1, effective January 1, 2010; am. Acts 2009, 81st Leg., ch. 494 (S.B. 798), § 1, effective January 1, 2010; am. Acts 2013, 83rd Leg., ch. 643 (H.B. 709), § 3, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 17, effective June 14, 2013.

NOTES TO DECISIONS

Analysis

Civil Procedure
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Governments
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••Personal Property Tax
•••Intangible Property
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••Real Property Tax
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CIVIL PROCEDURE
Pleading & Practice
Defenses, Demurrers & Objections
Affirmative Defenses

Duress. — Because taxpayers could have administratively challenged the disputed amount of taxes they paid, they could not claim duress based on the consequences resulting from their failure to make that challenge, nor could they pursue as plaintiffs an affirmative claim for refund of taxes paid under duress. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

REMEDIES
Injunctions

Preliminary & Temporary Injunctions. — In a property appraisal dispute, pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 65.011(1), where the owners did not rely on a statute that expressly authorized injunctive relief without a showing of the equitable requirements, they were required to prove both a probable right to the relief sought and a probable, imminent, and irreparable injury, but the owners' claimed injury was purely conjectural and thus insufficient to support a finding of probable imminent harm and the Texas Tax Code, Tex. Tax Code Ann. §§ 42.43(a), (d) and 31.11, provided full, practical, and complete relief for taxpayers who ultimately prevailed in their appeals; thus, the owners failed to show that they lacked an adequate remedy at law for recovering any taxes they might be found to have overpaid, they failed to show probable imminent and irreparable harm, the trial court abused its discretion in issuing the temporary injunction, and the temporary injunction was dissolved. Kendall Appraisal Dist. v. Cordillera Ranch, Ltd., No. 04-03-00150-CV, 2003 Tex. App. LEXIS 6293 (Tex. App. San Antonio July 23, 2003).

GOVERNMENTS
State & Territorial Governments

Claims By & Against. — Tex. Tax Code Ann. § /Aa31.11 did not clearly and unambiguously express a legislative intent to waive governmental immunity from suit; the school district enjoyed governmental immunity from the company's suit, which deprived the trial court of subject-matter jurisdiction, and the district's plea to the jurisdiction and motion to dismiss should have been granted. Lewisville Indep. Sch. Dist. v. CH Townhomes, Inc., 346 S.W.3d 21, 2011 Tex. App. LEXIS 3049 (Tex. App. Fort Worth Apr. 21, 2011, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — In addition to Tex. Tax Code Ann. § 42.23, Tex. Tax Code Ann. §§ 25.25, 26.15, and 31.11, which provide for the payment of a tax refund, indicate the doctrine of estoppel by rendition no longer precludes a refund to a taxpayer who challenges the taxation after submitting a rendition. Brooks County Cent. Appraisal Dist. v. Tipperary Energy Corp., 847 S.W.2d 592, 1992 Tex. App. LEXIS 3287 (Tex. App. San Antonio Nov. 30, 1992, no writ).

Tex. Tax Code Ann. § 31.11 authorizes a mechanism for obtaining a refund when a taxing authority receives a windfall even when the payment made by the taxpayer matches the amount as "due" on the tax such as those circumstances where two taxpayers unwittingly pay property taxes on the same parcel of property. Brooks County Cent. Appraisal Dist. v. Tipperary Energy Corp., 847 S.W.2d 592, 1992 Tex. App. LEXIS 3287 (Tex. App. San Antonio Nov. 30, 1992, no writ).

A bank's claim for refund of tax, on the basis that it had been erroneously assessed against the bank for its stock rather than against the holders of the stock, was dismissed because the bank filed its protest under Tex. Tax Code Ann. § 31.11, which applied to erroneous payments, rather than under Tex. Tax Code Ann. § 41.41(a)(1), which applied to determinations of ownership; thus, the bank had not exhausted its administrative remedies. First Bank of Deer Park v. Harris County, No. 01-88-00501-CV, 1989 Tex. App. LEXIS 1930 (Tex. App. Houston 1st Dist. July 27, 1989), op. withdrawn, sub. op., No. 01-88-00501-CV, 1990 Tex. App. LEXIS 492 (Tex. App. Houston 1st Dist. Mar. 8, 1990).

Tex. Tax Code Ann. § 31.11 applies only to cases wherein a tax was correctly assessed but the taxpayer made a mistake in paying it. First Bank of Deer Park v. Deer Park Independent School Dist., 770 S.W.2d 849, 1989 Tex. App. LEXIS 914 (Tex. App. Texarkana Apr. 18, 1989, writ denied).

Bank was not entitled to refund of ad valorem taxes on bank stock paid prior to a U.S. Supreme Court decision declaring such taxes unconstitutional because the Supreme Court decision was not retroactive. First Bank of Deer Park v. Deer Park Independent School Dist., 770 S.W.2d 849, 1989 Tex. App. LEXIS 914 (Tex. App. Texarkana Apr. 18, 1989, writ denied).

Tex. Prop. Tax. Code Ann. § 31.11 applies only in cases where the tax is correctly assessed but the taxpayer erred in paying it. Texas Nat'l Bank v. Harris County, 765 S.W.2d 823, 1988 Tex. App. LEXIS 3275 (Tex. App. Houston 14th Dist. Dec. 22, 1988, writ denied).

CREDITS, OVERASSESSMENTS & REFUNDS. — Tex. Tax Code Ann. § /Aa31.11 did not clearly and unambiguously express a legislative intent to waive governmental immunity from suit; the school district enjoyed governmental immunity from the company's suit, which deprived the trial court of subject-matter jurisdiction, and the district's plea to the jurisdiction and motion to dismiss should have been granted. Lewisville Indep. Sch. Dist. v. CH Townhomes, Inc., 346 S.W.3d 21, 2011 Tex. App. LEXIS 3049 (Tex. App. Fort Worth Apr. 21, 2011, no pet.).

JUDICIAL REVIEW. — Because taxpayers could have administratively challenged the disputed amount of taxes they paid, they could not claim duress based on the consequences resulting from their failure to make that challenge, nor could they pursue as plaintiffs an affirmative claim for refund of taxes paid under duress. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

PERSONAL PROPERTY TAX
Intangible Property

General Overview. — Bank's protest filed under Tex. Tax Code Ann. § 31.11 with the tax assessor-collector did not preserve the bank's right to contest the ownership of the stock. First Bank of Deer Park v. Harris County, No. 01-88-00501-CV, 1990 Tex. App. LEXIS 492 (Tex. App. Houston 1st Dist. Mar. 8, 1990), op.

withdrawn, sub. op., 804 S.W.2d 588, 1991 Tex. App. LEXIS 199 (Tex. App. Houston 1st Dist. Jan. 24, 1991).

REAL PROPERTY TAX

General Overview. — Tex. Tax Code Ann. § 31.11 applies in cases where the tax is correctly assessed but the taxpayer errs in paying it. Cockerell v. Taylor County, 814 S.W.2d 892, 1991 Tex. App. LEXIS 2165 (Tex. App. Eastland Aug. 29, 1991, writ denied).

ATTORNEY GENERAL OPINIONS

Analysis

Refund of Land Taxes.
Refunds.
Unclaimed Property Tax Overpayment.

Refund of Land Taxes.

Taxes paid on land later determined to be vacant public land may be refunded to the taxpayer if such payments were made under (1) fraud, (2) distress, and (3) mutual mistake. 1961 Tex. Op. Att'y Gen. W-1172.

Refunds.

Although a tax assessor-collector lacks statutory authority to accept or deposit in the heavy equipment dealer inventory tax escrow account monies paid by a dealer in a year in which the dealer would not owe taxes, a heavy equipment dealer who mistakenly prepays such taxes is not entitled to a refund of the monies unless he is entitled to a refund under section 31.11 of the Tax Code or can show that he paid them as the result of fraud, because of a mutual mistake of fact, or under duress. 2000 Tex. Op. Att'y Gen. JC-0286.

Unclaimed Property Tax Overpayment.

In the absence of authority to the contrary, unclaimed overpayments on property taxes belong to the county once the three year period of reclamation has lapsed under section 31.11 of the Tax Code. 1993 Tex. Op. Att'y Gen. DM-0258.

Sec. 31.111. Refunds of Duplicate Payments.

(a) The collector of a taxing unit who determines that a person erred in making a payment of taxes because the identical taxes were paid by another person shall refund the amount of the taxes to the person who erred in making the payment.

(b) A refund under Subsection (a) shall be made as soon as practicable after the collector discovers the erroneous payment. The refund shall be accompanied by a description of the property subject to the taxes sufficient to identify the property. If the property is assigned an account number, the collector shall include that number.

(c) Each month, the collector shall inform the auditor of each appropriate taxing unit of refunds of taxes made under Subsection (a) during the preceding month.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 673 (H.B. 2832), § 2, effective January 1, 2002; Enacted by Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 9, effective September 1, 2001.

Sec. 31.112. Refunds of Payments Made to Multiple Like Taxing Units.

(a) In this section, "like taxing units" has the meaning assigned by Section 72.010(a), Local Government Code.

(b) This section applies only to taxing units described by Section 72.010(b), Local Government Code.

(c) Like taxing units to which a property owner has made tax payments under protest as a result of a dispute or error described by Section 72.010(c), Local Government Code, may enter into an agreement to resolve the dispute or error. An agreement under this subsection:

(1) must establish the correct geographic boundary between the taxing units;

(2) may include an allocation between the taxing units of all or part of the taxes that were paid under protest before the dispute or error was resolved, less any amount that is required to be refunded to the property owner;

(3) must require the taxing units to refund to the property owner any amount by which the amount paid by the owner to the taxing units exceeds the amount due; and

(4) must be in writing.

(d) If a dispute or error described by Section 72.010(c), Local Government Code, is resolved by the agreement of the taxing units, a refund required by Subsection (c)(3) of this section must be made not later than the 90th day after the date on which the agreement is made.

(e) If a dispute or error described by Section 72.010(c), Local Government Code, is not resolved by the agreement of the taxing units and the supreme court enters a final order in a suit under Section 72.010, Local Government Code, determining the amount of taxes owed on the property and the taxing unit or units to which the taxes are owed, a refund required as a result of the order must be made not later than the 180th day after the date the order is entered.

(f) A refund under this section shall be accompanied by:

(1) a description sufficient to identify the property on which the taxes were imposed; and

(2) the tax account number, if applicable.

(g) A collector making a refund under this section shall notify the auditor of each appropriate taxing unit not later than the 30th day after the date the refund is made.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 768 (S.B. 2242), § 3, effective June 12, 2017.

Sec. 31.115. Payment of Tax Under Protest.

Payment of an ad valorem tax is involuntary if the taxpayer indicates that the tax is paid under protest:

(1) on the instrument by which the tax is paid; or

(2) in a document accompanying the payment.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 993 (S.B. 101), § 1, effective June 17, 1995.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes. — Taxpayers were not entitled to a refund of surplus school district funds raised with an ad valorem tax where the taxpayer class representative did not pay the taxes under a written protest as provided by Tex. Tax Code Ann. § 31.115 (Vernon 2001); taxes voluntarily paid could not be recovered by a taxpayer under Texas law. Donna Indep. Sch. Dist. v. Rogers, No. 13-01-277-CV, No. 13-01-00277-CV, 2002 Tex. App. LEXIS 3521 (Tex. App. Corpus Christi May 16, 2002), op. withdrawn, sub. op., No. 13-01-277-CV, 2002 Tex. App. LEXIS 5845 (Tex. App. Corpus Christi Aug. 8, 2002).

Sec. 31.12. Payment of Tax Refunds; Interest.

(a) **[Effective until January 1, 2020]** If a refund of a tax provided by Section 11.431(b), 26.07(g), 26.15(f), 31.11, 31.111, or 31.112 is paid on or before the 60th day after the date the liability for the refund arises, no interest is due on the amount refunded. If not paid on or before that 60th day, the amount of the tax to be refunded accrues interest at a rate of one percent for each month or part of a month that the refund is unpaid, beginning with the date on which the liability for the refund arises.

(a) **[Effective January 1, 2020]** If a refund of a tax provided by Section 11.431(b), 26.07(g), 26.075(k), 26.15(f), 31.11, 31.111, or 31.112 is paid on or before the 60th day after the date the liability for the refund arises, no interest is due on the amount refunded. If not paid on or before that 60th day, the amount of the tax to be refunded accrues interest at a rate of one percent for each month or part of a month that the refund is unpaid, beginning with the date on which the liability for the refund arises.

(b) For purposes of this section, liability for a refund arises:

(1) if the refund is required by Section 11.431(b), on the date the chief appraiser notifies the collector for the unit of the approval of the late homestead exemption;

(2) if the refund is required by Section 26.07(g), on the date the results of the election to reduce the tax rate are certified;

(3) if the refund is required by Section 26.15(f):

(A) for a correction to the tax roll made under Section 26.15(b), on the date the change in the tax roll is certified to the assessor for the taxing unit under Section 25.25; or

(B) for a correction to the tax roll made under Section 26.15(c), on the date the change in the tax roll is ordered by the governing body of the taxing unit;

(4) **[Effective until January 1, 2020]** if the refund is required by Section 31.11, on the date the auditor for the taxing unit determines that the payment was erroneous or excessive or, if the amount of the refund exceeds the applicable amount specified by Section 31.11(a), on the date the governing body of the unit approves the refund;

(4) **[Effective January 1, 2020]** if the refund is required by Section 31.11, on the date the auditor for the taxing unit determines that the payment was erroneous or excessive or, if the amount of the refund exceeds the applicable amount specified by Section 31.11(a), on the date the governing body of the taxing unit approves the refund;

(5) if the refund is required by Section 31.111, on the date the collector for the taxing unit determines that the payment was erroneous; or

(6) if the refund is required by Section 31.112, on the date required by Section 31.112(d) or (e), as applicable.

(c) This section does not apply to a refund in an amount less than $5.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 112 (S.B. 506), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 30, effective June 15, 1989; am. Acts 1999, 76th Leg., ch. 915 (H.B. 2220), § 2, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 673 (H.B. 2832), § 3, effective January 1, 2002; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 10, effective September 1, 2001; am. Acts 2017, 85th Leg., ch. 768 (S.B. 2242), § 4, effective June 12, 2017; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 58, effective January 1, 2020.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings
General Overview. — No statutory interest was due on property tax refunds paid within 60 days of the date that the refunds were approved by the taxing authorities, pursuant to Tex. Tax Code Ann. § 31.12(a), (b)(4); the date when the appraised value of the facility was reduced was not the date when the taxing authorities' liability arose. ABT Galveston L.P. v. Galveston Cent. Appraisal Dist., 137 S.W.3d 146, 2004 Tex. App. LEXIS 2940 (Tex. App. Houston 1st Dist. Mar. 30, 2004, no pet.).

CHAPTER 32

Tax Liens and Personal Liability

Section		Section	
32.01.	Tax Lien.	32.015.	Tax Lien on Manufactured Home.
32.014.	Tax Lien on Manufactured Home.	32.02.	Restrictions on a Mineral Interest Tax Lien.

Section		Section	
32.03.	Restrictions on Personal Property Tax Lien.	32.06.	Property Tax Loans; Transfer of Tax Lien.
32.04.	Priorities Among Tax Liens.	32.065.	Contract for Foreclosure of Tax Lien.
32.05.	Priority of Tax Liens over Other Property Interests.	32.07.	Personal Liability for Tax.

Sec. 32.01. Tax Lien.

(a) On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property, whether or not the taxes are imposed in the year the lien attaches. The lien exists in favor of each taxing unit having power to tax the property.

(b) A tax lien on inventory, furniture, equipment, or other personal property is a lien in solido and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.

(c) If an owner's real property is described with certainty by metes and bounds in one or more instruments of conveyance and part of that property is the owner's residence homestead taxed separately and apart from the remainder of the property, each of the liens under this section that secures the taxes imposed on that homestead and on the remainder of that property extends in solido to all the real property described in the instrument or instruments of conveyance, unless the homestead is identified as a separate parcel and is separately described in the conveyance or another instrument recorded in the real property records.

(d) The lien under this section is perfected on attachment and, except as provided by Section 32.03(b), perfection requires no further action by the taxing unit.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 22, effective August 29, 1983; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 3, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 11, effective January 1, 2000.

NOTES TO DECISIONS

Analysis

Banking Law
•Bankers Liens & Rights of Setoff
••Bankers Liens
Bankruptcy Law
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••Types
•••Secured Claims & Liens
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BANKING LAW
Bankers Liens & Rights of Setoff

Bankers Liens. — In a breach of contract case, a borrower failed to comply with a loan agreement by getting behind on property taxes for 3 years and by displacing the bank of its priority-lienholder position by failing to pay the taxes, regardless of whether the taxing authorities exercised their rights. Blanco Nat'l Bank v. Gonzalez, No. 04-12-00079-CV, 2013 Tex. App. LEXIS 4990 (Tex. App. San Antonio Apr. 24, 2013).

BANKRUPTCY LAW
Claims

Allowance. — Claims the Travis County, Texas, Tax Assessor-Collector filed against the bankruptcy estate of an airline corporation were not payable in part because they were based on the erroneous belief that Travis County and other taxing entities were entitled under Tex. Tax Code Ann. § 32.01 to collect taxes on personal property that was located outside of Travis County. Although § 32.01(b) was subject to two interpretations, the better interpretation was that § 32.01(b) was not meant to enable local taxing authorities to cast their tax liens on property that was located outside their jurisdiction and was subject to another taxing authority's jurisdiction. In re Conquest Airlines Corp., No. 96-10215-CAG, 2012 Bankr. LEXIS 2749 (Bankr. W.D. Tex. June 15, 2012).

TYPES
Secured Claims & Liens

Secured Creditors Rights. — When a creditor paid debtors' property taxes and the country assigned its liens to the creditor, the creditor's claim was not protected by the anti-modification provision of 11 U.S.C.S. § 1322(b)(2). The creditor's claim did not arise from a security interest because it was not created by an agreement; the transfer of the tax lien was consensual, but the lien itself arose under Tex. Tax Code Ann. § 32.01(a). In re Sheffield, 390 B.R. 302, 2008 Bankr. LEXIS 2548 (Bankr. S.D. Tex. 2008).

UNSECURED PRIORITY CLAIMS
Administrative Expenses

Taxes. — Bankruptcy court disallowed claims filed by three Texas taxing authorities, seeking payment of ad valorem taxes

they claimed Chapter 11 debtors owed on inventory they owned shortly before they abandoned the inventory pursuant ot 11 U.S.C.S. § 554, because the claims were untimely. To the extent inventory the debtors owned was not abandoned on January 1, 2009, the taxing authorities were entitled to a tax lien on the property pursuant to Tex. Tax Code Ann. §§ 32.01 and 32.07, and they had an obligation under 11 U.S.C.S. § 503(b)(1)(D) to file a claim against the debtors' bankruptcy estate by the bar date the court established in its Administrative Bar Date Order. In re Bh S&b Holdings Llc, 435 B.R. 153, 2010 Bankr. LEXIS 2264 (Bankr. S.D.N.Y. 2010).

CIVIL PROCEDURE
Remedies
Costs & Attorney Fees
Attorney Expenses & Fees

Statutory Awards. — Trial court was not authorized to award attorney fees to a taxpayer who filed a successful new trial motion after a county obtained a default judgment in a suit to collect delinquent taxes on real property because Tex. Tax Code Ann. § 33.48 and Tex. Tax Code Ann. § 33.49 allows a taxing unit to recover attorney fees but does not allow it to be liable for them; moreover, a suit to recover delinquent taxes is not a claim for monetary damages but is a foreclosure of a lien, as indicated in Tex. Tax Code Ann. § 32.01, and the county therefore did not waive its sovereign immunity by bringing suit because it did not assert affirmative claims for monetary damages. Waller County v. Simmons, No. 01-07-00180-CV, 2007 Tex. App. LEXIS 8318 (Tex. App. Houston 1st Dist. Oct. 18, 2007).

REAL PROPERTY LAW
Financing
Mortgages & Other Security Instruments
Redemption

Statutory Redemption. — Trial court erred in finding that a secured lienholder was not the holder of the "first lien" of property, as provided in the version of Tex. Tax Code Ann. § 32.06(i) in effect in 2004, and, therefore, not entitled to redeem the property from a purchaser who obtained a foreclosure sale deed from a party who had foreclosed on its transferred tax lien because the secured lienholder's prior lien was not required to be recorded first in order to be a "first lien" entitling it to exercise the right of redemption; the principle of lien priority based upon time of filing did not apply to a tax lien. ABN AMRO Mortg. Group v. TCB Farm & Ranch Land Invs., 200 S.W.3d 774, 2006 Tex. App. LEXIS 6731 (Tex. App. Fort Worth July 27, 2006, no pet.).

NONMORTGAGE LIENS

Lien Priorities. — Trial court erred in finding that a secured lienholder was not the holder of the "first lien" of property, as provided in the version of Tex. Tax Code Ann. § 32.06(i) in effect in 2004, and, therefore, not entitled to redeem the property from a purchaser who obtained a foreclosure sale deed from a party who had foreclosed on its transferred tax lien because the secured lienholder's prior lien was not required to be recorded first in order to be a "first lien" entitling it to exercise the right of redemption; the principle of lien priority based upon time of filing did not apply to a tax lien. ABN AMRO Mortg. Group v. TCB Farm & Ranch Land Invs., 200 S.W.3d 774, 2006 Tex. App. LEXIS 6731 (Tex. App. Fort Worth July 27, 2006, no pet.).

TAX LIENS. — Procedural requirement to pay property taxes into the registry of the court before commencing suit was inapposite in a case that did not involve the validity of a tax sale under Tex. Tax Code Ann. ch. 34 but rather tax-lien transfer under Tex. Tax Code Ann. ch. 32. Hunt v. CIT Group/Consumer Fin., Inc., No. 03-09-00046-CV, 2010 Tex. App. LEXIS 2767 (Tex. App. Austin Apr. 15, 2010).

Trial court erred in finding that a secured lienholder was not the holder of the "first lien" of property, as provided in the version of Tex. Tax Code Ann. § 32.06(i) in effect in 2004, and, therefore, not entitled to redeem the property from a purchaser who obtained a foreclosure sale deed from a party who had foreclosed on its transferred tax lien because the secured lienholder's prior lien was not required to be recorded first in order to be a "first lien" entitling it to exercise the right of redemption; the principle of lien priority based upon time of filing did not apply to a tax lien. ABN AMRO Mortg. Group v. TCB Farm & Ranch Land Invs., 200 S.W.3d 774, 2006 Tex. App. LEXIS 6731 (Tex. App. Fort Worth July 27, 2006, no pet.).

Dallas Central Appraisal District had a nondiscretionary duty to do a back appraisal to remove an erroneously claimed exemption on realty after the previous owner's death, and the realty was subject to a lien for any additional taxes owed after the back appraisal, Tex. Const. art. VIII, § 15, Tex. Tax Code Ann. § 11.43, and Tex. Tax Code Ann. § 32.01 mandated those results. Dallas Cent. Appraisal Dist. v. Wang, 82 S.W.3d 697, 2002 Tex. App. LEXIS 4549 (Tex. App. Dallas June 26, 2002, no pet.).

TITLE QUALITY
Adverse Claim Actions

General Overview. — Purchaser failed to prove his trespass to try title action as a matter of law, because the purchaser failed to establish a proper chain of title, when a deed evidencing a tax foreclosure sale did not establish that the sovereign conveyed title to the property to the grantor, as the county did not hold title to the property by virtue of its lien nor by its statutory authority to foreclose on the property, and without further evidence of the chain of title, the proffer of the constable's correction deed from the tax foreclosure sale did not establish title emanating directly from the sovereign. Ellis v. Buentello, No. 01-12-00098-CV, 2012 Tex. App. LEXIS 6803 (Tex. App. Houston 1st Dist. Aug. 16, 2012).

TAX LAW
State & Local Taxes
Administration & Proceedings

Assessments. — Mortgage creditor's effort to raise debtors' post-petition mortgage payment to make up for deficit in state tax escrow constituted willful violation of automatic stay under 11 U.S.C.S. § 362 because liability attached, per Tex. Tax Code Ann. § 32.01(a) and Tex. Tax Code Ann. § 32.07, on January 1 of the year in which the debtors filed their bankruptcy proceeding and thus constituted a prepetition debt that was within the scope of the automatic stay. Campbell v. Countrywide Home Loans, Inc. (In re Campbell), 2007 Bankr. LEXIS 314 (Bankr. S.D. Tex. Jan. 26 2007).

COLLECTION. — Trial court was not authorized to award attorney fees to a taxpayer who filed a successful new trial motion after a county obtained a default judgment in a suit to collect delinquent taxes on real property because Tex. Tax Code Ann. § 33.48 and Tex. Tax Code Ann. § 33.49 allows a taxing unit to recover attorney fees but does not allow it to be liable for them; moreover, a suit to recover delinquent taxes is not a claim for monetary damages but is a foreclosure of a lien, as indicated in Tex. Tax Code Ann. § 32.01, and the county therefore did not waive its sovereign immunity by bringing suit because it did not assert affirmative claims for monetary damages. Waller County v. Simmons, No. 01-07-00180-CV, 2007 Tex. App. LEXIS 8318 (Tex. App. Houston 1st Dist. Oct. 18, 2007).

TAX LIENS. — Claims the Travis County, Texas, Tax Assessor-Collector filed against the bankruptcy estate of an airline corporation were not payable in part because they were based on the erroneous belief that Travis County and other taxing entities were entitled under Tex. Tax Code Ann. § 32.01 to collect taxes on personal property that was located outside of Travis County. Although § 32.01(b) was subject to two interpretations, the better interpretation was that § 32.01(b) was not meant to enable local taxing authorities to cast their tax liens on property that was located outside their jurisdiction and was subject to another taxing authority's jurisdiction. In re Conquest Airlines Corp., No. 96-10215-CAG, 2012 Bankr. LEXIS 2749 (Bankr. W.D. Tex. June 15, 2012).

Bankruptcy court disallowed claims filed by three Texas taxing authorities, seeking payment of ad valorem taxes they claimed Chapter 11 debtors owed on inventory they owned shortly before they abandoned the inventory pursuant ot 11 U.S.C.S. § 554, because the claims were untimely. To the extent inventory the debtors owned was not abandoned on January 1, 2009, the taxing authorities were entitled to a tax lien on the property pursuant to Tex. Tax Code Ann. §§ 32.01 and 32.07, and they had an obliga-

tion under 11 U.S.C.S. § 503(b)(1)(D) to file a claim against the debtors' bankruptcy estate by the bar date the court established in its Administrative Bar Date Order. In re Bh S&b Holdings Llc, 435 B.R. 153, 2010 Bankr. LEXIS 2264 (Bankr. S.D.N.Y. 2010).

PERSONAL PROPERTY TAX

General Overview. — Because of the dichotomy in Texas law that minerals in place are realty and that minerals once produced are personalty, and because the property tax code establishes a lien for taxes against realty but not personalty, a lien as created and defined in Tex. Tax Code Ann. § 32.01 does not attach to minerals once they have been produced or sold. Hill v. Enerlex, Inc., 969 S.W.2d 120, 138 Oil & Gas Rep. 676, 1998 Tex. App. LEXIS 2602 (Tex. App. Eastland Apr. 30, 1998, no pet.).

For Tex. Tax Code Ann. § 32.01 to be enforceable, inventory property must be assessed as a unit. City of Dallas v. Cornerstone Bank, N.A., 879 S.W.2d 264, 1994 Tex. App. LEXIS 1838 (Tex. App. Dallas June 2, 1994, no writ).

REAL PROPERTY TAX

General Overview. — County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

Mobile home purchaser, who had bought the mobile home at a tax sale for delinquent taxes, held a junior lien to the finance company; the application of real property nonjudicial procedures to the disposition of personal property was a reasonable application, and the tax sale extinguished the purchaser's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

Pursuant to Tex. Tax Code Ann. § 32.01(a), a property owner's liability for ad valorem taxes for any given year arises as of January 1 of that year regardless of when the tax is assessed. Jackson v. Stonebriar Pshp., 931 S.W.2d 635, 1996 Tex. App. LEXIS 2755 (Tex. App. Dallas July 2, 1996, writ denied).

ASSESSMENT & VALUATION

General Overview. — County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

COLLECTION

Tax Deeds & Tax Sales. — Purchaser failed to prove his trespass to try title action as a matter of law, because the purchaser failed to establish a proper chain of title, when a deed evidencing a tax foreclosure sale did not establish that the sovereign conveyed title to the property to the grantor, as the county did not hold title to the property by virtue of its lien nor by its statutory authority to foreclose on the property, and without further evidence of the chain of title, the proffer of the constable's correction deed from the tax foreclosure sale did not establish title emanating directly from the sovereign. Ellis v. Buentello, No. 01-12-00098-CV, 2012 Tex. App. LEXIS 6803 (Tex. App. Houston 1st Dist. Aug. 16, 2012).

Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

TAX LIENS. — Where a mortgage lender moved for summary judgment, a borrower failed to establish that the lender breached the deed of trust by paying taxes that were not currently due and charging him for the taxes. The borrower's entry into a split-option tax payment plan did not excuse his obligations under the deed of trust. Pachecano v. Jpmorgan Chase Bank Nat'l Ass'n, No. SA-11-CV-00805-DAE, 2013 U.S. Dist. LEXIS 121139 (W.D. Tex. Aug. 26, 2013).

In a breach of contract case, a borrower failed to comply with a loan agreement by getting behind on property taxes for 3 years and by displacing the bank of its priority-lienholder position by failing to pay the taxes, regardless of whether the taxing authorities exercised their rights. Blanco Nat'l Bank v. Gonzalez, No. 04-12-00079-CV, 2013 Tex. App. LEXIS 4990 (Tex. App. San Antonio Apr. 24, 2013).

Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

When a creditor paid debtors' property taxes and the country assigned its liens to the creditor, the creditor's claim was not protected by the anti-modification provision of 11 U.S.C.S. § 1322(b)(2). The creditor's claim did not arise from a security interest because it was not created by an agreement; the transfer of the tax lien was consensual, but the lien itself arose under Tex. Tax Code Ann. § 32.01(a). In re Sheffield, 390 B.R. 302, 2008 Bankr. LEXIS 2548 (Bankr. S.D. Tex. 2008).

ATTORNEY GENERAL OPINIONS

Analysis

Manufactured Home.
Tax Exemptions.

Manufactured Home.

The Texas Department of Housing and Community Affairs may refuse to issue or may suspend or revoke a statement of ownership and location for a manufactured home that is based on false or fraudulent information regarding an existing tax lien. In addition, the Department may refuse to issue or may suspend or revoke a Statement for a manufactured home that was relocated without a relocation permit from the Department of Transportation or with a relocation permit obtained without truthful information regarding taxes due on the home. 2005 Tex. Op. Att'y Gen. GA-0343.

Tax Exemptions.

When a political subdivision acquires property from a private party and the property qualifies for a constitutional or statutory tax exemption, the exemption generally precludes charging the political subdivision penalties and interest for any outstanding ad valorem taxes. 2012 Tex. Op. Att'y Gen. GA-0973.

Whether a particular piece of property acquired by a political

subdivision is tax exempt on a specific date will depend on particular facts regarding the property. 2012 Tex. Op. Att'y Gen. GA-0973.

Sec. 32.014. Tax Lien on Manufactured Home.

(a) If the owner of a manufactured home has elected to treat the home as real property under Section 25.08, the tax lien shall be attached to the land on which the manufactured home is located.

(b) If the owner of a manufactured home does not elect to treat the home as real property with the land on which the manufactured home is located, the tax lien on the manufactured home does not attach to the land on which the home is located.

(c) In this section, "manufactured home" has the meaning assigned by Section 1201.003, Occupations Code.

(d) This section prevails over Chapter 1201, Occupations Code, to the extent of any conflict.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 633 (H.B. 2083), § 2, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.02(b), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1039 (H.B. 863), § 4.04, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 978 (H.B. 785), § 20, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 1055 (H.B. 1869), § 8, effective January 1, 2002; am. Acts 2003, 78th Leg., ch. 338 (S.B. 521), § 46, effective January 1, 2004; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 14A.813, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 1284 (H.B. 2438), § 31, effective June 18, 2005.

Sec. 32.015. Tax Lien on Manufactured Home.

(a) On payment of the taxes, penalties, and interest for a year for which a valid tax lien has been recorded on the title records of the department, the collector for the taxing unit shall issue a tax certificate showing no taxes due or a tax paid receipt for such year to the person making payment. When the tax certificate showing no taxes due or tax paid receipt is filed with the department or when no suit to collect a personal property tax lien has been filed and the lien has been delinquent for more than four years, the tax lien is extinguished and canceled and shall be removed from the title records of the manufactured home. The collector for a taxing unit may not refuse to issue a tax paid receipt to the person who offers to pay the taxes, penalties, and interest for a particular year or years, even though taxes may also be due for another year or other years.

(b) In this section, "department" and "manufactured home" have the meanings assigned by Section 1201.003, Occupations Code; however, the term "manufactured home" does not include a manufactured home that has been attached to real property and for which the document of title has been canceled under Section 1201.217 of that code.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 846 (S.B. 1267), § 15, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 1134 (H.B. 855), § 22, effective June 18, 1987; am. Acts 1989, 71st Leg., ch. 1039 (H.B. 863), § 4.05, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 617 (S.B. 1539), § 11, effective August 26, 1991; am. Acts 1995, 74th Leg., ch. 978 (H.B. 785), § 21, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 12, effective January 1, 2000; am. Acts 2001, 77th Leg., ch. 988 (H.B. 468), § 2, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 14A.814, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 1284 (H.B. 2438), § 32, effective June 18, 2005; am. Acts 2013, 83rd Leg., ch. 1095 (H.B. 3613), § 1, effective September 1, 2013.

Sec. 32.02. Restrictions on a Mineral Interest Tax Lien.

(a) If a mineral estate is severed from a surface estate and if different persons own the mineral estate and surface estate, the lien resulting from taxes imposed against each interest in the mineral estate exists only for the duration of the interest it encumbers. After an interest in the mineral estate terminates, the lien encumbering it expires and is not enforceable:

(1) against any part of the surface estate not owned by the owner of the interest encumbered by the lien;

(2) against any part of the mineral estate not owned by the owner of the interest encumbered by the lien; or

(3) against the owner of the surface estate as a personal obligation, unless he also owns the interest encumbered by the lien.

(b) Taxes imposed on a severed interest in a mineral estate that has terminated remain the personal liability of the person who owned the interest on January 1 of the year for which the tax was imposed.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

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Tax Deeds & Tax Sales. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the

appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

TAX LIENS. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

Sec. 32.03. Restrictions on Personal Property Tax Lien.

(a) Except as provided by Subsection (a-1), a tax lien may not be enforced against personal property transferred to a buyer in ordinary course of business as defined by Section 1.201(9) of the Business & Commerce Code for value who does not have actual notice of the existence of the lien.

(a-1) With regard to a manufactured home, a tax lien may be recorded at any time not later than six months after the end of the year for which the tax was owed. A tax lien on a manufactured home may be enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. A properly recorded tax lien may not be enforced against a new manufactured home that is owned by a person who acquired the manufactured home from a retailer as a buyer in the ordinary course of business.

(a-2) A person may not transfer ownership of a manufactured home until all tax liens perfected on the home that have been timely filed with the Texas Department of Housing and Community Affairs have been extinguished or satisfied and released and any personal property taxes on the manufactured home which accrued on each January 1 that falls within the 18 months preceding the date of the sale have been paid. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on a manufactured home statement of ownership is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community Affairs. In this section, manufactured home has the meaning assigned by Section 32.015(b). Unless a tax lien has been filed timely with the Texas Department of Housing and Community Affairs, no taxing unit, nor anyone acting on its behalf, may use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home.

(c) A taxpayer may designate in writing which tax year will be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a receipt for the payment of the taxes for the designated year.

(d) Notwithstanding any other provision of this section, if a manufactured home was omitted from the tax roll for either or both of the two preceding tax years, the taxing unit may file a tax lien within the 150-day period following the date on which the tax becomes delinquent.

(e) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide, upon request, an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. In order to enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Texas Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the taxes are levied, the tax collector shall apply the escrowed sums to the levied taxes. At the time the tax collector accepts the payment of the taxes, the tax collector shall provide notice that the payment of the estimated taxes is an estimate that may be raised once the appraisal rolls for the year are certified and that the new owner may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 846 (S.B. 1267), § 16, effective September 1, 1985; am. Acts 1991, 72nd Leg., ch. 617 (S.B. 1539), § 12, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 5.2, effective August 26, 1991; am. Acts 1995, 74th Leg., ch. 978 (H.B. 785), § 22, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 988 (H.B. 468), § 3, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 338 (S.B. 521), § 47, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 1284 (H.B. 2438), §§ 33, 34(2), effective June 18, 2005; am. Acts 2007, 80th Leg., ch. 863 (H.B. 1460), § 72, effective January 1, 2008; am. Acts 2017, 85th Leg., ch. 408 (H.B. 2019), § 84, effective September 1, 2017.

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Tax Deeds & Tax Sales. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the

appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

TAX LIENS. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

ATTORNEY GENERAL OPINIONS

Tax Liens.

A tax lien for taxes owed on a manufactured home attaches to the specific manufactured home and a taxing unit may perfect a tax lien on the home by filing a notice of the lien with the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "MHD") not later than six months after the end of the year for which the tax is owed, even though the notice may reflect the name of the prior owner rather than the current owner as shown by the MHD's records. 2006 Tex. Op. Att'y Gen. GA-0443.

Sec. 32.04. Priorities Among Tax Liens.

(a) Whether or not a tax lien provided by this chapter takes priority over a tax lien of the United States is determined by federal law. In the absence of federal law, a tax lien provided by this chapter takes priority over a tax lien of the United States.

(b) Tax liens provided by this chapter have equal priority.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

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TAX LAW
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Tax Deeds & Tax Sales. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

TAX LIENS. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

Sec. 32.05. Priority of Tax Liens over Other Property Interests.

(a) A tax lien on real property takes priority over a homestead interest in the property.

(b) Except as provided by Subsection (c)(1), a tax lien provided by this chapter takes priority over:

(1) the claim of any creditor of a person whose property is encumbered by the lien;

(2) the claim of any holder of a lien on property encumbered by the tax lien, including any lien held by a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime under a restrictive covenant, condominium declaration, master deed, or other similar instrument that secures regular or special maintenance assessments, fees, dues, interest, fines, costs, attorney's fees, or other monetary charges against the property; and

(3) any right of remainder, right or possibility of reverter, or other future interest in, or encumbrance against, the property, whether vested or contingent.

(b-1) The priority given to a tax lien by Subsection (b) prevails, regardless of whether the debt, lien, future interest, or other encumbrance existed before attachment of the tax lien.

(c) A tax lien provided by this chapter is inferior to:

(1) a claim for any survivor's allowance, funeral expenses, or expenses of the last illness of a decedent made against the estate of a decedent as provided by law;

(2) except as provided by Subsection (b)(2), a recorded restrictive covenant that runs with the land and was recorded before January 1 of the year the tax lien arose; or

(3) a valid easement of record recorded before January 1 of the year the tax lien arose.

(d) In an action brought under Chapter 33 for the enforced collection of a delinquent tax against property, a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime that holds a lien for regular or special maintenance assessments, fees, dues, interest, fines, costs, attorney's fees, or other monetary charges against the property is not a necessary party to the action unless, at the time the action is commenced, notice of the lien in a liquidated amount is evidenced by a sworn instrument duly executed by an authorized person and recorded with the clerk of the county in which the property is located. A tax sale of the property extinguishes the lien held by a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime for all amounts that accrued before the date of sale if:

(1) the holder of the lien is joined as a party to an action brought under Chapter 33 by virtue of a notice of the lien on record at the time the action is commenced; or

(2) the notice of lien is not of record at the time the action is commenced, regardless of whether the holder of the lien is made a party to the action.

(e) The existence of a recorded restrictive covenant, declaration, or master deed that generally provides for the lien held by a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime does not, by itself, constitute actual or constructive notice to a taxing unit of a lien under Subsection (d).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., ch. 854 (S.B. 1426), § 1, effective June 16, 1991; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 13, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 12, effective September 1, 2005.

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Bankers Liens & Rights of Setoff

Bankers Liens. — In a breach of contract case, a borrower failed to comply with a loan agreement by getting behind on property taxes for 3 years and by displacing the bank of its priority-lienholder position by failing to pay the taxes, regardless of whether the taxing authorities exercised their rights. Blanco Nat'l Bank v. Gonzalez, No. 04-12-00079-CV, 2013 Tex. App. LEXIS 4990 (Tex. App. San Antonio Apr. 24, 2013).

BANKRUPTCY LAW
Claims
Types
Secured Claims & Liens

General Overview. — Creditor, holder of the note and deed of trust for the debtors' residential property, was entitled to assert a secured claim for property taxes advanced because debtors' deferral of taxes was a breach of their obligations under the deed, which included covenants requiring payment of taxes and prohibiting imposition of any superior claims. Both of these obligations were violated through the tax deferral given that a tax lien with priority remained on the property pursuant to Tex. Tax Code Ann. §§ 32.05(b) and 33.06(d). In re Sanford, No. 11-73207 MEH, 2012 Bankr. LEXIS 5118 (Bankr. N.D. Cal. Nov. 1, 2012).

BUSINESS & CORPORATE LAW
Corporations
Shareholders
Disregard of Corporate Entity

General Overview. — State's attempt to impose personal liability against an individual for the delinquent taxes of a corporation was unsuccessful; the individual had received an automobile owned by the corporation in satisfaction of unpaid salary which was also security for a purchase money mortgage assumed by the individual in order to pay off some of the corporate debt, but the records failed to show that the corporation was the "alter ego" of the individual, and former Tex. Rev. Civ. Stat. Ann. art. 7269 did not purport to impose personal liability for taxes upon a third party who was neither the owner at the time of assessment nor, in fact, the assessed tax payer. State v. Nevitt, 595 S.W.2d 140, 1980 Tex. App. LEXIS 2984 (Tex. Civ. App. Dallas 1980, writ ref'd n.r.e.).

REAL PROPERTY LAW
Estates
Future Interests

General Overview. — Neither Tex. Tax Code Ann. § 33.54, which protects the purchaser of property at tax sale from previous

claims against the property, or Tex. Tax Code Ann. § 32.05, which provides that a tax lien is prior to the claim of any creditor of the person whose property is encumbered, will avoid a possibility of reverter because the possibility of reverter interest is not a claim, it is an interest in the property distinct from that of the delinquent taxpayer. Cypress-Fairbanks Indep. Sch. Dist. v. Glenn W. Loggins, Inc., 115 S.W.3d 67, 2003 Tex. App. LEXIS 5536 (Tex. App. San Antonio July 2, 2003, no pet.).

FINANCING
Mortgages & Other Security Instruments

General Overview. — Fact that plaintiffs' taxes were deferred under Tex. Tax Code Ann. § 33.06(a) did not excuse plaintiffs' obligations under the deed of trust, which provided that plaintiffs "shall" pay all taxes, assessments, charges and fines that could attain priority over defendants' lien, and, under Tex. Tax Code Ann. § 32.05(b), tax liens from an authorized taxing authority were granted priority over liens such as deeds of trust; thus, the evidence was undisputed that plaintiffs were in breach of a term of the deed of trust and in default, authorizing defendants to create an escrow account and seek reimbursement of taxes paid on behalf of plaintiffs. Lyles v. Deutsche Bank Nat'l Trust Co., No. G-09-300, 2011 U.S. Dist. LEXIS 2396 (S.D. Tex. Jan. 11, 2011).

FORECLOSURES

General Overview. — Defendants' two notices, taken together, satisfied the requirements of notice under Tex. Prop. Code Ann. § 51.002(b) because the notes and deeds of trust concerning the two loans were interlocking agreements, meaning that a default on one note or deed of trust obligation triggered a default on the other; thus, all notices were proper and sufficient as any timely notice of default, irrespective of loan number, and any notice of acceleration, irrespective of loan number, addressed the heart of plaintiffs' breach of the deed of trust — a tax lien under Tex. Tax Code Ann. § 32.05(b). Lyles v. Deutsche Bank Nat'l Trust Co., No. G-09-300, 2011 U.S. Dist. LEXIS 2396 (S.D. Tex. Jan. 11, 2011).

NONMORTGAGE LIENS

Lien Priorities. — Filing a copy of the tax collector's certification of transfer of the tax lien, along with an affidavit concerning the loss of the original tax collector's certification, did not comply with former Tex. Tax Code Ann. § 32.06(d) to create an enforceable transfer of the tax lien; thus, a claim for tax lien priority under Tex. Tax Code Ann. § 32.05(b)(1) failed. Kothmann v. Genesis Tax Loan Servs., 288 S.W.3d 503, 2009 Tex. App. LEXIS 1436 (Tex. App. Amarillo Feb. 27, 2009), rev'd, 339 S.W.3d 104, 2011 Tex. LEXIS 359 (Tex. 2011).

In a dispute over excess funds from the foreclosure sale on property within a property association's subdivision, disbursement of the funds to the association, and not to the former owner, was proper under Tex. Tax Code Ann. § 34.04(c) as the association established an amount due under its lien, its claim was superior to the owner's claim, and it filed its claim within two years of the sale. Belt v. Point Venture Prop. Owners' Ass'n, No. 03-07-00701-CV, 2008 Tex. App. LEXIS 5816 (Tex. App. Austin July 30, 2008).

The Manufactured Housing Standards Act provides that proper registration and recordation of a lien under the Act is notice to all persons that the lien exists; liens recorded or registered under the Act have priority, in the chronological order of recordation, over other liens or claims against the manufactured home, other than as expressly provided by Tex. Tax Code ch. 32; thus, pursuant to Tex. Tax Code Ann. § 32.05(b), any priority status granted by the act is made subject to the provisions of the tax code, which expressly grant priority status to tax liens. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

Tax liens are, by Tex. Tax Code Ann. § 32.05, given express priority status over security interests noted on certificates of title, and Tex. Tax Code Ann. § 34.01 addresses the procedures required for a proper tax sale; it does not convert a tax lien into a judicial lien; therefore, the January 17 tax sale extinguished appellant financing company's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

MECHANICS' LIENS. — Subrogating a bank to tax liens would have prejudiced a builder with possible mechanic's liens because the subrogation would have altered the foreclosure requirement of a judicial proceeding with the builder as a party; that requirement was eliminated by the bank's deed of trust. Lyda Swinerton Builders, Inc. v. Cathay Bank, 409 S.W.3d 221, 2013 Tex. App. LEXIS 10081 (Tex. App. Houston 14th Dist. Aug. 13, 2013, no pet.).

TAX LIENS. — Subrogating a bank to tax liens would have prejudiced a builder with possible mechanic's liens because the subrogation would have altered the foreclosure requirement of a judicial proceeding with the builder as a party; that requirement was eliminated by the bank's deed of trust. Lyda Swinerton Builders, Inc. v. Cathay Bank, 409 S.W.3d 221, 2013 Tex. App. LEXIS 10081 (Tex. App. Houston 14th Dist. Aug. 13, 2013, no pet.).

Possibility of reverter in the mineral estate was never severed from the surface estate and the legislature had specified that a tax lien had priority over the possibility of reverter, under Tex. Tax Code Ann. § 32.05(b)(3); thus, the 1986 judgment of foreclosure and order of sale could not have extended to the heirs' royalty interest and the 1987 and 1988 deeds conveyed an interest in the surface estate only. Pounds v. Jurgens, 296 S.W.3d 100, 170 Oil & Gas Rep. 630, 2009 Tex. App. LEXIS 4729 (Tex. App. Houston 14th Dist. June 18, 2009, no pet.).

Although the legislature enacted Tex. Tax Code Ann. § 32.05(b)(3) after the lien arose in the present case, the provision applies regardless of when the lien arose and applies to any cause of action pending on September 1, 2005 or brought after that date. Pounds v. Jurgens, 296 S.W.3d 100, 170 Oil & Gas Rep. 630, 2009 Tex. App. LEXIS 4729 (Tex. App. Houston 14th Dist. June 18, 2009, no pet.).

Filing a copy of the tax collector's certification of transfer of the tax lien, along with an affidavit concerning the loss of the original tax collector's certification, did not comply with former Tex. Tax Code Ann. § 32.06(d) to create an enforceable transfer of the tax lien; thus, a claim for tax lien priority under Tex. Tax Code Ann. § 32.05(b)(1) failed. Kothmann v. Genesis Tax Loan Servs., 288 S.W.3d 503, 2009 Tex. App. LEXIS 1436 (Tex. App. Amarillo Feb. 27, 2009), rev'd, 339 S.W.3d 104, 2011 Tex. LEXIS 359 (Tex. 2011).

There is nothing in Tex. Tax Code Ann. § 32.05 that indicates that it applies to anyone other than a taxing authority. Therefore, in a lien priority dispute, a mortgage creditor did not have priority to the extent of the ad valorem taxes that it paid on property because it was not a taxing authority, and there was no evidence of a lien transfer from a taxing authority. Cameron Life Ins. Co. v. Pactiv Corp., No. 13-05-760-CV, 2007 Tex. App. LEXIS 6773 (Tex. App. Corpus Christi Aug. 23, 2007).

Under Tex. Tax Code Ann. § 32.05(b), tax lien provided by this chapter takes priority over the claim of any creditor of a person whose property is encumbered by the lien and over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before attachment of the tax lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

Various tax units were not entitled to bring a conversion action against a finance corporation lienholder that refused to pay delinquent personal property taxes on an automobile inventory that it repossessed and subsequently sold, notwithstanding that the taxing authorities, pursuant to Tex. Tax Code Ann. § 32.05(b), had priority over previously filed liens that encumbered the property in question; among the prerequisites for maintaining a cause of action for conversion was the requirement of possession or entitlement to possession of the automobiles, and the tax units acknowledged that they were not entitled to possession except by foreclosure of the tax liens in a judicial proceeding. Wichita Falls v. ITT Commercial Finance Corp., 827 S.W.2d 6, 1992 Tex. App. LEXIS 45 (Tex. App. Fort Worth Jan. 7, 1992), aff'd in part and rev'd in part, 835 S.W.2d 65, 1992 Tex. LEXIS 61 (Tex. 1992).

TAX LAW
State & Local Taxes
Personal Property Tax
Tangible Property

General Overview. — Mobile home purchaser, who had

bought the mobile home at a tax sale for delinquent taxes, held a junior lien to the finance company; the application of real property nonjudicial procedures to the disposition of personal property was a reasonable application, and the tax sale extinguished the purchaser's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

Trial court improperly granted summary judgment in favor of appellee bank in appellant tax authority's action which claimed that its tax lien on personal property was superior to the interests of appellee who had foreclosed on and taken possession of the property because appellee bank was not a buyer in the ordinary course of business since it had acquired its ownership through foreclosure. Central Appraisal Dist. v. Dixie-Rose Jewels, 894 S.W.2d 841, 1995 Tex. App. LEXIS 360 (Tex. App. Eastland Feb. 23, 1995, no writ).

State could not recover delinquent taxes on property from creditor, pursuant to former Tex. Rev. Civ. Stat. Ann. art. 7269, where the creditor had foreclosed lien on the property, because taxes were assessed against a dealer and the creditor was only a lien holder at the time; the foreclosure did not come under the terms of the former statute and did not trigger or create a lien against the property for taxes. State v. Lincoln Corp., 596 S.W.2d 593, 1980 Tex. App. LEXIS 3205 (Tex. Civ. App. Beaumont Feb. 11, 1980, writ ref'd n.r.e.).

REAL PROPERTY TAX

General Overview. — Under Tex. Tax Code Ann. § 32.05(b), tax lien provided by this chapter takes priority over the claim of any creditor of a person whose property is encumbered by the lien and over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before attachment of the tax lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

Mobile home purchaser, who had bought the mobile home at a tax sale for delinquent taxes, held a junior lien to the finance company; the application of real property nonjudicial procedures to the disposition of personal property was a reasonable application, and the tax sale extinguished the purchaser's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

Entry of summary judgment for the reverter was affirmed because: (1) Tex. Tax Code Ann. §§ 33.54 and 32.05 did not apply to extinguish the reverter interest in that the possibility of reverter interest was not a claim, it was an interest in the property distinct from the trustee's interest, and the reverter would not have had to institute an action relating to the title of property to invoke its possibility of reverter interest, (2) the reverter was not a "defendant" under Tex. Tax Code Ann. § 34.01(n) because it owned a nontaxable interest, (3) a tax lien was inferior to a claim under a recorded restrictive covenant running with the land under Tex. Tax Code Ann. § 32.05(c), (4) the reverter's interest was nontaxable, and it could not have been extinguished by a foreclosure sale, and (5) the reverter's appeal on the issue of attorney fees was not properly preserved. Cypress-Fairbanks Indep. Sch. Dist. v. Glenn W. Loggins, Inc., No. 04-02-00513-CV, 2003 Tex. App. LEXIS 3441 (Tex. App. San Antonio Apr. 23, 2003), op. withdrawn, sub. op., 115 S.W.3d 67, 2003 Tex. App. LEXIS 5536 (Tex. App. San Antonio July 2, 2003).

COLLECTION

Tax Deeds & Tax Sales. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

In a dispute over excess funds from the foreclosure sale on property within a property association's subdivision, disbursement of the funds to the association, and not to the former owner, was proper under Tex. Tax Code Ann. § 34.04(c) as the association established an amount due under its lien, its claim was superior to the owner's claim, and it filed its claim within two years of the sale. Belt v. Point Venture Prop. Owners' Ass'n, No. 03-07-00701-CV, 2008 Tex. App. LEXIS 5816 (Tex. App. Austin July 30, 2008).

TAX LIENS. — In a breach of contract case, a borrower failed to comply with a loan agreement by getting behind on property taxes for 3 years and by displacing the bank of its priority-lienholder position by failing to pay the taxes, regardless of whether the taxing authorities exercised their rights. Blanco Nat'l Bank v. Gonzalez, No. 04-12-00079-CV, 2013 Tex. App. LEXIS 4990 (Tex. App. San Antonio Apr. 24, 2013).

Creditor, holder of the note and deed of trust for the debtors' residential property, was entitled to assert a secured claim for property taxes advanced because debtors' deferral of taxes was a breach of their obligations under the deed, which included covenants requiring payment of taxes and prohibiting imposition of any superior claims. Both of these obligations were violated through the tax deferral given that a tax lien with priority remained on the property pursuant to Tex. Tax Code Ann. §§ 32.05(b) and 33.06(d). In re Sanford, No. 11-73207 MEH, 2012 Bankr. LEXIS 5118 (Bankr. N.D. Cal. Nov. 1, 2012).

Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

Defendants' two notices, taken together, satisfied the requirements of notice under Tex. Prop. Code Ann. § 51.002(b) because the notes and deeds of trust concerning the two loans were interlocking agreements, meaning that a default on one note or deed of trust obligation triggered a default on the other; thus, all notices were proper and sufficient as any timely notice of default, irrespective of loan number, and any notice of acceleration, irrespective of loan number, addressed the heart of plaintiffs' breach of the deed of trust — a tax lien under Tex. Tax Code Ann. § 32.05(b). Lyles v. Deutsche Bank Nat'l Trust Co., No. G-09-300, 2011 U.S. Dist. LEXIS 2396 (S.D. Tex. Jan. 11, 2011).

Fact that plaintiffs' taxes were deferred under Tex. Tax Code Ann. § 33.06(a) did not excuse plaintiffs' obligations under the deed of trust, which provided that plaintiffs "shall" pay all taxes, assessments, charges and fines that could attain priority over defendants' lien, and, under Tex. Tax Code Ann. § 32.05(b), tax liens from an authorized taxing authority were granted priority over liens such as deeds of trust; thus, the evidence was undisputed that plaintiffs were in breach of a term of the deed of trust and in default, authorizing defendants to create an escrow account and seek reimbursement of taxes paid on behalf of plaintiffs. Lyles v. Deutsche Bank Nat'l Trust Co., No. G-09-300, 2011 U.S. Dist. LEXIS 2396 (S.D. Tex. Jan. 11, 2011).

Possibility of reverter in the mineral estate was never severed from the surface estate and the legislature had specified that a tax lien had priority over the possibility of reverter, under Tex. Tax Code Ann. § 32.05(b)(3); thus, the 1986 judgment of foreclosure and order of sale could not have extended to the heirs' royalty interest and the 1987 and 1988 deeds conveyed an interest in the surface estate only. Pounds v. Jurgens, 296 S.W.3d 100, 170 Oil & Gas Rep. 630, 2009 Tex. App. LEXIS 4729 (Tex. App. Houston 14th Dist. June 18, 2009, no pet.).

Although the legislature enacted Tex. Tax Code Ann. § 32.05(b)(3) after the lien arose in the present case, the provision applies regardless of when the lien arose and applies to any cause of action pending on September 1, 2005 or brought after

that date. Pounds v. Jurgens, 296 S.W.3d 100, 170 Oil & Gas Rep. 630, 2009 Tex. App. LEXIS 4729 (Tex. App. Houston 14th Dist. June 18, 2009, no pet.).

TORTS
Intentional Torts

Conversion. — Various tax units were not entitled to bring a conversion action against a finance corporation lienholder that refused to pay delinquent personal property taxes on an automobile inventory that it repossessed and subsequently sold, notwithstanding that the taxing authorities, pursuant to Tex. Tax Code Ann. § 32.05(b), had priority over previously filed liens that encumbered the property in question; among the prerequisites for maintaining a cause of action for conversion was the requirement of possession or entitlement to possession of the automobiles, and the tax units acknowledged that they were not entitled to possession except by foreclosure of the tax liens in a judicial proceeding. Wichita Falls v. ITT Commercial Finance Corp., 827 S.W.2d 6, 1992 Tex. App. LEXIS 45 (Tex. App. Fort Worth Jan. 7, 1992), aff'd in part and rev'd in part, 835 S.W.2d 65, 1992 Tex. LEXIS 61 (Tex. 1992).

Sec. 32.06. Property Tax Loans; Transfer of Tax Lien.

(a) In this section:

(1) "Mortgage servicer" has the meaning assigned by Section 51.0001, Property Code.

(2) "Transferee" means a person who is licensed under Chapter 351, Finance Code, or is exempt from the application of that chapter under Section 351.051(c), Finance Code, and who is:

(A) authorized to pay the taxes of another; or

(B) a successor in interest to a tax lien that is transferred under this section.

(a-1) A property owner may authorize another person to pay the taxes imposed by a taxing unit on the owner's real property by executing and filing with the collector for the taxing unit:

(1) a sworn document stating:

(A) the authorization for payment of the taxes;

(B) the name and street address of the transferee authorized to pay the taxes of the property owner;

(C) a description of the property by street address, if applicable, and legal description; and

(D) notice has been given to the property owner that if the property owner is disabled, the property owner may be eligible for a tax deferral under Section 33.06; and

(2) the information required by Section 351.054, Finance Code.

(a-2) Except as provided by Subsection (a-8), a tax lien may be transferred to the person who pays the taxes on behalf of the property owner under the authorization described by Subsection (a-1) for:

(1) taxes that are delinquent at the time of payment; or

(2) taxes that are due but not delinquent at the time of payment if the property is not subject to a recorded mortgage lien.

(a-3) A person who is 65 years of age or older may not authorize a transfer of a tax lien on real property on which the person is eligible to claim an exemption from taxation under Section 11.13(c).

(a-4) The Finance Commission of Texas shall:

(1) prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer;

(2) adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section;

(3) by rule prescribe the form and content of the sworn document under Subsection (a-1) and the certified statement under Subsection (b); and

(4) by rule prescribe the form and content of a request a lender with an existing recorded lien on the property must use to request a payoff statement and the transferee's response to the request, including the period within which the transferee must respond.

(a-5) At the time the transferee provides the disclosure statement required by Subsection (a-4)(1), the transferee must also describe the type and approximate cost range of each additional charge or fee that the property owner may incur in connection with the transfer.

(a-6) Notwithstanding Subsection (f-3), a lender described by Subsection (a-4)(4) may request a payoff statement before the tax loan becomes delinquent. The Finance Commission of Texas by rule shall require a transferee who receives a request for a payoff statement to deliver the requested payoff statement on the prescribed form within a period prescribed by finance commission rule. The prescribed period must allow the transferee at least seven business days after the date the request is received to deliver the payoff statement. The consumer credit commissioner may assess an administrative penalty under Subchapter F, Chapter 14, Finance Code, against a transferee who wilfully fails to provide the payoff statement as prescribed by finance commission rule.

(a-7) A contract between a transferee and a property owner that purports to authorize payment of taxes that are not delinquent or due at the time of the authorization, or that lacks the authorization described by Subsection (a-1), is void.

(a-8) A tax lien may not be transferred to the person who pays the taxes on behalf of the property owner under the authorization described by Subsection (a-1) if the real property:

(1) has been financed, wholly or partly, with a grant or below market rate loan provided by a governmental program or nonprofit organization and is subject to the covenants of the grant or loan; or

(2) is encumbered by a lien recorded under Subchapter A, Chapter 214, Local Government Code.

(a-9) The Finance Commission of Texas may adopt rules to implement Subsection (a-8).

(b) If a transferee authorized to pay a property owner's taxes under Subsection (a-1) pays the taxes and any penalties, interest, and collection costs imposed, the collector shall issue a tax receipt to that transferee. In addition, the collector

or a person designated by the collector shall certify that the taxes and any penalties, interest, and collection costs on the subject property have been paid by the transferee on behalf of the property owner and that the taxing unit's tax lien is transferred to that transferee. The collector shall attach to the certified statement the collector's seal of office or sign the statement before a notary public and deliver a tax receipt and the certified statement attesting to the transfer of the tax lien to the transferee within 30 days. The tax receipt and certified statement may be combined into one document. The collector shall identify in a discrete field in the applicable property owner's account the date of the transfer of a tax lien transferred under this section. When a tax lien is released, the transferee shall file a release with the county clerk of each county in which the property encumbered by the lien is located for recordation by the clerk and send a copy to the collector. The transferee may charge the property owner a reasonable fee for filing the release.

(b-1) Not later than the 10th business day after the date the certified statement is received by the transferee, the transferee shall send by certified mail a copy of the sworn document described by Subsection (a-1) to any mortgage servicer and to each holder of a recorded first lien encumbering the property. The copy must be sent, as applicable, to the address shown on the most recent payment invoice, statement, or payment coupon provided by the mortgage servicer to the property owner, or the address of the holder of a recorded first lien as shown in the real property records.

(c) Except as otherwise provided by this section, the transferee of a tax lien is entitled to foreclose the lien in the manner provided by law for foreclosure of tax liens.

(c-1) [Repealed by Acts 2013, 83rd Leg., ch. 206 (S.B. 247), § 10, effective May 29, 2013.]

(d) A transferee shall record a tax lien transferred as provided by this section with the certified statement attesting to the transfer of the tax lien as described by Subsection (b) in the deed records of each county in which the property encumbered by the lien is located.

(d-1) A right of rescission described by 12 C.F.R. Section 226.23 applies to a transfer under this section of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes.

(e) A transferee holding a tax lien transferred as provided by this section may not charge a greater rate of interest than 18 percent a year on the funds advanced. Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs.

(e-1) A transferee of a tax lien may not charge a fee for any expenses arising after the closing of a loan secured by a tax lien transferred under this section, including collection costs, except for:

(1) interest expressly authorized under this section;

(2) the fees for filing the release of the tax lien under Subsection (b);

(3) the fee for providing a payoff statement under Subsection (f-3);

(4) the fee for providing information regarding the current balance owed by the property owner under Subsection (g); and

(5) the fees expressly authorized under Section 351.0021, Finance Code.

(e-2) The contract between the property owner and the transferee may provide for interest for default, in addition to the interest permitted under Subsection (e), if any part of the installment remains unpaid after the 10th day after the date the installment is due, including Sundays and holidays. If the lien transferred is on residential property owned and used by the property owner for personal, family, or household purposes, the additional interest may not exceed five cents for each $1 of a scheduled installment.

(f) The holder of a loan secured by a transferred tax lien that is delinquent for 90 consecutive days must send a notice of the delinquency by certified mail on or before the 120th day of delinquency or, if the 120th day is not a business day, on the next business day after the 120th day of delinquency, to any holder of a recorded preexisting lien on the property. The holder or mortgage servicer of a recorded preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b) is entitled, within six months after the date on which the notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee.

(f-1) If an obligation secured by a preexisting first lien on the property is delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist, the mortgage servicer or the holder of the first lien may send a notice of the delinquency to the transferee of a tax lien. The mortgage servicer or the first lienholder is entitled, within six months after the date on which that notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee. The Finance Commission of Texas by rule shall prescribe the form and content of the notice under this subsection.

(f-2) The rights granted by Subsections (f) and (f-1) do not affect a right of redemption in a foreclosure proceeding described by Subsection (k) or (k-1).

(f-3) Notwithstanding any contractual agreement with the property owner, the transferee of a tax lien must provide the payoff information required by this section to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. The payoff statement must meet the requirements of a payoff statement defined by Section 12.017, Property Code. A transferee may charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided. However, a transferee is not required to release payoff information pursuant to a notice under Subsection (f-1) unless the notice contains the information prescribed by the Finance Commission of Texas.

(f-4) Failure to comply with Subsection (b-1), (f), or (f-1) does not invalidate a tax lien transferred under this section or a deed of trust.

(g) At any time after the end of the six-month period specified by Subsection (f) and before a notice of foreclosure of the transferred tax lien is sent, the transferee of the tax lien may require the property owner to provide written

authorization and pay a reasonable fee before providing information regarding the current balance owed by the property owner to the transferee.

(h) A mortgage servicer who pays a property tax loan secured by a tax lien transferred under this section becomes subrogated to all rights in the lien.

(i) A judicial foreclosure of a tax lien transferred under this section may not be instituted within one year from the date on which the lien is recorded in all counties in which the property is located, unless the contract between the owner of the property and the transferee provides otherwise.

(j) After one year from the date on which a tax lien transferred under this section is recorded in all counties in which the property is located, the transferee of the lien may foreclose the lien in the manner provided by Subsection (c) unless the contract between the transferee and the owner of the property encumbered by the lien provides otherwise. The proceeds of a sale following a judicial foreclosure as provided by this subsection shall be applied first to the payment of court costs, then to payment of the judgment, including accrued interest, and then to the payment of any attorney's fees fixed in the judgment. Any remaining proceeds shall be paid to other holders of liens on the property in the order of their priority and then to the person whose property was sold at the tax sale.

(k) Beginning on the date the foreclosure deed is recorded, the person whose property is sold as provided by Subsection (c) or the mortgage servicer of a prior recorded lien against the property is entitled to redeem the foreclosed property from the purchaser or the purchaser's successor by paying the purchaser or successor:

(1) 125 percent of the purchase price during the first year of the redemption period or 150 percent of the purchase price during the second year of the redemption period with cash or cash equivalent funds; and

(2) the amount reasonably spent by the purchaser in connection with the property as costs within the meaning of Section 34.21(g) and the legal judgment rate of return on that amount.

(k-1) The right of redemption provided by Subsection (k) may be exercised on or before the second anniversary of the date on which the purchaser's deed is filed of record if the property sold was the residence homestead of the owner, was land designated for agricultural use, or was a mineral interest. For any other property, the right of redemption must be exercised not later than the 180th day after the date on which the purchaser's deed is filed of record. If a person redeems the property as provided by Subsection (k) and this subsection, the purchaser at the tax sale or the purchaser's successor shall deliver a deed without warranty to the property to the person redeeming the property. If the person who owned the property at the time of foreclosure redeems the property, all liens existing on the property at the time of the tax sale remain in effect to the extent not paid from the sale proceeds.

(*l*) Except as specifically provided by this section, a property owner cannot waive or limit any requirement imposed on a transferee by this section.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1995, 74th Leg., ch. 131 (S.B. 1387), § 1, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 406 (S.B. 1587), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 13, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1220 (H.B. 2138), § 3, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1329 (S.B. 1520), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 22.006, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 104 (H.B. 1465), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1382 (S.B. 1620), § 4, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 622 (S.B. 762), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 206 (S.B. 247), §§ 6—8, 10, effective May 29, 2013.

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BANKRUPTCY LAW
Claims
Types
Definitions. — Interest on a secured claim was not entitled to the protection of 11 U.S.C.S. § 511 because the fact that the lien was called a tax lien by Tex. Tax Code Ann. § 32.06 did not render the claim secured by tax claims under 11 U.S.C.S. § 511. The tax lien could not secure the payment of the already-extinguished tax debt; instead, it secured the promissory note executed by the debtor payable to the creditor. In re Kizzee-Jordan, 399 B.R. 817, Bankr. L. Rep. (CCH) ¶81420, 2009 Bankr. LEXIS 152 (Bankr. S.D. Tex. 2009).

SECURED CLAIMS & LIENS
Secured Creditors Rights. — 11 U.S.C.S. § 506(b) and Tex. Tax Code Ann. § 32.06 permit an oversecured creditor holding a claim secured by a transferred tax lien to recover attorney's fees only to the extent of the agreement of the parties. When the attorney's work was in furtherance of the creditor's claim, which was represented by the promissory note, and the note only allowed attorney's fees following an acceleration of the note, the creditor was not entitled to an award of fees without a stipulation on the issue of acceleration. In re Tucker, 391 B.R. 404, 2008 Bankr. LEXIS 2321 (Bankr. S.D. Tex. 2008).

11 U.S.C.S. § 511 did not apply to the claim of a creditor who paid debtors' property tax because the creditor held a tax lien and not a tax claim. Under Tex. Tax Code Ann. § 32.06, a tax lien could only be assigned upon payment of the taxes, and the creditor's payment of the taxes extinguished tax claim. In re Sheffield, 390 B.R. 302, 2008 Bankr. LEXIS 2548 (Bankr. S.D. Tex. 2008).

INDIVIDUALS WITH REGULAR INCOME
Plans
Confirmation
General Overview. — Creditor's objection to confirmation of a Chapter 13 plan providing for payment of a creditor, who paid the debtors' tax liability under Tex. Tax Code Ann. § 32.06, at less than the contract rate of interest was sustained because 11 U.S.C.S. § 511 applied and thus the creditor was entitled to the contract rate of 18 percent. In re Davis, 352 B.R. 651, 2006 Bankr. LEXIS 2046 (Bankr. N.D. Tex. 2006).

CONTENTS. — Where a third-party lender paid a Chapter 13 debtor's property taxes in exchange for a note that was secured by a deed of trust and a Transfer of Tax Liens obtained from the county, and the debtor's plan proposed to reduce the interest rate on the note, the anti-modification protection under 11 U.S.C.S. § 511 did not apply because, pursuant to Tex. Tax Code Ann. § 32.06 and § 32.065, the lender acquired a tax lien, not a tax claim. In re Prevo, 393 B.R. 464, 2008 Bankr. LEXIS 2720 (Bankr. S.D. Tex. 2008).

TAXATION
State & Local Taxes. — Creditor's objection to confirmation of a Chapter 13 plan providing for payment of a creditor, who paid the debtors' tax liability under Tex. Tax Code Ann. § 32.06, at less than the contract rate of interest was sustained because 11 U.S.C.S. § 511 applied and thus the creditor was entitled to the contract rate of 18 percent. In re Davis, 352 B.R. 651, 2006 Bankr. LEXIS 2046 (Bankr. N.D. Tex. 2006).

CIVIL PROCEDURE
Remedies
Costs & Attorney Fees
General Overview. — In a tax lien foreclosure suit, the tax lien holder was not estopped from recovering attorney fees at the rate of 15 percent under Tex. Tax Code Ann. § 33.48; although the tax lien holder requested attorney fees as authorized by Tex. Tax Code Ann. § 32.06 et seq., that citation reasonably included Tex. Tax Code Ann. § 32.065(c), which provided that an assignee of a taxing authority was subrogated to all rights of the taxing authority, and the issue was not properly preserved under Tex. R. App. P. 33.1(a) and Tex. R. Evid. 103(a)(1) because an estoppel argument was not made to the trial court. JB Joyce, Ltd. v. Regions Fin. Corp., No. 06-04-000140-CV, 2005 Tex. App. LEXIS 7246 (Tex. App. Texarkana Sept. 1, 2005).

DEPOSITS IN COURT. — In a redemption of real property purchased at a non-judicial tax foreclosure sale, the first lienholder's deposit into the registry of the court was a proper tender of payment for redemption purposes. Canfield v. Wells Fargo Bank, N.A., No. 09-06-089-CV, 2006 Tex. App. LEXIS 8486 (Tex. App. Beaumont Sept. 28, 2006).

APPEALS
Reviewability
Preservation for Review. — In a tax lien foreclosure suit, the tax lien holder was not estopped from recovering attorney fees at the rate of 15 percent under Tex. Tax Code Ann. § 33.48; although the tax lien holder requested attorney fees as authorized by Tex. Tax Code Ann. § 32.06 et seq., that citation reasonably included Tex. Tax Code Ann. § 32.065(c), which provided that an assignee of a taxing authority was subrogated to all rights of the taxing authority, and the issue was not properly preserved under Tex. R. App. P. 33.1(a) and Tex. R. Evid. 103(a)(1) because an estoppel argument was not made to the trial court. JB Joyce, Ltd. v. Regions Fin. Corp., No. 06-04-000140-CV, 2005 Tex. App. LEXIS 7246 (Tex. App. Texarkana Sept. 1, 2005).

CRIMINAL LAW & PROCEDURE
Criminal Offenses
Property Crimes
Larceny & Theft
General Overview. — Plaintiff banks had a right to the excess proceeds resulting from foreclosure sales because, where there is a foreclosure suit that leads to a judicial foreclosure, Tex. Tax Code Ann. § 32.06(j) directs the distribution of additional amounts, such as court costs, judgment, interest, and attorneys' fees, that are required to be paid from the proceeds. Debtor unlawfully appropriated the banks' property under Tex. Penal Code § 31.001(4)(A) because he intentionally altered language in the deeds of trust to omit instruction to pay the banks. Countrywide Home Loans, Inc. v. Cowin (In re Cowin), 492 B.R. 858, 2013 Bankr. LEXIS 1703 (Bankr. S.D. Tex. 2013), aff'd, app. dismissed, 538 B.R. 721, 2015 U.S. Dist. LEXIS 130902 (S.D. Tex. 2015).

EVIDENCE
Documentary Evidence
Best Evidence Rule. — Lender's tax liens were enforceable because verified copies were recorded in lieu of originals. Genesis Tax Loan Servs. v. Kothmann, 339 S.W.3d 104, 2011 Tex. LEXIS 359 (Tex. 2011).

REAL PROPERTY LAW
Financing
Mortgages & Other Security Instruments
Foreclosures
General Overview. — Prior to the homeowner's purchase, the lienholder had the opportunity to raise its complaints regarding lack of notice and deficiencies in the contract between the prior owner and the lender and seek to have the tax foreclosure sale declared void, and because the lienholder failed to do so and because the documents that had to be recorded for an enforceable tax lien transfer under Tex. Tax Code Ann. § 32.06 —the prior owner's deed of trust, the sworn authorization for payment of taxes and the tax collector's certified statement— were in fact recorded and satisfied the statutory requirements, the homeowner and bank were not on notice that the tax foreclosure sale arguably failed to extinguished the lienholder's claims on the property; the evidence put forth by the homeowner and bank demonstrating lack of notice of the lienholder's claims against the property was sufficient to satisfy their summary judgment burden. WMC Mortg. Corp. v. Moss, No. 01-10-00948-CV, 2011 Tex. App. LEXIS 3853 (Tex. App. Houston 1st Dist. May 19, 2011).

JUDICIAL FORECLOSURES. — Plaintiff banks had a right to the excess proceeds resulting from foreclosure sales because, where there is a foreclosure suit that leads to a judicial foreclosure, Tex. Tax Code Ann. § 32.06(j) directs the distribution of

additional amounts, such as court costs, judgment, interest, and attorneys' fees, that are required to be paid from the proceeds. Debtor unlawfully appropriated the banks' property under Tex. Penal Code § 31.001(4)(A) because he intentionally altered language in the deeds of trust to omit instruction to pay the banks. Countrywide Home Loans, Inc. v. Cowin (In re Cowin), 492 B.R. 858, 2013 Bankr. LEXIS 1703 (Bankr. S.D. Tex. 2013), aff'd, app. dismissed, 538 B.R. 721, 2015 U.S. Dist. LEXIS 130902 (S.D. Tex. 2015).

REDEMPTION

Statutory Redemption. — Nothing in Tex. Tax Code Ann. § 32.06(d) indicates that recording the transfer of a tax lien converts the tax lien to a "first lien" as that term is used in the redemption statute, so as to give it priority over a prior existing lien because it already has priority and the transferee still holds nothing more than the tax lien, which it is entitled to foreclose. ABN AMRO Mortg. Group v. TCB Farm & Ranch Land Invs., 200 S.W.3d 774, 2006 Tex. App. LEXIS 6731 (Tex. App. Fort Worth July 27, 2006, no pet.).

Trial court erred in finding that a secured lienholder was not the holder of the "first lien" of property, as provided in the version of Tex. Tax Code Ann. § 32.06(i) in effect in 2004, and, therefore, not entitled to redeem the property from a purchaser who obtained a foreclosure sale deed from a party who had foreclosed on its transferred tax lien because the secured lienholder's prior lien was not required to be recorded first in order to be a "first lien" entitling it to exercise the right of redemption; the principle of lien priority based upon time of filing did not apply to a tax lien. ABN AMRO Mortg. Group v. TCB Farm & Ranch Land Invs., 200 S.W.3d 774, 2006 Tex. App. LEXIS 6731 (Tex. App. Fort Worth July 27, 2006, no pet.).

NONMORTGAGE LIENS

Lien Priorities. — Filing a copy of the tax collector's certification of transfer of the tax lien, along with an affidavit concerning the loss of the original tax collector's certification, did not comply with former Tex. Tax Code Ann. § 32.06(d) to create an enforceable transfer of the tax lien; thus, a claim for tax lien priority under Tex. Tax Code Ann. § 32.05(b)(1) failed. Kothmann v. Genesis Tax Loan Servs., 288 S.W.3d 503, 2009 Tex. App. LEXIS 1436 (Tex. App. Amarillo Feb. 27, 2009), rev'd, 339 S.W.3d 104, 2011 Tex. LEXIS 359 (Tex. 2011).

Priority of liens as between claimants does not affect the applicability of a right of redemption as between an existing lienholder and a purchaser at a tax sale. ABN AMRO Mortg. Group v. TCB Farm & Ranch Land Invs., 200 S.W.3d 774, 2006 Tex. App. LEXIS 6731 (Tex. App. Fort Worth July 27, 2006, no pet.).

Trial court erred in finding that a secured lienholder was not the holder of the "first lien" of property, as provided in the version of Tex. Tax Code Ann. § 32.06(i) in effect in 2004, and, therefore, not entitled to redeem the property from a purchaser who obtained a foreclosure sale deed from a party who had foreclosed on its transferred tax lien because the secured lienholder's prior lien was not required to be recorded first in order to be a "first lien" entitling it to exercise the right of redemption; the principle of lien priority based upon time of filing did not apply to a tax lien. ABN AMRO Mortg. Group v. TCB Farm & Ranch Land Invs., 200 S.W.3d 774, 2006 Tex. App. LEXIS 6731 (Tex. App. Fort Worth July 27, 2006, no pet.).

TAX LIENS. — Although a bank's failure to comply with the tax lien transfer statutes did not prevent its subrogation to a tax lien, there were fact questions regarding whether equity required subrogation that precluded summary judgment. The tax lien transfer statutes do not abrogate common law subrogation doctrines, but parties who rely exclusively upon equity to obtain the taxing authority's priority may face additional obstacles not present under the statutes. Lyda Swinerton Builders, Inc. v. Cathay Bank, 409 S.W.3d 221, 2013 Tex. App. LEXIS 10081 (Tex. App. Houston 14th Dist. Aug. 13, 2013, no pet.).

Tax lien foreclosure sale was not void due to the lien holder's failure to wait six months between recording the lien and foreclosing because the other defects rendered the foreclosure sale merely voidable, which meant that it passed title subject to another's right to have it set aside. BAC Home Loans Servicing, LP v. Tex. Realty Holdings, LLC, 901 F. Supp. 2d 884, 2012 U.S. Dist. LEXIS 140373 (S.D. Tex. 2012).

Where, as here, there is substantial compliance with Tex. Tax Code Ann. §§ 32.06, 32.065 (prior to the 2007 amendments), any defect in the contract regarding those sections renders the foreclosure sale merely voidable, but does not, by itself, render it void; even if the requirements of Tex. Tax Code Ann. § 32.065(b) were not spelled out in one of the recorded documents in this case, the sworn affidavit, certified statement, and deed of trust were recorded, notice of foreclosure was given, and the company knew of the tax lien transfer, the foreclosure sale, and the redemption period. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Tax lienholder was permitted to conduct a foreclosure sale without a court order, given that, for purposes of former Tex. Tax Code Ann. § 32.06, as notice was served; the foreclosure took place less than one year after the lien was recorded, but the contract provided for waiver of the one-year restriction. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Agreement for tax transfer stated it was secured under Tex. Tax Code Ann. §§ 32.06, 32.065 (prior to 2007 amendments) and was further secured by a deed of trust; in reading the documents together as was permitted, the contract allowed for foreclosure under the law in effect when the contract was executed, and thus the prior law applied. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Redemption period had passed, the tax lien transfer was no longer voidable, and a limited liability company's title was absolute, and as the tax lien transfer substantially complied with Tex. Tax Code Ann. §§ 32.06 and 32.065 (prior to the 2007 amendments), the tax lien transfer was effective to transfer the lien. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Statute in effect at the time, Tex. Tax Code Ann. § 32.06 (prior to the 2007 amendments) required only that the sworn authorization and certified statement be filed in order for the lien transfer to be effective, and the court holds that where, as here, the actions required by Tex. Tax Code Ann. §§ 32.06 and 32.065(b) have been performed and the only alleged defects are that the contract between the parties did not contain provisions expressly requiring those actions and the agreement was not recorded, those defects may render the foreclosure sale voidable, but do not, by themselves, render the foreclosure sale void. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Both a sworn authorization and a certified statement were recorded where the property was located, and thus the separate recordings of the documents did not invalidate the tax lien transfer. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Court concluded that there is no requirement in Tex. Tax Code Ann. § 32.06(b) (prior to 2007 amendments) that both documents, the sworn authorization and the certified statement, be recorded at the same time, so long as they are both recorded in the proper county records; the court agrees with the court's holding. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Tex. Tax Code Ann. § 32.06(b), as it existed prior to the 2007 amendments, expressly permitted that the sworn document, tax receipt and affidavit attesting to the transfer may be combined into one document; the court holds that where, as here, the tax collector (1) issued the certified statement that the taxes were paid and the tax lien was transferred, (2) affixed its seal of office to the certified statement, and (3) the certified statement was recorded, it is not required that the tax collector's certification and seal appear on the sworn authorization or that the sworn authorization be notarized. Avelo Mortg., LLC v. Infinity Capital,

LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Tax collector's certified statement that was recorded contained statements concerning payment of taxes and transfer of the lien required by statute, and the statement was marked with the tax collector's seal as required by Tex. Tax Code Ann. § 32.06(b) (prior to the 2007 amendments). Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Because the property was not a homestead, the right of redemption was exercisable during a period lasting 180 days from the date on which the purchaser's deed was recorded, under Tex. Tax Code Ann. § 32.06(b) as it then existed; given that the company did not timely exercise its rights during the proper redemption period, any defect in the contract for tax payments was waived, and the title of the limited liability company to the property was absolute. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Purchaser at a tax sale, such as the limited liability company in this case, purchased with knowledge that his title might be defeated via redemption. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Legislature amended the tax lien statutes, including Tex. Tax Code Ann. §§ 32.06, 32.065, but the effective date of the amendments was September 1, 2007; as the tax lien transfer in this case took place in July 2007, the transfer was governed by the statutes as they existed at that time. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Company's property interest was not extinguished by a tax lien foreclosure sale, and instead the interest became subject to a right of redemption, and the foreclosure sale was voidable at the insistence of the company, if it had exercised its right of redemption during the redemption period. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Company did not present evidence that the tax collector acted in any way other than what the law required, and thus there was a presumption that the tax lien holder was an authorized transferee, as she was issued a tax receipt, and the court held that the holder complied with the Tex. Tax Code Ann. § 32.06(a-1) (prior to 2007 amendments). Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Filing a copy of the tax collector's certification of transfer of the tax lien, along with an affidavit concerning the loss of the original tax collector's certification, did not comply with former Tex. Tax Code Ann. § 32.06(d) to create an enforceable transfer of the tax lien; thus, a claim for tax lien priority under Tex. Tax Code Ann. § 32.05(b)(1) failed. Kothmann v. Genesis Tax Loan Servs., 288 S.W.3d 503, 2009 Tex. App. LEXIS 1436 (Tex. App. Amarillo Feb. 27, 2009), rev'd, 339 S.W.3d 104, 2011 Tex. LEXIS 359 (Tex. 2011).

Claim held by a creditor who paid off a taxing authority's tax claim, and subsequently obtained the taxing authority's tax lien under Tex. Tax Code Ann. § 32.06, did not hold a tax claim protected by 11 U.S.C.S. § 511; under Texas law, the tax claim had been paid, a new non-tax claim in favor of the creditor had arisen, and the new claim was secured by the tax lien. Fact that the lien was called a "tax lien" by Tex. Tax Code Ann. § 32.06 did not render the claims secured by the liens tax claims under 11 U.S.C.S. § 511. In re Soto, 410 B.R. 761, 61 Collier Bankr. Cas. 2d (MB) 799, 2009 Bankr. LEXIS 214 (Bankr. S.D. Tex. 2009).

There is nothing in Tex. Tax Code Ann. § 32.05 that indicates that it applies to anyone other than a taxing authority. Therefore, in a lien priority dispute, a mortgage creditor did not have priority to the extent of the ad valorem taxes that it paid on property because it was not a taxing authority, and there was no evidence of a lien transfer from a taxing authority. Cameron Life Ins. Co. v. Pactiv Corp., No. 13-05-760-CV, 2007 Tex. App. LEXIS 6773 (Tex. App. Corpus Christi Aug. 23, 2007).

Nothing in Tex. Tax Code Ann. § 32.06(d) indicates that recording the transfer of a tax lien converts the tax lien to a "first lien" as that term is used in the redemption statute, so as to give it priority over a prior existing lien because it already has priority and the transferee still holds nothing more than the tax lien, which it is entitled to foreclose. ABN AMRO Mortg. Group v. TCB Farm & Ranch Land Invs., 200 S.W.3d 774, 2006 Tex. App. LEXIS 6731 (Tex. App. Fort Worth July 27, 2006, no pet.).

Priority of liens as between claimants does not affect the applicability of a right of redemption as between an existing lienholder and a purchaser at a tax sale. ABN AMRO Mortg. Group v. TCB Farm & Ranch Land Invs., 200 S.W.3d 774, 2006 Tex. App. LEXIS 6731 (Tex. App. Fort Worth July 27, 2006, no pet.).

Trial court erred in finding that a secured lienholder was not the holder of the "first lien" of property, as provided in the version of Tex. Tax Code Ann. § 32.06(i) in effect in 2004, and, therefore, not entitled to redeem the property from a purchaser who obtained a foreclosure sale deed from a party who had foreclosed on its transferred tax lien because the secured lienholder's prior lien was not required to be recorded first in order to be a "first lien" entitling it to exercise the right of redemption; the principle of lien priority based upon time of filing did not apply to a tax lien. ABN AMRO Mortg. Group v. TCB Farm & Ranch Land Invs., 200 S.W.3d 774, 2006 Tex. App. LEXIS 6731 (Tex. App. Fort Worth July 27, 2006, no pet.).

In a tax lien foreclosure suit, the tax lien holder was not estopped from recovering attorney fees at the rate of 15 percent under Tex. Tax Code Ann. § 33.48; although the tax lien holder requested attorney fees as authorized by Tex. Tax Code Ann. § 32.06 et seq., that citation reasonably included Tex. Tax Code Ann. § 32.065(c), which provided that an assignee of a taxing authority was subrogated to all rights of the taxing authority, and the issue was not properly preserved under Tex. R. App. P. 33.1(a) and Tex. R. Evid. 103(a)(1) because an estoppel argument was not made to the trial court. JB Joyce, Ltd. v. Regions Fin. Corp., No. 06-04-000140-CV, 2005 Tex. App. LEXIS 7246 (Tex. App. Texarkana Sept. 1, 2005).

PRIORITIES & RECORDING

General Overview. — Nothing in Tex. Tax Code Ann. § 32.06(d) indicates that recording the transfer of a tax lien converts the tax lien to a "first lien" as that term is used in the redemption statute, so as to give it priority over a prior existing lien because it already has priority and the transferee still holds nothing more than the tax lien, which it is entitled to foreclose. ABN AMRO Mortg. Group v. TCB Farm & Ranch Land Invs., 200 S.W.3d 774, 2006 Tex. App. LEXIS 6731 (Tex. App. Fort Worth July 27, 2006, no pet.).

TAX LAW

State & Local Taxes

Administration & Proceedings

Tax Liens. — Trial court did not err in granting the limited liability company's (LLC) motion for summary judgment on the property owner's suit against the LLC seeking a declaration that the 2010 foreclosure sale extinguished the tax liens because the statute did not require sworn certificates; section 32.06(b) provided explicit instructions for how a tax collector was to verify that a tax lien had been transferred, and these instructions did not include swearing to the contents of the certification. Millstone Inv. & Mgmt., L.L.C. v. BNC Retax, L.L.C., 410 S.W.3d 869, 2013 Tex. App. LEXIS 9887 (Tex. App. Houston 14th Dist. Aug. 8, 2013, no pet.).

Where, as here, there is substantial compliance with Tex. Tax Code Ann. §§ 32.06, 32.065 (prior to the 2007 amendments), any defect in the contract regarding those sections renders the foreclosure sale merely voidable, but does not, by itself, render it void; even if the requirements of Tex. Tax Code Ann. § 32.065(b) were not spelled out in one of the recorded documents in this case, the sworn affidavit, certified statement, and deed of trust were recorded, notice of foreclosure was given, and the company knew of the tax lien transfer, the foreclosure sale, and the redemption period. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Tax lienholder was permitted to conduct a foreclosure sale without a court order, given that, for purposes of former Tex. Tax Code Ann. § 32.06, as notice was served; the foreclosure took place less than one year after the lien was recorded, but the

contract provided for waiver of the one-year restriction. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Agreement for tax transfer stated it was secured under Tex. Tax Code Ann. §§ 32.06, 32.065 (prior to 2007 amendments) and was further secured by a deed of trust; in reading the documents together as was permitted, the contract allowed for foreclosure under the law in effect when the contract was executed, and thus the prior law applied. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Redemption period had passed, the tax lien transfer was no longer voidable, and a limited liability company's title was absolute, and as the tax lien transfer substantially complied with Tex. Tax Code Ann. §§ 32.06 and 32.065 (prior to the 2007 amendments), the tax lien transfer was effective to transfer the lien. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Statute in effect at the time, Tex. Tax Code Ann. § 32.06 (prior to the 2007 amendments) required only that the sworn authorization and certified statement be filed in order for the lien transfer to be effective, and the court holds that where, as here, the actions required by Tex. Tax Code Ann. §§ 32.06 and 32.065(b) have been performed and the only alleged defects are that the contract between the parties did not contain provisions expressly requiring those actions and the agreement was not recorded, those defects may render the foreclosure sale voidable, but do not, by themselves, render the foreclosure sale void. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Both a sworn authorization and a certified statement were recorded where the property was located, and thus the separate recordings of the documents did not invalidate the tax lien transfer. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Court concluded that there is no requirement in Tex. Tax Code Ann. § 32.06(b) (prior to 2007 amendments) that both documents, the sworn authorization and the certified statement, be recorded at the same time, so long as they are both recorded in the proper county records; the court agrees with the court's holding. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Tex. Tax Code Ann. § 32.06(b), as it existed prior to the 2007 amendments, expressly permitted that the sworn document, tax receipt and affidavit attesting to the transfer may be combined into one document; the court holds that where, as here, the tax collector (1) issued the certified statement that the taxes were paid and the tax lien was transferred, (2) affixed its seal of office to the certified statement, and (3) the certified statement was recorded, it is not required that the tax collector's certification and seal appear on the sworn authorization or that the sworn authorization be notarized. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Tax collector's certified statement that was recorded contained statements concerning payment of taxes and transfer of the lien required by statute, and the statement was marked with the tax collector's seal as required by Tex. Tax Code Ann. § 32.06(b) (prior to the 2007 amendments). Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Because the property was not a homestead, the right of redemption was exercisable during a period lasting 180 days from the date on which the purchaser's deed was recorded, under Tex. Tax Code Ann. § 32.06(b) as it then existed; given that the company did not timely exercise its rights during the proper redemption period, any defect in the contract for tax payments was waived, and the title of the limited liability company to the property was absolute. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Purchaser at a tax sale, such as the limited liability company in this case, purchased with knowledge that his title might be defeated via redemption. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Legislature amended the tax lien statutes, including Tex. Tax Code Ann. §§ 32.06, 32.065, but the effective date of the amendments was September 1, 2007; as the tax lien transfer in this case took place in July 2007, the transfer was governed by the statutes as they existed at that time. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Company's property interest was not extinguished by a tax lien foreclosure sale, and instead the interest became subject to a right of redemption, and the foreclosure sale was voidable at the insistence of the company, if it had exercised its right of redemption during the redemption period. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Company did not present evidence that the tax collector acted in any way other than what the law required, and thus there was a presumption that the tax lien holder was an authorized transferee, as she was issued a tax receipt, and the court held that the holder complied with the Tex. Tax Code Ann. § 32.06(a-1) (prior to 2007 amendments). Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

REAL PROPERTY TAX

Collection

Tax Deeds & Tax Sales. — In a redemption of real property purchased at a non-judicial tax foreclosure sale, the first lienholder's deposit into the registry of the court was a proper tender of payment for redemption purposes. Canfield v. Wells Fargo Bank, N.A., No. 09-06-089-CV, 2006 Tex. App. LEXIS 8486 (Tex. App. Beaumont Sept. 28, 2006).

In a redemption of real property purchased at a non-judicial tax foreclosure sale, the costs included in the redemption amount were those reasonably spent by the purchaser for maintaining, preserving, and safekeeping the property. Canfield v. Wells Fargo Bank, N.A., No. 09-06-089-CV, 2006 Tex. App. LEXIS 8486 (Tex. App. Beaumont Sept. 28, 2006).

First lienholder was entitled under Tex. Tax Code Ann. § 32.06 to redeem real property purchased at a non-judicial tax foreclosure sale; however, tendering 118 percent of the purchase price was insufficient because the statutory cap of 118 percent of the amount of the judgment could not apply where no judgment existed because the sale was held pursuant to Tex. Prop. Code Ann. § 51.002, and the redemption amount was the tax sale purchase price plus costs. Canfield v. Wells Fargo Bank, N.A., No. 09-06-089-CV, 2006 Tex. App. LEXIS 8486 (Tex. App. Beaumont Sept. 28, 2006).

TAX LIENS. — Prior to the homeowner's purchase, the lienholder had the opportunity to raise its complaints regarding lack of notice and deficiencies in the contract between the prior owner and the lender and seek to have the tax foreclosure sale declared void, and because the lienholder failed to do so and because the documents that had to be recorded for an enforceable tax lien transfer under Tex. Tax Code Ann. § 32.06—the prior owner's deed of trust, the sworn authorization for payment of taxes and the tax collector's certified statement—were in fact recorded and satisfied the statutory requirements, the homeowner and bank were not on notice that the tax foreclosure sale arguably failed to extinguished the lienholder's claims on the property; the evidence put forth by the homeowner and bank demonstrating lack of notice of the lienholder's claims against the property was sufficient to satisfy their summary judgment burden. WMC Mortg. Corp. v. Moss, No. 01-10-00948-CV, 2011 Tex. App. LEXIS 3853 (Tex. App. Houston 1st Dist. May 19, 2011).

Under Tex. Tax Code Ann. § 32.06, the lender's tax liens were enforceable because verified copies were recorded in lieu of originals, and the tax collector's certification was properly acknowledged before a notary; the tax collector's recordkeeping was irrelevant to enforceability of lender's liens, as were the issuance

of receipts. Genesis Tax Loan Servs. v. Kothmann, 339 S.W.3d 104, 2011 Tex. LEXIS 359 (Tex. 2011).

Lender's tax liens were enforceable because verified copies were recorded in lieu of originals. Genesis Tax Loan Servs. v. Kothmann, 339 S.W.3d 104, 2011 Tex. LEXIS 359 (Tex. 2011).

Claim held by a creditor who paid off a taxing authority's tax claim, and subsequently obtained the taxing authority's tax lien under Tex. Tax Code Ann. § 32.06, did not hold a tax claim protected by 11 U.S.C.S. § 511; under Texas law, the tax claim had been paid, a new non-tax claim in favor of the creditor had arisen, and the new claim was secured by the tax lien. Fact that the lien was called a "tax lien" by Tex. Tax Code Ann. § 32.06 did not render the claims secured by the liens tax claims under 11 U.S.C.S. § 511. In re Soto, 410 B.R. 761, 61 Collier Bankr. Cas. 2d (MB) 799, 2009 Bankr. LEXIS 214 (Bankr. S.D. Tex. 2009).

Interest on a secured claim was not entitled to the protection of 11 U.S.C.S. § 511 because the fact that the lien was called a tax lien by Tex. Tax Code Ann. § 32.06 did not render the claim secured by tax claims under 11 U.S.C.S. § 511. The tax lien could not secure the payment of the already-extinguished tax debt; instead, it secured the promissory note executed by the debtor payable to the creditor. In re Kizzee-Jordan, 399 B.R. 817, Bankr. L. Rep. (CCH) ¶81420, 2009 Bankr. LEXIS 152 (Bankr. S.D. Tex. 2009).

11 U.S.C.S. § 506(b) and Tex. Tax Code Ann. § 32.06 permit an oversecured creditor holding a claim secured by a transferred tax lien to recover attorney's fees only to the extent of the agreement of the parties. When the attorney's work was in furtherance of the creditor's claim, which was represented by the promissory note, and the note only allowed attorney's fees following an acceleration of the note, the creditor was not entitled to an award of fees without a stipulation on the issue of acceleration. In re Tucker, 391 B.R. 404, 2008 Bankr. LEXIS 2321 (Bankr. S.D. Tex. 2008).

11 U.S.C.S. § 511 did not apply to the claim of a creditor who paid debtors' property tax because the creditor held a tax lien and not a tax claim. Under Tex. Tax Code Ann. § 32.06, a tax lien could only be assigned upon payment of the taxes, and the creditor's payment of the taxes extinguished tax claim. In re Sheffield, 390 B.R. 302, 2008 Bankr. LEXIS 2548 (Bankr. S.D. Tex. 2008).

Creditor's objection to confirmation of a Chapter 13 plan providing for payment of a creditor, who paid the debtors' tax liability under Tex. Tax Code Ann. § 32.06, at less than the contract rate of interest was sustained because 11 U.S.C.S. § 511 applied and thus the creditor was entitled to the contract rate of 18 percent. In re Davis, 352 B.R. 651, 2006 Bankr. LEXIS 2046 (Bankr. N.D. Tex. 2006).

ATTORNEY GENERAL OPINIONS

Analysis

Costs and Fees.
Tax Delinquency.
Tax Lien Does Not Transfer.
Transfers.

Costs and Fees.

A court could conclude that closing costs and lien recordation fees charged by a property tax lien transferee under Tex. Tax Code Ann. § 32.06 are secured by the transferred tax lien. 2012 Tex. Op. Att'y Gen. GA-0965.

Tax Delinquency.

If an individual age sixty-five years or older has appropriately filed a deferment of taxes under Tex. Tax Code Ann. § 33.06, a property tax lender with a tax lien that was perfected prior to the property owner's sixty-fifth birthday may not exercise a remedy of foreclosure or judicial sale until the 181st day after the date the individual no longer owns and occupies the property as a residence homestead. 2010 Tex. Op. Att'y Gen. GA-0787, 2010 Tex. AG LEXIS 35.

Tax Lien Does Not Transfer.

Taxes on property acquired by the State either by condemnation or purchase due by the owner at the time of acquiring the title should be prorated between the taxing units to which taxes are owing upon a pro rata basis from the consideration or award. If the consideration or award be not sufficient to satisfy the taxes, the State nevertheless acquired the property free from tax liens. Liability for the taxes continues as a personal obligation of the owner against whom the taxes were assessed. 1952 Tex. Op. Att'y Gen. V-1393.

Transfers.

The tax assessor-collector, acting alone, must carry out the statutorily required duties related to a transfer of a tax lien under Tex. Tax Code Ann. § 32.06; neither the tax assessor-collector nor the governing body of the taxing unit is empowered to deny the transfer of a tax lien if the conditions of section 32.06 are otherwise met. 2012 Tex. Op. Att'y Gen. GA-0965.

Sec. 32.065. Contract for Foreclosure of Tax Lien.

(a) Section 32.06 does not abridge the right of an owner of real property to enter into a contract for the payment of taxes.

(b) Notwithstanding any agreement to the contrary, a contract entered into under Subsection (a) between a transferee and the property owner under Section 32.06 that is secured by a priority lien on the property shall provide for foreclosure in the manner provided by Section 32.06(c) and:

(1) an event of default;

(2) notice of acceleration; and

(3) recording of the deed of trust or other instrument securing the contract entered into under Subsection (a) in each county in which the property is located.

(b-1) On an event of default and notice of acceleration, the mortgage servicer of a recorded lien encumbering real property may obtain a release of a transferred tax lien on the property by paying the transferee of the tax lien or the holder of the tax lien the amount owed by the property owner to that transferee or holder.

(c) Notwithstanding any other provision of this code, a transferee of a tax lien or the transferee's assignee is subrogated to and is entitled to exercise any right or remedy possessed by the transferring taxing unit, including or related to foreclosure or judicial sale, but is prohibited from exercising a remedy of foreclosure or judicial sale where the transferring taxing unit would be prohibited from foreclosure or judicial sale.

(d) Chapters 342 and 346, Finance Code, and the provisions of Chapter 343, Finance Code, other than Sections 343.203 and 343.205, do not apply to a transaction covered by this section.

(e) If in a contract under this section a person contracts for, charges, or receives a rate or amount of interest that exceeds the rate or amount allowed by this section, the amount of the penalty for which the person is obligated is determined in the manner provided by Chapter 349, Finance Code.

(f) Before accepting an application fee or executing a contract, the transferee shall disclose to the transferee's prospective borrower each type and the amount of possible additional charges or fees that may be incurred by the borrower in connection with the loan or contract under this section.

(g) [Repealed by Acts 2007, 80th Leg., ch. 1329 (S.B. 1520), § 3, effective September 1, 2007.]

(h) An affidavit of the transferee executed after foreclosure of a tax lien that recites compliance with the terms of Section 32.06 and this section and is recorded in each county in which the property is located:

(1) is prima facie evidence of compliance with Section 32.06 and this section; and

(2) may be relied on conclusively by a bona fide purchaser for value without notice of any failure to comply.

(i) An agreement under this section that attempts to create a lien for the payment of taxes that are not delinquent or due at the time the property owner executes the sworn document under Section 32.06(a-1) is void.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1995, 74th Leg., ch. 131 (S.B. 1387), § 1, effective September 1, 1995 (renumbered from Sec. 32.06(j); am. Acts 1997, 75th Leg., ch. 1396 (H.B. 1971), § 39, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 7.91, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 406 (S.B. 1587), § 2, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 14, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(66), effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1220 (H.B. 2138), § 4, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1329 (S.B. 1520), §§ 2, 3, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 22.007, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 206 (S.B. 247), § 9, effective May 29, 2013.

NOTES TO DECISIONS

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BANKRUPTCY LAW
Individuals With Regular Income
Plans

Contents. — Where a third-party lender paid a Chapter 13 debtor's property taxes in exchange for a note that was secured by a deed of trust and a Transfer of Tax Liens obtained from the county, and the debtor's plan proposed to reduce the interest rate on the note, the anti-modification protection under 11 U.S.C.S. § 511 did not apply because, pursuant to Tex. Tax Code Ann. § 32.06 and § 32.065, the lender acquired a tax lien, not a tax claim. In re Prevo, 393 B.R. 464, 2008 Bankr. LEXIS 2720 (Bankr. S.D. Tex. 2008).

PAYMENTS. — Third-party lender's claim was a tax claim, and thus, the interest rate due thereon could not be modified by a debtor's Chapter 13 reorganization plan. The lender, as the transferee of a tax lien and a subrogee of the taxing authorities' rights under Tex. Tax Code Ann. § 32.065(c), held a tax claim for purposes of 11 U.S.C.S. § 511 and enjoyed at least the same advantages and disadvantages of its claim as the taxing authorities would have, including the application of § 511 for the tax claim. Tax Ease Funding, L.P. v. Thompson (In re Kizzee-Jordan), 626 F.3d 239, Bankr. L. Rep. (CCH) ¶81881, 2010 U.S. App. LEXIS 23385 (5th Cir. Tex. 2010).

TAXATION

State & Local Taxes. — Third-party lender's claim was a tax claim, and thus, the interest rate due thereon could not be modified by a debtor's Chapter 13 reorganization plan. The lender, as the transferee of a tax lien and a subrogee of the taxing authorities' rights under Tex. Tax Code Ann. § 32.065(c), held a tax claim for purposes of 11 U.S.C.S. § 511 and enjoyed at least the same advantages and disadvantages of its claim as the taxing authorities would have, including the application of § 511 for the tax claim. Tax Ease Funding, L.P. v. Thompson (In re Kizzee-Jordan), 626 F.3d 239, Bankr. L. Rep. (CCH) ¶81881, 2010 U.S. App. LEXIS 23385 (5th Cir. Tex. 2010).

CIVIL PROCEDURE
Remedies
Costs & Attorney Fees

General Overview. — In a tax lien foreclosure suit, the tax lien holder was not estopped from recovering attorney fees at the rate of 15 percent under Tex. Tax Code Ann. § 33.48; although the tax lien holder requested attorney fees as authorized by Tex. Tax Code Ann. § 32.06 et seq., that citation reasonably included Tex. Tax Code Ann. § 32.065(c), which provided that an assignee of a taxing authority was subrogated to all rights of the taxing authority, and the issue was not properly preserved under Tex. R. App. P. 33.1(a) and Tex. R. Evid. 103(a)(1) because an estoppel argument was not made to the trial court. JB Joyce, Ltd. v. Regions Fin. Corp., No. 06-04-000140-CV, 2005 Tex. App. LEXIS 7246 (Tex. App. Texarkana Sept. 1, 2005).

APPEALS
Reviewability

Preservation for Review. — In a tax lien foreclosure suit, the tax lien holder was not estopped from recovering attorney fees at the rate of 15 percent under Tex. Tax Code Ann. § 33.48; although the tax lien holder requested attorney fees as authorized by Tex. Tax Code Ann. § 32.06 et seq., that citation reasonably included Tex. Tax Code Ann. § 32.065(c), which provided that an assignee of a taxing authority was subrogated to all rights of the taxing authority, and the issue was not properly preserved under Tex. R. App. P. 33.1(a) and Tex. R. Evid. 103(a)(1) because an estoppel argument was not made to the trial court. JB Joyce, Ltd. v. Regions Fin. Corp., No. 06-04-000140-CV, 2005 Tex. App. LEXIS 7246 (Tex. App. Texarkana Sept. 1, 2005).

GOVERNMENTS
Legislation

Interpretation. — Trial court did not err in granting the creditor's plea in abatement, dismissing the buyers' counterclaim for usury, because Tex. Tax Code Ann. § 32.065(e) cross-referenced Tex. Fin. Code Ann. ch. 349 to determine the amount of the penalty, and Tex. Fin. Code Ann. § 349.001 provided that a person who contracted for, charges, or received interest greater than the amount permitted by statute "was liable to the obligor" for certain penalties, Tex. Fin. Code Ann. § 349.001(a) and (b); the Texas Legislature's cross-reference to a statute expressly including the limiting language did not evidence an intent to create a new, broader rule not limited to obligors. Weisfeld v. Tex. Land Fin. Co. II, 162 S.W.3d 379, 2005 Tex. App. LEXIS 2947 (Tex. App. Dallas Apr. 18, 2005, no pet.).

REAL PROPERTY LAW
Financing
Mortgages & Other Security Instruments
Foreclosures

General Overview. — Prior to the homeowner's purchase, the lienholder had the opportunity to raise its complaints regarding lack of notice and deficiencies in the contract between the prior owner and the lender and seek to have the tax foreclosure sale declared void, and because the lienholder failed to do so and because the documents that had to be recorded for an enforceable tax lien transfer under Tex. Tax Code Ann. § 32.06 —the prior owner's deed of trust, the sworn authorization for payment of taxes and the tax collector's certified statement— were in fact recorded and satisfied the statutory requirements, the homeowner and bank were not on notice that the tax foreclosure sale arguably failed to extinguished the lienholder's claims on the property; the evidence put forth by the homeowner and bank demonstrating lack of notice of the lienholder's claims against the property was sufficient to satisfy their summary judgment burden. WMC Mortg. Corp. v. Moss, No. 01-10-00948-CV, 2011 Tex. App. LEXIS 3853 (Tex. App. Houston 1st Dist. May 19, 2011).

NONMORTGAGE LIENS

Tax Liens. — Although a bank's failure to comply with the tax lien transfer statutes did not prevent its subrogation to a tax lien, there were fact questions regarding whether equity required subrogation that precluded summary judgment. The tax lien transfer statutes do not abrogate common law subrogation doctrines, but parties who rely exclusively upon equity to obtain the taxing authority's priority may face additional obstacles not present under the statutes. Lyda Swinerton Builders, Inc. v. Cathay Bank, 409 S.W.3d 221, 2013 Tex. App. LEXIS 10081 (Tex. App. Houston 14th Dist. Aug. 13, 2013, no pet.).

Tax lien foreclosure sale was not void due to the lien holder's failure to wait six months between recording the lien and foreclosing because the other defects rendered the foreclosure sale merely voidable, which meant that it passed title subject to another's right to have it set aside. BAC Home Loans Servicing, LP v. Tex. Realty Holdings, LLC, 901 F. Supp. 2d 884, 2012 U.S. Dist. LEXIS 140373 (S.D. Tex. 2012).

Agreement for tax transfer stated it was secured under Tex. Tax Code Ann. §§ 32.06, 32.065 (prior to 2007 amendments) and was further secured by a deed of trust; in reading the documents together as was permitted, the contract allowed for foreclosure under the law in effect when the contract was executed, and thus the prior law applied. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Redemption period had passed, the tax lien transfer was no longer voidable, and a limited liability company's title was absolute, and as the tax lien transfer substantially complied with Tex. Tax Code Ann. §§ 32.06 and 32.065 (prior to the 2007 amendments), the tax lien transfer was effective to transfer the lien. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Company's arguments concerning the lack of provisions regarding contract recording raised only minor defects that did not affect the transfer's validity, and any defects with regard to Tex. Tax Code Ann. § 32.065(b) (prior to the 2007 amendments) just rendered the foreclosure sale voidable. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Agreement constituted the agreement for the payment of taxes, but did not comply explicitly with Tex. Tax Code Ann. § 32.065(b)(3), (6) requirements (prior to the 2007 amendments), in part because the substitute trustee's notice did not contain certain language that was boldfaced and uppercase; because the purpose of the statute here was to ensure that all interested parties were aware of the foreclosure sale and aware of their statutory rights and the priority of the tax lien, and the company was aware of the foreclosure sale and redemption rights, the notice sent to the company substantially complied with the statute. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Statute in effect at the time, Tex. Tax Code Ann. § 32.06 (prior to the 2007 amendments) required only that the sworn authorization and certified statement be filed in order for the lien transfer to be effective, and the court holds that where, as here, the actions required by Tex. Tax Code Ann. §§ 32.06 and 32.065(b) have been performed and the only alleged defects are that the contract between the parties did not contain provisions expressly requiring those actions and the agreement was not recorded, those defects may render the foreclosure sale voidable, but do not, by themselves, render the foreclosure sale void. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Legislature amended the tax lien statutes, including Tex. Tax Code Ann. §§ 32.06, 32.065, but the effective date of the amendments was September 1, 2007; as the tax lien transfer in this case took place in July 2007, the transfer was governed by the statutes as they existed at that time. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Where, as here, there is substantial compliance with Tex. Tax Code Ann. §§ 32.06, 32.065 (prior to the 2007 amendments), any defect in the contract regarding those sections renders the foreclosure sale merely voidable, but does not, by itself, render it void; even if the requirements of Tex. Tax Code Ann. § 32.065(b) were not spelled out in one of the recorded documents in this case, the sworn affidavit, certified statement, and deed of trust were recorded, notice of foreclosure was given, and the company knew of the tax lien transfer, the foreclosure sale, and the redemption period. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

In a tax lien foreclosure suit, the tax lien holder was not estopped from recovering attorney fees at the rate of 15 percent under Tex. Tax Code Ann. § 33.48; although the tax lien holder requested attorney fees as authorized by Tex. Tax Code Ann. § 32.06 et seq., that citation reasonably included Tex. Tax Code Ann. § 32.065(c), which provided that an assignee of a taxing authority was subrogated to all rights of the taxing authority, and the issue was not properly preserved under Tex. R. App. P. 33.1(a) and Tex. R. Evid. 103(a)(1) because an estoppel argument was not made to the trial court. JB Joyce, Ltd. v. Regions Fin. Corp., No. 06-04-000140-CV, 2005 Tex. App. LEXIS 7246 (Tex. App. Texarkana Sept. 1, 2005).

TAX LAW
State & Local Taxes
Administration & Proceedings

Tax Liens. — Agreement for tax transfer stated it was secured under Tex. Tax Code Ann. §§ 32.06, 32.065 (prior to 2007 amendments) and was further secured by a deed of trust; in reading the documents together as was permitted, the contract allowed for foreclosure under the law in effect when the contract was executed, and thus the prior law applied. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

Redemption period had passed, the tax lien transfer was no longer voidable, and a limited liability company's title was absolute, and as the tax lien transfer substantially complied with

Tex. Tax Code Ann. §§ 32.06 and 32.065 (prior to the 2007 amendments), the tax lien transfer was effective to transfer the lien. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

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Statute in effect at the time, Tex. Tax Code Ann. § 32.06 (prior to the 2007 amendments) required only that the sworn authorization and certified statement be filed in order for the lien transfer to be effective, and the court holds that where, as here, the actions required by Tex. Tax Code Ann. §§ 32.06 and 32.065(b) have been performed and the only alleged defects are that the contract between the parties did not contain provisions expressly requiring those actions and the agreement was not recorded, those defects may render the foreclosure sale voidable, but do not, by themselves, render the foreclosure sale void. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

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Where, as here, there is substantial compliance with Tex. Tax Code Ann. §§ 32.06, 32.065 (prior to the 2007 amendments), any defect in the contract regarding those sections renders the foreclosure sale merely voidable, but does not, by itself, render it void; even if the requirements of Tex. Tax Code Ann. § 32.065(b) were not spelled out in one of the recorded documents in this case, the sworn affidavit, certified statement, and deed of trust were recorded, notice of foreclosure was given, and the company knew of the tax lien transfer, the foreclosure sale, and the redemption period. Avelo Mortg., LLC v. Infinity Capital, LLC, 366 S.W.3d 258, 2012 Tex. App. LEXIS 1965 (Tex. App. Houston 14th Dist. Mar. 13, 2012, no pet.).

REAL PROPERTY TAX

Collection

Tax Liens. — Prior to the homeowner's purchase, the lienholder had the opportunity to raise its complaints regarding lack of notice and deficiencies in the contract between the prior owner and the lender and seek to have the tax foreclosure sale declared void, and because the lienholder failed to do so and because the documents that had to be recorded for an enforceable tax lien transfer under Tex. Tax Code Ann. § 32.06—the prior owner's deed of trust, the sworn authorization for payment of taxes and the tax collector's certified statement—were in fact recorded and satisfied the statutory requirements, the homeowner and bank were not on notice that the tax foreclosure sale arguably failed to extinguished the lienholder's claims on the property; the evidence put forth by the homeowner and bank demonstrating lack of notice of the lienholder's claims against the property was sufficient to satisfy their summary judgment burden. WMC Mortg. Corp. v. Moss, No. 01-10-00948-CV, 2011 Tex. App. LEXIS 3853 (Tex. App. Houston 1st Dist. May 19, 2011).

ATTORNEY GENERAL OPINIONS

Analysis

Purchase by Owner of Foreclosed Property.
Tax Delinquency.

Purchase by Owner of Foreclosed Property.

Real property foreclosed by tax judgment for ad valorem taxes may be purchased by the owner at sheriff's sale at its adjudged value although for an amount less than full amount of judgment. In this event, the owner-tax debtor is liable under the judgment for the deficiency but he acquires title to the property purchased free of the liens for the taxes sued for. The judgment may be enforced for the balance against the tax debtor as any other judgment rendered for a personal Indebtedness. 1972 Tex. Op. Att'y Gen. M-1137.

Tax Delinquency.

If an individual age sixty-five years or older has appropriately filed a deferment of taxes under Tex. Tax Code Ann. § 33.06, a property tax lender with a tax lien that was perfected prior to the property owner's sixty-fifth birthday may not exercise a remedy of foreclosure or judicial sale until the 181st day after the date the individual no longer owns and occupies the property as a residence homestead. 2010 Tex. Op. Att'y Gen. GA-0787, 2010 Tex. AG LEXIS 35.

Sec. 32.07. Personal Liability for Tax.

(a) Except as provided by Subsections (b) and (c) of this section, property taxes are the personal obligation of the person who owns or acquires the property on January 1 of the year for which the tax is imposed or would have been imposed had property not been omitted as described under Section 25.21. A person is not relieved of the obligation because he no longer owns the property.

(b) The person in whose name a property is required to be listed by Section 25.13 of this code is personally liable for the taxes imposed on the property.

(c) A qualifying trust as defined by Section 11.13(j) and each trustor of the trust are jointly and severally liable for the tax imposed on the interest of the trust in a residence homestead.

(d) Any person who receives or collects an ad valorem tax or any money represented to be a tax from another person holds the amount so collected in trust for the benefit of the taxing unit and is liable to the taxing unit for the full amount collected plus any accrued penalties and interest on the amount collected.

(e) With respect to an ad valorem tax or other money subject to the provisions of Subsection (d), an individual who controls or supervises the collection of tax or money from another person, or an individual who controls or supervises the accounting for and paying over of the tax or money, and who wilfully fails to pay or cause to be paid the tax or money is liable as a responsible individual for an amount equal to the tax or money, plus all interest, penalties, and costs, not

paid or caused to be paid. The liability imposed by this subsection is in addition to any other penalty provided by law. The dissolution of a corporation, association, limited liability company, or partnership does not affect a responsible individual's liability under this subsection.

(f) Venue for suits arising under this section shall be governed by Section 33.41(a).

(g) In this section:

(1) "Responsible individual" includes an officer, manager, director, or employee or a corporation, association, or limited liability company or a member of a partnership who, as an officer, manager, director, employee, or member, is under a duty to perform an act with respect to the collection, accounting, or payment of a tax or money subject to the provisions of Subsection (d).

(2) "Tax" includes any ad valorem tax or money subject to the provisions of Subsection (d), including the penalty and interest computed by reference to the amount of the tax or money.

(h) For purposes of Subsection (a), a person is considered to be an owner of property subject to an installment contract of sale if the person is:

(1) the seller of the property; or

(2) a purchaser of the property who has the duty under the installment contract to pay taxes on the property.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1993, 73rd Leg., ch. 854 (H.B. 2813), § 4, effective January 1, 1994; am. Acts 1995, 74th Leg., ch. 579 (S.B. 642), § 10, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 2, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), §§ 14, 15, effective January 1, 2000; am. Acts 2005, 79th Leg., ch. 846 (S.B. 898), § 3, effective September 1, 2005.

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BANKRUPTCY LAW
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Taxes. — Bankruptcy court disallowed claims filed by three Texas taxing authorities, seeking payment of ad valorem taxes they claimed Chapter 11 debtors owed on inventory they owned shortly before they abandoned the inventory pursuant ot 11 U.S.C.S. § 554, because the claims were untimely. To the extent inventory the debtors owned was not abandoned on January 1, 2009, the taxing authorities were entitled to a tax lien on the property pursuant to Tex. Tax Code Ann. §§ 32.01 and 32.07, and they had an obligation under 11 U.S.C.S. § 503(b)(1)(D) to file a claim against the debtors' bankruptcy estate by the bar date the court established in its Administrative Bar Date Order. In re Bh S&b Holdings Llc, 435 B.R. 153, 2010 Bankr. LEXIS 2264 (Bankr. S.D.N.Y. 2010).

PREPETITION CUSTOMS DUTIES & TAXES. — The creditor claimed that the debt did not arise as between the debtors and the lender until the taxes were assessed upon receipt of the October tax bill, which was postpetition. The court rejected that argument, finding the taxes became due and payable under Tex. Tax Code Ann. § 32.07 on January 1 of each year, and thus were a pre-petition obligation. Caesar's Landscaping v. Countrywide Home Loans, Inc. (In re Campbell), No. 06-31321, No. 06-3476, 57 Collier Bankr. Cas. 2d (MB) 631, 2007 Bankr. LEXIS 4622 (Bankr. S.D. Tex. Jan. 26, 2007), amended, 361 B.R. 831, 57 Collier Bankr. Cas. 2d (MB) 1348, 2007 Bankr. LEXIS 936 (Bankr. S.D. Tex. 2007).

BUSINESS & CORPORATE LAW
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Management Duties & Liabilities
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Partnership Liabilities. — Appellees were entitled to rely upon the recitations contained in the deed filed of record, indicating that the property owner's brother was a partner in the company, when attempting to determine ownership of the property for purposes of effecting service of process; as citation served on one member of a partnership authorized a judgment against the partnership, Tex. Civ. Prac. & Rem. Code Ann. § 17.022, service upon the brother was effective to authorize a judgment against the company. Reed v. County of Tarrant, No. 02-11-00285-CV, 2012 Tex. App. LEXIS 4197 (Tex. App. Fort Worth May 24, 2012).

CIVIL PROCEDURE
Justiciability
Standing

General Overview. — In response to a plea to the jurisdiction by a county appraisal district, a trial court did not err in dismissing without prejudice a suit brought by a property seller and its buyer for judicial review of resolution of an ad valorem tax-valuation protest for the 2005 tax year where neither the seller nor the buyer had standing in the district court because: (1) the seller did not own the property on January 1, 2005, and thus had no legal right to appeal under Tex. Tax Code Ann. § 42.01(1)(A), and its lack of standing as owner thus precluded its "party" status under Tex. Tax Code Ann. § 42.21(a); (2) the buyer had neither a legal right to enforce, nor any real controversy for the trial court to determine, as the buyer did not pursue its Tex. Tax Code Ann. ch. 41 right to protest the valuation before the district's appraisal review board, and thus the board never determined a protest by the buyer as the property owner pursuant to Tex. Tax Code Ann. § 42.01(a); and (3) no proper party having appealed to the district court within the 45-day time limit of Tex. Tax Code Ann. § 42.21(a), it never acquired subject-matter jurisdiction, and the board's valuation became final when those 45 days expired. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

Grantor of transferred property had standing to proceed under Tex. Tax. Code Ann. § 42.01(1) with an appeal to the district court for a de novo review of the appraisal value of the property which it owned as of the first day of the year in which the property taxes were imposed, despite the fact that the property was transferred to a new owner before the appeal was filed, because the property taxes were the personal obligation of the grantor at the time the tax obligation accrued pursuant to Tex. Tax. Code Ann. § 32.07(a) and the grantor was not relieved of the obligation due to the transfer of ownership. Department of Hous. & Urban Dev. v. Nueces County Appraisal Dist., 875 S.W.2d 377, 1994 Tex. App. LEXIS 646 (Tex. App. Corpus Christi Mar. 24, 1994, no writ).

PRETRIAL JUDGMENTS
Default

Relief From Default. — Lienholder seeking relief from a post-answer default judgment for property taxes asserted a meritorious defense that, having repossessed mobile homes for the purpose of selling them pursuant to a security agreement, it was not the owner of the mobile homes. Green Tree Servicing, LLC v. Travis County, No. 03-10-00709-CV, 2011 Tex. App. LEXIS 7272 (Tex. App. Austin Aug. 31, 2011).

COMMERCIAL LAW (UCC)
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Leases. — Summary judgment in favor of the taxing units was proper in a suit for delinquent ad valorem taxes against an automobile leasing company as the company's affirmative defense of nonownership based on its claim that its leases with its customers were security agreements failed as a matter of law under Tex. Bus. & Com. Code Ann. § 1.203(b); the company's leases expressly provided that they were subject to termination by the lessee, and no party claimed ambiguity in the subject lease agreements. Excel Auto & Truck Leasing, LLP v. Alief Indep. Sch. Dist., No. 01-04-01185-CV, 2007 Tex. App. LEXIS 3032 (Tex. App. Houston 1st Dist. Apr. 19, 2007), op. withdrawn, sub. op., reh'g denied, 249 S.W.3d 46, 63 U.C.C. Rep. Serv. 2d (CBC) 846, 2007 Tex. App. LEXIS 7359 (Tex. App. Houston 1st Dist. Aug. 31, 2007).

CONSTITUTIONAL LAW
Congressional Duties & Powers
Commerce Clause

Dormant Commerce Clause. — Natural gas distributor owned working gas in a storage facility in Texas for ad valorem tax purposes; however, the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, shielded the gas from ad valorem taxation because the gas was in interstate commerce, and the storage of the gas did not remove it from interstate commerce. Peoples Gas, Light & Coke Co. v. Harrison Cent. Appraisal Dist., 270 S.W.3d 208, 172 Oil & Gas Rep. 207, 2008 Tex. App. LEXIS 7077 (Tex. App. Texarkana Sept. 24, 2008), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3177 (U.S. 2011).

ESTATE, GIFT & TRUST LAW
Estate Administration
Claims Against Estates

General Overview. — In the taxing entities' suit to recover unpaid ad valorem taxes on property inherited by the decedent's son, judgment in favor of the taxing entities was proper as it was against the property rather than the son, the trial court had jurisdiction, and the son failed to demonstrate any violation of his constitutional rights to open courts and due process. As the taxing entities amended their petition to include the heirs of the father "in rem only," they were seeking judgment against the property, and the trial court did not impose personal liability on the son for delinquent taxes incurred prior to his acquisition of the property as his father's heir. Stoker v. City of Fort Worth, No. 2-08-103-CV, 2009 Tex. App. LEXIS 5507 (Tex. App. Fort Worth July 16, 2009).

TAX LAW
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General Overview. — Mortgage creditor's effort to raise debtors' post-petition mortgage payment to make up for deficit in state tax escrow constituted willful violation of automatic stay under 11 U.S.C.S. § 362 because liability attached, per Tex. Tax Code Ann. § 32.01(a) and Tex. Tax Code Ann. § 32.07, on January 1 of the year in which the debtors filed their bankruptcy proceeding and thus constituted a prepetition debt that was within the scope of the automatic stay. Campbell v. Countrywide Home Loans, Inc. (In re Campbell), 2007 Bankr. LEXIS 314 (Bankr. S.D. Tex. Jan. 26 2007).

In school district's appeal from a take-nothing judgment in favor of taxpayer in an action to collect delinquent ad valorem taxes allegedly owed by taxpayer arising from taxpayer's ownership of an aircraft, the court reversed because the tax was properly assessed against taxpayer pursuant to Tex. Tax Code Ann. § 32.07(a), because taxpayer failed to notify the taxing authority that taxpayer did not own the property on the date the tax was assessed, and the taxing authority had no actual knowledge that taxpayer did not own the property. Alief Independent School Dist. v. Moses, No. A14-90-01126-CV, 1991 Tex. App. LEXIS 2385 (Tex. App. Houston 14th Dist. Sept. 26, 1991).

COLLECTION. — Because a trust still retained the full acres on the record date for purposes of property tax assessments in 1997, the entire tax bill for that year was to be mailed to the trust under Tex. Tax Code Ann. §§ 22.01, 25.02, 32.07. Old Farms Owners Ass'n v. Houston Indep. Sch. Dist., 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

JUDICIAL REVIEW. — In response to a plea to the jurisdiction by a county appraisal district, a trial court did not err in dismissing without prejudice a suit brought by a property seller and its buyer for judicial review of resolution of an ad valorem tax-valuation protest for the 2005 tax year where neither the seller nor the buyer had standing in the district court because: (1) the seller did not own the property on January 1, 2005, and thus had no legal right to appeal under Tex. Tax Code Ann. § 42.01(1)(A), and its lack of standing as owner thus precluded its "party" status under Tex. Tax Code Ann. § 42.21(a); (2) the buyer had neither a legal right to enforce, nor any real controversy for the trial court to determine, as the buyer did not pursue its Tex. Tax Code Ann. ch. 41 right to protest the valuation before the district's appraisal review board, and thus the board never determined a protest by the buyer as the property owner pursuant to Tex. Tax Code Ann. § 42.01(a); and (3) no proper party having appealed to the district court within the 45-day time limit of Tex. Tax Code Ann. § 42.21(a), it never acquired subject-matter jurisdiction, and the board's valuation became final when those 45 days expired. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

TAX LIENS. — Bankruptcy court disallowed claims filed by three Texas taxing authorities, seeking payment of ad valorem

taxes they claimed Chapter 11 debtors owed on inventory they owned shortly before they abandoned the inventory pursuant ot 11 U.S.C.S. § 554, because the claims were untimely. To the extent inventory the debtors owned was not abandoned on January 1, 2009, the taxing authorities were entitled to a tax lien on the property pursuant to Tex. Tax Code Ann. §§ 32.01 and 32.07, and they had an obligation under 11 U.S.C.S. § 503(b)(1)(D) to file a claim against the debtors' bankruptcy estate by the bar date the court established in its Administrative Bar Date Order. In re Bh S&b Holdings Llc, 435 B.R. 153, 2010 Bankr. LEXIS 2264 (Bankr. S.D.N.Y. 2010).

PERSONAL PROPERTY TAX

General Overview. — Natural gas distributor owned working gas in a storage facility in Texas for ad valorem tax purposes; however, the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, shielded the gas from ad valorem taxation because the gas was in interstate commerce, and the storage of the gas did not remove it from interstate commerce. Peoples Gas, Light & Coke Co. v. Harrison Cent. Appraisal Dist., 270 S.W.3d 208, 172 Oil & Gas Rep. 207, 2008 Tex. App. LEXIS 7077 (Tex. App. Texarkana Sept. 24, 2008), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3177 (U.S. 2011).

TANGIBLE PROPERTY

General Overview. — Term "owner," as used in tEX. tAX cODE aNN. §/N 32.07 means a person or entity holding legal title to the property, or holding an equitable right to obtain legal title to the property; this definition of "owner" does not encompass a lienholder who takes possession of personal property collateral for the purpose of selling it pursuant to a security agreement. Comerica Acceptance Corp. v. Dallas Cent. Appraisal Dist., 52 S.W.3d 495, 2001 Tex. App. LEXIS 5179 (Tex. App. Dallas July 31, 2001, no pet.).

Where the taxing authorities introduced delinquent tax rolls under Tex. Tax Code Ann. §§ 33.47(a), 41.41, 42.09(b)(1), (2), the taxpayer waived any complaint about the manner in which the taxing authorities determined that the taxpayer was the party responsible for the taxes because the taxpayer's failure to pursue administrative remedies precluded any protest in a subsequent suit for delinquent taxes, except for the affirmative defenses of non-ownership and the taxing authority's lack of jurisdiction over the property. General Elec. Capital Corp. v. Corpus Christi, 850 S.W.2d 596, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 468 (Tex. App. Corpus Christi Feb. 11, 1993, writ denied), modified in part, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 790 (Tex. App. Corpus Christi 1993).

Under Tex. Tax Code Ann. §§ 25.06, 32.07, a secured party in possession of personal property can be held responsible for ad valorem taxes, and for purposes of ad valorem taxation, the secured party in possession is the equivalent of the title owner. General Elec. Capital Corp. v. Corpus Christi, 850 S.W.2d 596, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 468 (Tex. App. Corpus Christi Feb. 11, 1993, writ denied), modified in part, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 790 (Tex. App. Corpus Christi 1993).

FAILURE TO PAY TAX. — Summary judgment in favor of the taxing units was proper in a suit for delinquent ad valorem taxes against an automobile leasing company as the company's affirmative defense of nonownership based on its claim that its leases with its customers were security agreements failed as a matter of law under Tex. Bus. & Com. Code Ann. § 1.203(b); the company's leases expressly provided that they were subject to termination by the lessee, and no party claimed ambiguity in the subject lease agreements. Excel Auto & Truck Leasing, LLP v. Alief Indep. Sch. Dist., No. 01-04-01185-CV, 2007 Tex. App. LEXIS 3032 (Tex. App. Houston 1st Dist. Apr. 19, 2007), op. withdrawn, sub. op., reh'g denied, 249 S.W.3d 46, 63 U.C.C. Rep. Serv. 2d (CBC) 846, 2007 Tex. App. LEXIS 7359 (Tex. App. Houston 1st Dist. Aug. 31, 2007).

IMPOSITION OF TAX. — Lienholder seeking relief from a post-answer default judgment for property taxes asserted a meritorious defense that, having repossessed mobile homes for the purpose of selling them pursuant to a security agreement, it was not the owner of the mobile homes. Green Tree Servicing, LLC v. Travis County, No. 03-10-00709-CV, 2011 Tex. App. LEXIS 7272 (Tex. App. Austin Aug. 31, 2011).

REAL PROPERTY TAX

General Overview. — Tax Code made a purchaser of property under an installment contract the owner of the property for tax purposes, Tex. Tax Code Ann. § 32.07(h), but nevertheless, subsection (h) did not grant the purchaser of property under a contract for sale legal title in the property; therefore, subsection (h) did not subject the Texas Veterans Land Board's legal title in the buyer's property to foreclosure. Montgomery County v. Veterans Land Bd., 342 S.W.3d 219, 2011 Tex. App. LEXIS 3552 (Tex. App. Beaumont May 12, 2011, no pet.).

County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

ASSESSMENT & VALUATION

General Overview. — Fact that one or more of the taxpayers held title to the property before it was sold established their right to claim the excess proceeds as the former owner; because the taxpayers made a claim based on ownership, within two years, they were entitled to the excess proceeds. Dallas County City of Grand Prairie v. Sides, 430 S.W.3d 649, 2014 Tex. App. LEXIS 5042 (Tex. App. Dallas May 8, 2014, no pet.).

County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

COLLECTION

Tax Liens. — Appellees were entitled to rely upon the recitations contained in the deed filed of record, indicating that the property owner's brother was a partner in the company, when attempting to determine ownership of the property for purposes of effecting service of process; as citation served on one member of a partnership authorized a judgment against the partnership, Tex. Civ. Prac. & Rem. Code Ann. § 17.022, service upon the brother was effective to authorize a judgment against the company. Reed v. County of Tarrant, No. 02-11-00285-CV, 2012 Tex. App. LEXIS 4197 (Tex. App. Fort Worth May 24, 2012).

Tax Code made a purchaser of property under an installment contract the owner of the property for tax purposes, Tex. Tax Code Ann. § 32.07(h), but nevertheless, subsection (h) did not grant the purchaser of property under a contract for sale legal title in the property; therefore, subsection (h) did not subject the Texas Veterans Land Board's legal title in the buyer's property to foreclosure. Montgomery County v. Veterans Land Bd., 342 S.W.3d 219, 2011 Tex. App. LEXIS 3552 (Tex. App. Beaumont May 12, 2011, no pet.).

In the taxing entities' suit to recover unpaid ad valorem taxes on property inherited by the decedent's son, judgment in favor of the taxing entities was proper as it was against the property rather than the son, the trial court had jurisdiction, and the son failed to demonstrate any violation of his constitutional rights to open courts and due process. As the taxing entities amended their petition to include the heirs of the father "in rem only," they were seeking judgment against the property, and the trial court did not impose personal liability on the son for delinquent taxes incurred prior to his acquisition of the property as his father's heir. Stoker

v. City of Fort Worth, No. 2-08-103-CV, 2009 Tex. App. LEXIS 5507 (Tex. App. Fort Worth July 16, 2009).

CHAPTER 33

Delinquency

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Subchapter A

General Provisions

Sec. 33.01. Penalties and Interest.

(a) A delinquent tax incurs a penalty of six percent of the amount of the tax for the first calendar month it is delinquent plus one percent for each additional month or portion of a month the tax remains unpaid prior to July 1 of the year in which it becomes delinquent. However, a tax delinquent on July 1 incurs a total penalty of twelve percent of the amount of the delinquent tax without regard to the number of months the tax has been delinquent. A delinquent tax continues to incur the penalty provided by this subsection as long as the tax remains unpaid, regardless of whether a judgment for the delinquent tax has been rendered.

(b) If a person who exercises the split-payment option provided by Section 31.03 of this code fails to make the second payment before July 1, the second payment is delinquent and incurs a penalty of twelve percent of the amount of unpaid tax.

(c) A delinquent tax accrues interest at a rate of one percent for each month or portion of a month the tax remains unpaid. Interest payable under this section is to compensate the taxing unit for revenue lost because of the delinquency.

A delinquent tax continues to accrue interest under this subsection as long as the tax remains unpaid, regardless of whether a judgment for the delinquent tax has been rendered.

(d) In lieu of the penalty imposed under Subsection (a), a delinquent tax incurs a penalty of 50 percent of the amount of the tax without regard to the number of months the tax has been delinquent if the tax is delinquent because the property owner received an exemption under:

(1) Section 11.13 and the chief appraiser subsequently cancels the exemption because the residence was not the principal residence of the property owner and the property owner received an exemption for two or more additional residence homesteads for the tax year in which the tax was imposed;

(2) Section 11.13(c) or (d) for a person who is 65 years of age or older and the chief appraiser subsequently cancels the exemption because the property owner was younger than 65 years of age; or

(3) Section 11.13(q) and the chief appraiser subsequently cancels the exemption because the property owner was younger than 55 years of age when the property owner's spouse died.

(e) A penalty imposed under Subsection (d) does not apply if:

(1) the exemption was granted by the appraisal district or board and not at the request or application of the property owner or the property owner's agent; or

(2) at any time before the date the tax becomes delinquent, the property owner gives to the chief appraiser of the appraisal district in which the property is located written notice of circumstances that would disqualify the owner for the exemption.

(f) Notwithstanding the other provisions of this section, a delinquent tax for which a person defers payment under Section 31.02(b) that is not paid on or before the date the deferral period prescribed by that subsection expires:

(1) accrues interest at a rate of six percent for each year or portion of a year the tax remains unpaid; and

(2) does not incur a penalty.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 127, effective January 1, 1982; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 5.3, effective August 26, 1991; am. Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 3, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 33, effective January 1, 1998; am. Acts 2019, 86th Leg., ch. 788 (H.B. 1883), § 2, effective September 1, 2019.

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BANKRUPTCY LAW
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Secured Creditors Rights. — County, an oversecured taxing authority with a tax claim against a Chapter 13 debtor, was not entitled to interest on interest, interest on penalties, or interest on fees under 11 U.S.C.S. § 511 because, pursuant to Tex. Tax Code Ann. § 33.01(a), the county could only claim 12 percent interest on the principal of its tax claim. In re Jones, 368 B.R. 602, Bankr. L. Rep. (CCH) ¶80905, 2007 Bankr. LEXIS 1436 (Bankr. S.D. Tex. 2007).

TAXATION
State & Local Taxes. — Liens for penalties and interest on ad valorem taxes which accrued under Tex. Tax Code Ann. §§ 33.01 and 33.07 during pendency of taxpayer's bankruptcy were not void but merely voidable because of the automatic stay provisions of the federal bankruptcy code, and were not subject to collateral attack outside the U.S. bankruptcy court. Walker's Country Place v. Central Appraisal Dist., 867 S.W.2d 111, 1993 Tex. App. LEXIS 3239 (Tex. App. Eastland Dec. 2, 1993, no writ).

CIVIL PROCEDURE
Remedies
Costs & Attorney Fees

General Overview. — Where a school district taxing authority incorrectly described a property owner's lot which had been subdivided, but subsequently recombined once a penalty was assessed to the property owners under Tex. Tax Code Ann. §§ 33.01 or 33.07, the Texas Tax Code prohibited a taxing unit from recovering attorney's fees under Tex. Tax Code Ann. § 33.48. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

JUDGMENT INTEREST
General Overview. — Where the evidence was insufficient to show that the county failed to deliver tax bills to the property owners, the taxes owed to the county for those tax years were delinquent and the trial court erred in failing to award interest on the unpaid taxes and post-judgment interest under Tex. Tax Code Ann. §§ 33.01(c) and 33.55. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

GOVERNMENTS
Legislation

Interpretation. — Tex. Tax Code Ann. §§ 33.01(a) and 33.07(a) establish the amount of penalty and the conditions under which a penalty continues, but are not definitions of whether an assessment is or is not a penalty, thus, the appellate court holds that any penalty assessed, regardless of when, is a penalty under Tex. Tax Code Ann. §§ 33.01 and 33.07. Spring Branch Indep.

Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — School district was not entitled to penalties or interest for those tax years where property owners' testimony of non-receipt of delinquency notices coupled with the discrepancy in the school district's records relating to the owners' address, and the testimony of the district's appraiser that the notices were not mailed first-class, was sufficient to support the trial court's finding that the district did not "deliver" the notices to the owner. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

Trial court erred in holding statutory requirement involving preparation and mailing of a corrected tax bill under Tex. Tax Code Ann. § 26.15(d) and (e) incorporated a separate postponement of the delinquency provision contained in Tex. Tax Code Ann. § 31.04 and in assuming corrected tax bill completely voided the original tax bill; the court concluded that the taxpayer was required to pay the interest and penalties under Tex. Tax Code Ann. § 33.01 because there was no evidence explaining why the taxpayer did not pay the taxes prior to delinquency despite the corrected tax bill. Richardson Indep. Sch. Dist. v. GE Capital Corp., 58 S.W.3d 290, 2001 Tex. App. LEXIS 6876 (Tex. App. Dallas Oct. 12, 2001, no pet.).

FAILURE TO PAY TAX. — Although a taxpayer delayed payment thinking it would receive corrected bills for each tax year, the taxpayer did not protest or comply with procedures to contest the assessments at issue, for purposes of Tex. Tax Code Ann. §§ 41.41, 41.44, 42.01, and delinquent taxes incurred penalties and interest under Tex. Tax Code Ann. § 33.01. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Given that a taxpayer failed to pay taxes before the following February 1 of the tax years, the taxes were delinquent and the taxpayer was subject to penalties and interest, for purposes of Tex. Tax Code Ann. § 33.01(a), (c); Tex. Tax Code Ann. § 25.25 did not postpone the delinquency dates, for purposes of Tex. Tax Code Ann. § 31.02, where the taxpayer failed to pay assessments before the following February 1 of the tax years in question. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

REAL PROPERTY TAX

General Overview. — To the extent that bank's tax payments were allocated to penalties, costs, or fees pursuant to Tex. Tax Code Ann. § 33.07 or § 33.48, such payments were involuntary payments and therefore had to be refunded or reallocated to constitute payment in full of all base tax, interest, and penalties pursuant to Tex. Tax Code Ann. § 33.01. Houston v. First City, 827 S.W.2d 462, 1992 Tex. App. LEXIS 693 (Tex. App. Houston 1st Dist. Mar. 12, 1992, writ denied).

ASSESSMENT & VALUATION

General Overview. — In the context of property taxes, no part of either Tex. Tax Code Ann. § 33.01 or Tex. Tax Code Ann. § 33.07 states that a penalty to recover attorney's fees imposed before July 1 is not a penalty under Tex. Tax Code Ann. § 33.07(c); any penalty assessed, regardless of when, is a penalty under Tex. Tax Code Ann. § 33.01 and Tex. Tax Code Ann. § 33.07. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

School district's claim that it was entitled to attorney's fees under Tex. Tax Code Ann. § 33.48(a)(5) in the amount of 15 percent of the total amount of taxes, penalties, and interest and that it could impose attorney's fees in addition to an existing penalty despite Tex. Tax Code Ann. § 33.07(c) because it imposed the penalty under Tex. Tax Code Ann. § 33.01(a) before July 1 was without merit because a penalty assessed, regardless of when, was a penalty under Tex. Tax Code Ann. § 33.01 and Tex. Tax Code Ann. § 33.07, and Tex. Tax Code Ann. § 33.07(c) prohibited a taxing unit from recovering attorney's fees once a penalty had been assessed. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

ATTORNEY GENERAL OPINIONS

Tax Deferrals.

Tex. Tax Code Ann. § 33.06 governs calculation of interest and penalties on the homestead of an elderly or disabled person whose taxes have been deferred for the entire period during which the deferral is effective. 2011 Tex. Op. Att'y Gen. GA-0881.

Waiver of Penalties and InterestSubsections 33.01 l(a)(l), (a)(3), and (d) of the Tax Code permit a taxing unit under some circumstances to waive penalties and interest charged on delinquent taxes based on an act or omission of the taxing unit, or a formerly-correct address for payment, if certain requirements are met and the taxing unit receives a timely submitted written request for the waiver. 2019 Tex. Op. Att'y Gen. KP-0239.

Sec. 33.011. Waiver of Penalties and Interest.

(a) The governing body of a taxing unit:

(1) shall waive penalties and may provide for the waiver of interest on a delinquent tax if an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates caused or resulted in the taxpayer's failure to pay the tax before delinquency and if the tax is paid not later than the 21st day after the date the taxpayer knows or should know of the delinquency;

(2) may waive penalties and provide for the waiver of interest on a delinquent tax if:

(A) the property for which the tax is owed is acquired by a religious organization; and

(B) before the first anniversary of the date the religious organization acquires the property, the organization pays the tax and qualifies the property for an exemption under Section 11.20 as evidenced by the approval of the exemption by the chief appraiser under Section 11.45; and

(3) may waive penalties and provide for the waiver of interest on a delinquent tax if the taxpayer submits evidence showing that:

(A) the taxpayer attempted to pay the tax before the delinquency date by mail;

(B) the taxpayer mailed the tax payment to an incorrect address that in a prior tax year was the correct address for payment of the taxpayer's tax;

(C) the payment was mailed to the incorrect address within one year of the date that the former address ceased to be the correct address for payment of the tax; and

(D) the taxpayer paid the tax not later than the 21st day after the date the taxpayer knew or should have known of the delinquency.

(b) If a tax bill is returned undelivered to the taxing unit by the United States Postal Service, the governing body of the taxing unit shall waive penalties and interest if:

(1) the taxing unit does not send another tax bill on the property in question at least 21 days before the delinquency date to the current mailing address furnished by the property owner and the property owner establishes that a current mailing address was furnished to the appraisal district by the property owner for the tax bill before September 1 of the year in which the tax is assessed; or

(2) the tax bill was returned because of an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates and the taxing unit or appraisal district did not send another tax bill on the property in question at least 21 days before the delinquency date to the proper mailing address.

(c) For the purposes of this section, a property owner is considered to have furnished a current mailing address to the taxing unit or to the appraisal district if the current address is expressly communicated to the appraisal district in writing or if the appraisal district received a copy of a recorded instrument transferring ownership of real property and the current mailing address of the new owner is included in the instrument or in accompanying communications or letters of transmittal.

(d) **[Effective until January 1, 2020]** A request for a waiver of penalties and interest under Subsection (a)(1) or (3), (b), (h), or (j) must be made before the 181st day after the delinquency date. A request for a waiver of penalties and interest under Subsection (a)(2) must be made before the first anniversary of the date the religious organization acquires the property. A request for a waiver of penalties and interest under Subsection (i) must be made before the 181st day after the date the property owner making the request receives notice of the delinquent tax that satisfies the requirements of Section 33.04(c). To be valid, a waiver of penalties or interest under this section must be requested in writing. If a written request for a waiver is not timely made, the governing body of a taxing unit may not waive any penalties or interest under this section.

(d) **[Effective January 1, 2020]** A request for a waiver of penalties and interest under Subsection (a)(1) or (3), (b), (h), (j), or (k) must be made before the 181st day after the delinquency date. A request for a waiver of penalties and interest under Subsection (a)(2) must be made before the first anniversary of the date the religious organization acquires the property. A request for a waiver of penalties and interest under Subsection (i) must be made before the 181st day after the date the property owner making the request receives notice of the delinquent tax that satisfies the requirements of Section 33.04(c). To be valid, a waiver of penalties or interest under this section must be requested in writing. If a written request for a waiver is not timely made, the governing body of a taxing unit may not waive any penalties or interest under this section.

(e) Penalties and interest do not accrue during the period that a bill is not sent under Section 31.01(f).

(f) A property owner is not entitled to relief under Subsection (b) of this section if the property owner or the owner's agent furnished an incorrect mailing address to the appraisal district or the taxing unit or to an employee or agent of the district or unit.

(g) Taxes for which penalties and interest have been waived under Subsection (b) of this section must be paid within 21 days of the property owner having received a bill for those taxes at the current mailing address.

(h) The governing body of a taxing unit shall waive penalties and interest on a delinquent tax if:

(1) the tax is payable by electronic funds transfer under an agreement entered into under Section 31.06(a); and

(2) the taxpayer submits evidence sufficient to show that:

(A) the taxpayer attempted to pay the tax by electronic funds transfer in the proper manner before the delinquency date;

(B) the taxpayer's failure to pay the tax before the delinquency date was caused by an error in the transmission of the funds; and

(C) the tax was properly paid by electronic funds transfer or otherwise not later than the 21st day after the date the taxpayer knew or should have known of the delinquency.

(i) The governing body of a taxing unit may waive penalties and interest on a delinquent tax that relates to a date preceding the date on which the property owner acquired the property if:

(1) the property owner or another person liable for the tax pays the tax not later than the 181st day after the date the property owner receives notice of the delinquent tax that satisfies the requirements of Section 33.04(c); and

(2) the delinquency is the result of taxes imposed on:

(A) omitted property entered in the appraisal records as provided by Section 25.21;

(B) erroneously exempted property or appraised value added to the appraisal roll as provided by Section 11.43(i); or

(C) property added to the appraisal roll under a different account number or parcel when the property was owned by a prior owner.

(j) The governing body of a taxing unit may waive penalties and interest on a delinquent tax if the taxpayer submits evidence sufficient to show that the taxpayer delivered payment for the tax before the delinquency date to:

(1) the United States Postal Service for delivery by mail, but an act or omission of the postal service resulted in the taxpayer's payment being postmarked after the delinquency date; or

(2) a private delivery service for delivery, but an act or omission of the private carrier resulted in the taxpayer's payment being received by the taxing unit after the delinquency date.

(k) **[Effective January 1, 2020]** The governing body of a taxing unit may waive penalties and interest on a delinquent tax if:

(1) the property for which the tax is owed is subject to a mortgage that does not require the owner of the property to fund an escrow account for the payment of the taxes on the property;

(2) the tax bill was mailed or delivered by electronic means to the mortgagee of the property, but the mortgagee failed to mail a copy of the bill to the owner of the property as required by Section 31.01(j); and

(3) the taxpayer paid the tax not later than the 21st day after the date the taxpayer knew or should have known of the delinquency.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 769 (H.B. 2434), § 1, effective June 14, 1985; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 31, effective June 15, 1989; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 5.1, effective August 26, 1991; am. Acts 1995, 74th Leg., ch. 579 (S.B. 642), § 11, effective January 1, 1996 (renumbered from Sec. 31.015); am. Acts 1999, 76th Leg., ch. 606 (S.B. 779), § 2, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 817 (H.B. 1604), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 768 (S.B. 1736), § 1, effective June 30, 2001; am. Acts 2003, 78th Leg., ch. 151 (S.B. 725), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 15, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 413 (S.B. 1063), § 1, effective June 15, 2007; am. Acts 2013, 83rd Leg., ch. 967 (H.B. 1913), § 1, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 482 (H.B. 1885), § 1, effective January 1, 2020.

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CIVIL PROCEDURE
Pleading & Practice
Defenses, Demurrers & Objections
Affirmative Defenses

General Overview. — In a suit for collection of past due real property tax, where the current landowner intervened for refund of penalties and interest paid under protest, Tex. Tax Code Ann. § 33.011(a), (d) did not bar the current landowner's intervention; the taxing authorities waived the issue of avoidance by not pleading it as an affirmative defense under Tex. R. Civ. P. 94. WHM Props. v. Dallas County, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco Aug. 4, 2003, no pet.).

WAIVER & PRESERVATION. — In a suit against a corporation for collection of real property taxes, Tex. Tax Code Ann. § 33.011(a), (d) did not bar the current landowner from intervening in the suit to seek to recover a refund of penalties and interest on ad valorem taxes it paid under protest, because the taxing authorities waived the issue of avoidance by not pleading it as an affirmative defense, as required by Tex. R. Civ. P. 94. WHM Props. v. Dallas County, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco Aug. 4, 2003, no pet.).

Property owner was not entitled to a waiver of penalties pursuant to Tex. Tax Code 33.011(a)(1) as no evidence showed the reduction in the valuation of its property caused or resulted in its failure to pay the tax before the delinquency. Richardson Indep. Sch. Dist. v. GE Capital Corp., 58 S.W.3d 290, 2001 Tex. App. LEXIS 6876 (Tex. App. Dallas Oct. 12, 2001, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Trial court did not err in entering a judgment for a school district in its suit brought against property owners for delinquent taxes, penalties and interest owed, and foreclosure of its tax lien, that included taxes, penalties, interest, and attorney fees where the appellate court found nothing in Tex. Tax. Code Ann. § 33.011(a) that would have required the district to have waived the penalty and interests assessed under the record in the instant case. Coleman v. Snook Indep. Sch. Dist., No. 14-03-00006-CV, 2004 Tex. App. LEXIS 5076 (Tex. App. Houston 14th Dist. June 10, 2004).

Appellee corporation was entitled to a waiver of late payment tax penalties pursuant to Tex. Tax Code Ann. § 33.011 because the failure to pay the taxes before the delinquency date was the result of an error by an employee of the county appraisal district and not of appellee corporation. Spring Branch Indep. Sch. Dist. v. Citicorp Nat'l Servs., No. 01-95-00359-CV, 1995 Tex. App. LEXIS 2399 (Tex. App. Houston 1st Dist. Oct. 5, 1995).

County mischaracterizes Tex. Tax Code Ann. § 33.011 as vesting in the taxing authority discretionary power to waive penalties; this is not an accurate reading of the statute; the statute mandates that the taxing authority "shall waive penalties" if the acts of its own agents cause the delinquency. Inwood Dad's Club v. Aldine Indep. Sch. Dist., 882 S.W.2d 532, 1994 Tex. App. LEXIS 2048 (Tex. App. Houston 1st Dist. Aug. 18, 1994, no writ).

Taxpayer was not entitled to a refund pursuant to Tex. Tax Code § 33.011 where his payment of penalties, interest, and collection fees in connection with his payment of delinquent taxes to a school board was voluntary, and not the result of duress. Sheldon v. Jasper Independent School Dist., 768 S.W.2d 884, 1989 Tex. App. LEXIS 1375 (Tex. App. Beaumont Mar. 30, 1989, writ denied).

PERSONAL PROPERTY TAX

General Overview. — Taxpayers did not raise issue of fact as to their affirmative defense based on Tex. Tax Code Ann. sec. 31.04(a) because they failed to raise an issue of fact as to whether they were entitled to a postponement of the delinquency date; furthermore, because Tex. Tax. Code Ann. sec. 33.011 was discretionary, they failed to raise an issue of fact because they were not entitled to waiver of the penalties and interest. Amoroso v. Aldine Independent School Dist., 808 S.W.2d 118, 1991 Tex. App. LEXIS 475 (Tex. App. Houston 1st Dist. Feb. 28, 1991, writ denied).

ATTORNEY GENERAL OPINIONS

Analysis

Central Appraisal Districts.
Waiver.
Waiver of Penalties.

Central Appraisal Districts.

The term "agent," as used in Tex. Tax Code § 33.011, is to be read as including a central appraisal district making appraisals for use by the taxing unit. Therefore, the directors of a taxing unit are permitted to waive interest and penalties on a tax payment which is delinquent by reason of an error of a central appraisal district. 1988 Tex. Op. Att'y Gen. JM-0919.

Reimbursement of Penalties and InterestTo the extent Hood County failed to mail a tax bill despite the County's possession of the taxpayer's mailing address, a court could conclude that the

taxes are not yet delinquent, in which case the statutory deadline in subsection 33.01 l(d) for submitting the waiver request has not passed. To the extent Hood County mailed the tax bills in question such that a waiver of penalties and interest under section 33.011 is foreclosed, article III, subsection 52(a) of the Texas Constitution likely precludes the County from reimbursing taxpayers from its general fund for the amount of the penalties and interest. 2019 Tex. Op. Att'y Gen. KP-0239.

Waiver.

Cameron County may not waive taxes, penalties, and interest on real property owned by an individual that houses a nonprofit organization. 1999 Tex. Op. Att'y Gen. JC-0134.

Waiver of Penalties.

Where taxpayer mailed a check in an amount insufficient to cover ad valorem taxes and poll taxes, and Tax Assessor-Collector returned the check by mail to the taxpayer because of such insufficiency, and taxpayer neglected to open said mail until after penalties and interest had accrued, the Tax Assessor-Collector has no authority to waive such penalties and interest as have accrued. 1962 Tex. Op. Att'y Gen. W-1395.

Sec. 33.02. Installment Payment of Delinquent Taxes.

(a) The collector for a taxing unit may enter into an agreement with a person delinquent in the payment of the tax for payment of the tax, penalties, and interest in installments. The collector for a taxing unit shall, on request by a person delinquent in the payment of the tax on a residence homestead for which the property owner has been granted an exemption under Section 11.13, enter into an agreement with the person for payment of the tax, penalties, and interest in installments if the person has not entered into an installment agreement with the collector for the taxing unit under this section in the preceding 24 months.

(a-1) An installment agreement under this section:

(1) must be in writing;

(2) must provide for payments to be made in monthly installments;

(3) must extend for a period of at least 12 months if the property that is the subject of the agreement is a residence homestead for which the person entering into the agreement has been granted an exemption under Section 11.13; and

(4) may not extend for a period of more than 36 months.

(b) Except as provided by Subsection (b-1), interest and a penalty accrue as provided by Sections 33.01(a) and (c) on the unpaid balance during the period of the agreement.

(b-1) Except as otherwise provided by this subsection, a penalty does not accrue as provided by Section 33.01(a) on the unpaid balance during the period of the agreement if the property that is the subject of the agreement is a residence homestead for which the property owner has been granted an exemption under Section 11.13. If the property owner fails to make a payment as required by the agreement, a penalty accrues as provided by Section 33.01(a) on the unpaid balance as if the owner had not entered into the agreement.

(c) A property owner's execution of an installment agreement under this section is an irrevocable admission of liability for all taxes, penalties, and interest that are subject to the agreement.

(d) Property may not be seized and sold and a suit may not be filed to collect a delinquent tax subject to an installment agreement unless the property owner:

(1) fails to make a payment as required by the agreement;

(2) fails to pay other property taxes collected by the unit when due as required by the collector; or

(3) breaches any other condition of the agreement.

(e) Execution of an installment agreement tolls the limitation periods provided by Section 33.05 of this code for the period during which enforced collection is barred by Subsection (d) of this section.

(f) The collector for a taxing unit must deliver a notice of default to a person who is in breach of an installment agreement under this section and to any other owner of an interest in the property subject to the agreement whose name appears on the delinquent tax roll before the collector may seize and sell the property or file a suit to collect a delinquent tax subject to the agreement.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 5, effective January 1, 1998; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 16, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 935 (H.B. 1597), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 226 (H.B. 1933), § 4, effective September 1, 2015.

Sec. 33.03. Delinquent Tax Roll.

Each year the collector for each taxing unit shall prepare a current and a cumulative delinquent tax roll for the unit.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Under former Tex. Rev. Civ. Stat. Ann. arts. 7326 and 7336, the pertinent delinquent tax records and evidence that the taxes had not been paid were prima facie evidence of the correct amount of the taxes and costs due in a suit for collection of taxes, and the taxpayer had the burden of proving that the assessment was invalid. Duval County Ranch Co. v. State, 587 S.W.2d 436, 63 Oil & Gas Rep. 549, 1979 Tex. App. LEXIS 3889 (Tex. Civ. App. San Antonio July 11, 1979, writ ref'd n.r.e.), cert. denied, 449 U.S. 1077, 101 S. Ct. 856, 66 L. Ed. 2d 800, 1981 U.S. LEXIS 292 (U.S. 1981).

Sec. 33.04. Notice of Delinquency.

(a) At least once each year the collector for a taxing unit shall deliver a notice of delinquency to each person whose name appears on the current delinquent tax roll. However, the notice need not be delivered if:

(1) a bill for the tax was not mailed under Section 31.01(f); or

(2) the collector does not know and by exercising reasonable diligence cannot determine the delinquent taxpayer's name and address.

(b) A notice of delinquency under this section must contain the following statement in capital letters: "IF THE PROPERTY DESCRIBED IN THIS DOCUMENT IS YOUR RESIDENCE HOMESTEAD, YOU SHOULD CONTACT THE TAX COLLECTOR FOR (NAME OF TAXING UNIT) REGARDING A RIGHT YOU MAY HAVE TO ENTER INTO AN INSTALLMENT AGREEMENT DIRECTLY WITH THE TAX COLLECTOR FOR (NAME OF TAXING UNIT) FOR THE PAYMENT OF THESE TAXES."

(c) If the delinquency is the result of taxes imposed on property described by Section 33.011(i), the first page of the notice of delinquency must include, in 14-point boldfaced type or 14-point uppercase letters, a statement that reads substantially as follows: "THE TAXES ON THIS PROPERTY ARE DELINQUENT. THE PROPERTY IS SUBJECT TO A LIEN FOR THE DELINQUENT TAXES. IF THE DELINQUENT TAXES ARE NOT PAID, THE LIEN MAY BE FORECLOSED."

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 128, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 761 (H.B. 2299), § 1, effective August 26, 1985; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 16, effective January 1, 2000; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 11, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 935 (H.B. 1597), § 3, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 967 (H.B. 1913), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 226 (H.B. 1933), § 5, effective September 1, 2015.

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Judicial Review
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Substantial Evidence. — Because the record from the administrative hearing reflected evidence of delivery of delinquent notices to the business—a green card signed by the business followed by multiple pages of delinquent statement notices and other correspondence for each year from 1994 through 2002—and there was no evidence that the business failed to receive notice, the Texas Alcoholic Beverage Commission was entitled to the presumption of delivery and thus presented substantial evidence of the business's delinquency. Miller v. Tex. Alcoholic Bev. Comm'n, No. 2-03-246-CV, 2004 Tex. App. LEXIS 7507 (Tex. App. Fort Worth Aug. 19, 2004).

BUSINESS & CORPORATE LAW
Joint Ventures

General Overview. — Individual's receipt of tax bills and notices could not be imputed to a joint venture because there was legally insufficient evidence that the individual was a partner. Therefore, under the 1985 version of Tex. Tax Code Ann. § 33.04, the required statutory notice was not given and the penalties on the taxes had to be cancelled. Tierra Sol J.V. v. City of El Paso, 155 S.W.3d 503, 2004 Tex. App. LEXIS 10552 (Tex. App. El Paso Nov. 24, 2004, no pet.).

CIVIL PROCEDURE
Pleading & Practice
Defenses, Demurrers & Objections

Waiver & Preservation. — When capacity is contested by either party, Tex. R. Civ. P. 93(1) requires the filing of a verified plea; therefore, where a party fails to raise the issue of his opponent's corporate status by means of a verified plea, the issue is waived. In a suit against a corporation for collection of real property taxes, the taxing authorities waived the issue of the status of a current landowner's corporate charter as affecting its capacity to maintain its plea in intervention, seeking a refund of penalties and interest on ad valorem taxes paid under protest, based on Tex. Tax Code Ann. § 33.04(c), because the taxing authorities failed to raise the defense in a verified pleading, as required by Tex. R. Civ. P. 93(1). WHM Props. v. Dallas County, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco Aug. 4, 2003, no pet.).

EVIDENCE
Inferences & Presumptions

General Overview. — In a suit for collection of real property taxes, where the landowner intervened seeking a refund of penalties and interest on ad valorem taxes it paid under protest, the taxing authorities were not entitled to the legal presumption of delivery of the delinquency notice under Tex. Tax Code Ann. § 1.07(c); therefore, pursuant to Tex. Tax Code Ann. § 33.04(c), the penalties and interest could not be collected from the landowner. WHM Props. v. Dallas County, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco Aug. 4, 2003, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Tex. Tax Code Ann. § 33.04 requires the taxing unit to send delinquent tax notices annually to each person whose name appears on the current delinquent tax roll relating to the property; the taxing units were required to send a delinquent tax statement to the subject property owner but the code did not require cancellation of penalties or interest for their failure to deliver an annual delinquent tax statement. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

Failure by the collector of a taxing unit to give the required notices under former Tex. Tax Code Ann. § 33.04(b) mandated

cancellation of penalties and interest on the taxes owed; where the subject property owner failed to receive the notices, there was a discrepancy in the district's records relating to the owner's address, and the notices were not mailed first-class, that evidence supported a finding that the taxing district did not deliver notice to the owner and was not entitled to penalties or interest for those tax years. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

School district was not entitled to penalties or interest for those tax years where property owners' testimony of non-receipt of delinquency notices coupled with the discrepancy in the school district's records relating to the owners' address, and the testimony of the district's appraiser that the notices were not mailed first-class, was sufficient to support the trial court's finding that the district did not "deliver" the notices to the owner. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

In a suit for collection of real property taxes, where the landowner intervened seeking a refund of penalties and interest on ad valorem taxes it paid under protest, the taxing authorities were not entitled to the legal presumption of delivery of the delinquency notice under Tex. Tax Code Ann. § 1.07(c); therefore, pursuant to Tex. Tax Code Ann. § 33.04(c), the penalties and interest could not be collected from the landowner. WHM Props. v. Dallas County, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco Aug. 4, 2003, no pet.).

County misconstrued former Tex. Rev. Civ. Stat. Ann. art. 7324, which did not address suits for penalties or interest, but only suits for the delinquent taxes; therefore, the governing statute did not preclude a charitable entity from asserting, as a defense to the county's claim for penalties and interest, that the county failed to deliver the required delinquency notices, and the trial court had jurisdiction to consider its claim that it never received the required delinquency notices. Inwood Dad's Club v. Aldine Indep. Sch. Dist., 882 S.W.2d 532, 1994 Tex. App. LEXIS 2048 (Tex. App. Houston 1st Dist. Aug. 18, 1994, no writ).

COLLECTION. — Because interest and penalties were waived under former Tex. Tax Code Ann. § 33.04, the court did not consider whether they were waived due to the taxing units' failure to deliver the 1997 tax bill to the trust's correct address. Old Farms Owners Ass'n v. Houston Indep. Sch. Dist., 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

Taxing units argued that a savings clause's last sentence acted as an instruction as to whether to apply the 1985 version of Tex. Tax Code Ann. § 33.04 or the 1999 version of the statute, but the court did not see this instruction in the savings clause and regardless, penalties and interest would not have been recoverable under either version. Old Farms Owners Ass'n v. Houston Indep. Sch. Dist., 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

Dismissal is in no way an adjudication of the rights of parties and it merely places the parties in the position that they were in before the court's jurisdiction was invoked just as if the suit had never been brought, and the court does not modify this rule today, but the court does recognize that this savings clause related to Tex. Tax Code Ann. § 33.04 is broad enough to apply to any collection suit filed prior to the revisions in the law, even if the suit was eventually nonsuited, and this must be so because, otherwise, the last sentence of the savings clause would have no meaning; the savings clause cannot be reasonably read to bar the prosecution only of suits taxing authorities had prosecuted to completion under prior law because these suits were already barred by the law of res judicata, and this clause could not have been intended to apply to a case disposed of due to judgment or one pending appeal because those cases would have already applied the statute in effect at the time of trial. As to those cases dismissed for want of prosecution, this clause would apply to them, as long as they were dismissed without prejudice, in which case they are treated the same as a nonsuit, and there is no indication that the Legislature intended to include a dismissal for want of prosecution under this clause, but not a nonsuit. Old Farms Owners Ass'n v. Houston Indep. Sch. Dist., 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

Amendment to Tex. Tax Code Ann. § 33.04 removed any penalty on the part of the taxing units for failure to provide the five-year notice in the past in many cases, but the parties disputed the meaning of other sentences to the amendment, which did exempt some cases; in this case, the delinquency suit was originally filed in 1999, nonsuited, then refiled in 2002 following the amendments, and although the 1999 case was nonsuited, it was a suit that was pending before September 1, 2001, plus the trust's delinquent tax was the subject of a collection suit filed before the effective date of the legislature, and although the 1999 suit ended in nonsuit, that did not change the fact that it was a collection suit filed before the effective date of the legislation. Old Farms Owners Ass'n v. Houston Indep. Sch. Dist., 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

For purposes of Tex. Tax Code Ann. § 33.04 (1999), the record demonstrated that the required five-year notice was not delivered to the trust as required in 2000, and thus, under former § 33.04(c), penalties and interest on the 1997 taxes were waived. Old Farms Owners Ass'n v. Houston Indep. Sch. Dist., 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

Amendatory language of Tex. Tax Code Ann. § 33.04 applied in a suit filed in 2002 by several taxing authorities to recover delinquent property taxes from 1997; the fact that a suit had been filed in 1999 did not make the older version of Tex. Tax Code Ann. § 33.04 apply because a nonsuit was taken in that case. Houston Indep. Sch. Dist. v. Old Farms Owners Ass'n, 236 S.W.3d 375, 2007 Tex. App. LEXIS 5898 (Tex. App. Houston 1st Dist. July 26, 2007), reh'g denied, No. 01-04-00538-CV, 2007 Tex. App. LEXIS 9309 (Tex. App. Houston 1st Dist. Sept. 25, 2007), rev'd, 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

FAILURE TO PAY TAX. — In a suit to collect delinquent taxes on a vacant tract of land, because a claimant's name did not appear on the current delinquent tax roll, he was not entitled to receive notice of the delinquency. Thompson v. Aldine Indep. Sch. Dist., No. 14-09-00596-CV, 2011 Tex. App. LEXIS 5536 (Tex. App. Houston 14th Dist. July 21, 2011).

Amendatory language of Tex. Tax Code Ann. § 33.04 applied in a suit filed in 2002 by several taxing authorities to recover delinquent property taxes from 1997; the fact that a suit had been filed in 1999 did not make the older version of Tex. Tax Code Ann. § 33.04 apply because a nonsuit was taken in that case. Houston Indep. Sch. Dist. v. Old Farms Owners Ass'n, 236 S.W.3d 375, 2007 Tex. App. LEXIS 5898 (Tex. App. Houston 1st Dist. July 26, 2007), reh'g denied, No. 01-04-00538-CV, 2007 Tex. App. LEXIS 9309 (Tex. App. Houston 1st Dist. Sept. 25, 2007), rev'd, 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

ATTORNEY GENERAL OPINIONS

Notice of Property Tax.

A taxpayer who owes property tax that is delinquent more than five years but who has not received proper notice under section 33.04(b) of the Tax Code is not responsible to pay the accrued penalties and interest. 2001 Tex. Op. Att'y Gen. JC-0328.

Sec. 33.045. Notice of Provisions Authorizing Deferral or Abatement.

(a) A tax bill mailed by an assessor or collector under Section 31.01 and any written communication delivered to a property owner by an assessor or collector for a taxing unit or an attorney or other agent of a taxing unit that specifically threatens a lawsuit to collect a delinquent tax assessed against property that may qualify as a residence homestead shall contain the following explanation in capital letters: "IF YOU ARE 65 YEARS OF AGE OR OLDER OR ARE

DISABLED, AND YOU OCCUPY THE PROPERTY DESCRIBED IN THIS DOCUMENT AS YOUR RESIDENCE HOMESTEAD, YOU SHOULD CONTACT THE APPRAISAL DISTRICT REGARDING ANY ENTITLEMENT YOU MAY HAVE TO A POSTPONEMENT IN THE PAYMENT OF THESE TAXES."

(b) This section does not apply to a communication that relates to taxes that are the subject of pending litigation.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 18, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 31 (S.B. 456), § 1, effective September 1, 2007.

Sec. 33.05. Limitation on Collection of Taxes.

(a) Personal property may not be seized and a suit may not be filed:

(1) to collect a tax on personal property that has been delinquent more than four years; or

(2) to collect a tax on real property that has been delinquent more than 20 years.

(b) A tax delinquent for more than the limitation period prescribed by this section and any penalty and interest on the tax is presumed paid unless a suit to collect the tax is pending.

(c) If there is no pending litigation concerning the delinquent tax at the time of the cancellation and removal, the collector for a taxing unit shall cancel and remove from the delinquent tax roll:

(1) a tax on real property that has been delinquent for more than 20 years;

(2) a tax on personal property that has been delinquent for more than 10 years; and

(3) a tax on real property that has been delinquent for more than 10 years if the property has been owned for at least the preceding eight years by a home-rule municipality in a county with a population of more than 3.3 million.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 5.4, effective August 26, 1991; am. Acts 1997, 75th Leg., ch. 63 (S.B. 492), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 669 (H.B. 2810), § 119, effective September 1, 2001.

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CIVIL PROCEDURE
Remedies
Costs & Attorney Fees

Costs. — Pursuant to former Tex. Rev. Civ. Stat. Ann. art. 7298, plaintiff was exempt from liability for costs growing out of a collection suit and therefore the court deleted the portion of the take nothing judgment accordingly. Nordheim Independent School Dist. v. Johnson, 597 S.W.2d 48, 1980 Tex. App. LEXIS 3210 (Tex. Civ. App. Corpus Christi Mar. 20, 1980, no writ).

CONSTITUTIONAL LAW
Congressional Duties & Powers
Ex Post Facto Clause & Bills of Attainder

General Overview. — In a suit filed by the taxing authorities to collect delinquent ad valorem taxes and to foreclose on tax liens on real property owned by the estate of the deceased, the heirs were not unconstitutionally deprived of a statute of limitations defense under Tex. Prob. Code Ann. § 317(c) because the statute did not violate Tex. Const. art. I, § 16, which prohibits bills of attainder, and all of the taxing authorities claims were timely asserted and the heirs had no vested limitations defense pursuant to Tex. Prob. Code Ann. § 298 and Tex. Tax Code Ann. § 33.05(a)(2). Moak v. County of Cherokee, No. 12-01-00322-CV, 2003 Tex. App. LEXIS 4343 (Tex. App. Tyler May 21, 2003).

GOVERNMENTS
Legislation
Statutes of Limitations

General Overview. — Tex. Tax. Code Ann. § 33.05(a)(1) prohibited filing of a suit to collect tax on personal property that has been delinquent more than four years; the court resolved doubts about when the lawsuit was filed in favor of the nonmovant and assumed it was filed in time to collect the 1991 and 1992 taxes. The only way then, that the buyer could escape liability for the taxes would be by proving that it was a buyer in the ordinary course of business, which it was not as it purchased the property through a foreclosure of a security interest. PNL Asset Mgmt. Co. v. Kerrville Indep. Sch. Dist., 37 S.W.3d 80, 2000 Tex. App. LEXIS 8264 (Tex. App. San Antonio Dec. 13, 2000, no pet.).

TIME LIMITATIONS. — Four-year statute of limitation that barred taxing authorities from bringing an action to collect ad valorem personal property taxes assessed against a 36-inch-diameter gas transmission pipeline that was buried below normal plow depth did not violate the prohibition of the release or extinguishment of an indebtedness, liability, or obligation to a governmental taxing unit contained in Tex. Const. art. III, § 55. Lingleville Independent School Dist. v. Valero Transmission Co., 763 S.W.2d 616, 1989 Tex. App. LEXIS 56 (Tex. App. Eastland Jan. 12, 1989, writ denied).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Four year statute of limitations set forth in Tex. Tax. Code § 33.05 did not contravene the provisions of Tex. Const. art. III, § 55, because the statute of limitations limited enforcement only. Flowers v. Lavaca County Appraisal Dist., 766 S.W.2d 825, 1989 Tex. App. LEXIS 78 (Tex. App. Corpus Christi Jan. 19, 1989, writ denied).

Taxpayer could not bring a cause of action under Tex. Tax Code Ann. § 33.05 to recover personal property taxes that he alleged were wrongfully assessed; the statute provided a limitations defense and could only be raised in a suit filed against a taxpayer by the state. Salvaggio v. Houston Independent School Dist., 752

S.W.2d 189, 1988 Tex. App. LEXIS 1290 (Tex. App. Houston 14th Dist. June 2, 1988, writ denied).

PERSONAL PROPERTY TAX

General Overview. — Tex. Tax Code Ann. § 33.05's limitations period was inapplicable, because the district's suit alleging breach of the tax abatement agreement and recovery of lost ad valorem tax revenue as damages was not a suit to collect delinquent taxes; it was undisputed that the county and district did not impose the abated taxes during either ten-year abatement period, consequently, the abated taxes were not due on February 1 of each tax applicable tax year and the taxes did not become delinquent. Stanley Works v. Wichita Falls Indep. Sch. Dist., 366 S.W.3d 816, 2012 Tex. App. LEXIS 3230 (Tex. App. El Paso Apr. 25, 2012), reh'g denied, No. 08-11-00015-CV, 2012 Tex. App. LEXIS 5373 (Tex. App. El Paso May 23, 2012).

Sec. 33.06. Deferred Collection of Taxes on Residence Homestead of Elderly or Disabled Person or Disabled Veteran.

(a) An individual is entitled to defer collection of a tax, abate a suit to collect a delinquent tax, or abate a sale to foreclose a tax lien if:

(1) the individual:

(A) is 65 years of age or older;

(B) is disabled as defined by Section 11.13(m); or

(C) is qualified to receive an exemption under Section 11.22; and

(2) the tax was imposed against property that the individual owns and occupies as a residence homestead.

(b) To obtain a deferral, an individual must file with the chief appraiser for the appraisal district in which the property is located an affidavit stating the facts required to be established by Subsection (a). The chief appraiser shall notify each taxing unit participating in the district of the filing. After an affidavit is filed under this subsection, a taxing unit may not file suit to collect delinquent taxes on the property and the property may not be sold at a sale to foreclose the tax lien until the 181st day after the date the individual no longer owns and occupies the property as a residence homestead.

(c) To obtain an abatement of a pending suit, the individual must file in the court in which suit is pending an affidavit stating the facts required to be established by Subsection (a). If no controverting affidavit is filed by the taxing unit filing suit or if, after a hearing, the court finds the individual is entitled to the deferral, the court shall abate the suit until the 181st day after the date the individual no longer owns and occupies the property as a residence homestead. The clerk of the court shall deliver a copy of the judgment abating the suit to the chief appraiser of each appraisal district that appraises the property.

(c-1) To obtain an abatement of a pending sale to foreclose the tax lien, the individual must deliver an affidavit stating the facts required to be established by Subsection (a) to the chief appraiser of each appraisal district that appraises the property, the collector for the taxing unit that requested the order of sale or the attorney representing that unit for the collection of delinquent taxes, and the officer charged with selling the property not later than the fifth day before the date of the sale. After an affidavit is delivered under this subsection, the property may not be sold at a tax sale until the 181st day after the date the individual no longer owns and occupies the property as a residence homestead. If property is sold in violation of this section, the property owner may file a motion to set aside the sale under the same cause number and in the same court as a judgment reference in the order of sale. The motion must be filed during the applicable redemption period as set forth in Section 34.21(a) or, if the property is bid off to a taxing entity, on or before the 180th day following the date the taxing unit's deed is filed of record, whichever is later. This right is not transferable to a third party.

(d) A tax lien remains on the property and interest continues to accrue during the period collection of taxes is deferred or abated under this section. The annual interest rate during the deferral or abatement period is five percent instead of the rate provided by Section 33.01. Interest and penalties that accrued or that were incurred or imposed under Section 33.01 or 33.07 before the date the individual files the deferral affidavit under Subsection (b) or the date the judgment abating the suit is entered, as applicable, are preserved. A penalty under Section 33.01 is not incurred during a deferral or abatement period. The additional penalty under Section 33.07 may be imposed and collected only if the taxes for which collection is deferred or abated remain delinquent on or after the 181st day after the date the deferral or abatement period expires. A plea of limitation, laches, or want of prosecution does not apply against the taxing unit because of deferral or abatement of collection as provided by this section.

(e) Each year the chief appraiser for each appraisal district shall publicize in a manner reasonably designed to notify all residents of the district or county of the provisions of this section and, specifically, the method by which eligible persons may obtain a deferral or abatement.

(f) Notwithstanding the other provisions of this section, if an individual who qualifies for a deferral or abatement of collection of taxes on property as provided by this section dies, the deferral or abatement continues in effect until the 181st day after the date the surviving spouse of the individual no longer owns and occupies the property as a residence homestead if:

(1) the property was the residence homestead of the deceased spouse when the deceased spouse died;

(2) the surviving spouse was 55 years of age or older when the deceased spouse died; and

(3) the property was the residence homestead of the surviving spouse when the deceased spouse died.

(g) If the ownership interest of an individual entitled to a deferral under this section is a life estate, a lien for the deferred tax attaches to the estate of the life tenant, and not to the remainder interest, if the owner of the remainder is an institution of higher education that has not consented to the deferral. In this subsection, "institution of higher

education" has the meaning assigned by Section 61.003, Education Code. This subsection does not apply to a deferral for which the individual entitled to the deferral filed the affidavit required by Subsection (b) before September 1, 2011.

(h) An heir property owner who qualifies heir property as the owner's residence homestead under Chapter 11 is considered the sole owner of the property for the purposes of this section.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 129, effective January 1, 1982; am. Acts 1989, 71st Leg., ch. 793 (H.B. 421), § 1, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), §§ 34, 35, effective January 1, 1998; am. Acts 2001, 77th Leg., ch. 892 (H.B. 3364), §§ 1, 2, effective June 14, 2001; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 12, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 754 (H.B. 3504), §§ 1, 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 15.002, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 1049 (S.B. 5), § 4.05, effective June 17, 2011; am. Acts 2017, 85th Leg., ch. 18 (H.B. 217), §§ 1, 2, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1131 (H.B. 150), § 2, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 663 (S.B. 1943), § 9, effective September 1, 2019.

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BANKRUPTCY LAW
Claims
Types
Secured Claims & Liens

General Overview. — Creditor, holder of the note and deed of trust for the debtors' residential property, was entitled to assert a secured claim for property taxes advanced because debtors' deferral of taxes was a breach of their obligations under the deed, which included covenants requiring payment of taxes and prohibiting imposition of any superior claims. Both of these obligations were violated through the tax deferral given that a tax lien with priority remained on the property pursuant to Tex. Tax Code Ann. §§ 32.05(b) and 33.06(d). In re Sanford, No. 11-73207 MEH, 2012 Bankr. LEXIS 5118 (Bankr. N.D. Cal. Nov. 1, 2012).

CIVIL PROCEDURE
Dismissals
Involuntary Dismissals

General Overview. — Court affirmed dismissal of taxpayer's action to set aside a tax sale of property pursuant to a judgment for delinquent ad valorem taxes where Tex. Tax Code Ann. § 33.06(a) did not apply because it was not an action to collect a delinquent tax. Day v. Knox County Appraisal Dist., No. 11-04-00269-CV, 2006 Tex. App. LEXIS 2497 (Tex. App. Eastland Mar. 30, 2006).

REAL PROPERTY LAW
Financing
Mortgages & Other Security Instruments

General Overview. — Fact that plaintiffs' taxes were deferred under Tex. Tax Code Ann. § 33.06(a) did not excuse plaintiffs' obligations under the deed of trust, which provided that plaintiffs "shall" pay all taxes, assessments, charges and fines that could attain priority over defendants' lien, and, under Tex. Tax Code Ann. § 32.05(b), tax liens from an authorized taxing authority were granted priority over liens such as deeds of trust; thus, the evidence was undisputed that plaintiffs were in breach of a term of the deed of trust and in default, authorizing defendants to create an escrow account and seek reimbursement of taxes paid on behalf of plaintiffs. Lyles v. Deutsche Bank Nat'l Trust Co., No. G-09-300, 2011 U.S. Dist. LEXIS 2396 (S.D. Tex. Jan. 11, 2011).

FORECLOSURES

General Overview. — Judgment reflected that the award of attorney fees for the year 2000 was "due only on foreclosure sale," because under Tex. Tax Code Ann. § 32.06(h), a holder of a lien could file suit to foreclose the lien, and if the suit resulted in foreclosure of the lien, the person filing suit was entitled to recover attorney fees in an amount not to exceed 10 percent of the judgment. Weisfeld v. Tex. Land Fin. Co. II, 162 S.W.3d 379, 2005 Tex. App. LEXIS 2947 (Tex. App. Dallas Apr. 18, 2005, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Assertion of a matter warranting abatement, such as the filing of a residence homestead affidavit, does not deprive a court of its subject matter jurisdiction over the case; although a trial court can properly take no further action in a case after such an affidavit is filed, filing such affidavit does not defeat the trial court's subject matter jurisdiction. Kubovy v. Cypress-Fairbanks Indep. Sch. Dist., 972 S.W.2d 130, 1998 Tex. App. LEXIS 3689 (Tex. App. Houston 14th Dist. June 18, 1998, no pet.).

Where an affidavit stated that the affiant was 65 years of age or older and that he owned and occupies as his homestead the property described in the affidavit, which was the property on which the tax subject to the suit was delinquent, regardless whether or when his plea in abatement was filed, the court was required to abate the suit until he no longer owned and occupied the property as a residence homestead because the statute did not require an individual to file an actual plea in abatement in order to obtain abatement, but required only that a proper affidavit be filed while suit was pending. Kubovy v. Cypress-Fairbanks Indep. Sch. Dist., 972 S.W.2d 130, 1998 Tex. App. LEXIS 3689 (Tex. App. Houston 14th Dist. June 18, 1998, no pet.).

Statute does not place a time limit on when the affidavit must be filed, but requires only that the affidavit be filed in the court in which suit is pending; a cause is considered to be pending in a trial court even after a final judgment is entered so long as the trial court retains its plenary power to vacate or modify the judgment or to grant a motion for new trial. Kubovy v. Cypress-Fairbanks Indep. Sch. Dist., 972 S.W.2d 130, 1998 Tex. App. LEXIS 3689 (Tex. App. Houston 14th Dist. June 18, 1998, no pet.).

REAL PROPERTY TAX

General Overview. — Where appellant taxpayers filed a plea in abatement pursuant to Tex. Rev. Civ. Stat. Ann. art. 7329a § (2), the taxpayers were entitled to have the real property tax collection lawsuit abated without having a judgment pending against them, nothwithstanding the fact that enforcement of the tax had

been abated. Hale v. Los Fresnos, 623 S.W.2d 745, 1981 Tex. App. LEXIS 4105 (Tex. App. Houston 1st Dist. Sept. 17, 1981, no writ).

COLLECTION

Tax Liens. — Creditor, holder of the note and deed of trust for the debtors' residential property, was entitled to assert a secured claim for property taxes advanced because debtors' deferral of taxes was a breach of their obligations under the deed, which included covenants requiring payment of taxes and prohibiting imposition of any superior claims. Both of these obligations were violated through the tax deferral given that a tax lien with priority remained on the property pursuant to Tex. Tax Code Ann. §§ 32.05(b) and 33.06(d). In re Sanford, No. 11-73207 MEH, 2012 Bankr. LEXIS 5118 (Bankr. N.D. Cal. Nov. 1, 2012).

Fact that plaintiffs' taxes were deferred under Tex. Tax Code Ann. § 33.06(a) did not excuse plaintiffs' obligations under the deed of trust, which provided that plaintiffs "shall" pay all taxes, assessments, charges and fines that could attain priority over defendants' lien, and, under Tex. Tax Code Ann. § 32.05(b), tax liens from an authorized taxing authority were granted priority over liens such as deeds of trust; thus, the evidence was undisputed that plaintiffs were in breach of a term of the deed of trust and in default, authorizing defendants to create an escrow account and seek reimbursement of taxes paid on behalf of plaintiffs. Lyles v. Deutsche Bank Nat'l Trust Co., No. G-09-300, 2011 U.S. Dist. LEXIS 2396 (S.D. Tex. Jan. 11, 2011).

ATTORNEY GENERAL OPINIONS

Analysis

Deferrals.
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Tax Delinquency.

Deferrals.

A court would likely conclude that Tex. Tax Code Ann. § 33.06 impliedly authorizes a district to investigate facts recited in an affidavit for deferral, request additional information, and allow or deny a deferral as warranted by the law and facts; an appraisal district may grant deferral on mixed-use property provided that all uses are compatible with occupancy as a residence homestead; whether an owner occupies an entire parcel as a residence homestead will depend on the particular facts. 2016 Tex. Op. Att'y Gen. KP-0081.

Requirements.

Tex. Tax Code Ann. § 33.06 does not authorize an appraisal district to require a property owner to provide a survey at the owner's expense in order to claim entitlement to tax deferral under Tex. Tax Code Ann. § 33.06(a). 2016 Tex. Op. Att'y Gen. KP-0081.

Tax Deferrals.

Tex. Tax Code Ann. § 33.06 governs calculation of interest and penalties on the homestead of an elderly or disabled person whose taxes have been deferred for the entire period during which the deferral is effective. 2011 Tex. Op. Att'y Gen. GA-0881.

Tax Delinquency.

If an individual age sixty-five years or older has appropriately filed a deferment of taxes under Tex. Tax Code Ann. § 33.06, a property tax lender with a tax lien that was perfected prior to the property owner's sixty-fifth birthday may not exercise a remedy of foreclosure or judicial sale until the 181st day after the date the individual no longer owns and occupies the property as a residence homestead. 2010 Tex. Op. Att'y Gen. GA-0787, 2010 Tex. AG LEXIS 35.

Sec. 33.065. Deferred Collection of Taxes on Appreciating Residence Homestead.

(a) An individual is entitled to defer or abate a suit to collect a delinquent tax imposed on the portion of the appraised value of property the individual owns and occupies as the individual's residence homestead that exceeds the sum of:

(1) 105 percent of the appraised value of the property for the preceding year; and

(2) the market value of all new improvements to the property.

(b) An individual may not obtain a deferral or abatement under this section, and any deferral or abatement previously received expires, if the taxes on the portion of the appraised value of the property that does not exceed the amount provided by Subsection (a) are delinquent.

(c) To obtain a deferral, an individual must file with the chief appraiser for the appraisal district in which the property is located an affidavit stating the facts required to be established by Subsection (a). The chief appraiser shall notify each taxing unit participating in the district of the filing. After an affidavit is filed under this subsection, a taxing unit may not file suit to collect delinquent taxes on the property for which collection is deferred until the individual no longer owns and occupies the property as a residence homestead.

(d) To obtain an abatement, the individual must file in the court in which the delinquent tax suit is pending an affidavit stating the facts required to be established by Subsection (a). If the taxing unit that filed the suit does not file a controverting affidavit or if, after a hearing, the court finds the individual is entitled to the deferral, the court shall abate the suit until the individual no longer owns and occupies the property as the individual's residence homestead. The clerk of the court shall deliver a copy of the judgment abating the suit to the chief appraiser of each appraisal district that appraises the property.

(e) A deferral or abatement under this section applies only to ad valorem taxes imposed beginning with the tax year following the first tax year the individual entitled to the deferral or abatement qualifies the property for an exemption under Section 11.13. For purposes of this subsection, the owner of a residence homestead that is qualified for an exemption under Section 11.13 on January 1, 1998, is considered to have qualified the property for the first time in the 1997 tax year.

(f) If the collection of delinquent taxes on the property was deferred in a prior tax year and the sum of the amounts described by Subsections (a)(1) and (2) exceeds the appraised value of the property for the current tax year, the amount of taxes the collection of which may be deferred is reduced by the amount calculated by multiplying the taxing unit's tax rate for the current year by the amount by which that sum exceeds the appraised value of the property.

(g) A tax lien remains on the property and interest continues to accrue during the period collection of delinquent taxes is deferred or abated under this section. The annual interest rate during the deferral or abatement period is eight

percent instead of the rate provided by Section 33.01. Interest and penalties that accrued or that were incurred or imposed under Section 33.01 or 33.07 before the date the individual files the deferral affidavit under Subsection (c) or the date the judgment abating the suit is entered, as applicable, are preserved. A penalty is not incurred on the delinquent taxes for which collection is deferred or abated during a deferral or abatement period. The additional penalty under Section 33.07 may be imposed and collected only if the delinquent taxes for which collection is deferred or abated remain delinquent on or after the 91st day after the date the deferral or abatement period expires. A plea of limitation, laches, or want of prosecution does not apply against the taxing unit because of deferral or abatement of collection as provided by this section.

(h) Each year the chief appraiser for each appraisal district shall publicize in a manner reasonably designed to notify all residents of the county for which the appraisal district is established of the provisions of this section and, specifically, the method by which an eligible person may obtain a deferral.

(i) In this section:

(1) "New improvement" means an improvement to a residence homestead that is made after the appraisal of the property for the preceding year and that increases the market value of the property. The term does not include ordinary maintenance of an existing structure or the grounds or another feature of the property.

(2) "Residence homestead" has the meaning assigned that term by Section 11.13.

(j) An heir property owner who qualifies heir property as the owner's residence homestead under Chapter 11 is considered the sole owner of the property for the purposes of this section.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 36, effective January 1, 1998; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 13, effective September 1, 2001; am. Acts 2019, 86th Leg., ch. 663 (S.B. 1943), § 10, effective September 1, 2019.

Sec. 33.07. Additional Penalty for Collection Costs for Taxes Due Before June 1.

(a) A taxing unit or appraisal district may provide, in the manner required by law for official action by the body, that taxes that become delinquent on or after February 1 of a year but not later than May 1 of that year and that remain delinquent on July 1 of the year in which they become delinquent incur an additional penalty to defray costs of collection, if the unit or district or another unit that collects taxes for the unit has contracted with an attorney pursuant to Section 6.30. The amount of the penalty may not exceed the amount of the compensation specified in the contract with the attorney to be paid in connection with the collection of the delinquent taxes.

(b) A tax lien attaches to the property on which the tax is imposed to secure payment of the penalty.

(c) If a penalty is imposed pursuant to this section, a taxing unit may not recover attorney's fees in a suit to collect delinquent taxes subject to the penalty.

(d) If a taxing unit or appraisal district provides for a penalty under this section, the collector shall deliver a notice of delinquency and of the penalty to the property owner at least 30 and not more than 60 days before July 1.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 130, effective January 1, 1982; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 17, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 14, effective September 1, 2001.

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BANKRUPTCY LAW
Taxation

State & Local Taxes. — Liens for penalties and interest on ad valorem taxes which accrued under Tex. Tax Code Ann. §§ 33.01 and 33.07 during pendency of taxpayer's bankruptcy were not void but merely voidable because of the automatic stay provisions of the federal bankruptcy code, and were not subject to collateral attack outside the U.S. bankruptcy court. Walker's Country Place v. Central Appraisal Dist., 867 S.W.2d 111, 1993 Tex. App. LEXIS 3239 (Tex. App. Eastland Dec. 2, 1993, no writ).

CIVIL PROCEDURE
Class Actions
Prerequisites

General Overview. — Denial of class certification to a group of taxpayers who had paid penalties assessed against them under Tex. Tax Code Ann. § 33.07 was proper, because the claims of each class member would have required individual findings of fact as to whether the payments were voluntary or involuntary, and because abrogation of the voluntary payment rule as to § 33.07 attorney fee penalties would also have required indi-

vidual findings of fact. Salvaggio v. Houston Independent School Dist., 709 S.W.2d 306, 1986 Tex. App. LEXIS 12563 (Tex. App. Houston 14th Dist. Apr. 3, 1986, pet. dism'd w.o.j.).

REMEDIES
Costs & Attorney Fees

General Overview. — Where a school district taxing authority incorrectly described a property owner's lot which had been subdivided, but subsequently recombined once a penalty was assessed to the property owners under Tex. Tax Code Ann. §§ 33.01 or 33.07, the Texas Tax Code prohibited a taxing unit from recovering attorney's fees under Tex. Tax Code Ann. § 33.48. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

If a penalty is imposed under Tex. Tax Code Ann. § 33.07, a taxing unit may not recover attorney's fees in a suit to collect delinquent taxes subject to the penalty. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

Trial court did not abuse its discretion when it awarded a taxing unit statutory attorney's fees of 15 percent of the taxes, penalties, and interest due pursuant to Tex. Tax Code Ann. § 33.48(a) in a suit to collect delinquent taxes against a property owner because there was no evidence that the costs included attorney's fees or were imposed under Tex. Tax Code Ann. § 33.07. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

In an action involving collection of a tax deficiency, error did not result when the trial court granted the county summary judgment in the absence of proof of reasonableness of attorney's fees assessed under Tex. Tax Code Ann. § 33.07 because such fees were not subject to a reasonableness review. Siracusa v. Nueces County, 890 S.W.2d 884, 1994 Tex. App. LEXIS 3003 (Tex. App. Corpus Christi Dec. 8, 1994, no writ).

EVIDENCE
Inferences & Presumptions

General Overview. — Decision that awarded taxing authorities a 15 percent penalty for collection costs under Tex. Tax Code Ann. § 33.07 was proper because delinquent taxpayer did not introduce evidence that rebutted a prima facie case that the taxing authorities had complied with § 33.07. National Church Residences of Alief v. Alief Indep. Sch. Dist., No. 14-99-00445-CV, 2000 Tex. App. LEXIS 7988 (Tex. App. Houston 14th Dist. Nov. 30, 2000).

GOVERNMENTS
Legislation

Interpretation. — Tex. Tax Code Ann. §§ 33.01(a) and 33.07(a) establish the amount of penalty and the conditions under which a penalty continues, but are not definitions of whether an assessment is or is not a penalty, thus, the appellate court holds that any penalty assessed, regardless of when, is a penalty under Tex. Tax Code Ann. §§ 33.01 and 33.07. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

REAL PROPERTY LAW
Financing
Mortgages & Other Security Instruments
Foreclosures

General Overview. — Appellate court overruled the buyers' argument that the trial court erred in awarding attorney fees to the creditor because the creditor was not prohibited by Tex. Tax Code Ann. § 33.07(c) from recovering attorney fees of 15 percent for the year 2001, and the trial judge did not err in including the award in the judgment, Tex. Tax Code Ann. § 33.48; the awards of attorney fees in the judgment did not exceed the applicable statutory percentages, and because Tex. Tax Code Ann. § 33.48 did not condition recovery of attorney fees upon foreclosure, it was not necessary for the judgment to make the award for the year 2001 contingent upon foreclosure. Weisfeld v. Tex. Land Fin. Co. II, 162 S.W.3d 379, 2005 Tex. App. LEXIS 2947 (Tex. App. Dallas Apr. 18, 2005, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Because the provisions of the Tax Code and the water code conflicted, the Code Construction Act, Tex. Gov't Code Ann. § 311.026, applied, and the special provisions of Tax Code Ann. § 33.07 prevailed over Tex. Water Code Ann. § 51.591; attorney fees were recoverable under Tax. Code Ann. § 33.48, and the court also noted that the provisions of the tax code applied to the water district pursuant to Tex. Tax Code Ann. § 1.04(12). Harris County Water Control & Improvement Dist. # 99 v. Duke, 59 S.W.3d 333, 2001 Tex. App. LEXIS 6850 (Tex. App. Houston 1st Dist. Oct. 11, 2001, no pet.).

Penalty on delinquent taxes may be imposed on a taxpayer to defray costs of collection and the amount of the penalty may not exceed 15 percent of the amount of taxes, penalties, and interest due. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

Tex. Tax Code Ann. § 33.07 does not require that the actions that must be taken by the state before imposing a penalty for delinquent taxes be taken in any particular sequence. Salvaggio v. Houston Independent School Dist., 752 S.W.2d 189, 1988 Tex. App. LEXIS 1290 (Tex. App. Houston 14th Dist. June 2, 1988, writ denied).

FAILURE TO PAY TAX. — Taxpayers argued that the judgment improperly awarded fees for a law firm's actions in collecting taxes, penalties, and interest, but the judgment awarded a penalty in lieu of fees as permitted by Tex. Tax Code Ann. § 33.07; Tex. Tax Code Ann. § 6.30 provided that a taxing unit could contract with an attorney for representation regarding collection of delinquent taxes, but the judgment did not award fees and instead awarded a penalty, such that the taxpayer's argument lacked merit. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

REAL PROPERTY TAX

General Overview. — When the trial court did not lower a tax penalty assessed by city and school district, but simply enforced the conditions under which checks were tendered and cashed, such payments constituted an accord and satisfaction, and no part of such payments were applicable to or could be applied to penalties, costs, attorney's fees, or otherwise, pursuant to Tex. Tax Code Ann. §§ 33.07, 33.48. Houston v. First City, 827 S.W.2d 462, 1992 Tex. App. LEXIS 693 (Tex. App. Houston 1st Dist. Mar. 12, 1992, writ denied).

Tex. Tax Code Ann. § 33.07(a) & (c) provided that a taxing unit could impose an additional 15 percent penalty upon taxes that remained delinquent, but if it did so, it could not recover attorney's fees in a suit to collect delinquent taxes subject to an additional penalty; where tax authorities did impose the additional 15 percent penalty they consequently relinquished, as a matter of law, any right to attorney's fees insofar as the judgment awarded recovery of delinquent taxes, penalties, and interest. Lakeridge Dev. Corp. v. Travis County Water Control & Improv. Dist. No. 18, 677 S.W.2d 764, 1984 Tex. App. LEXIS 6451 (Tex. App. Austin Sept. 12, 1984, no writ).

ASSESSMENT & VALUATION

General Overview. — School district's claim that it was entitled to attorney's fees under Tex. Tax Code Ann. § 33.48(a)(5) in the amount of 15 percent of the total amount of taxes, penalties, and interest and that it could impose attorney's fees in addition to an existing penalty despite Tex. Tax Code Ann. § 33.07(c) because it imposed the penalty under Tex. Tax Code Ann. § 33.01(a) before July 1 was without merit because a penalty assessed, regardless of when, was a penalty under Tex. Tax Code Ann. § 33.01 and Tex. Tax Code Ann. § 33.07, and Tex. Tax Code Ann. § 33.07(c) prohibited a taxing unit from recovering attorney's fees once a penalty had been assessed. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

In the context of property taxes, no part of either Tex. Tax Code Ann. § 33.01 or Tex. Tax Code Ann. § 33.07 states that a penalty

to recover attorney's fees imposed before July 1 is not a penalty under Tex. Tax Code Ann. § 33.07(c); any penalty assessed, regardless of when, is a penalty under Tex. Tax Code Ann. § 33.01 and Tex. Tax Code Ann. § 33.07. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

COLLECTION

General Overview. — A properly admitted certified tax statement was prima facie evidence that the city had complied with the requirements of Tex. Tax Code Ann. § 33.07(a). F-Star Socorro, L.P. v. City of El Paso, 281 S.W.3d 103, 2008 Tex. App. LEXIS 5008 (Tex. App. El Paso July 3, 2008, no pet.).

Where the trial court found that property owner's failure to receive tax statements or delinquency notices was the direct result of the county appraisal district's failure to exercise reasonable diligence in determining the owner's correct mailing address, the district was not entitled to recover a 15 percent penalty on the delinquent taxes because it failed to comply with the notice requirements of Tex. Tax Code Ann. § 33.07. Uvalde County Appraisal Dist. v. Parker, 733 S.W.2d 609, 1987 Tex. App. LEXIS 8005 (Tex. App. San Antonio June 3, 1987, writ ref'd n.r.e.).

Tex. Tax Code Ann. § 33.07(a) & (c) provided that a taxing unit could impose an additional 15 percent penalty upon taxes that remained delinquent, but if it did so, it could not recover attorney's fees in a suit to collect delinquent taxes subject to an additional penalty; where tax authorities did impose the additional 15 percent penalty they consequently relinquished, as a matter of law, any right to attorney's fees insofar as the judgment awarded recovery of delinquent taxes, penalties, and interest. Lakeridge Dev. Corp. v. Travis County Water Control & Improv. Dist. No. 18, 677 S.W.2d 764, 1984 Tex. App. LEXIS 6451 (Tex. App. Austin Sept. 12, 1984, no writ).

ATTORNEY GENERAL OPINIONS

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Attorney Compensation.

Pursuant to section 33.07 of the Tax Code, a taxing unit that has contracted with an attorney to collect delinquent taxes under section 6.30 of the Tax Code is authorized to impose a penalty not to exceed 15 percent against delinquent taxpayers to cover the attorney's compensation. The taxing unit may not apply any part of the penalties collected under section 33.07 to any additional costs of collection which it incurs but must use all of the assessed penalties solely to compensate the attorney with whom it contracted. 1988 Tex. Op. Att'y Gen. JM-0857.

Delinquent Tax Penalty.

The additional delinquent tax penalty authorized pursuant to Tax Code section 33.07 may only be imposed against taxes that become delinquent on a date at least 30 days before July 1 and that remain delinquent on July 1 of the year in which they become delinquent. 1998 Tex. Op. Att'y Gen. DM-0491.

A delinquent tax penalty adopted under section 33.07 of the Tax Code does not apply to delinquent taxes subject to installment agreements entered into under section 33.02 of the Tax Code prior to July 1 of the year in which the taxes became delinquent. 1993 Tex. Op. Att'y Gen. DM-0235.

Enforcement.

Neither a county attorney nor a city attorney possesses the contractual capacity to enter into contract for the enforcement of delinquent tax collection, while acting in his or her official capacity. No taxing unit which contracts with either a county or a city for delinquent tax collection may impose the additional penalty permitted by Tex. Tax Code § 33.07 when the county attorney or the city attorney represents the county or city, respectively, in the enforcement of delinquent tax collection. 1984 Tex. Op. Att'y Gen. JM-135.

Professional Ethics.

The attorney's services to the Pasadena Independent School District as an unpaid advisor and collector of delinquent taxes do not appear, in this instance, to implicate laws pertaining to dual office holding, the common-law doctrine of incompatibility, or the general conflict of interest provisions contained in chapter 171 of the Local Government Code. However, the provision of free legal services to a school district by an attorney under or in conjunction with a contract for the collection of delinquent taxes may contravene Tax Code section 33.07. Whether a donation of legal services by an attorney under a particular contract violates section 33.07 is a question of fact not appropriate for the attorney general opinion process. The Texas Disciplinary Rules of Professional Conduct also may need to be considered in relation to the attorney's services to the school district. Questions about any potential conflicts of interest arising from the attorney's conduct must be addressed by the Committee on Professional Ethics. 2009 Tex. Op. Att'y Gen. GA-0719.

Refund of Compensation to County.

The additional penalty authorized by section 33.07 of the Tax Code is solely for the purpose of providing compensation to the contract attorney, and the attorney may not make a donation to the county that in effect refunds part of his or her compensation to the county. 2001 Tex. Op. Att'y Gen. JC-0443.

Sec. 33.08. Additional Penalty for Collection Costs for Taxes Due on or After June 1.

(a) This section applies to a taxing unit or appraisal district only if:

(1) the governing body of the taxing unit or appraisal district has imposed the additional penalty for collection costs under Section 33.07; and

(2) the taxing unit or appraisal district, or another taxing unit that collects taxes for the unit, has entered into a contract with an attorney under Section 6.30 for the collection of the unit's delinquent taxes.

(b) **[Effective until January 1, 2020]** The governing body of the taxing unit or appraisal district, in the manner required by law for official action, may provide that taxes that become delinquent on or after June 1 under Section 26.07(f), 26.15(e), 31.03, 31.031, 31.032, 31.04, or 42.42 incur an additional penalty to defray costs of collection. The amount of the penalty may not exceed the amount of the compensation specified in the applicable contract with an attorney under Section 6.30 to be paid in connection with the collection of the delinquent taxes.

(b) **[Effective January 1, 2020]** The governing body of the taxing unit or appraisal district, in the manner required by law for official action, may provide that taxes that become delinquent on or after June 1 under Section 26.075(j), 26.15(e), 31.03, 31.031, 31.032, 31.04, or 42.42 incur an additional penalty to defray costs of collection. The amount of the penalty may not exceed the amount of the compensation specified in the applicable contract with an attorney under Section 6.30 to be paid in connection with the collection of the delinquent taxes.

(c) After the taxes become delinquent, the collector for a taxing unit or appraisal district that has provided for the

additional penalty under this section shall send a notice of the delinquency and the penalty to the property owner. The penalty is incurred on the first day of the first month that begins at least 21 days after the date the notice is sent.

(d) A tax lien attaches to the property on which the tax is imposed to secure payment of the additional penalty.

(e) A taxing unit or appraisal district that imposes the additional penalty under this section may not recover attorney's fees in a suit to collect delinquent taxes subject to the penalty.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 18, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 15, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 704 (H.B. 499), § 1, effective June 17, 2011; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 59, effective January 1, 2020.

Sec. 33.09. Transfer of Delinquent County Education District Taxes [Expired].

Expired pursuant to Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 16, effective February 1, 2014.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 16, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 409 (H.B. 195), § 1, effective September 1, 2003.

Sec. 33.10. Restricted or Conditional Payments of Delinquent Taxes, Penalties, and Interest Prohibited.

Unless the restriction or condition is authorized by this title, a restriction or condition placed on a check in payment of delinquent taxes by the maker that purports to limit the amount of delinquent taxes owed to an amount less than that stated in the applicable delinquent tax roll, or a restriction or condition placed on a check in payment of penalties and interest on delinquent taxes by the maker that purports to limit the amount of the penalties and interest to an amount less than the amount of penalties and interest accrued on the delinquent taxes, is void.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 651 (H.B. 2148), § 1, effective June 20, 2003.

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Failure to Pay Tax. — Although a taxpayer instructed the county to apply payments for the years at issue to its taxes, Tex. Tax Code Ann. § 33.10 did not permit the taxpayer to control the manner in which its payments were applied by the county to the taxpayer's past tax, penalty, and interest; furthermore, Tex. Tax Code Ann. § 31.073 did not allow one to direct his payments to be applied to taxes and not interest and penalties, and thus Tax Code sections rendered the taxpayer's conditions void. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Sec. 33.11. Early Additional Penalty for Collection Costs for Taxes Imposed on Personal Property.

(a) In order to defray costs of collection, the governing body of a taxing unit or appraisal district in the manner required by law for official action may provide that taxes imposed on tangible personal property that become delinquent on or after February 1 of a year incur an additional penalty on a date that occurs before July 1 of the year in which the taxes become delinquent if:

(1) the taxing unit or appraisal district or another unit that collects taxes for the unit has contracted with an attorney under Section 6.30; and

(2) the taxes on the personal property become subject to the attorney's contract before July 1 of the year in which the taxes become delinquent.

(b) A penalty imposed under Subsection (a) is incurred by the delinquent taxes on the later of:

(1) the date those taxes become subject to the attorney's contract; or

(2) 60 days after the date the taxes become delinquent.

(c) The amount of the penalty may not exceed the amount of the compensation specified in the contract with the attorney to be paid in connection with the collection of the delinquent taxes.

(d) A tax lien attaches to the property on which the tax is imposed to secure payment of the penalty.

(e) If a penalty is provided under this section, a taxing unit or appraisal district may not:

(1) recover attorney's fees in a suit to collect delinquent taxes subject to the penalty; or

(2) impose an additional penalty under Section 33.07 on a delinquent personal property tax.

(f) If the governing body of a taxing unit or appraisal district provides for a penalty under this section, the collector for the taxing unit or appraisal district shall send a notice of the penalty to the property owner. The notice shall state the date on which the penalty is incurred, and the tax collector shall deliver the notice at least 30 and not more than 60 days before that date. If the amount of personal property tax, penalty and interest owed to all taxing units for which the tax collector collects exceeds $10,000 on a single account identified by a unique property identification number, the notice regarding that account must be delivered by certified mail, return receipt requested. All other notices under this section may be delivered by regular first-class mail.

(g) The authority granted to taxing units and appraisal districts under this section is to be construed as an alternative, with regards to delinquent personal property taxes, to the authority given by Section 33.07.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 19, effective September 1, 2005.

Secs. 33.12 to 33.20. [Reserved for expansion].

Subchapter B

Seizure of Personal Property

Sec. 33.21. Property Subject to Seizure.

(a) A person's personal property is subject to seizure for the payment of a delinquent tax, penalty, and interest he owes a taxing unit on property.

(b) A person's personal property is subject to seizure for the payment of a tax imposed by a taxing unit on the person's property before the tax becomes delinquent if:

(1) the collector discovers that property on which the tax has been or will be imposed is about to be:

(A) removed from the county; or

(B) sold in a liquidation sale in connection with the cessation of a business; and

(2) the collector knows of no other personal property in the county from which the tax may be satisfied.

(c) Current wages in the possession of an employer are not subject to seizure.

(d) In this subchapter, "personal property" means:

(1) tangible personal property;

(2) cash on hand;

(3) notes or accounts receivable, including rents and royalties;

(4) demand or time deposits; and

(5) certificates of deposit.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 23, effective August 29, 1983; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 17, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 309 (H.B. 1910), § 1, effective September 1, 2007.

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TAX LAW
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Administration & Proceedings

General Overview. — Former Tex. Rev. Civ. Stat. Ann. art. 7266 (now Tex. Tax Code Ann. § 33.21), which allows the state to sell property for unpaid taxes is not unconstitutional for lack of due process because due process requires notice of the seizure and an opportunity to contest the seizure and sale; the court held that a taxpayer could contest the seizure by bringing a declaratory judgment suit to determine the accuracy of the tax computations as well as a suit to enjoin the alleged illegal taxes pending a hearing on the legality. Shaw v. Phillips Crane & Rigging, Inc., 636 S.W.2d 186, 1982 Tex. LEXIS 296 (Tex. 1982), app. dismissed, 459 U.S. 1191, 103 S. Ct. 1169, 75 L. Ed. 2d 422, 1983 U.S. LEXIS 3295 (U.S. 1983).

Former Tex. Rev. Civ. Stat. Ann. art. 7266 (now Tex. Tax. Code Ann. § 33.21) was unconstitutional because it operated to effect a deprivation of property without due process of law; where the statute did not provide an opportunity either before or after the seizure for taxpayer to contest the validity of the tax or his liability with respect to it, it was invalid. Querner Truck Lines, Inc. v. State, 610 S.W.2d 533, 1980 Tex. App. LEXIS 4121 (Tex. Civ. App. San Antonio Nov. 19, 1980), writ ref'd n.r.e. 615 S.W.2d 176, 1981 Tex. LEXIS 293 (Tex. 1981).

PERSONAL PROPERTY TAX

General Overview. — Former Tex. Rev. Civ. Stat. Ann. art. 7266 (now Tex. Tax Code Ann. § 33.21), is not unconstitutional as a deprivation of the statutory provision for the four year statute of limitations because the applicability of a statute of limitations which bars the remedy and not the debt is not a question of constitutional dimensions, such a question being properly addressed by appeal to the appropriate court of appeals and not by direct appeal. Querner Truck Lines, Inc. v. State, 652 S.W.2d 367, 1983 Tex. LEXIS 322 (Tex. 1983).

INTANGIBLE PROPERTY

General Overview. — Under Chapter 33 of the Tex. Tax Code, Texas allowed a collector to reach non-taxed intangible personal property provided it was not exempt; reading the Code as a whole, under Chapter 11, taxable property and exemptions, the intangible personal property was not taxed, and therefore the property tax lien did not attach to the interpleaded funds. Enters. Leasing Co. of DFW v. Larson & King, LLP (In re Southwest Broadband Holdings I, LP), 326 B.R. 112, 2005 Bankr. LEXIS 1058 (Bankr. N.D. Tex. 2005).

ATTORNEY GENERAL OPINIONS

Intangible Property.

County officials are authorized to collect delinquent intangible taxes in the same name; and under the same statutory provisions as delinquent taxes upon tangible property. 1947 Tex. Op. Att'y Gen. V-215.

Sec. 33.22. Institution of Seizure.

(a) At any time after a tax becomes delinquent, a collector may apply for a tax warrant to any court in any county in which the person liable for the tax has personal property. If more than one collector participates in the seizure, all may make a joint application.

(b) A collector may apply at any time for a tax warrant authorizing seizure of property as provided by Subsection (b) of Section 33.21 of this code.

(c) The court shall issue the tax warrant if the applicant shows by affidavit that:

(1) the person whose property the applicant intends to seize is delinquent in the payment of taxes, penalties, and interest in the amount stated in the application; or

(2) taxes in a stated amount have been imposed on the property or taxes in an estimated amount will be imposed on the property, the applicant knows of no other personal property the person owns in the county from which the tax may be satisfied, and the applicant has reason to believe that:

(A) the property owner is about to remove the property from the county; or

(B) the property is about to be sold at a liquidation sale in connection with the cessation of a business.

(d) A collector is entitled to recover attorney's fees in an amount equal to the compensation specified in the contract with the attorney if:

(1) recovery of the attorney's fees is requested in the application for the tax warrant;

(2) the taxing unit served by the collector contracts with an attorney under Section 6.30;

(3) the existence of the contract and the amount of attorney's fees that equals the compensation specified in the contract are supported by the affidavit of the collector; and

(4) the tax sought to be recovered is not subject to the additional penalty under Section 33.07 or 33.08 at the time the application is filed.

(e) If a taxing unit is represented by an attorney who is also an officer or employee of the taxing unit, the collector for the taxing unit is entitled to recover attorney's fees in an amount equal to 15 percent of the total amount of delinquent taxes, penalties, and interest that the property owner owes the taxing unit.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 17, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 242 (H.B. 930), § 1, effective June 17, 2011.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Intangible Property

General Overview. — Under Chapter 33 of the Tex. Tax Code, Texas allowed a collector to reach non-taxed intangible personal property provided it was not exempt; reading the Code as a whole, under Chapter 11, taxable property and exemptions, the intangible personal property was not taxed, and therefore the property tax lien did not attach to the interpleaded funds. Enters. Leasing Co. of DFW v. Larson & King, LLP (In re Southwest Broadband Holdings I, LP), 326 B.R. 112, 2005 Bankr. LEXIS 1058 (Bankr. N.D. Tex. 2005).

Sec. 33.23. Tax Warrant.

(a) A tax warrant shall direct a peace officer in the county and the collector to seize as much of the person's personal property as may be reasonably necessary for the payment of all taxes, penalties, interest, and attorney's fees included in the application and all costs of seizure and sale. The warrant shall direct the person whose property is seized to disclose to the officer executing the warrant the name and the address if known of any other person having an interest in the property.

(b) A bond may not be required of a taxing unit for issuance or delivery of a tax warrant, and a fee or court cost may not be charged for issuance or delivery of a warrant.

(c) After a tax warrant is issued, the collector or peace officer shall take possession of the property pending its sale. The person against whom a tax warrant is issued or another person having possession of property of the person against whom a tax warrant is issued shall surrender the property on demand. Pending the sale of the property, the collector or peace officer may secure the property at the location where it is seized or may move the property to another location.

(d) A person who possesses personal property owned by the person against whom a tax warrant is issued and who surrenders the property on demand is not liable to any person for the surrender. At the time of surrender, the collector shall provide the person surrendering the property a sworn receipt describing the property surrendered.

(e) Subsection (d) does not create an obligation on the part of a person who surrenders property owned by the person against whom a tax warrant is issued that exceeds or materially differs from that person's obligation to the person against whom the tax warrant is issued.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 24, effective August 29, 1983; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 18, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 20, effective September 1, 2005.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Intangible Property

General Overview. — Under Chapter 33 of the Tex. Tax Code, Texas allowed a collector to reach non-taxed intangible personal property provided it was not exempt; reading the Code as a whole, under Chapter 11, taxable property and exemptions, the intangible personal property was not taxed, and therefore the property tax lien did not attach to the interpleaded funds. Enters.

Leasing Co. of DFW v. Larson & King, LLP (In re Southwest Broadband Holdings I, LP), 326 B.R. 112, 2005 Bankr. LEXIS 1058 (Bankr. N.D. Tex. 2005).

ATTORNEY GENERAL OPINIONS

Analysis

Executing Warrant.
Inventory Preparation.

Executing Warrant.
A peace officer, as defined by article 2.12 of the Code of Criminal Procedure, may execute a tax warrant for the seizure of personal property under section 33.23 of the Tax Code. Any peace officer may seize personal property that is the subject of a tax warrant. Seizure requires possession or control of the property. A peace officer who seizes personal property is authorized, but not required, by statute to relinquish possession to the tax assessor-collector. 2004 Tex. Op. Att'y Gen. GA-140.

Inventory Preparation.
Section 33.23 of the Tax Code does not specify who is to prepare the inventory or personal property seized in accordance with a tax warrant. Consistent with case law and with practical considerations, the officer who executes the warrant must prepare the inventory. 2004 Tex. Op. Att'y Gen. GA-140.

Sec. 33.24. Bond for Payment of Taxes.

A person may prevent seizure of property or sale of property seized by delivering to the collector a cash or surety bond conditioned on payment of the tax before delinquency. The bond must be approved by the collector in an amount determined by him, but he may not require an amount greater than the amount of tax if imposed or the collector's reasonable estimate of the amount of tax if not yet imposed.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 33.25. Tax Sale: Notice; Method; Disposition of Proceeds.

(a) After a seizure of personal property, the collector shall make a reasonable inquiry to determine the identity and to ascertain the address of any person having an interest in the property other than the person against whom the tax warrant is issued. The collector shall provide in writing the name and address of each other person the collector identifies as having an interest in the property to the peace officer charged with executing the warrant. The peace officer shall deliver as soon as possible a written notice stating the time and place of the sale and briefly describing the property seized to the person against whom the warrant is issued and to any other person having an interest in the property whose name and address the collector provided to the peace officer. The posting of the notice and the sale of the property shall be conducted:

(1) in a county other than a county to which Subdivision (2) applies, by the peace officer in the manner required for the sale under execution of personal property; or

(2) in a county having a population of three million or more:

(A) by the peace officer or collector, as specified in the warrant, in the manner required for the sale under execution of personal property; or

(B) under an agreement authorized by Subsection (b).

(b) The commissioners court of a county having a population of three million or more by official action may authorize a peace officer or the collector for the county charged with selling property under this subchapter by public auction to enter into an agreement with a person who holds an auctioneer's license to advertise the auction sale of the property and to conduct the auction sale of the property. The agreement may provide for on-line bidding and sale.

(c) The commissioners court of a county that authorizes a peace officer or the collector for the county to enter into an agreement under Subsection (b) may by official action authorize the peace officer or collector to enter into an agreement with a service provider to advertise the auction and to conduct the auction sale of the property or to accept bids during the auction sale of the property under Subsection (b) using the Internet.

(d) The terms of an agreement entered into under Subsection (b) or (c) must be approved in writing by the collector for each taxing unit entitled to receive proceeds from the sale of the property. An agreement entered into under Subsection (b) or (c) is presumed to be commercially reasonable, and the presumption may not be rebutted by any person.

(e) Failure to send or receive a notice required by this section does not affect the validity of the sale or title to the seized property.

(f) The proceeds of a sale of property under this section shall be applied to:

(1) any compensation owed to or any expense advanced by the licensed auctioneer under an agreement entered into under Subsection (b) or a service provider under an agreement entered into under Subsection (c);

(2) all usual costs, expenses, and fees of the seizure and sale, payable to the peace officer conducting the sale;

(3) all additional expenses incurred in advertising the sale or in removing, storing, preserving, or safeguarding the seized property pending its sale;

(4) all usual court costs payable to the clerk of the court that issued the tax warrant; and

(5) taxes, penalties, interest, and attorney's fees included in the application for warrant.

(g) The peace officer or licensed auctioneer conducting the sale shall pay all proceeds from the sale to the collector designated in the tax warrant for distribution as required by Subsection (f).

(h) After a seizure of personal property defined by Sections 33.21(d) (2)—(5), the collector shall apply the seized property toward the payment of the taxes, penalties, interest, and attorney's fees included in the application for warrant and all costs of the seizure as required by Subsection (f).

(i) After a tax warrant is issued, the seizure or sale of the property may be canceled and terminated at any time by the applicant or an authorized agent or attorney of the applicant.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 19, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 1, effective June 18, 2003; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 21, effective September 1, 2005.

NOTES TO DECISIONS

Analysis

Real Property Law
•Nonmortgage Liens
••Lien Priorities
Tax Law
•State & Local Taxes
••Personal Property Tax
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REAL PROPERTY LAW
Nonmortgage Liens

Lien Priorities. — Under Tex. Tax Code Ann. § 33.25, to protect the property interests of other lien holders, a taxing authority is required to comply with certain notice and procedural requirements before selling property at a tax sale to collect delinquent taxes; even so, failure to send notice to a junior lien holder does not affect the validity of the sale or title to the seized property. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

TAX LAW
State & Local Taxes
Personal Property Tax
Tangible Property

General Overview. — Mobile home purchaser, who had bought the mobile home at a tax sale for delinquent taxes, held a junior lien to the finance company; the application of real property nonjudicial procedures to the disposition of personal property was a reasonable application, and the tax sale extinguished the purchaser's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

REAL PROPERTY TAX

General Overview. — Mobile home purchaser, who had bought the mobile home at a tax sale for delinquent taxes, held a junior lien to the finance company; the application of real property nonjudicial procedures to the disposition of personal property was a reasonable application, and the tax sale extinguished the purchaser's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

COLLECTION

Tax Deeds & Tax Sales. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

TAX LIENS. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

Secs. 33.26 to 33.40. [Reserved for expansion].

Subchapter C

Delinquent Tax Suits

Sec. 33.41. Suit to Collect Delinquent Tax.

(a) At any time after its tax on property becomes delinquent, a taxing unit may file suit to foreclose the lien securing payment of the tax, to enforce personal liability for the tax, or both. The suit must be in a court of competent jurisdiction for the county in which the tax was imposed.

(b) A suit to collect a delinquent tax takes precedence over all other suits pending in appellate courts.

(c) In a suit brought under Subsection (a), a taxing unit may foreclose any other lien on the property in favor of the taxing unit or enforce personal liability of the property owner for the other lien.

(d) In a suit brought under this section, a court shall grant a taxing unit injunctive relief on a showing that the personal property on which the taxing unit seeks to foreclose a tax lien is about to be:

(1) removed from the county in which the tax was imposed; or

(2) transferred to another person and the other person is not a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code.

(e) Injunctive relief granted under Subsection (d) must:

(1) prohibit alienation or dissipation of the property;

(2) order that proceeds from the sale of the property in an amount equal to the taxes claimed to be due be paid into the court registry; or

(3) order any other relief to ensure the payment of the taxes owed.

(f) A taxing unit is not required to file a bond as a condition to the granting of injunctive relief under Subsection (d).

(g) In a petition for relief under Subsection (d), the taxing unit may also seek to secure the payment of taxes for a current tax year that are not delinquent and shall estimate the amount due if those taxes are not yet assessed.

(h) The tax lien attaches to any amounts paid into the court's registry with the same priority as for the property on which taxes are owed.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., ch. 707 (H.B. 646), § 4(33), effective August 31, 1981; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 4, effective September 1, 1993; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 20, effective September 1, 2001.

NOTES TO DECISIONS

Analysis

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••••Partnership Liabilities
Civil Procedure
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Estate, Gift & Trust Law
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Tax Law
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••Real Property Tax
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••••General Overview
••••Tax Deeds & Tax Sales
••••Tax Liens
••Sales Tax
•••Failure to Pay Tax

BUSINESS & CORPORATE LAW
General Partnerships
Management Duties & Liabilities
Causes of Action

Partnership Liabilities. — Appellees were entitled to rely upon the recitations contained in the deed filed of record, indicating that the property owner's brother was a partner in the company, when attempting to determine ownership of the property for purposes of effecting service of process; as citation served on one member of a partnership authorized a judgment against the partnership, Tex. Civ. Prac. & Rem. Code Ann. § 17.022, service upon the brother was effective to authorize a judgment against the company. Reed v. County of Tarrant, No. 02-11-00285-CV, 2012 Tex. App. LEXIS 4197 (Tex. App. Fort Worth May 24, 2012).

CIVIL PROCEDURE
Jurisdiction
Subject Matter Jurisdiction
Jurisdiction Over Actions

General Overview. — Tex. Prob. Code Ann. § 5C divested the probate court of jurisdiction over a suit filed by the taxing authorities to collect delinquent ad valorem taxes and to foreclose on tax liens on real property owned by the estate of the deceased; thus, pursuant to Tex. Const. art. V, § 8 and Tex. Tax Code Ann. § 33.41, the district court had and properly exercised jurisdiction over the case. Moak v. County of Cherokee, No. 12-01-00322-CV, 2003 Tex. App. LEXIS 4343 (Tex. App. Tyler May 21, 2003).

Former Tex. Rev. Civ. Stat. Ann. art. 7345b-1 (now Tex. Tax Code Ann. § 33.41) vested exclusive jurisdiction of actions to collect ad valorem taxes in the county where the taxes were assessed, and a plea of privilege under former Tex. Rev. Civ. Stat. Ann. art. 1995, § 30 was wholly improper, and the trial court had no power to grant it. Poynor v. Bowie Independent School Dist., 627 S.W.2d 517, 1982 Tex. App. LEXIS 3824 (Tex. App. Fort Worth Jan. 20, 1982, pet. dism'd w.o.j.).

VENUE

Individual Defendants. — A trial court did not abuse its discretion in granting a city's motion for summary judgment and denying property owner's request to file an opposing affidavit where the city allegedly had filed a previous suit concerning the subject matter in another county; under former Tex. Rev. Civ. Stat. Ann. art. 7345b-1 no issue of venue could arise under a plea of privilege and the trial court was under no duty to transfer a cause to a court with no jurisdiction. Rhodes v. Austin, 584 S.W.2d 917, 1979 Tex. App. LEXIS 3921 (Tex. Civ. App. Tyler July 12, 1979, writ ref'd n.r.e.).

SUMMARY JUDGMENT
Supporting Materials

General Overview. — In a school district's suit against taxpayers to recover delinquent ad valorem taxes, under Tex. Rev. Civ. Stat. Ann. art. 7326 (now Tex. Tax. Code Ann. § 33.41) the tax rolls constituted adequate summary judgment supporting proof because the tax rolls were prima facie evidence of the lawful levy of the taxes and the amount due. Foster v. Hubbard Independent School Dist., 619 S.W.2d 607, 1981 Tex. App. LEXIS 3973 (Tex. Civ. App. Waco July 30, 1981, writ ref'd n.r.e.).

ESTATE, GIFT & TRUST LAW
Estate Administration
Claims Against Estates

General Overview. — In the taxing entities' suit to recover unpaid ad valorem taxes under Tex. Tax. Code Ann. § 33.41 on property inherited by the decedent's son, judgment in favor of the taxing entities was proper as it was against the property rather than the son, the trial court had jurisdiction, and the son failed to

demonstrate any violation of his constitutional rights to open courts and due process. As the taxing entities amended their petition to include the heirs of the father "in rem only," they were seeking judgment against the property, and the trial court did not impose personal liability on the son for delinquent taxes incurred prior to his acquisition of the property as his father's heir. Stoker v. City of Fort Worth, No. 2-08-103-CV, 2009 Tex. App. LEXIS 5507 (Tex. App. Fort Worth July 16, 2009).

REAL PROPERTY LAW
Nonmortgage Liens

Mechanics' Liens. — Subrogating a bank to tax liens would have prejudiced a builder with possible mechanic's liens because the subrogation would have altered the foreclosure requirement of a judicial proceeding with the builder as a party; that requirement was eliminated by the bank's deed of trust. Lyda Swinerton Builders, Inc. v. Cathay Bank, 409 S.W.3d 221, 2013 Tex. App. LEXIS 10081 (Tex. App. Houston 14th Dist. Aug. 13, 2013, no pet.).

TAX LIENS. — Subrogating a bank to tax liens would have prejudiced a builder with possible mechanic's liens because the subrogation would have altered the foreclosure requirement of a judicial proceeding with the builder as a party; that requirement was eliminated by the bank's deed of trust. Lyda Swinerton Builders, Inc. v. Cathay Bank, 409 S.W.3d 221, 2013 Tex. App. LEXIS 10081 (Tex. App. Houston 14th Dist. Aug. 13, 2013, no pet.).

TITLE QUALITY
Adverse Claim Actions

General Overview. — Purchaser failed to prove his trespass to try title action as a matter of law, because the purchaser failed to establish a proper chain of title, when a deed evidencing a tax foreclosure sale did not establish that the sovereign conveyed title to the property to the grantor, as the county did not hold title to the property by virtue of its lien nor by its statutory authority to foreclose on the property, and without further evidence of the chain of title, the proffer of the constable's correction deed from the tax foreclosure sale did not establish title emanating directly from the sovereign. Ellis v. Buentello, No. 01-12-00098-CV, 2012 Tex. App. LEXIS 6803 (Tex. App. Houston 1st Dist. Aug. 16, 2012).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Under Tex. Tax Code Ann. § 33.41(a), suits to collect ad valorem taxes on real property brought during the administration of a probate estate had to be brought in the county in which the property was located. Estate of Crawford v. Town of Flower Mound, 933 S.W.2d 727, 1996 Tex. App. LEXIS 4622 (Tex. App. Fort Worth Oct. 17, 1996, writ denied).

Taxpayer failed to allege that appraisal district's valuation of his property at over $500 was made in bad faith or fraudulently and, therefore, the district court retained jurisdiction. Flowers v. Lavaca County Appraisal Dist., 766 S.W.2d 825, 1989 Tex. App. LEXIS 78 (Tex. App. Corpus Christi Jan. 19, 1989, writ denied).

COLLECTION. — In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

FAILURE TO PAY TAX. — Taxpayer failed to pay taxes by the deadlines under Tex. Tax Code Ann. § 31.02 and the exclusive remedies provision, Tex. Tax Code Ann. § 42.09, deprived the taxpayer of equitable defenses it raised to avoid summary judgment; the trial court properly found that the taxpayer owed penalties and interest on the tax years in question, for purposes of Tex. Tax Code Ann. § 33.41. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Trial court could have found the taxpayer delinquent in its tax payments, for purposes of Tex. Tax Code Ann. § 31.02(a), and because the county had a right to sue for such taxes under Tex. Tax Code Ann. § 33.41, and the taxpayer did not specifically challenge the constitutionality of the payment deadline, the trial court did not err in granting summary judgment on the taxpayer's claims under Tex. Const. art. I, §§ 3, 17, 19 and Tex. Const. VIII, §§ 1, 2. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

JUDICIAL REVIEW. — In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

REAL PROPERTY TAX
Collection

General Overview. — Since if summary judgment were granted, voiding and setting aside a tax suit judgment, making a property owner the owner in fee simple free of any claims of a subsequent purchaser, voiding a sheriff's sale, and awarding a writ of possession, it was improper; the property owner failed to establish the absence of negligence and that the owner had not been guilty of a lack of diligence in preventing the execution of the order of sale in the tax suit. Fender v. Moss, 629 S.W.2d 192, 1982 Tex. App. LEXIS 4250 (Tex. App. Dallas Feb. 17, 1982), writ ref'd n.r.e. 637 S.W.2d 922, 1982 Tex. LEXIS 323 (Tex. 1982).

TAX DEEDS & TAX SALES. — Purchaser failed to prove his trespass to try title action as a matter of law, because the purchaser failed to establish a proper chain of title, when a deed evidencing a tax foreclosure sale did not establish that the sovereign conveyed title to the property to the grantor, as the county did not hold title to the property by virtue of its lien nor by its statutory authority to foreclose on the property, and without further evidence of the chain of title, the proffer of the constable's correction deed from the tax foreclosure sale did not establish title emanating directly from the sovereign. Ellis v. Buentello, No. 01-12-00098-CV, 2012 Tex. App. LEXIS 6803 (Tex. App. Houston 1st Dist. Aug. 16, 2012).

TAX LIENS. — Appellees were entitled to rely upon the recitations contained in the deed filed of record, indicating that the property owner's brother was a partner in the company, when attempting to determine ownership of the property for purposes of effecting service of process; as citation served on one member of a partnership authorized a judgment against the partnership, Tex. Civ. Prac. & Rem. Code Ann. § 17.022, service upon the brother was effective to authorize a judgment against the company. Reed v. County of Tarrant, No. 02-11-00285-CV, 2012 Tex. App. LEXIS 4197 (Tex. App. Fort Worth May 24, 2012).

In the taxing entities' suit to recover unpaid ad valorem taxes under Tex. Tax. Code Ann. § 33.41 on property inherited by the decedent's son, judgment in favor of the taxing entities was proper as it was against the property rather than the son, the

trial court had jurisdiction, and the son failed to demonstrate any violation of his constitutional rights to open courts and due process. As the taxing entities amended their petition to include the heirs of the father "in rem only," they were seeking judgment against the property, and the trial court did not impose personal liability on the son for delinquent taxes incurred prior to his acquisition of the property as his father's heir. Stoker v. City of Fort Worth, No. 2-08-103-CV, 2009 Tex. App. LEXIS 5507 (Tex. App. Fort Worth July 16, 2009).

SALES TAX
Failure to Pay Tax. — As a city conceded that the portion of the judgment awarding it an in personam judgment was erroneous, but represented that it would proceed only in rem against the tract by foreclosing the tax lien that existed on the property, that rendered moot any dispute about the portion of the judgment establishing personal liability for the delinquent taxes. Tierra Sol Joint Venture & Samuel & Co. v. City of El Paso, 311 S.W.3d 492, 2009 Tex. App. LEXIS 6890 (Tex. App. El Paso Aug. 28, 2009, no pet.).

Sec. 33.42. Taxes Included in Foreclosure Suit.

(a) In a suit to foreclose a lien securing payment of its tax on real property, a taxing unit shall include all delinquent taxes due the unit on the property.

(b) If a taxing unit's tax on real property becomes delinquent after the unit files suit to foreclose a tax lien on the property but before entry of judgment, the court shall include the amount of the tax and any penalty and interest in its judgment.

(c) If a tax required by this section to be included in a suit is omitted from the judgment in the suit, the taxing unit may not enforce collection of the tax at a later time except as provided by Section 34.04(c)(2).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 21, effective September 1, 2001.

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CIVIL PROCEDURE
Discovery
Disclosures
Mandatory Disclosures. — In a suit to collect delinquent ad valorem taxes, because the tax statement attached to the petition gave notice pursuant to Tex. Tax Code Ann. § 33.42(a), that the suit covered all delinquent taxes owed on the property whether or not itemized, lack of unfair surprise to the taxpayer was a legitimate basis under Tex. R. Civ. P. 193.6 to admit an updated tax statement in evidence at trial. Williams v. County of Dallas, No. 05-05-00376-CV, 2006 Tex. App. LEXIS 2367 (Tex. App. Dallas Mar. 29, 2006), vacated, op. withdrawn, reh'g denied, 194 S.W.3d 29, 2006 Tex. App. LEXIS 3712 (Tex. App. Dallas May 3, 2006).

TAX LAW
State & Local Taxes
Real Property Tax
General Overview. — In a suit to collect delinquent ad valorem taxes, because the tax statement attached to the petition gave notice pursuant to Tex. Tax Code Ann. § 33.42(a), that the suit covered all delinquent taxes owed on the property whether or not itemized, lack of unfair surprise to the taxpayer was a legitimate basis under Tex. R. Civ. P. 193.6 to admit an updated tax statement in evidence at trial. Williams v. County of Dallas, No. 05-05-00376-CV, 2006 Tex. App. LEXIS 2367 (Tex. App. Dallas Mar. 29, 2006), vacated, op. withdrawn, reh'g denied, 194 S.W.3d 29, 2006 Tex. App. LEXIS 3712 (Tex. App. Dallas May 3, 2006).

Sec. 33.43. Petition.

(a) A petition initiating a suit to collect a delinquent property tax is sufficient if it alleges that:

(1) the taxing unit is legally constituted and authorized to impose and collect ad valorem taxes on property;

(2) tax in a stated amount was legally imposed on each separately described property for each year specified and on each person named if known who owned the property on January 1 of the year for which the tax was imposed;

(3) the tax was imposed in the county in which the suit is filed;

(4) the tax is delinquent;

(5) penalties, interest, and costs authorized by law in a stated amount for each separately assessed property are due;

(6) the taxing unit is entitled to recover each penalty that is incurred and all interest that accrues on delinquent taxes imposed on the property from the date of the judgment to the date of the sale under Section 34.01 or under Section 253.010, Local Government Code, as applicable, if the suit seeks to foreclose a tax lien;

(7) the person sued owned the property on January 1 of the year for which the tax was imposed if the suit seeks to enforce personal liability;

(8) the person sued owns the property when the suit is filed if the suit seeks to foreclose a tax lien;

(9) the taxing unit asserts a lien on each separately described property to secure the payment of all taxes, penalties, interest, and costs due if the suit seeks to foreclose a tax lien;

(10) all things required by law to be done have been done properly by the appropriate officials; and

(11) the attorney signing the petition is legally authorized to prosecute the suit on behalf of the taxing unit.

(b) If the petition alleges that the person sued owns the property on which the taxing unit asserts a lien, the prayer

in the petition shall be for foreclosure of the lien and payment of all taxes, penalties, interest, and costs that are due or will become due and that are secured by the lien. If the petition alleges that the person sued owned the property on January 1 of the year for which the taxes were imposed, the prayer shall be for personal judgment for all taxes, penalties, interest, and costs that are due or will become due on the property. If the petition contains the appropriate allegations, the prayer may be for both foreclosure of a lien on the property and personal judgment.

(c) If the suit is for personal judgment against the person who owned personal property on January 1 of the year for which the tax was imposed on the property, the personal property may be described generally.

(d) The petition need not be verified.

(e) The comptroller shall prepare forms for petitions initiating suits to collect delinquent taxes. An attorney representing a taxing unit may use the forms or develop his own form.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 49, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 981 (H.B. 2622), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 19, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 18.006, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 22, effective September 1, 2001.

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BUSINESS & CORPORATE LAW
General Partnerships
Management Duties & Liabilities
Causes of Action

Partnership Liabilities. — Appellees were entitled to rely upon the recitations contained in the deed filed of record, indicating that the property owner's brother was a partner in the company, when attempting to determine ownership of the property for purposes of effecting service of process; as citation served on one member of a partnership authorized a judgment against the partnership, Tex. Civ. Prac. & Rem. Code Ann. § 17.022, service upon the brother was effective to authorize a judgment against the company. Reed v. County of Tarrant, No. 02-11-00285-CV, 2012 Tex. App. LEXIS 4197 (Tex. App. Fort Worth May 24, 2012).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Under the provisions of Tex. Tax. Code Ann. § 33.43, the allegation of ownership was required to be a part of plaintiff taxing authority's petition to collect delinquent taxes from defendant taxpayer. Anderson v. Robstown Independent School Dist., 698 S.W.2d 206, 1985 Tex. App. LEXIS 12143 (Tex. App. Corpus Christi Aug. 30, 1985), aff'd in part and rev'd in part, 706 S.W.2d 952, 1986 Tex. LEXIS 944 (Tex. 1986).

ASSESSMENTS. — Property description was sufficient to put a taxpayer on notice of the appraised property value because the property description as attested to by the Deputy Tax Assessor Collector and referenced on the certified delinquent tax roll records was sufficient to identify the subject property with reasonable certainty. Marrs v. San Jacinto County, No. 09-07-382 CV, 2008 Tex. App. LEXIS 6207 (Tex. App. Beaumont Aug. 14, 2008).

COLLECTION. — Property description was sufficient to put a taxpayer on notice of the appraised property value because the property description as attested to by the Deputy Tax Assessor Collector and referenced on the certified delinquent tax roll records was sufficient to identify the subject property with reasonable certainty. Marrs v. San Jacinto County, No. 09-07-382 CV, 2008 Tex. App. LEXIS 6207 (Tex. App. Beaumont Aug. 14, 2008).

PERSONAL PROPERTY TAX

General Overview. — County's suit against a property owner for delinquent ad valorem taxes was supported by adequate property descriptions because the county's abbreviations and general descriptive evidence was sufficient to comply with the requirements of Tex. Tax Code Ann. § 33.43(c). Castillo v. State, 733 S.W.2d 560, 1987 Tex. App. LEXIS 8023 (Tex. App. San Antonio Feb. 27, 1987, no writ).

REAL PROPERTY TAX

General Overview. — Generality of the personal-property description, averred in appellee's petition, did not preclude the rendition of summary judgment, because appellee's petition was sufficient to support the judgment; nothing in Tex. Tax Code Ann. § 33.43 required any degree of specificity in order to make the petition sufficient for that purpose. Texas Architectural Aggregate, Inc. v. San Saba County Cent. Appraisal Dist., 725 S.W.2d 389, 1987 Tex. App. LEXIS 6573 (Tex. App. Austin Jan. 28, 1987, writ ref'd n.r.e.).

COLLECTION

Tax Deeds & Tax Sales. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; Tax Code provisions for real property tax suits did not contain express joinder requirements that would have compelled the county to have joined the lienholder in the tax suit. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

TAX LIENS. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; Tax Code provisions for real property tax suits did not contain express joinder requirements that would have compelled the county to have joined the lienholder in the tax suit. Kothari v. Oyervidez, 373 S.W.3d 801,

2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

Appellees were entitled to rely upon the recitations contained in the deed filed of record, indicating that the property owner's brother was a partner in the company, when attempting to determine ownership of the property for purposes of effecting service of process; as citation served on one member of a partnership authorized a judgment against the partnership, Tex. Civ. Prac. & Rem. Code Ann. § 17.022, service upon the brother was effective to authorize a judgment against the company. Reed v. County of Tarrant, No. 02-11-00285-CV, 2012 Tex. App. LEXIS 4197 (Tex. App. Fort Worth May 24, 2012).

Sec. 33.44. Joinder of Other Taxing Units.

(a) A taxing unit filing suit to foreclose a tax lien on real property shall join other taxing units that have claims for delinquent taxes against all or part of the same property.

(b) For purposes of joining a county, citation may be served on the county tax assessor-collector. For purposes of joining any other taxing unit, citation may be served on the officer charged with collecting taxes for the unit or on the presiding officer or secretary of the governing body of the unit. Citation may be served by certified mail, return receipt requested. A person on whom service is authorized by this subsection may waive the issuance and service of citation in behalf of his taxing unit.

(c) A taxing unit joined in a suit as provided by this section must file its claim for delinquent taxes against the property or its lien on the property is extinguished. The court's judgment in the suit shall reflect the extinguishment of a lien under this subsection.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 25, effective August 29, 1983.

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TAX LAW
State & Local Taxes
Real Property Tax
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Tax Deeds & Tax Sales. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; Tax Code provisions for real property tax suits did not contain express joinder requirements that would have compelled the county to have joined the lienholder in the tax suit. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

TAX LIENS. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; Tax Code provisions for real property tax suits did not contain express joinder requirements that would have compelled the county to have joined the lienholder in the tax suit. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

Sec. 33.445. Joinder of Tax Lien Transferee.

(a) A taxing unit acting under Section 33.44(a) shall also join each transferee of a tax lien against the property that may appear of record under Section 32.06. After the joinder, the transferee of the tax lien may file its claim and seek foreclosure in the suit for all amounts owed the transferee that are secured by the transferred tax lien, regardless of when the original transfer of tax lien was recorded or whether the original loan secured by the transferred tax lien is delinquent. In the alternative, the transferee may pay all taxes, penalties, interest, court costs, and attorney's fees owing to the taxing unit that filed the foreclosure suit and each other taxing unit that is joined.

(b) In consideration of the payment by the transferee of those taxes and charges, each joined taxing unit shall transfer its tax lien to the transferee in the form and manner provided by Section 32.06(b) and enter its disclaimer in the suit. The transfer of a tax lien under this subsection does not require authorization by the property owner.

(c) On transfer of all applicable tax liens, the transferee may seek to foreclose the tax liens in the pending suit or in any other manner provided by Section 32.06, regardless of when the original transfer of tax lien was recorded or whether the original loan secured by the transferred tax lien is delinquent. The foreclosure may include all amounts owed to the transferee, including any amount secured by the original transfer of tax lien.

(d) All liens held by a transferee who is joined under this section but fails to act in the manner provided by this section are extinguished, and the court's judgment shall reflect the extinguishment of those liens.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 104 (H.B. 1465), § 2, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 622 (S.B. 762), § 2, effective September 1, 2011.

Sec. 33.45. Pleading and Answering to Claims Filed.

A party to the suit must take notice of and plead and answer to all claims and pleadings filed by other parties that have been joined or have intervened, and each citation must so state.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 33.46. Partition of Real Property.

(a) If suit is filed to foreclose a tax lien on real property owned in undivided interests by two or more persons, one or more of the owners may have the property partitioned in the manner prescribed by law for the partition of real property in district court.

(b) The court shall apportion the taxes, penalties, interest, and costs sued for to the owners of the property in proportion to the interest of each. If an owner pays the taxes, penalties, interest, and costs apportioned to him, the property partitioned to him is free from further claim or lien for the taxes involved in the suit. If an owner refuses to pay the amount apportioned to him, the suit shall proceed against him for that amount.

(c) The court shall allow reasonable attorney's fees and costs of partitioning for each property partitioned. The fee shall be taxed as costs against each owner in proportion to his interest and constitutes a lien against the property until paid.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

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TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — Tex. Tax Code Ann. § 33.46 is an additional remedy which is available to joint owners of property, and its existence should not prevent one co-owner from authorizing another co-owner to pay all of the ad valorem taxes and to secure a transfer of the tax lien as to the co-owner's portion of the taxes; as a matter of policy, the payment should be permitted to avoid the necessity of tax foreclosure suits. Rosewood Props. v. Community Credit Union, 944 S.W.2d 46, 1997 Tex. App. LEXIS 1760 (Tex. App. Eastland Apr. 3, 1997, writ denied).

Sec. 33.47. Tax Records As Evidence.

(a) In a suit to collect a delinquent tax, the taxing unit's current tax roll and delinquent tax roll or certified copies of the entries showing the property and the amount of the tax and penalties imposed and interest accrued constitute prima facie evidence that each person charged with a duty relating to the imposition of the tax has complied with all requirements of law and that the amount of tax alleged to be delinquent against the property and the amount of penalties and interest due on that tax as listed are the correct amounts.

(b) If the description of a property in the tax roll or delinquent tax roll is insufficient to identify the property, the records of the appraisal office are admissible to identify the property.

(c) In a suit to collect a tax, a tax receipt issued under Section 31.075 of this code, or an electronic replica of the receipt, that states that a tax has been paid is prima facie evidence that the tax has been paid as stated by the receipt or electronic replica.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 52 (S.B. 83), § 2, effective May 6, 1987; am. Acts 1995, 74th Leg., ch. 828 (H.B. 2610), § 1, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 20, effective September 1, 1999.

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CIVIL PROCEDURE
Summary Judgment
Standards

General Overview. — Trial court properly granted the taxing authorities' motion for summary judgment because: (1) pursuant to Tex. Prob. Code Ann. 317(c)(3)(B), the trial court properly considered the taxing authorities' summary judgment evidence; (2) pursuant to Tex. Tax Code Ann. § 33.47, the taxing authorities met their burden to show that the taxes were properly imposed, due, and owing; (3) the statute of limitations in the probate code, Tex. Prob. Code Ann. § 5C, was not applicable to the case; (4) the 20-year statute of limitations in the tax code, Tex. Tax. Code Ann. § 33.05(a)(2), was tolled pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 16.064, and thus, none of the taxing authorities' claims were barred by that statute of limitations. Moak v. County of Cherokee, No. 12-01-00322-CV, 2003 Tex. App. LEXIS 4343 (Tex. App. Tyler May 21, 2003).

SUPPORTING MATERIALS

General Overview. — When in its motion for summary judgment, a town included copies of the portions of its current and supplemental tax rolls relating to the property in question, under Tex. Tax Code Ann. § 33.47(a), this entitled the town to the statutory presumption that the town's representatives did their duty relating to the imposition of the tax, which included mailing a proper notice to the taxpayers. The town did not have to expressly plead the statute to invoke the presumption. Freeman v. Town of Flower Mound, No. 03-02-00032-CV, 2002 Tex. App. LEXIS 3463 (Tex. App. Austin May 16, 2002).

APPEALS
Standards of Review
Substantial Evidence

Sufficiency of Evidence. — Evidence presented by the Taxing Units was sufficient to support the judgment because they introduced certified copies of the delinquent tax record and the taxpayer admitted to owing the Taxing Units. Johnson v. Dallas County, No. 05-12-01046-CV, 2014 Tex. App. LEXIS 2540 (Tex. App. Dallas Mar. 5, 2014), reh'g denied, No. 05-12-01046-CV, 2014 Tex. App. LEXIS 4590 (Tex. App. Dallas Apr. 23, 2014).

COMMERCIAL LAW (UCC)
Secured Transactions (Article 9)
Application & Construction

Leases. — Summary judgment in favor of the taxing units was proper in a suit for delinquent ad valorem taxes against an automobile leasing company as the company's affirmative defense of nonownership based on its claim that its leases with its customers were security agreements failed as a matter of law under Tex. Bus. & Com. Code Ann. § 1.203(b); the company's leases expressly provided that they were subject to termination by the lessee, and no party claimed ambiguity in the subject lease agreements. Excel Auto & Truck Leasing, LLP v. Alief Indep. Sch. Dist., No. 01-04-01185-CV, 2007 Tex. App. LEXIS 3032 (Tex. App. Houston 1st Dist. Apr. 19, 2007), op. withdrawn, sub. op., reh'g denied, 249 S.W.3d 46, 63 U.C.C. Rep. Serv. 2d (CBC) 846, 2007 Tex. App. LEXIS 7359 (Tex. App. Houston 1st Dist. Aug. 31, 2007).

EVIDENCE
Inferences & Presumptions

General Overview. — Where the record contained certified copies of the tax statements that showed the delinquent nature of taxpayer's property, and city and school district made their prima facie case by introducing the official tax records and proof of nonpayment, taxpayer did not introduce evidence in support of the proposition that the notices had not been sent, and, consequently, did not meet the burden imposed under Tex. Tax Code Ann. § 33.47(a) to go forward with his defense. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

PRESUMPTIONS

Creation of Presumptions. — Reasonable factfinder could have credited the county's evidence, which included a certified delinquent tax statement and a copy of a deed to the taxpayer, in this suit to collect delinquent taxes. Felt v. Harris County, No. 14-12-00327-CV, 2013 Tex. App. LEXIS 4981 (Tex. App. Houston 14th Dist. Apr. 23, 2013).

As for the amounts at issue, a certified delinquent-tax statement is prima facie evidence of the amount of penalties, tax, and interest, and on those matters, and in this case, the county relied solely on the presumption under Tex. Tax Code Ann. § 33.47(a) that these amounts were due, delinquent, and unpaid, and the taxpayer did not offer evidence to rebut that presumption, which was not undermined by the misidentification of the property's owner, for purposes of Tex. Tax Code Ann. § 25.02(b). Felt v. Harris County, No. 14-12-00327-CV, 2013 Tex. App. LEXIS 4981 (Tex. App. Houston 14th Dist. Apr. 23, 2013).

PRESUMPTION OF REGULARITY. — Incorrect name on certified delinquent tax statements did not defeat the presumption created by Tex. Tax Code Ann. § 33.47(a) that the statements were accurate; the taxpayers did not dispute their ownership of the property under Tex. Tax Code Ann. § 42.09, and the validity of the tax roll was unaffected by a clerical mistake as provided in Tex. Tax Code Ann. § 25.02(b). Seiflein v. City of Houston, No. 01-09-00361-CV, 2010 Tex. App. LEXIS 778 (Tex. App. Houston 1st Dist. Feb. 4, 2010).

PROCEDURAL CONSIDERATIONS

Weight & Sufficiency. — In a suit to collect delinquent taxes on a vacant tract of land, delinquent tax statements provided legally sufficient evidence under Tex. Tax Code Ann. § 33.47(a) to support a tax master's finding that the taxes were delinquent. Thompson v. Aldine Indep. Sch. Dist., No. 14-09-00596-CV, 2011 Tex. App. LEXIS 5536 (Tex. App. Houston 14th Dist. July 21, 2011).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Assuming it was sufficient to rebut the presumption, the tax roll continued to be of probative value under Tex. Tax Code Ann. § 33.47(a), and given the power of the trial court to believe or disbelieve the evidence, the evidence was sufficient to support the judgment against the corporation for delinquent taxes. Nat'l Med. Fin. Servs. v. Irving Indep. Sch. Dist., 150 S.W.3d 901, 2004 Tex. App. LEXIS 11149 (Tex. App. Dallas Dec. 13, 2004, no pet.).

In a taxpayer protest, documents the taxing entities presented were insufficient to prove their cause of action as no explanation was given as to how the amount the taxpayers owed was calculated, nor how the taxpayers' payments were applied. Estates of Elkins v. County of Dallas, 146 S.W.3d 826, 2004 Tex. App. LEXIS 9417 (Tex. App. Dallas Oct. 26, 2004, no pet.).

In addition to the presumption of delivery accorded the taxing units under Tex. Tax Code Ann. § 33.47, Tex. Tax Code Ann. § 1.07(c) provides for the presumption of delivery of notice upon the notice's deposit in the mail for delivery by first-class mail; the presumption was rebutted by a taxpayer who showed that the taxing unit did not send notices by first-class mail. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

Presumption created by Tex. Tax Code Ann. § 33.47 disappears if and when the taxpayer meets its burden of producing competent evidence to justify a finding against the presumed fact; where the subject property owner showed that he did not in fact receive notice and that the taxing district's records were incorrect relative to his address, he rebutted the presumption of receipt of notice. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

Once the taxing unit introduces records as required by Tex. Tax Code Ann. § 33.47(a), it establishes a prima facie case as to every material fact necessary to establish its cause of action; when the taxing unit establishes a prima facie case in a tax delinquency suit, a rebuttable presumption arises that the taxing entity has taken all actions necessary to obtain legal authority to levy the tax, including proper delivery of all required tax notices. Aldine

Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

School district was not entitled to penalties or interest for those tax years where property owners' testimony of non-receipt of delinquency notices coupled with the discrepancy in the school district's records relating to the owners' address, and the testimony of the district's appraiser that the notices were not mailed first-class, was sufficient to support the trial court's finding that the district did not "deliver" the notices to the owner. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

Certified copy of the delinquent tax record introduced by the taxing authorities in an action to collect delinquent ad valorem property taxes was prima facie evidence that all requirements of the law had been complied with and that the amount stated as due was correct; where the taxpayer had not presented evidence rebutting the prima facie case, a grant of summary judgment in favor of the taxing authorities was proper. Mortland v. Dripping Springs I. S. D., No. 03-02-00331-CV, No. 03-03-00003-CV, 2003 Tex. App. LEXIS 6343 (Tex. App. Austin July 24, 2003).

Tex. Tax Code Ann. § 33.47 provides that the delinquent tax roll constitutes prima facie evidence that the amount of tax alleged to be delinquent is the correct amount. Bryan Independent School Dist. v. Lamountt, 726 S.W.2d 192, 1987 Tex. App. LEXIS 6289 (Tex. App. Houston 14th Dist. Jan. 29, 1987, no writ).

Under former Tex. Rev. Civ. Stat. Ann. arts. 7326 and 7336, the pertinent delinquent tax records and evidence that the taxes had not been paid were prima facie evidence of the correct amount of the taxes and costs due in a suit for collection of taxes, and the taxpayer had the burden of proving that the assessment was invalid. Duval County Ranch Co. v. State, 587 S.W.2d 436, 63 Oil & Gas Rep. 549, 1979 Tex. App. LEXIS 3889 (Tex. Civ. App. San Antonio July 11, 1979, writ ref'd n.r.e.), cert. denied, 449 U.S. 1077, 101 S. Ct. 856, 66 L. Ed. 2d 800, 1981 U.S. LEXIS 292 (U.S. 1981).

ASSESSMENTS. — For purposes of Tex. Tax Code Ann. § 33.47(a), the county's tax records were prima facie evidence of the amount owed, such that the burden shifted to the taxpayer to raise a defense, presumably under Tex. Tax Code Ann. § 42.09; however, the defenses asserted were not among those available to a taxpayer who failed to timely protest, and the trial court properly granted the county summary judgment. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

COLLECTION. — Reasonable factfinder could have credited the county's evidence, which included a certified delinquent tax statement and a copy of a deed to the taxpayer, in this suit to collect delinquent taxes. Felt v. Harris County, No. 14-12-00327-CV, 2013 Tex. App. LEXIS 4981 (Tex. App. Houston 14th Dist. Apr. 23, 2013).

As for the amounts at issue, a certified delinquent-tax statement is prima facie evidence of the amount of penalties, tax, and interest, and on those matters, and in this case, the county relied solely on the presumption under Tex. Tax Code Ann. § 33.47(a) that these amounts were due, delinquent, and unpaid, and the taxpayer did not offer evidence to rebut that presumption, which was not undermined by the misidentification of the property's owner, for purposes of Tex. Tax Code Ann. § 25.02(b). Felt v. Harris County, No. 14-12-00327-CV, 2013 Tex. App. LEXIS 4981 (Tex. App. Houston 14th Dist. Apr. 23, 2013).

Court agreed that the certified delinquent-tax statement did not give rise to a presumption that the taxpayer owned the property, but the county did not rest its case only on a presumption; the statement created a presumption that a company owned the property, but the county also relied on a copy of a deed that conveyed the property to the taxpayer, and his signature was on the deed, and this was unrebutted, competent evidence that the taxpayer was the owner of the property. Felt v. Harris County, No. 14-12-00327-CV, 2013 Tex. App. LEXIS 4981 (Tex. App. Houston 14th Dist. Apr. 23, 2013).

Evidence was insufficient to show that the estate owed delinquent property taxes, because the identity of the person listed as the certified owner of the property in the evidence introduced at trial did not match the identity of the estate, and the taxing entities offered no evidence of who the certified owner was or what relation he had to the estate, nor did they offer any evidence that the estate owed the delinquent taxes. Estate of Springer v. Dallas County, No. 05-09-00452-CV, 2010 Tex. App. LEXIS 3592 (Tex. App. Dallas May 12, 2010).

Incorrect name on certified delinquent tax statements did not defeat the presumption created by Tex. Tax Code Ann. § 33.47(a) that the statements were accurate; the taxpayers did not dispute their ownership of the property under Tex. Tax Code Ann. § 42.09, and the validity of the tax roll was unaffected by a clerical mistake as provided in Tex. Tax Code Ann. § 25.02(b). Seiflein v. City of Houston, No. 01-09-00361-CV, 2010 Tex. App. LEXIS 778 (Tex. App. Houston 1st Dist. Feb. 4, 2010).

Taxpayer failed to meet her burden to preclude judgment for delinquent taxes because the evidence attached to the county's motion for summary judgment established a prima facie case of every material element needed to establish its cause of action to collect the delinquent taxes. The county's certification of the delinquent tax records and certified copies of the entries from the delinquent tax roll showed the property and the amount of the tax and penalties imposed and interest accrued. Marrs v. San Jacinto County, No. 09-07-382 CV, 2008 Tex. App. LEXIS 6207 (Tex. App. Beaumont Aug. 14, 2008).

When a taxing authority introduces a copy of its delinquent-tax record, it establishes its prima facie case as to every material fact necessary to establish its cause of action. F-Star Socorro, L.P. v. City of El Paso, 281 S.W.3d 103, 2008 Tex. App. LEXIS 5008 (Tex. App. El Paso July 3, 2008, no pet.).

Because several taxing authorities introduced the records in Tex. Tax Code Ann. § 33.47(a), they established a prima facie case, and a rebuttable presumption arose that the authorities had taken all actions necessary to obtain legal authority to levy a tax, including the proper delivery of the tax notices; the bill was mailed to the most current address listed on the tax rolls, even though it was not the proper mailing address for a trustee; therefore, the evidence was legally insufficient to rebut the presumption that the authorities properly sent out a 1997 tax bill, and they were entitled to seek penalties and interest. Houston Indep. Sch. Dist. v. Old Farms Owners Ass'n, 236 S.W.3d 375, 2007 Tex. App. LEXIS 5898 (Tex. App. Houston 1st Dist. July 26, 2007), reh'g denied, No. 01-04-00538-CV, 2007 Tex. App. LEXIS 9309 (Tex. App. Houston 1st Dist. Sept. 25, 2007), rev'd, 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

Taxpayer was properly ordered to pay delinquencies owed on two parcels of property because the evidence was legally and factually sufficient based on the certified copies of the delinquencies offered under Tex. Tax Code Ann. § 33.47; moreover, the taxpayer's direction regarding the application of his payments was invalid under Tex. Tax. Code Ann. § 31.073, so his defense of payment was not successful. Reinmiller v. County of Dallas, 212 S.W.3d 835, 2006 Tex. App. LEXIS 10350 (Tex. App. Eastland Nov. 30, 2006, no pet.).

DEFICIENCIES. — In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

FAILURE TO PAY TAX. — In a suit to collect delinquent taxes on a vacant tract of land, delinquent tax statements provided legally sufficient evidence under Tex. Tax Code Ann. § 33.47(a) to support a tax master's finding that the taxes were delinquent. Thompson v. Aldine Indep. Sch. Dist., No. 14-09-00596-CV, 2011 Tex. App. LEXIS 5536 (Tex. App. Houston 14th Dist. July 21, 2011).

Taxpayer failed to meet her burden to preclude judgment for delinquent taxes because the evidence attached to the county's motion for summary judgment established a prima facie case of every material element needed to establish its cause of action to collect the delinquent taxes. The county's certification of the delinquent tax records and certified copies of the entries from the delinquent tax roll showed the property and the amount of the tax and penalties imposed and interest accrued. Marrs v. San Jacinto County, No. 09-07-382 CV, 2008 Tex. App. LEXIS 6207 (Tex. App. Beaumont Aug. 14, 2008).

Because several taxing authorities introduced the records in Tex. Tax Code Ann. § 33.47(a), they established a prima facie case, and a rebuttable presumption arose that the authorities had taken all actions necessary to obtain legal authority to levy a tax, including the proper delivery of the tax notices; the bill was mailed to the most current address listed on the tax rolls, even though it was not the proper mailing address for a trustee; therefore, the evidence was legally insufficient to rebut the presumption that the authorities properly sent out a 1997 tax bill, and they were entitled to seek penalties and interest. Houston Indep. Sch. Dist. v. Old Farms Owners Ass'n, 236 S.W.3d 375, 2007 Tex. App. LEXIS 5898 (Tex. App. Houston 1st Dist. July 26, 2007), reh'g denied, No. 01-04-00538-CV, 2007 Tex. App. LEXIS 9309 (Tex. App. Houston 1st Dist. Sept. 25, 2007), rev'd, 277 S.W.3d 420, 2009 Tex. LEXIS 27 (Tex. 2009).

Document entitled "Property Tax Notice" was admissible under Tex. Tax Code Ann. § 33.47(a) in a suit to collect delinquent taxes from the landowner as it was a properly certified document and included the total amount of taxes due; the judgment was not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Reagans v. County of Dallas, 225 S.W.3d 680, 2006 Tex. App. LEXIS 9983 (Tex. App. El Paso Nov. 16, 2006, no pet.).

JUDICIAL REVIEW. — In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

PERSONAL PROPERTY TAX

Tangible Property

General Overview. — Where the taxing authorities introduced delinquent tax rolls under Tex. Tax Code Ann. §§ 33.47(a), 41.41, 42.09(b)(1), (2), the taxpayer waived any complaint about the manner in which the taxing authorities determined that the taxpayer was the party responsible for the taxes because the taxpayer's failure to pursue administrative remedies precluded any protest in a subsequent suit for delinquent taxes, except for the affirmative defenses of non-ownership and the taxing authority's lack of jurisdiction over the property. General Elec. Capital Corp. v. Corpus Christi, 850 S.W.2d 596, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 468 (Tex. App. Corpus Christi Feb. 11, 1993, writ denied), modified in part, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 790 (Tex. App. Corpus Christi 1993).

While the presumption of law created by Tex. Tax Code Ann. § 33.47 for a certified tax statement disappears if and when the taxpayer meets its burden of producing sufficient evidence to justify a finding against the presumed fact; however, the certified tax statement continues to exist and have probative value. D & M Vacuum Service, Inc. v. Zavala County Appraisal Dist., 812 S.W.2d 435, 1991 Tex. App. LEXIS 2071 (Tex. App. San Antonio July 3, 1991, no writ).

FAILURE TO PAY TAX. — Summary judgment in favor of the taxing units was proper in a suit for delinquent ad valorem taxes against an automobile leasing company as the company's affirmative defense of nonownership based on its claim that its leases with its customers were security agreements failed as a matter of law under Tex. Bus. & Com. Code Ann. § 1.203(b); the company's leases expressly provided that they were subject to termination by the lessee, and no party claimed ambiguity in the subject lease agreements. Excel Auto & Truck Leasing, LLP v. Alief Indep. Sch. Dist., No. 01-04-01185-CV, 2007 Tex. App. LEXIS 3032 (Tex. App. Houston 1st Dist. Apr. 19, 2007), op. withdrawn, sub. op., reh'g denied, 249 S.W.3d 46, 63 U.C.C. Rep. Serv. 2d (CBC) 846, 2007 Tex. App. LEXIS 7359 (Tex. App. Houston 1st Dist. Aug. 31, 2007).

REAL PROPERTY TAX

General Overview. — County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

In a suit against a business for delinquent property taxes, no presumption of liability arose under Tex. Tax Code Ann. § 33.47(a) because, as to ownership, the taxing authorities offered only tax documents that identified an individual with the same name as the business; there was no evidence that the business and individual were equivalent. Pete Dominguez Enters. v. County of Dallas, 188 S.W.3d 385, 2006 Tex. App. LEXIS 2164 (Tex. App. Dallas Mar. 22, 2006, no pet.).

Certified copy of the delinquent tax record introduced by the taxing authorities in an action to collect delinquent ad valorem property taxes was prima facie evidence that all requirements of the law had been complied with and that the amount stated as due was correct; where the taxpayer had not presented evidence rebutting the prima facie case, a grant of summary judgment in favor of the taxing authorities was proper. Mortland v. Dripping Springs I. S. D., No. 03-02-00331-CV, No. 03-03-00003-CV, 2003 Tex. App. LEXIS 6343 (Tex. App. Austin July 24, 2003).

ASSESSMENT & VALUATION

General Overview. — County, a city, and a school district established a prima facie case against a taxpayer, showing that he owed delinquent property taxes because the county and the school district introduced into evidence a copy of a warranty deed reflecting that the taxpayer became owner of the property years before, and a compilation of the delinquent taxes due to the county and the city was offered into evidence; the school district introduced into evidence a certified copy of the tax records for the school district, and there was no evidence offered in rebuttal. Fisher v. County of Williamson, No. 03-05-00584-CV, 2006 Tex. App. LEXIS 5157 (Tex. App. Austin June 15, 2006).

After reduction of a property appraisal, a taxpayer was entitled under Tex. Tax Code Ann. § 42.43(a) to a refund of penalties and interest that had been calculated on the incorrect appraised value because Tex. Tax Code Ann. § 33.47(a) provided that a taxing unit's recovery of delinquent taxes, penalties, and interest had to be assessed from the current tax roll, and pursuant to Tex. Tax Code Ann. § 42.41(a), (b), the tax roll was corrected when the appraised value was lowered. Carrollton-Farmers Branch Indep. Sch. Dist. v. JPD, Inc., 168 S.W.3d 184, 2005 Tex. App. LEXIS 3987 (Tex. App. Dallas May 25, 2005, no pet.).

Tax rolls are prima facie evidence of a tax liability and establish every material fact necessary to establish a cause of action for delinquent taxes, pursuant to Tex. Tax Code Ann. § 33.47(a). The failure to issue a tax bill does not affect the validity of the tax under Tex. Tax Code Ann. § 31.01(g); however, there are additional requirements that appraisal records must describe the property subject to the tax with sufficient certainty to identify it and that a tax bill must identify that property, pursuant to Tex. Tax Code Ann. § 25.03(a) and Tex. Tax Code Ann. § 31.01(c)(1). Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

Where county had provided proper notice to taxpayer of change in reappraisal of properties, taxpayer was properly held liable for delinquent property taxes on the ground that the taxpayer failed to produce any evidence to support the proposition that the notice of collection had not been sent; city's current and delinquent tax rolls established that taxpayer had been notified of the city's intent to collect the delinquent taxes under Tex. Tax Code Ann. § 33.47(a) Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

COLLECTION

General Overview. — When a taxing authority introduces a copy of its delinquent-tax record, it establishes its prima facie case as to every material fact necessary to establish its cause of action. F-Star Socorro, L.P. v. City of El Paso, 281 S.W.3d 103, 2008 Tex. App. LEXIS 5008 (Tex. App. El Paso July 3, 2008, no pet.).

Where the record contained certified copies of the tax statements that showed the delinquent nature of taxpayer's property, and city and school district made their prima facie case by introducing the official tax records and proof of nonpayment, taxpayer did not introduce evidence in support of the proposition that the notices had not been sent, and, consequently, did not meet the burden imposed under Tex. Tax Code Ann. § 33.47(a) to go forward with his defense. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

Where city and school district introduced certified copies of the tax statements on taxpayer's property, the city and school district had made the prima facie case against taxpayer that taxes on properties were delinquent because these statements showed that the taxing entities had complied with all requirements of law in assessing the taxes as delinquent under Tex. Tax Code Ann. § 33.47(a), and taxpayer presented no evidence in the record that supported the proposition that the taxes were not placed on the tax roll. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

Where county had provided proper notice to taxpayer of change in reappraisal of properties, taxpayer was properly held liable for delinquent property taxes on the ground that the taxpayer failed to produce any evidence to support the proposition that the notice of collection had not been sent; city's current and delinquent tax rolls established that taxpayer had been notified of the city's intent to collect the delinquent taxes under Tex. Tax Code Ann. § 33.47(a) Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

METHODS & TIMING. — Under Tex. Tax Code Ann. § 33.47(a), the taxing authorities and city were statutorily entitled to penalties and interest accrued on the taxpayer's delinquent taxes for tax years 2005-2009; the taxpayer did not present evidence that he had paid the full amount of taxes, penalties, and interest. City of Bellaire v. Sewell, 426 S.W.3d 116, 2012 Tex. App. LEXIS 3698 (Tex. App. Houston 1st Dist. May 10, 2012, no pet.).

SALES TAX

Failure to Pay Tax. — Pursuant to Tex. Tax Code Ann. § 33.47(a), the certified delinquent tax statement details constituted prima facie evidence that the amount of delinquent taxes due were $ 28,378.97. Tierra Sol Joint Venture & Samuel & Co. v. City of El Paso, 311 S.W.3d 492, 2009 Tex. App. LEXIS 6890 (Tex. App. El Paso Aug. 28, 2009, no pet.).

Sec. 33.475. Attorney Ad Litem Report; Approval of Fees.

(a) In a suit to collect a delinquent tax, an attorney ad litem appointed by a court to represent the interests of a defendant served with process by means of citation by publication or posting shall submit to the court a report describing the actions taken by the attorney ad litem to locate and represent the interests of the defendant.

(b) The court may not approve the fees of the attorney ad litem until the attorney ad litem submits the report required by this section and the court determines that the actions taken by the attorney ad litem as described in the report were sufficient to discharge the attorney's duties to the defendant.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1090 (H.B. 2710), § 1, effective September 1, 2015.

Sec. 33.48. Recovery of Costs and Expenses.

(a) In addition to other costs authorized by law, a taxing unit is entitled to recover the following costs and expenses in a suit to collect a delinquent tax:

(1) all usual court costs, including the cost of serving process and electronic filing fees;

(2) costs of filing for record a notice of lis pendens against property;

(3) expenses of foreclosure sale;

(4) reasonable expenses that are incurred by the taxing unit in determining the name, identity, and location of necessary parties and in procuring necessary legal descriptions of the property on which a delinquent tax is due;

(5) attorney's fees in the amount of 15 percent of the total amount of taxes, penalties, and interest due the unit; and

(6) reasonable attorney ad litem fees approved by the court that are incurred in a suit in which the court orders the appointment of an attorney to represent the interests of a defendant served with process by means of citation by publication or posting.

(b) Each item specified by Subsection (a) of this section is a charge against the property subject to foreclosure in the suit and shall be collected out of the proceeds of the sale of the property or, if the suit is for personal judgment, charged against the defendant.

(c) Fees collected for attorneys and other officials are fees of office, except that fees for contract attorneys representing a taxing unit that is joined or intervenes shall be applied toward the compensation due the attorney under the contract.

(d) A collector who accepts a payment of the court costs and other expenses described by this section shall disburse the amount of the payment as follows:

(1) amounts owing under Subsections (a)(1), (2), (3), and (6) are payable to the clerk of the court in which the suit is pending; and

(2) expenses described by Subsection (a)(4) are payable to the general fund of the taxing unit or to the person or entity who advanced the expense.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 131, effective January 1, 1982; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 16, effective September 1, 1993; am.

Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 6(a), effective January 1, 1998; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 23, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 22, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 18, effective June 14, 2013; am. Acts 2013, 83rd Leg., ch. 1290 (H.B. 2302), § 19, effective September 1, 2013.

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BANKRUPTCY LAW
Individuals With Regular Income
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General Overview. — Creditor was awarded $ 485 in attorney's fees pursuant to 11 U.S.C.S. § 506(a) in connection with its objection to a creditor's Chapter 13 plan because, pursuant to Tex. Tax Code Ann. § 33.48(a)(5), the amount of attorney's fees sought by the creditor did not exceed 15 percent of the total amount due on its claim, and the amount requested was not unreasonable. In re Davis, 352 B.R. 651, 2006 Bankr. LEXIS 2046 (Bankr. N.D. Tex. 2006).

TAXATION
State & Local Taxes. — Creditor was awarded $ 485 in attorney's fees pursuant to 11 U.S.C.S. § 506(a) in connection with its objection to a creditor's Chapter 13 plan because, pursuant to Tex. Tax Code Ann. § 33.48(a)(5), the amount of attorney's fees sought by the creditor did not exceed 15 percent of the total amount due on its claim, and the amount requested was not unreasonable. In re Davis, 352 B.R. 651, 2006 Bankr. LEXIS 2046 (Bankr. N.D. Tex. 2006).

CIVIL PROCEDURE
Remedies
Costs & Attorney Fees

General Overview. — In a tax lien foreclosure suit, the tax lien holder was not estopped from recovering attorney fees at the rate of 15 percent under Tex. Tax Code Ann. § 33.48; although the tax lien holder requested attorney fees as authorized by Tex. Tax Code Ann. § 32.06 et seq., that citation reasonably included Tex. Tax Code Ann. § 32.065(c), which provided that an assignee of a taxing authority was subrogated to all rights of the taxing authority, and the issue was not properly preserved under Tex. R. App. P. 33.1(a) and Tex. R. Evid. 103(a)(1) because an estoppel argument was not made to the trial court. JB Joyce, Ltd. v. Regions Fin. Corp., No. 06-04-000140-CV, 2005 Tex. App. LEXIS 7246 (Tex. App. Texarkana Sept. 1, 2005).

Where a school district taxing authority incorrectly described a property owner's lot which had been subdivided, but subsequently recombined, once a penalty was assessed to the property owners under Tex. Tax Code Ann. §§ 33.01 or 33.07, the Texas Tax Code prohibited a taxing unit from recovering attorney's fees under Tex. Tax Code Ann. § 33.48. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

Trial court did not abuse its discretion when it awarded a taxing unit statutory attorney's fees of 15 percent of the taxes, penalties, and interest due pursuant to Tex. Tax Code Ann. § 33.48(a) in a suit to collect delinquent taxes against a property owner because there was no evidence that the costs included attorney's fees or were imposed under Tex. Tax Code Ann. § 33.07. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

In an action involving collection of a tax deficiency, error did not result when the trial court granted the county summary judgment in the absence of proof of reasonableness of attorney's fees assessed because such fees were not subject to a reasonableness review in a collection action under Tex. Tax Code Ann. § 33.48. Siracusa v. Nueces County, 890 S.W.2d 884, 1994 Tex. App. LEXIS 3003 (Tex. App. Corpus Christi Dec. 8, 1994, no writ).

Tex. Tax. Code Ann. § 33.48 required entry of a judgment as a prerequisite to recovery of attorney's fees in taxing units' suit against taxpayers; therefore, the trial court erred in awarding attorney's fees under § 33.48 where the taxpayers had paid in full prior to trial all taxes, penalties, and interest owed to the taxing units. Gano v. Houston, 834 S.W.2d 585, 1992 Tex. App. LEXIS 1942 (Tex. App. Houston 14th Dist. July 23, 1992, writ denied).

ATTORNEY EXPENSES & FEES
Statutory Awards. — Trial court was not authorized to award attorney fees to a taxpayer who filed a successful new trial motion after a county obtained a default judgment in a suit to collect delinquent taxes on real property because Tex. Tax Code Ann. § 33.48 and Tex. Tax Code Ann. § 33.49 allows a taxing unit to recover attorney fees but does not allow it to be liable for them; moreover, a suit to recover delinquent taxes is not a claim for monetary damages but is a foreclosure of a lien, as indicated in Tex. Tax Code Ann. § 32.01, and the county therefore did not waive its sovereign immunity by bringing suit because it did not assert affirmative claims for monetary damages. Waller County v. Simmons, No. 01-07-00180-CV, 2007 Tex. App. LEXIS 8318 (Tex. App. Houston 1st Dist. Oct. 18, 2007).

Creditor was awarded $ 485 in attorney's fees pursuant to 11 U.S.C.S. § 506(a) in connection with its objection to a creditor's Chapter 13 plan because, pursuant to Tex. Tax Code Ann. § 33.48(a)(5), the amount of attorney's fees sought by the creditor did not exceed 15 percent of the total amount due on its claim, and the amount requested was not unreasonable. In re Davis, 352 B.R. 651, 2006 Bankr. LEXIS 2046 (Bankr. N.D. Tex. 2006).

COSTS. — Under Tex. Tax Code Ann. § 33.48, trial court had the discretion to reduce the amount of costs owed by taxpayer and bank when one tax collection suit by appellants would have sufficed but multiple suits were filed; appellants knew that they were dealing with one common owner, one first lienholder, and one set of second lienholders State v. Castle Hills Forest, Inc., 842

S.W.2d 370, 1992 Tex. App. LEXIS 3184 (Tex. App. San Antonio Nov. 18, 1992, writ denied).

COSTS

General Overview. — Where the district did not have the property owners' mailing address, the taxes for those years became "delinquent" on February 1 of the year after the taxes were imposed and the district was entitled to attorney's fees, court costs, and title search fees associated with the collection of delinquent taxes for those years. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

Where the evidence was insufficient to show that the county failed to deliver tax bills to the property owners, the taxes owed to the county for those tax years were delinquent and the trial court erred in failing to award attorney's fees and court costs as requested by the county. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

APPEALS

Reviewability

Preservation for Review. — In a tax lien foreclosure suit, the tax lien holder was not estopped from recovering attorney fees at the rate of 15 percent under Tex. Tax Code Ann. § 33.48; although the tax lien holder requested attorney fees as authorized by Tex. Tax Code Ann. § 32.06 et seq., that citation reasonably included Tex. Tax Code Ann. § 32.065(c), which provided that an assignee of a taxing authority was subrogated to all rights of the taxing authority, and the issue was not properly preserved under Tex. R. App. P. 33.1(a) and Tex. R. Evid. 103(a)(1) because an estoppel argument was not made to the trial court. JB Joyce, Ltd. v. Regions Fin. Corp., No. 06-04-000140-CV, 2005 Tex. App. LEXIS 7246 (Tex. App. Texarkana Sept. 1, 2005).

REAL PROPERTY LAW

Financing

Mortgages & Other Security Instruments

Foreclosures

General Overview. — Appellate court overruled the buyers' argument that the trial court erred in awarding attorney fees to the creditor because the creditor was not prohibited by Tex. Tax Code Ann. § 33.07(c) from recovering attorney fees of 15 percent for the year 2001, and the trial judge did not err in including the award in the judgment, Tex. Tax Code Ann. § 33.48; the awards of attorney fees in the judgment did not exceed the applicable statutory percentages, and because Tex. Tax Code Ann. § 33.48 did not condition recovery of attorney fees upon foreclosure, it was not necessary for the judgment to make the award for the year 2001 contingent upon foreclosure. Weisfeld v. Tex. Land Fin. Co. II, 162 S.W.3d 379, 2005 Tex. App. LEXIS 2947 (Tex. App. Dallas Apr. 18, 2005, no pet.).

NONMORTGAGE LIENS

Tax Liens. — In a tax lien foreclosure suit, the tax lien holder was not estopped from recovering attorney fees at the rate of 15 percent under Tex. Tax Code Ann. § 33.48; although the tax lien holder requested attorney fees as authorized by Tex. Tax Code Ann. § 32.06 et seq., that citation reasonably included Tex. Tax Code Ann. § 32.065(c), which provided that an assignee of a taxing authority was subrogated to all rights of the taxing authority, and the issue was not properly preserved under Tex. R. App. P. 33.1(a) and Tex. R. Evid. 103(a)(1) because an estoppel argument was not made to the trial court. JB Joyce, Ltd. v. Regions Fin. Corp., No. 06-04-000140-CV, 2005 Tex. App. LEXIS 7246 (Tex. App. Texarkana Sept. 1, 2005).

TAX LAW

State & Local Taxes

Administration & Proceedings

General Overview. — Tex. Tax Code Ann. § 33.48 contains "entitled to" language making an award of attorney's fees and the other enumerated costs and fees mandatory in a suit to collect a delinquent tax. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

Because the provisions of the Tax Code and the water code conflicted, the Code Construction Act, Tex. Gov't Code Ann. § 311.026, applied, and the special provisions of Tax Code Ann. § 33.07 prevailed over Tex. Water Code Ann. § 51.591; attorney fees were recoverable under Tax. Code Ann. § 33.48, and the court also noted that the provisions of the tax code applied to the water district pursuant to Tex. Tax Code Ann. § 1.04(12). Harris County Water Control & Improvement Dist. # 99 v. Duke, 59 S.W.3d 333, 2001 Tex. App. LEXIS 6850 (Tex. App. Houston 1st Dist. Oct. 11, 2001, no pet.).

Taxing unit could recoup its collection costs as attorney's fees in the amount of 15 percent of the total amount of taxes, penalties, and interest owed. Harris County Water Control & Improvement Dist. # 99 v. Duke, 59 S.W.3d 333, 2001 Tex. App. LEXIS 6850 (Tex. App. Houston 1st Dist. Oct. 11, 2001, no pet.).

Legislature had a manifest intent that the provisions of the Tax Code prevailed over any conflicting provisions of the Water Code concerning the collection of attorney's fees in a suit by a water control and improvement district prevailed over Tex. Water Code Ann. § 51.591. Harris County Water Control & Improvement Dist. # 99 v. Duke, 59 S.W.3d 333, 2001 Tex. App. LEXIS 6850 (Tex. App. Houston 1st Dist. Oct. 11, 2001, no pet.).

Trial court did not abuse its discretion in denying the county costs incurred in determining the identity and location of the taxpayer pursuant to Tex. Tax Code Ann. § 33.48(a)(4) even though the county established the reasonableness of the costs. Galveston County v. Roth, No. 01-97-00245-CV, 1997 Tex. App. LEXIS 5213 (Tex. App. Houston 1st Dist. Oct. 2, 1997).

Taxing unit is entitled to recover its costs and expenses in a suit to collect a delinquent tax, including the taxing unit's court costs, expenses of a foreclosure sale, reasonable expenses, and reasonable attorney's fees not exceeding 15 percent of the taxes, penalties, and interest due. Lawler v. Collin County/Collin County CCD, No. 05-95-00487-CV, 1996 Tex. App. LEXIS 3072 (Tex. App. Dallas July 12, 1996).

COLLECTION. — Trial court was not authorized to award attorney fees to a taxpayer who filed a successful new trial motion after a county obtained a default judgment in a suit to collect delinquent taxes on real property because Tex. Tax Code Ann. § 33.48 and Tex. Tax Code Ann. § 33.49 allows a taxing unit to recover attorney fees but does not allow it to be liable for them; moreover, a suit to recover delinquent taxes is not a claim for monetary damages but is a foreclosure of a lien, as indicated in Tex. Tax Code Ann. § 32.01, and the county therefore did not waive its sovereign immunity by bringing suit because it did not assert affirmative claims for monetary damages. Waller County v. Simmons, No. 01-07-00180-CV, 2007 Tex. App. LEXIS 8318 (Tex. App. Houston 1st Dist. Oct. 18, 2007).

PERSONAL PROPERTY TAX

Intangible Property

General Overview. — Taxpayers were granted injunctive relief from a particular tax scheme that was found to be illegal, because the scheme was discriminatory by levying against only one type of moneyed capital, bank stock, and not against any other moneyed capital, in violation of former Tex. Rev. Civ. Stat. Ann. art. 7166; costs were properly assessed against the tax assessor and county board under former Tex. Rev. Civ. Stat. Ann. art. 7345b, § b; exemptions for governmental units, provided for in former Tex. Rev. Civ. Stat. Ann. art. 7297, did not apply. Childs v. Reunion Bank, 587 S.W.2d 466, 1979 Tex. App. LEXIS 4025 (Tex. Civ. App. Dallas Aug. 6, 1979, writ ref'd n.r.e.).

REAL PROPERTY TAX

Assessment & Valuation

General Overview. — School district's claim that it was entitled to attorney's fees under Tex. Tax Code Ann. § 33.48(a)(5) in the amount of 15 percent of the total amount of taxes, penalties, and interest and that it could impose attorney's fees in addition to an existing penalty despite Tex. Tax Code Ann. § 33.07(c) because it imposed the penalty under Tex. Tax Code Ann. § 33.01(a) before July 1 was without merit because a penalty assessed, regardless of when, was a penalty under Tex. Tax Code Ann. § 33.01 and Tex. Tax Code Ann. § 33.07, and Tex. Tax Code Ann. § 33.07(c) prohibited a taxing unit from recovering

attorney's fees once a penalty had been assessed. Spring Branch Indep. Sch. Dist. v. Seibert, 100 S.W.3d 520, 2003 Tex. App. LEXIS 1266 (Tex. App. Houston 1st Dist. Feb. 6, 2003, no pet.).

Sec. 33.49. Liability of Taxing Unit for Costs.

(a) Except as provided by Subsection (b), a taxing unit is not liable in a suit to collect taxes for court costs, including any fees for service of process or electronic filing, an attorney ad litem, arbitration, or mediation, and may not be required to post security for costs.

(b) A taxing unit shall pay the cost of publishing citations, notices of sale, or other notices from the unit's general fund as soon as practicable after receipt of the publisher's claim for payment. The taxing unit is entitled to reimbursement from other taxing units that are parties to the suit for their proportionate share of the publication costs on satisfaction of any portion of the tax indebtedness before further distribution of the proceeds. A taxing unit may not pay a word or line rate for publication of citation or other required notice that exceeds the rate the newspaper publishing the notice charges private entities for similar classes of advertising.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1993, 73rd Leg., ch. 850 (H.B. 2165), § 1, effective June 19, 1993; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 24, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 19, effective June 14, 2013; am. Acts 2013, 83rd Leg., ch. 1290 (H.B. 2302), § 20, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 16.002, effective September 1, 2015.

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CIVIL PROCEDURE
Remedies
Costs & Attorney Fees

General Overview. — Although an appellate court normally awards costs of appeal to a prevailing party in civil cases under Tex. R. App. P. 43.4, because the taxing units were exempt from costs, including any costs on appeal, pursuant to Tex. Tax Code Ann. § 33.49(a), the appellate court withdrew its prior judgment and issued a new judgment denying the request of the assignee of a possibility of reverter interest in property for attorney's fees. Cypress-Fairbanks Indep. Sch. Dist. v. Glenn W. Loggins, Inc., 115 S.W.3d 67, 2003 Tex. App. LEXIS 5536 (Tex. App. San Antonio July 2, 2003, no pet.).

ATTORNEY EXPENSES & FEES

Statutory Awards. — To the extent Tex. R. Civ. P. 141 conflicted with Tex. Tax Code Ann. § 33.49, the statute prevailed pursuant to Tex. Gov't Code Ann. § 22.004, and a county could not be held liable for the attorney's fees of an attorney ad litem appointed to represent absent taxpayers pursuant to Tex. R. Civ. P. 244. The attorney could be compensated out of the proceeds of the foreclosure sale pursuant to Tex. Tax Code Ann. § 34.02(a), (b). Lee County v. Everett, No. 03-05-00821-CV, 2009 Tex. App. LEXIS 3993 (Tex. App. Austin May 29, 2009).

Trial court was not authorized to award attorney fees to a taxpayer who filed a successful new trial motion after a county obtained a default judgment in a suit to collect delinquent taxes on real property because Tex. Tax Code Ann. § 33.48 and Tex. Tax Code Ann. § 33.49 allows a taxing unit to recover attorney fees but does not allow it to be liable for them; moreover, a suit to recover delinquent taxes is not a claim for monetary damages but is a foreclosure of a lien, as indicated in Tex. Tax Code Ann. § 32.01, and the county therefore did not waive its sovereign immunity by bringing suit because it did not assert affirmative claims for monetary damages. Waller County v. Simmons, No. 01-07-00180-CV, 2007 Tex. App. LEXIS 8318 (Tex. App. Houston 1st Dist. Oct. 18, 2007).

COSTS

General Overview. — With certain exceptions, taxing units were exempt from court costs in suit to collect delinquent taxes under Tex. Tax. Code Ann. § 33.49(a), lower court's assessment of all costs against the taxing units was improper. City of Wichita Falls v. ITT Commercial Fin. Corp., 835 S.W.2d 65, 1992 Tex. LEXIS 61 (Tex. 1992).

EDUCATION LAW
Administration & Operation
Boards of Elementary & Secondary Schools

Authority. — Appeals court held that an independent school district was not to be charged with liability for court costs in the trial court and on appeal pursuant to Tex. Tax Code Ann. § 33.49. Arnold v. Crockett Independent School Dist., 688 S.W.2d 884, 1985 Tex. App. LEXIS 6253 (Tex. App. Tyler Feb. 21, 1985, no writ).

GOVERNMENTS
Local Governments

Finance. — Pursuant to Tex. Rev. Civ. Stat. Ann. art. 5429b-2, § 3.03(4) and (5), in construing statutes promulgated in the Tax Code, the court may consider the common law and former statutory provisions, including laws upon the same or similar subjects, as well as the consequences to be attributed to a particular construction, consequently, the court may presume that, when the Legislature added the final phrase to Texas Tax Code § 33.49(a), it was aware it had repealed the statutory foundation for the Sour Lake holding and that it intended to enact legislation designed to reach a similar result. Brady Independent School Dist. v. Davenport, 663 S.W.2d 637, 1983 Tex. App. LEXIS 5540 (Tex. App. Austin Dec. 21, 1983, no writ).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Relator taxpayer did not have to pay court costs on a suit to collect taxes as it was a taxing unit under

Tex. Tax Code Ann. § 33.49, and therefore was not required to post security for its costs. Aldine Independent School Dist. v. Moore, 694 S.W.2d 454, 1985 Tex. App. LEXIS 11768 (Tex. App. Houston 1st Dist. June 27, 1985, no writ).

COLLECTION. — Trial court was not authorized to award attorney fees to a taxpayer who filed a successful new trial motion after a county obtained a default judgment in a suit to collect delinquent taxes on real property because Tex. Tax Code Ann. § 33.48 and Tex. Tax Code Ann. § 33.49 allows a taxing unit to recover attorney fees but does not allow it to be liable for them; moreover, a suit to recover delinquent taxes is not a claim for monetary damages but is a foreclosure of a lien, as indicated in Tex. Tax Code Ann. § 32.01, and the county therefore did not waive its sovereign immunity by bringing suit because it did not assert affirmative claims for monetary damages. Waller County v. Simmons, No. 01-07-00180-CV, 2007 Tex. App. LEXIS 8318 (Tex. App. Houston 1st Dist. Oct. 18, 2007).

FAILURE TO PAY TAX. — To the extent Tex. R. Civ. P. 141 conflicted with Tex. Tax Code Ann. § 33.49, the statute prevailed pursuant to Tex. Gov't Code Ann. § 22.004, and a county could not be held liable for the attorney's fees of an attorney ad litem appointed to represent absent taxpayers pursuant to Tex. R. Civ. P. 244. The attorney could be compensated out of the proceeds of the foreclosure sale pursuant to Tex. Tax Code Ann. § 34.02(a), (b). Lee County v. Everett, No. 03-05-00821-CV, 2009 Tex. App. LEXIS 3993 (Tex. App. Austin May 29, 2009).

Sec. 33.50. Adjudged Value.

(a) In a suit for foreclosure of a tax lien on property, the court shall determine the market value of the property on the date of trial. The appraised value of the property according to the most recent appraisal roll approved by the appraisal review board is presumed to be its market value on the date of trial, and the person being sued has the burden of establishing that the market value of the property differs from that appraised value. The court shall incorporate a finding of the market value of the property on the date of trial in the judgment.

(b) If the judgment in a suit to collect a delinquent tax is for the foreclosure of a tax lien on property, the order of sale shall specify that the property may be sold to a taxing unit that is a party to the suit or to any other person, other than a person owning an interest in the property or any party to the suit that is not a taxing unit, for the market value of the property stated in the judgment or the aggregate amount of the judgments against the property, whichever is less.

(c) The order of sale shall also specify that the property may not be sold to a person owning an interest in the property or to a person who is a party to the suit other than a taxing unit unless:

(1) that person is the highest bidder at the tax sale; and

(2) the amount bid by that person is equal to or greater than the aggregate amount of the judgments against the property, including all costs of suit and sale.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 5, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 21, effective September 1, 1999.

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REAL PROPERTY LAW
Financing
Mortgages & Other Security Instruments
Foreclosures

General Overview. — Under Tex. Tax Code Ann. § 34.01(c), when read in light of the minimum bid requirements of Tex. Tax Code Ann. § 33.50(b), if the highest bidder of property sold at a sheriff's sale was either a party to the suit or a person with an interest in the property, and the bid did not meet the minimum bid requirements, the bid was insufficient, and the property was sold to the taxing entity. Cash Invs. v. Clint Indep. Sch. Dist., 940 S.W.2d 693, 1996 Tex. App. LEXIS 5313 (Tex. App. El Paso Nov. 21, 1996), writ granted No. 97-0309 (Tex. 1997), rev'd, 970 S.W.2d 535, 1998 Tex. LEXIS 98 (Tex. 1998).

NONMORTGAGE LIENS

Tax Liens. — Title did not pass to a buyer at a tax lien foreclosure sale where the sale did not comply with the minimum bid requirement of Tex. Tax Code Ann. § 33.50(b) and with the trial court's foreclosure judgment and order of sale. Clint Indep. Sch. Dist. v. Cash Invs., 970 S.W.2d 535, 1998 Tex. LEXIS 98 (Tex. 1998).

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — Valuation of the taxpayer's property at $ 300,000.00 was not in error where the tax rolls valued the property as such; therefore, pursuant to Tex. Tax Code Ann. § 33.50(a), the trial court, in the absence of controverting evidence, valued the property as reflected by the tax rolls. Khadem v. County of Bexar, No. 04-03-00559-CV, 2004 Tex. App. LEXIS 4686 (Tex. App. San Antonio May 26, 2004).

Plain language of Tex. Tax Code Ann. § 33.50(b), under which the sheriff conducted a tax sale of properties over which plaintiff school district held tax liens and which defendant property owner purchased, clearly required the order of sale to restrict sales for a minimum bid to persons with an interest in the properties or who were parties to the tax suit, and did not prohibit the sheriff from selling the properties to anyone, save a taxing unit, for less than a minimum bid. Cash Invs. v. Clint Indep. Sch. Dist., 940 S.W.2d 693, 1996 Tex. App. LEXIS 5313 (Tex. App. El Paso Nov. 21, 1996), writ granted No. 97-0309 (Tex. 1997), rev'd, 970 S.W.2d 535, 1998 Tex. LEXIS 98 (Tex. 1998).

Because the summary-judgment documents did not reflect the appraised value of the real property, there was no prima facie showing of the market value of such property as allowed under Tex. Tax Code Ann. § 33.50(a). Texas Architectural Aggregate, Inc. v. San Saba County Cent. Appraisal Dist., 725 S.W.2d 389, 1987 Tex. App. LEXIS 6573 (Tex. App. Austin Jan. 28, 1987, writ ref'd n.r.e.).

Sec. 33.51. Writ of Possession.

(a) If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall provide for the issuance by the clerk of said court of a writ of possession to the purchaser at the sale or to the purchaser's assigns no sooner than 20 days following the date on which the purchaser's deed from the sheriff or constable is filed of record.

(b) The officer charged with executing the writ shall place the purchaser or the purchaser's assigns in possession of the property described in the purchaser's deed without further order from any court and in the manner provided by the writ, subject to any notice to vacate that may be required to be given to a tenant under Section 24.005(b), Property Code.

(c) The writ of possession shall order the officer executing the writ to:

(1) post a written warning that is at least 8-½ by 11 inches on the exterior of the front door of the premises notifying the occupant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning that is not sooner than the 10th day after the date the warning is posted; and

(2) on execution of the writ:

(A) deliver possession of the premises to the purchaser or the purchaser's assigns;

(B) instruct the occupants to immediately leave the premises and, if the occupants fail or refuse to comply, physically remove them from the premises;

(C) instruct the occupants to remove, or to allow the purchaser or purchaser's assigns, representatives, or other persons acting under the officer's supervision to remove, all personal property from the premises; and

(D) place, or have an authorized person place, the removed personal property outside the premises at a nearby location, but not so as to block a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing.

(d) The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, all or part of the personal property at no cost to the purchaser, the purchaser's assigns, or the officer executing the writ. The officer may not require the purchaser or the purchaser's assigns to store the personal property.

(e) The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(f) The warehouseman's lien on stored property, the officer's duties, and the occupants' rights of redemption as provided by Section 24.0062, Property Code, are all applicable with respect to any personal property that is removed under Subsection (d).

(g) A sheriff or constable may use reasonable force in executing a writ under this section.

(h) If a taxing unit is a purchaser and is entitled to a writ of possession in the taxing unit's name:

(1) a bond may not be required of the taxing unit for issuance or delivery of a writ of possession; and

(2) a fee or court cost may not be charged for issuance or delivery of a writ of possession.

(i) In this section:

(1) "Premises" means all of the property described in the purchaser's deed, including the buildings, dwellings, or other structures located on the property.

(2) "Purchaser" includes a taxing unit to which property is bid off under Section 34.01(j).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 7, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 6, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1111 (H.B. 2587), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 42(1), effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 23, effective September 1, 2005.

Sec. 33.52. Taxes Included in Judgment.

(a) Only taxes that are delinquent on the date of a judgment may be included in the amount recoverable under the judgment by the taxing units that are parties to the suit.

(b) In lieu of stating as a liquidated amount the aggregate total of taxes, penalties, and interest due, a judgment may:

(1) set out the tax due each taxing unit for each year; and

(2) provide that penalties and interest accrue on the unpaid taxes as provided by Subchapter A.

(c) For purposes of calculating penalties and interest due under the judgment, it is presumed that the delinquency date for a tax is February 1 of the year following the year in which the tax was imposed, unless the judgment provides otherwise.

(d) Except as provided by Section 34.05(k), a taxing unit's claim for taxes that become delinquent after the date of the judgment is not affected by the entry of the judgment or a tax sale conducted under that judgment. Those taxes may be collected by any remedy provided by this title.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 8, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 981 (H.B. 2622), § 2, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1111 (H.B. 2587), § 3, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 22, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 740 (H.B. 1118), § 1, effective June 17, 2011.

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TAX LAW
State & Local Taxes
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Tax Deeds & Tax Sales. — Purchaser of property from a school district at a tax resale was liable for taxes that had accrued from the date of the property's original tax sale until the date that the property was struck off to the district because such taxes did not merge with the property's title at the time of the resale. Irannezhad v. Aldine Indep. Sch. Dist., 257 S.W.3d 260, 2008 Tex. App. LEXIS 2059 (Tex. App. Houston 1st Dist. Mar. 20, 2008, no pet.).

TAX LIENS. — Purchaser of property from a school district at a tax resale was liable for taxes that had accrued from the date of the property's original tax sale until the date that the property was struck off to the district because such taxes did not merge with the property's title at the time of the resale. Irannezhad v. Aldine Indep. Sch. Dist., 257 S.W.3d 260, 2008 Tex. App. LEXIS 2059 (Tex. App. Houston 1st Dist. Mar. 20, 2008, no pet.).

Sec. 33.53. Order of Sale; Payment Before Sale.

(a) If judgment in a suit to collect a delinquent tax is for foreclosure of a tax lien, the court shall order the property sold in satisfaction of the amount of the judgment.

(b) On application by a taxing unit that is a party to the judgment, the district clerk shall prepare an order to an officer authorized to conduct execution sales ordering the sale of the property. If more than one parcel of property is included in the judgment, the taxing unit may specify particular parcels to be sold. A taxing unit may request more than one order of sale as necessary to collect all amounts due under the judgment.

(c) An order of sale:

(1) shall be returned to the district clerk as unexecuted if not executed before the 181st day after the date the order is issued; and

(2) may be accompanied by a copy of the judgment and a bill of costs attached to the order and incorporate the terms of the judgment or bill of costs by reference.

(d) A judgment or a bill of costs attached to the order of sale is not required to be certified.

(e) If the owner pays the amount of the judgment before the property is sold, the taxing unit shall:

(1) release the tax lien held by the taxing unit on the property; and

(2) file for record with the clerk of the court in which the judgment was rendered a release of the lien.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 537 (H.B. 1610), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 23, effective September 1, 1999.

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REAL PROPERTY LAW
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Tax Liens. — Taxing authority had only lien claims, it had no claim to the real properties beyond the amount it was owed for taxes, and Tex. Tax Code Ann. § 33.53(e) required the taxing unit to release a tax lien if the owner paid the delinquent taxes before a foreclosure sale; the judgments that a taxing unit obtained ordering foreclosure of its tax liens on properties, did not transfer title to the taxing unit or extinguish the tax liens, and Tex. Tax Code Ann. § 34.01(k) provided that property may be bid off to taxing unit, which then takes title for all taxing units holding liens. Andrews v. Aldine Indep. Sch. Dist., 116 S.W.3d 407, 2003 Tex. App. LEXIS 7772 (Tex. App. Houston 14th Dist. Sept. 4, 2003, no pet.).

TAX LAW
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Tax Deeds & Tax Sales. — In an action brought under Tex. Tax Code Ann. § 34.08, the taxpayer was not entitled to set aside the tax sale pursuant to Tex. Tax Code Ann. § 33.53(e) based on payment of the amount shown on the delinquent property tax statement because the taxpayer failed to pay the court costs and fees, which were not de minimis, and the taxpayer could not invoke the principle of substantial compliance. Mekhail v. Duncan-Jackson Mortuary, Inc., 369 S.W.3d 482, 2012 Tex. App. LEXIS 1594 (Tex. App. Houston 1st Dist. Mar. 1, 2012), reh'g denied, No. 01-11-00485-CV, 2012 Tex. App. LEXIS 6240 (Tex. App. Houston 1st Dist. May 2, 2012).

TAX LIENS. — Principle of substantial compliance does not apply to Tex. Tax Code Ann. § 33.53(e). Mekhail v. Duncan-Jackson Mortuary, Inc., 369 S.W.3d 482, 2012 Tex. App. LEXIS 1594 (Tex. App. Houston 1st Dist. Mar. 1, 2012), reh'g denied, No. 01-11-00485-CV, 2012 Tex. App. LEXIS 6240 (Tex. App. Houston 1st Dist. May 2, 2012).

In an action brought under Tex. Tax Code Ann. § 34.08, the taxpayer was not entitled to set aside the tax sale pursuant to

Tex. Tax Code Ann. § 33.53(e) based on payment of the amount shown on the delinquent property tax statement because the taxpayer failed to pay the court costs and fees, which were not de minimis, and the taxpayer could not invoke the principle of substantial compliance. Mekhail v. Duncan-Jackson Mortuary, Inc., 369 S.W.3d 482, 2012 Tex. App. LEXIS 1594 (Tex. App. Houston 1st Dist. Mar. 1, 2012), reh'g denied, No. 01-11-00485-CV, 2012 Tex. App. LEXIS 6240 (Tex. App. Houston 1st Dist. May 2, 2012).

Sec. 33.54. Limitation on Actions Relating to Property Sold for Taxes.

(a) Except as provided by Subsection (b), an action relating to the title to property may not be maintained against the purchaser of the property at a tax sale unless the action is commenced:

(1) before the first anniversary of the date that the deed executed to the purchaser at the tax sale is filed of record; or

(2) before the second anniversary of the date that the deed executed to the purchaser is filed of record, if on the date that the suit to collect the delinquent tax was filed the property was:

(A) the residence homestead of the owner; or

(B) land appraised or eligible to be appraised under Subchapter C or D, Chapter 23.

(b) If a person other than the purchaser at the tax sale or the person's successor in interest pays taxes on the property during the applicable limitations period and until the commencement of an action challenging the validity of the tax sale and that person was not served citation in the suit to foreclose the tax lien, that limitations period does not apply to that person.

(c) When actions are barred by this section, the purchaser at the tax sale or the purchaser's successor in interest has full title to the property, precluding all other claims.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 1136 (H.B. 3263), § 1, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1192 (S.B. 1249), § 1, effective September 1, 1997.

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Pleading & Proof. — Property owner's challenge to a tax sale of his property more than 15 years earlier failed because he failed to bring his action within one year as required by Tex. Tax Code Ann. § 33.54; and he failed to deposit an amount equal to the delinquent taxes, penalties, and interest into the court registry as required by Tex. Tax Code Ann. § 34.08(a). Holmes v. Cassel, No. 14-12-00964-CV, 2013 Tex. App. LEXIS 10266 (Tex. App. Houston 14th Dist. Aug. 15, 2013), cert. denied, 135 S. Ct. 1900, 191 L. Ed. 2d 765, 2015 U.S. LEXIS 2928 (U.S. 2015).

TIME LIMITATIONS. — Record owner of property could not challenge a tax sale of the property that failed to give him notice of the sale because he did not file suit within one year as required by Tex. Tax Code Ann. § 33.54(a), and he did not pay taxes on the property or deposit the delinquent taxes as required by Tex. Tax Code Ann. § 34.08(a). Holmes v. Cassel, No. 14-12-00964-CV, 2013 Tex. App. LEXIS 9605 (Tex. App. Houston 14th Dist. Aug. 1, 2013), op. withdrawn, sub. op., No. 14-12-00964-CV, 2013 Tex. App. LEXIS 10266 (Tex. App. Houston 14th Dist. Aug. 15, 2013).

County and city conclusively established the affirmative defense of the statute of limitations, Tex. Tax Code Ann. § /Aa33.54, as the school waited more than five years after the recording of the sheriff's deed to file suit and its action was barred. Rameses Sch., Inc. v. City of San Antonio, No. 14-10-00320-CV, 2011 Tex. App. LEXIS 2552 (Tex. App. Houston 14th Dist. Apr. 7, 2011).

Action was time-barred under Tex. Tax Code Ann. § 33.54, because the sheriff's deed selling the property to the buyer was recorded on April 22, 2004, and the claimant filed her trespass to try title action on August 4, 2006, more than two years after the sheriff's deed was recorded. Roberts v. T.P. Three Enters., 321 S.W.3d 674, 2010 Tex. App. LEXIS 6203 (Tex. App. Houston 14th Dist. Aug. 3, 2010, no pet.).

Taxing units admitted no taxes were due on the royalty interest, the taxing units and a buyer did not contend that a particular person was named or served in the foreclosure suit, and the Tex. Tax Code Ann. § 33.54(b) limitations period did not preclude the heirs' challenge to foreclosure of the royalty interest. Pounds v. Jurgens, 296 S.W.3d 100, 170 Oil & Gas Rep. 630, 2009 Tex. App. LEXIS 4729 (Tex. App. Houston 14th Dist. June 18, 2009, no pet.).

In the property owners' trespass to try title action, as there was no proof that any owner paid any taxes on any part of the tax foreclosure buyers' tract, which was the subject of the tax deed being attacked, the owners did not show themselves to be exempt from the bar of limitations in making that attack under Tex. Tax Code Ann. § 33.54(a). As such, summary judgment in favor of the buyers was proper. Miller v. Kenna, No. 06-08-00006-CV, 2008 Tex. App. LEXIS 7561 (Tex. App. Texarkana Oct. 2, 2008).

In a case arising from a tax sale of a mineral interest, summary judgment was properly granted to a transferee because a joint venture did not challenge the sale for almost four years, which was outside the limitations period in Tex. Tax Code Ann. § 33.54; there was no open courts violation under Tex. Const. art. I, § 13 since there was a mechanism for an owner to recoup its property, the discovery rule did not apply since a specific time limit was set under § 33.54, and, regardless of the merits of the joint venture's

argument that it received no notice, the argument was still time-barred. Therefore, the transferee was entitled to presume that it was the owner of the mineral interest. W.L. Pickens Grandchildren's Joint Venture v. DOH Oil Co., 281 S.W.3d 116, 178 Oil & Gas Rep. 886, 2008 Tex. App. LEXIS 5982 (Tex. App. El Paso Aug. 7, 2008, no pet.).

Statute of limitations did not bar a tardily filed claim to cancel a tax deed because the tax sale buyers, when introducing the tax deed into evidence, failed to introduce the foreclosure judgment and order of sale. Sani v. Powell, 153 S.W.3d 736, 2005 Tex. App. LEXIS 554 (Tex. App. Dallas Jan. 26, 2005, no pet.).

Purchasers of property foreclosed for a tax delinquency and purchasers' successor in interest were entitled to summary judgment in a trespass-to-try-title action brought by former owners on the ground that the action was barred by the 3 year limitation period contained in Tex. Tax. Code Ann. § 33.54(a), where the former owners did not exercise their right of redemption and did not bring their action until more than six years after the purchasers recorded their deed. Cedillo v. Gaitan, 981 S.W.2d 388, 1998 Tex. App. LEXIS 5941 (Tex. App. San Antonio Sept. 23, 1998, no pet.).

REAL PROPERTY LAW
Estates
Future Interests

General Overview. — Neither Tex. Tax Code Ann. § 33.54, which protects the purchaser of property at tax sale from previous claims against the property, or Tex. Tax Code Ann. § 32.05, which provides that a tax lien is prior to the claim of any creditor of the person whose property is encumbered, will avoid a possibility of reverter because the possibility of reverter interest is not a claim, it is an interest in the property distinct from that of the delinquent taxpayer. Cypress-Fairbanks Indep. Sch. Dist. v. Glenn W. Loggins, Inc., 115 S.W.3d 67, 2003 Tex. App. LEXIS 5536 (Tex. App. San Antonio July 2, 2003, no pet.).

FINANCING
Mortgages & Other Security Instruments
Foreclosures

General Overview. — Owner of property sold at a tax sale was not bound by the one-year period in Tex. Tax Code Ann. § 33.54 because a deed of trust holder redeemed the property by purchasing it from a bidder at the tax sale; the holder was not a purchaser or an assignee of the purchaser. T & M Sales & Envtl. Sys. v. LSS Invs., No. 13-03-659-CV, 2005 Tex. App. LEXIS 8874 (Tex. App. Corpus Christi Oct. 27, 2005).

NONMORTGAGE LIENS

Tax Liens. — Owner of property sold at a tax sale was not bound by the one-year period in Tex. Tax Code Ann. § 33.54 because a deed of trust holder redeemed the property by purchasing it from a bidder at the tax sale; the holder was not a purchaser or an assignee of the purchaser. T & M Sales & Envtl. Sys. v. LSS Invs., No. 13-03-659-CV, 2005 Tex. App. LEXIS 8874 (Tex. App. Corpus Christi Oct. 27, 2005).

Although the landowner raised Tex. Tax. Code Ann. § 33.54 in response to the executors' summary judgment motion, the landowner did not move for summary judgment on the affirmative defense, and thus the court remanded. Jordan v. Bustamante, 158 S.W.3d 29, 2005 Tex. App. LEXIS 490 (Tex. App. Houston 14th Dist. Jan. 25, 2005, no pet.).

Executors were precluded under Tex. Tax Code Ann. § 33.54 from challenging the landowner's title to two tracts of land because (1) the executors did not commence their action by the one-year anniversary of the recording of the deed, and the landowner asserted limitations as an affirmative defense to the executors' trespass to try title action under Tex. Prop. Code Ann. § 22.001, (2) under Tex. Tax. Code Ann. § 34.08(a)(1), the executors did not deposit funds into the court as required to commence an action challenging the validity of the tax sale to either tract, and (3) the landowner was entitled to presume that the tax sale was valid; in light of the plain language of Tex. Tax. Code Ann. § 33.54 and case law, the court rejected the executors' claim that the landowner was required to introduce the tax judgment and order of sale in order to rely on the statute. Jordan v. Bustamante, 158 S.W.3d 29, 2005 Tex. App. LEXIS 490 (Tex. App. Houston 14th Dist. Jan. 25, 2005, no pet.).

Tex. Tax Code § 33.54, which defendants, as the former owners of property owned by plaintiff purchaser, claimed did not operate to vest ownership of the land at issue in plaintiff, was not unconstitutional as no litigant had a vested right in a statute, or portion thereof, which was remedial or procedural in nature. Cook v. Slusky, 659 S.W.2d 110, 1983 Tex. App. LEXIS 4912 (Tex. App. Houston 14th Dist. Aug. 18, 1983, no writ).

Under Tex. Tax Code § 33.54, former owners of property were barred from asserting a right to title and possession because their action did not commence within three years after the tax deed was filed of record. Cook v. Slusky, 659 S.W.2d 110, 1983 Tex. App. LEXIS 4912 (Tex. App. Houston 14th Dist. Aug. 18, 1983, no writ).

TITLE QUALITY
Adverse Claim Actions

General Overview. — In a real property claimant's action for trespass to try title, Tex. Tax Code Ann. § 33.54 prevented him from challenging an opposing claimant's title to the land purchased at a tax sale because well over two years had elapsed after the opposing claimant's tax deed was recorded before the claimant brought his suit. The claimant, as a claimant of limitations title through adverse possession, was served by posting, there was no evidence to the contrary that the property obtained through the tax sale did not encompass the disputed property, and the tax foreclosure suit appeared to have included the record owners, lienholders, and all parties owning or claiming any interest in the property, as required by Tex. Tax Code Ann. § 34.01(n). Session v. Woods, 206 S.W.3d 772, 2006 Tex. App. LEXIS 9470 (Tex. App. Texarkana Nov. 2, 2006, no pet.).

QUIET TITLE ACTIONS. — Although the Texas Tax Code allows a purchaser or successor purchaser of land conveyed at a tax sale to have full title to the property, it does not give title to property that was void due to the lack of a definite description. Therefore, in a quiet title action, the limitations period in Tex. Tax Code Ann. § 33.54 did not apply because a 1993 tax judgment was void since it failed to describe a definite tract of land; as a result, title was not conveyed to a school district and could not have been conveyed to subsequent purchasers. Hays v. Butler, 295 S.W.3d 53, 2009 Tex. App. LEXIS 3602 (Tex. App. Houston 1st Dist. May 21, 2009, no pet.).

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — Judgment was properly awarded to plaintiff in a trespass-to-try-title suit against defendants because while a sheriff's deed was executed to plaintiff in 1983, defendants did not acquire the property at issue until 1986, a time outside the limitations period mandated by Tex. Tax Code Ann. § 33.54. Because defendants neither instituted suit nor paid taxes on the property within one year of the execution of the sheriff's deed to plaintiff, they lacked standing to challenge the validity of plaintiff's deed. Norman v. Murphree, No. 14-04-00430-CV, 2005 Tex. App. LEXIS 3519 (Tex. App. Houston 14th Dist. May 10, 2005).

Entry of summary judgment for the reverter was affirmed because: (1) Tex. Tax Code Ann. §§ 33.54, 32.05 did not apply to extinguish the reverter interest in that the possibility of reverter interest was not a claim, it was an interest in the property distinct from the trustee's interest, and the reverter would not have had to institute an action relating to the title of property to invoke its possibility of reverter interest, (2) the reverter was not a "defendant" under Tex. Tax Code Ann. § 34.01(n) because it owned a nontaxable interest, (3) a tax lien was inferior to a claim under a recorded restrictive covenant running with the land under Tex. Tax Code Ann. § 32.05(c), (4) the reverter's interest was nontaxable, and it could not have been extinguished by a foreclosure sale, and (5) the reverter's appeal on the issue of attorney fees was not properly preserved. Cypress-Fairbanks Indep. Sch. Dist. v. Glenn W. Loggins, Inc., No. 04-02-00513-CV, 2003 Tex. App. LEXIS 3441 (Tex. App. San Antonio Apr. 23, 2003), op. withdrawn, sub. op., 115 S.W.3d 67, 2003 Tex. App. LEXIS 5536 (Tex. App. San Antonio July 2, 2003).

COLLECTION

Methods & Timing. — When a bank contested the foreclosure of tax liens on property on which the bank held a mortgage lien, the bank was entitled to successfully contest the tax lien foreclosure, despite the bank's failure to file suit within the limitations period specified in Tex. Tax Code Ann. § 33.54, because a complete failure to provide the bank with notice of the tax foreclosure and subsequent tax sale of the property violated the bank's due process right to protect the bank's interest in the property. Sec. State Bank & Trust v. Bexar County, No. 04-11-00928-CV, 2012 Tex. App. LEXIS 9842 (Tex. App. San Antonio Nov. 30, 2012), op. withdrawn, sub. op., reh'g denied, 397 S.W.3d 715, 2012 Tex. App. LEXIS 10557 (Tex. App. San Antonio Dec. 21, 2012).

TAX DEEDS & TAX SALES. — Trial court erred in concluding that a taxpayer's suit was an impermissible attack on a 2009 tax sale because his 2010 lawsuit was timely under the statute; nonetheless, the error was harmless because the taxpayer was allowed to present his attack of the tax sale. Cooper v. Hamilton County, No. 10-12-00427-CV, 2014 Tex. App. LEXIS 1066 (Tex. App. Waco Jan. 30, 2014), pet. denied No. 14-0203, 2014 Tex. LEXIS 433 (Tex. May 23, 2014).

Property owner's challenge to a tax sale of his property more than 15 years earlier failed because he failed to bring his action within one year as required by Tex. Tax Code Ann. § 33.54; and he failed to deposit an amount equal to the delinquent taxes, penalties, and interest into the court registry as required by Tex. Tax Code Ann. § 34.08(a). Holmes v. Cassel, No. 14-12-00964-CV, 2013 Tex. App. LEXIS 10266 (Tex. App. Houston 14th Dist. Aug. 15, 2013), cert. denied, 135 S. Ct. 1900, 191 L. Ed. 2d 765, 2015 U.S. LEXIS 2928 (U.S. 2015).

Record owner of property could not challenge a tax sale of the property that failed to give him notice of the sale because he did not file suit within one year as required by Tex. Tax Code Ann. § 33.54(a), and he did not pay taxes on the property or deposit the delinquent taxes as required by Tex. Tax Code Ann. § 34.08(a). Holmes v. Cassel, No. 14-12-00964-CV, 2013 Tex. App. LEXIS 9605 (Tex. App. Houston 14th Dist. Aug. 1, 2013), op. withdrawn, sub. op., No. 14-12-00964-CV, 2013 Tex. App. LEXIS 10266 (Tex. App. Houston 14th Dist. Aug. 15, 2013).

When a bank contested the foreclosure of tax liens on property on which the bank held a mortgage lien, the bank was entitled to successfully contest the tax lien foreclosure, despite the bank's failure to file suit within the limitations period specified in Tex. Tax Code Ann. § 33.54, because a complete failure to provide the bank with notice of the tax foreclosure and subsequent tax sale of the property violated the bank's due process right to protect the bank's interest in the property. Sec. State Bank & Trust v. Bexar County, No. 04-11-00928-CV, 2012 Tex. App. LEXIS 9842 (Tex. App. San Antonio Nov. 30, 2012), op. withdrawn, sub. op., reh'g denied, 397 S.W.3d 715, 2012 Tex. App. LEXIS 10557 (Tex. App. San Antonio Dec. 21, 2012).

County and city conclusively established the affirmative defense of the statute of limitations, Tex. Tax Code Ann. § /Aa33.54, as the school waited more than five years after the recording of the sheriff's deed to file suit and its action was barred. Rameses Sch., Inc. v. City of San Antonio, No. 14-10-00320-CV, 2011 Tex. App. LEXIS 2552 (Tex. App. Houston 14th Dist. Apr. 7, 2011).

Action was time-barred under Tex. Tax Code Ann. § 33.54, because the sheriff's deed selling the property to the buyer was recorded on April 22, 2004, and the claimant filed her trespass to try title action on August 4, 2006, more than two years after the sheriff's deed was recorded. Roberts v. T.P. Three Enters., 321 S.W.3d 674, 2010 Tex. App. LEXIS 6203 (Tex. App. Houston 14th Dist. Aug. 3, 2010, no pet.).

Taxing units admitted no taxes were due on the royalty interest, the taxing units and a buyer did not contend that a particular person was named or served in the foreclosure suit, and the Tex. Tax Code Ann. § 33.54(b) limitations period did not preclude the heirs' challenge to foreclosure of the royalty interest. Pounds v. Jurgens, 296 S.W.3d 100, 170 Oil & Gas Rep. 630, 2009 Tex. App. LEXIS 4729 (Tex. App. Houston 14th Dist. June 18, 2009, no pet.).

Although the Texas Tax Code allows a purchaser or successor purchaser of land conveyed at a tax sale to have full title to the property, it does not give title to property that was void due to the lack of a definite description. Therefore, in a quiet title action, the limitations period in Tex. Tax Code Ann. § 33.54 did not apply because a 1993 tax judgment was void since it failed to describe a definite tract of land; as a result, title was not conveyed to a school district and could not have been conveyed to subsequent purchasers. Hays v. Butler, 295 S.W.3d 53, 2009 Tex. App. LEXIS 3602 (Tex. App. Houston 1st Dist. May 21, 2009, no pet.).

In the property owners' trespass to try title action, as there was no proof that any owner paid any taxes on any part of the tax foreclosure buyers' tract, which was the subject of the tax deed being attacked, the owners did not show themselves to be exempt from the bar of limitations in making that attack under Tex. Tax Code Ann. § 33.54(a). As such, summary judgment in favor of the buyers was proper. Miller v. Kenna, No. 06-08-00006-CV, 2008 Tex. App. LEXIS 7561 (Tex. App. Texarkana Oct. 2, 2008).

In a case arising from a tax sale of a mineral interest, summary judgment was properly granted to a transferee because a joint venture did not challenge the sale for almost four years, which was outside the limitations period in Tex. Tax Code Ann. § 33.54; there was no open courts violation under Tex. Const. art. I, § 13 since there was a mechanism for an owner to recoup its property, the discovery rule did not apply since a specific time limit was set under § 33.54, and, regardless of the merits of the joint venture's argument that it received no notice, the argument was still time-barred. Therefore, the transferee was entitled to presume that it was the owner of the mineral interest. W.L. Pickens Grandchildren's Joint Venture v. DOH Oil Co., 281 S.W.3d 116, 178 Oil & Gas Rep. 886, 2008 Tex. App. LEXIS 5982 (Tex. App. El Paso Aug. 7, 2008, no pet.).

Where the constable's deed from a challenged tax sale was filed of record on June 19, 1996, and appellant (the party challenging the sale) did not obtain the quitclaim deed until 2001 and did not file suit against appellees (the purchasers at the tax sale) until 2003, the requirement of Tex. Tax Code Ann. § 33.54(a)(1) was not met, and Tex. Tax Code Ann. § 33.54(b) did not apply because no tax payment was made by appellant's predecessors-in-title, or by appellant, during the applicable limitations period. John K. Harrison Holdings, LLC v. Strauss, 221 S.W.3d 785, 2007 Tex. App. LEXIS 2169 (Tex. App. Beaumont Mar. 22, 2007, no pet.).

In a real property claimant's action for trespass to try title, Tex. Tax Code Ann. § 33.54 prevented him from challenging an opposing claimant's title to the land purchased at a tax sale because well over two years had elapsed after the opposing claimant's tax deed was recorded before the claimant brought his suit. The claimant, as a claimant of limitations title through adverse possession, was served by posting, there was no evidence to the contrary that the property obtained through the tax sale did not encompass the disputed property, and the tax foreclosure suit appeared to have included the record owners, lienholders, and all parties owning or claiming any interest in the property, as required by Tex. Tax Code Ann. § 34.01(n). Session v. Woods, 206 S.W.3d 772, 2006 Tex. App. LEXIS 9470 (Tex. App. Texarkana Nov. 2, 2006, no pet.).

Sec. 33.55. Effect of Judgment on Accrual of Penalties and Interest.

A judgment for delinquent taxes does not affect the accrual after the date of the judgment of penalties and interest under this chapter on the taxes included in the judgment.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1111 (H.B. 2587), § 4, effective September 1, 1997.

NOTES TO DECISIONS

CIVIL PROCEDURE
Remedies
Judgment Interest
General Overview. — Where the evidence was insufficient to show that the county failed to deliver tax bills to the property owners, the taxes owed to the county for those tax years were delinquent and the trial court erred in failing to award interest on the unpaid taxes and post-judgment interest under Tex. Tax Code Ann. §§ 33.01(c) and 33.55. Aldine Indep. Sch. Dist. v. Ogg, 122 S.W.3d 257, 2003 Tex. App. LEXIS 7148 (Tex. App. Houston 1st Dist. Aug. 21, 2003, no pet.).

Sec. 33.56. Vacation of Judgment.

(a) If, in a suit to collect a delinquent tax, a court renders a judgment for foreclosure of a tax lien on behalf of a taxing unit, any taxing unit that was a party to the judgment may file a petition to vacate the judgment on one or more of the following grounds:

(1) failure to join a person needed for just adjudication under the Texas Rules of Civil Procedure, including a taxing unit required to be joined under Section 33.44(a);

(2) failure to serve a person needed for just adjudication under the Texas Rules of Civil Procedure, including a taxing unit required to be joined under Section 33.44(a);

(3) failure of the judgment to adequately describe the property that is the subject of the suit; or

(4) that the property described in the judgment was subject to multiple appraisals for the tax years included in the judgment.

(b) The taxing unit must file the petition under the same cause number as the delinquent tax suit and in the same court.

(c) The taxing unit may not file a petition if a tax sale of the property has occurred unless:

(1) the tax sale has been vacated by an order of a court;

(2) the property was bid off to a taxing unit under Section 34.01(j) and has not been resold; or

(3) the tax sale or resale purchaser, or the purchaser's heirs, successors, or assigns, consents to the petition.

(d) Consent of the purchaser to a petition may be shown by:

(1) a written memorandum signed by the purchaser and filed with the court;

(2) the purchaser's joinder in the taxing unit's petition;

(3) a statement of the purchaser made in open court on the record in a hearing on the petition; or

(4) the purchaser's signature of approval to an agreed order to grant the petition.

(e) A copy of the petition must be served in a manner authorized by Rule 21a, Texas Rules of Civil Procedure, on each party to the delinquent tax suit.

(f) If the court grants the petition, the court shall enter an order providing that:

(1) the judgment, any tax sale based on that judgment, and any subsequent resale are vacated;

(2) any applicable tax deed or applicable resale deed is canceled;

(3) the delinquent tax suit is revived; and

(4) except in a case in which judgment is vacated under Subsection (a)(4), the taxes, penalties, interest, and attorney's fees and costs, and the liens that secure each of those items, are reinstated.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 626 (S.B. 953), § 1, effective August 30, 1999; am. Acts 2001, 77th Leg., ch. 1430 (H.B.490), § 25, effective September 1, 2001.

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CIVIL PROCEDURE
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Methods
General Overview. — In taxing entities' suit seeking to collect unpaid taxes from a property owner, the owner's contention that he had not notice of the petition and hearing to reinstate, vacate, and dismiss the tax deficiency suit relied on facts outside of the record and did not constitute error apparent on the face of the record. Kaminetzky v. Houston Indep. Sch. Dist., No. 14-02-00584-CV, 2003 Tex. App. LEXIS 7345 (Tex. App. Houston 14th Dist. Aug. 28, 2003).

TAX LAW
State & Local Taxes
Administration & Proceedings
Judicial Review. — 2005 foreclosure judgment was not void on the ground that it violated the one judgment rule because the trial court had the authority to vacate a 2003 tax judgment due to the failure to join parties; under the statute, the delinquent tax suit was revived. Cooper v. Hamilton County, No. 10-12-00427-CV, 2014 Tex. App. LEXIS 1066 (Tex. App. Waco Jan. 30, 2014), pet. denied No. 14-0203, 2014 Tex. LEXIS 433 (Tex. May 23, 2014).

Sec. 33.57. Alternative Notice of Tax Foreclosure on Certain Parcels of Real Property.

(a) In this section, "appraised value" means the appraised value according to the most recent appraisal roll approved by the appraisal review board.

(b) This section may be invoked and used by one or more taxing units if there are delinquent taxes, penalties, interest, and attorney's fees owing to a taxing unit on a parcel of real property, and:

(1) the total amount of delinquent taxes, penalties, interest, and attorney's fees owed exceeds the appraised value of the parcel; or

(2) there are 10 or more years for which delinquent taxes are owed on the parcel.

(c) One or more taxing units may file a single petition for foreclosure under this section that includes multiple parcels of property and multiple owners. Alternatively, separate petitions may be filed and docketed separately for each parcel of property. Another taxing unit with a tax claim against the same parcel may intervene in an action for the purpose of establishing and foreclosing its tax lien without further notice to a defendant. The petition must be filed in the county in which the tax was imposed and is sufficient if it is in substantially the form prescribed by Section 33.43 and further alleges that:

(1) the amount owed in delinquent taxes, penalties, interest, and attorney's fees exceeds the appraised value of the parcel; or

(2) there are 10 or more years for which delinquent taxes are owed on the parcel.

(d) Simultaneously with the filing of the petition under this section, a taxing unit shall also file a motion with the court seeking an order approving notice of the petition to each defendant by certified mail in lieu of citation and, if the amount of delinquent taxes, penalties, interest, and attorney's fees alleged to be owed exceeds the appraised value of the parcel, waiving the appointment of an attorney ad litem. The motion must be supported by certified copies of tax records that show the tax years for which delinquent taxes are owed, the amounts of delinquent taxes, penalties, interest, and attorney's fees, and, if appropriate, the appraised value of the parcel.

(e) The court shall approve a motion under Subsection (d) if the documents in support of the motion show that:

(1) the amount of delinquent taxes, penalties, interest, and attorney's fees that are owed exceeds the appraised value of the parcel; or

(2) there are 10 or more years for which delinquent taxes are owed on the parcel.

(f) Before filing a petition under this section, or as soon afterwards as practicable, the taxing unit or its attorney shall determine the address of each owner of a property interest in the parcel for the purpose of providing notice of the pending petition. If the title search, the taxing unit's tax records, and the appraisal district records do not disclose an address of a person with a property interest, consulting the following sources of information is to be considered a reasonable effort by the taxing unit or its attorney to determine the address of a person with a property interest in the parcel subject to foreclosure:

(1) telephone directories, electronic or otherwise, that cover:

(A) the area of any last known address for the person; and

(B) the county in which the parcel is located;

(2) voter registration records in the county in which the parcel is located; and

(3) where applicable, assumed name records maintained by the county clerk of the county in which the parcel is located and corporate records maintained by the secretary of state.

(g) Not later than the 45th day before the date on which a hearing on the merits on a taxing unit's petition is scheduled, the taxing unit or its attorney shall send a copy of the petition and a notice by certified mail to each person whose address is determined under Subsection (f), informing the person of the pending foreclosure action and the scheduled hearing. A copy of each notice shall be filed with the clerk of the court together with an affidavit by the tax collector or by the taxing unit's attorney attesting to the fact and date of mailing of the notice.

(h) In addition to the notice required by Subsection (g), the taxing unit shall provide notice by publication and by posting to all persons with a property interest in the parcel subject to foreclosure. The notice shall be published in the English language once a week for two weeks in a newspaper that is published in the county in which the parcel is located and that has been in general circulation for at least one year immediately before the date of the first publication, with the first publication to be not less than the 45th day before the date on which the taxing unit's petition is scheduled to be heard. When returned and filed in the trial court, an affidavit of the editor or publisher of the newspaper attesting to the date of publication, together with a printed copy of the notice as published, is sufficient proof of publication under this subsection. If a newspaper is not published in the county in which the parcel is located, publication in an otherwise qualifying newspaper published in an adjoining county is sufficient. The maximum fee for publishing the citation shall be the lowest published word or line rate of that newspaper for classified advertising. The notice by posting shall be in the English language and given by posting a copy of the notice at the courthouse door of the county in which the foreclosure is pending not less than the 45th day before the date on which the taxing unit's petition is scheduled to be heard. Proof of the posting of the notice shall be made by affidavit of the attorney for the taxing unit, or of the person posting it. If the publication of the notice cannot be had for the maximum fee established in this subsection, and that fact is supported by the affidavit of the attorney for the taxing unit, the notice by posting under this subsection is sufficient.

(i) The notice required by Subsections (g) and (h) must include:

(1) a statement that foreclosure proceedings have been commenced and the date the petition was filed;

(2) a legal description, tax account number, and, if known, a street address for the parcel in which the addressee owns a property interest;

(3) the name of the person to whom the notice is addressed and the name of each other person who, according to the title search, has an interest in the parcel in which the addressee owns a property interest;

(4) the date, time, and place of the scheduled hearing on the petition;

(5) a statement that the recipient of the notice may lose whatever property interest the recipient owns in the parcel as a result of the hearing and any subsequent tax sale;

(6) a statement explaining how a person may contest the taxing unit's petition as provided by Subsection (j) and that a person's interest in the parcel may be preserved by paying all delinquent taxes, penalties, interest, attorney's fees, and court costs before the date of the scheduled hearing on the petition;

(7) the name, address, and telephone number of the taxing unit and the taxing unit's attorney of record; and

(8) the name of each other taxing unit that imposes taxes on the parcel, together with a notice that any taxing unit may intervene without further notice and set up its claims for delinquent taxes.

(j) A person claiming a property interest in a parcel subject to foreclosure may contest a taxing unit's petition by filing with the clerk of the court a written response to the petition not later than the seventh day before the date scheduled for hearing on the petition and specifying in the response any affirmative defense of the person. A copy of the response must be served on the taxing unit's attorney of record in the manner required by Rule 21a, Texas Rules of Civil Procedure. The taxing unit is entitled on request to a continuance of the hearing if a written response filed to a notice of the hearing contains an affirmative defense or requests affirmative relief against the taxing unit.

(k) Before entry of a judgment under this section, a taxing unit may remove a parcel erroneously included in the petition and may take a voluntary nonsuit as to one or more parcels of property without prejudicing its action against the remaining parcels.

(*l*) If before the hearing on a taxing unit's petition the taxing unit discovers a deficiency in the provision of notice under this section, the taxing unit shall take reasonable steps in good faith to correct the deficiency before the hearing. A notice provided by Subsections (g)—(i) is in lieu of citation issued and served under Rule 117a, Texas Rules of Civil Procedure. Regardless of the manner in which notice under this section is given, an attorney ad litem may not be appointed for a person with an interest in a parcel with delinquent taxes, penalties, interest, and attorney's fees against the parcel in an amount that exceeds the parcel's appraised value. To the extent of any additional conflict between this section and the Texas Rules of Civil Procedure, this section controls. Except as otherwise provided by this section, a suit brought under this section is governed generally by the Texas Rules of Civil Procedure and by Subchapters C and D of this chapter.

(m) A judgment in favor of a taxing unit under this section must be only for foreclosure of the tax lien against the parcel. The judgment may not include a personal judgment against any person.

(n) A person is considered to have been provided sufficient notice of foreclosure and opportunity to be heard for purposes of a proceeding under this section if the taxing unit follows the procedures required by this section for notice by certified mail or by publication and posting or if one or more of the following apply:

(1) the person had constructive notice of the hearing on the merits by acquiring an interest in the parcel after the date of the filing of the taxing unit's petition;

(2) the person appeared at the hearing on the taxing unit's petition or filed a responsive pleading or other communication with the clerk of the court before the date of the hearing; or

(3) before the hearing on the taxing unit's petition, the person had actual notice of the hearing.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 24, effective September 1, 2005.

Sec. 33.58. [Expired September 1, 2017] Alternative Notice of Foreclosure for Parcels in Certain Municipalities.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1042 (H.B. 1899), § 1, effective September 1, 2007.

Secs. 33.59 to 33.70. [Reserved for expansion].

Subchapter D

Tax Masters

Sec. 33.71. Masters for Tax Suits.

(a) The court may, in delinquent tax suits, for good cause appoint a master in chancery for each case as desired, who shall be a citizen of this state and not an attorney for either party to the action, nor related to either party, who shall perform all of the duties required by the court, be under orders of the court, and have the power the master of chancery has in a court of equity.

(b) The order of reference to the master may specify or limit the master's powers, and may direct the master to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only, and may fix the time and place for beginning and closing the hearings and for the filing of the master's report.

(c) Subject to the limitations and specifications stated in the order, the master may:

(1) regulate all proceedings in every hearing before the master and do all acts and take all measures necessary or proper for the efficient performance of duties under the order;

(2) require the production of evidence upon all matters embraced in the reference, including the production of books, papers, vouchers, documents, and other writings applicable to the case;

(3) rule upon the admissibility of evidence, unless otherwise directed by the order of reference;

(4) put witnesses on oath, and examine them; and

(5) call the parties to the action and examine them upon oath.

(d) When a party requests, the master shall make a record of the evidence offered and excluded in the same manner as provided for a court sitting in the trial of a case.

(e) The clerk of the court shall forthwith furnish the master with a copy of the order of reference.

(f) The parties may procure the attendance of witnesses before the master by the issuance and service of process as provided by law.

(g) A pretrial ruling of a tax master from which a mandamus is sought must be appealed to the referring court before the initiation of mandamus proceedings before the court of appeals.

(h) Notwithstanding any other law or requirement, an attorney appointed a master under this section may practice law in the referring court if otherwise qualified to do so.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 916 (H.B. 1625), § 1, effective September 1, 1983; am. Acts 1991, 72nd Leg., ch. 525 (H.B. 2197), § 1, effective September 1, 1991 (renumbered from Sec. 1.13); am. Acts 2001, 77th Leg., ch. 326 (H.B. 1876), § 1, effective May 24, 2001.

NOTES TO DECISIONS

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CIVIL PROCEDURE
Appeals
Standards of Review

De Novo Review. — Under Tex. Tax Code Ann. § 33.71 and Tex. Tax Code Ann. § 33.74(a), the intervening creditors were entitled to a de novo hearing of their appeal of the tax master's recommendation that they take nothing in their suit against the company that allegedly owed them money. City of Houston v. Alief I.S.D., 117 S.W.3d 913, 2003 Tex. App. LEXIS 8045 (Tex. App. Houston 14th Dist. Sept. 16, 2003, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Trial court was authorized to refer suit filed by taxing authority, and in which the intervenors had successfully intervened, for delinquent tax to a master in chancery and the master was permitted to conduct evidentiary proceedings and recommend a final judgment; however, the trial erred in entering the master's recommendation that the intervenors take nothing as a judgment where it was required by statute to hold a de novo hearing on the intervenors' appeal on the tax master's recommendation since the intervenors had filed an appeal of that recommendation in the trial court. City of Houston v. Alief I.S.D., 117 S.W.3d 913, 2003 Tex. App. LEXIS 8045 (Tex. App. Houston 14th Dist. Sept. 16, 2003, no pet.).

Sec. 33.72. Report Transmitted to Court; Notice.

(a) At the conclusion of any hearing conducted by a master that results in a recommendation of a final judgment or on the request of the referring court, the master shall transmit to the referring court all papers relating to the case, with the master's signed and dated report.

(b) After the master's report has been signed, the master shall give to the parties participating in the hearing notice of the substance of the report. The master's report may contain the master's findings, conclusions, or recommendations. The master's report must be in writing in a form as the referring court may direct. The form may be a notation on the referring court's docket sheet.

(c) If the master's report recommends a final judgment, notice of the right of appeal to the judge of the referring court shall be given to all parties.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 525 (H.B. 2197), § 1, effective September 1, 1991.

Sec. 33.73. Court Action on Master's Report; Master's Compensation.

(a) After the master's report is filed, and unless a party has filed a written notice of appeal to the referring court, the court may confirm, modify, correct, reject, reverse, or recommit the report as the court may deem proper and necessary in the particular circumstances of the case.

(b) The court shall award reasonable compensation to the master to be taxed as costs of suit.

(c) The district clerk shall collect the fees taxed as costs of suit and award the fees to the master as required under Subsection (b) in each delinquent tax suit for which a master is appointed under Section 33.71, regardless of the disposition of the suit subject to this subsection. Fees may not be collected or awarded in a suit dismissed by the master unless the master:

(1) held at least one hearing on the suit; or

(2) prepared for the suit for at least a number of hours equivalent to the time typically required to conduct a hearing.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 916 (H.B. 1625), § 1, effective September 1, 1983; am. Acts 1991, 72nd Leg., ch. 525 (H.B. 2197), § 1, effective September 1, 1991 (renumbered from Sec. 1.13); am. Acts 2017, 85th Leg., ch. 368 (H.B. 3389), § 1, effective September 1, 2017.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings
Judicial Review. — District court had authority to conduct a de novo review as to a taxpayer who did not appeal from a tax master's report that was favorable to him and unfavorable to another taxpayer; he was notified of the de novo hearing, and he knew that the taxing authority's appeal subjected him to potential liability. Hebisen v. Clear Creek Indep. Sch. Dist., 217 S.W.3d 527, 2006 Tex. App. LEXIS 8712 (Tex. App. Houston 14th Dist. Oct. 10, 2006, no pet.).

Sec. 33.74. Appeal of Recommendation of Final Judgment to the Referring Court or on Request of the Referring Court.

(a) Any party is entitled to a hearing by the judge of the referring court, if within 10 days, computed in the manner provided by Rule 4 of the Texas Rules of Civil Procedure, after the master gives the notice required by Section 33.72(c), an appeal of the master's report is filed with the referring court. The first day of the appeal time to the referring court begins on the day after the date on which the master gives the notice.

(b) The notice required by Section 33.72(c) may be given in open court or may be given by first class mail. If the notice is given by first class mail the notice is considered to have been given on the third day after the date of the mailing.

(c) All appeals to the referring court shall be in writing specifying the findings and conclusions of the master that are objected to and the appeal shall be limited to those findings and conclusions.

(d) On appeal to the referring court, the parties may present witnesses as in a hearing de novo only on the issues raised in the appeal.

(e) Notice of any appeal to the referring court shall be given to opposing counsel under Rule 72 of the Texas Rules of Civil Procedure.

(f) If an appeal to the referring court is filed by a party, any other party may file an appeal to the referring court not later than the seventh day after the date the initial appeal was filed.

(g) The referring court, after notice to the parties, shall hold a hearing on all appeals not later than the 45th day after the date on which the initial appeal was filed with the referring court.

(h) Before a hearing before a master, the parties may waive the right of appeal to the referring court in writing or on the record.

(i) The failure to appeal to the referring court, by waiver or otherwise, a master's report that is approved by the referring court does not deprive any party of the right to appeal to or request other relief from a court of appeals or the supreme court. The date of the signing of an order or judgment by the referring court is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 525 (H.B. 2197), § 1, effective September 1, 1991.

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CIVIL PROCEDURE
Appeals
Records on Appeal. — After a trial de novo in the district court, taxpayers who provided an appellate record consisting only of a clerk's record and a reporter's record of the hearing before the tax master could not prevail in an evidentiary challenge; because they did not provide the record from the de novo hearing, there was nothing to review. Hebisen v. Clear Creek Indep. Sch. Dist., 217 S.W.3d 527, 2006 Tex. App. LEXIS 8712 (Tex. App. Houston 14th Dist. Oct. 10, 2006, no pet.).

STANDARDS OF REVIEW
De Novo Review. — Under Tex. Tax Code Ann. § 33.71 and Tex. Tax Code Ann. § 33.74(a), the intervening creditors were entitled to a de novo hearing of their appeal of the tax master's recommendation that they take nothing in their suit against the company that allegedly owed them money. City of Houston v. Alief I.S.D., 117 S.W.3d 913, 2003 Tex. App. LEXIS 8045 (Tex. App. Houston 14th Dist. Sept. 16, 2003, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings
General Overview. — Trial court was authorized to refer suit filed by taxing authority, and in which the intervenors had successfully intervened, for delinquent tax to a master in chancery and the master was permitted to conduct evidentiary proceedings and recommend a final judgment; however, the trial erred in entering the master's recommendation that the intervenors take nothing as a judgment because it was required by statute to hold a de novo hearing on the intervenors' appeal on the tax master's recommendation since the intervenors had filed an

appeal of that recommendation in the trial court. City of Houston v. Alief I.S.D., 117 S.W.3d 913, 2003 Tex. App. LEXIS 8045 (Tex. App. Houston 14th Dist. Sept. 16, 2003, no pet.).

JUDICIAL REVIEW. — After a trial de novo in the district court, taxpayers who provided an appellate record consisting only of a clerk's record and a reporter's record of the hearing before the tax master could not prevail in an evidentiary challenge; because they did not provide the record from the de novo hearing, there was nothing to review. Hebisen v. Clear Creek Indep. Sch. Dist., 217 S.W.3d 527, 2006 Tex. App. LEXIS 8712 (Tex. App. Houston 14th Dist. Oct. 10, 2006, no pet.).

PERSONAL PROPERTY TAX
Intangible Property
General Overview. — Where taxpayers sought review of a judgment against them for delinquent ad valorem taxes on personal and business property, the court held that the trial court could have held the evidentiary hearing without jurisdictional consequences under Tex. Tax Code Ann. § 33.74(a), (d), (g) because while the language regarding timeliness of the hearing in § 33.74(g) was mandatory, a referring court would not have been divested of jurisdiction if it failed to comply with the requirement to hold a hearing within 45 days; rather, the provision gave the appealing party a vehicle to compel prompt adjudication of the appeal. Godwin v. Aldine Indep. Sch. Dist., 961 S.W.2d 219, 1997 Tex. App. LEXIS 257 (Tex. App. Houston 1st Dist. Jan. 23, 1997), op. withdrawn, 961 S.W.2d 219, 1997 Tex. App. LEXIS 4453 (Tex. App. Houston 1st Dist. Aug. 21, 1997).

Sec. 33.75. Decree or Order of Court.

If an appeal to the referring court is not filed or the right to an appeal to the referring court is waived, the findings and recommendations of the master become the decree or order of the referring court on the referring court's signing an order or decree conforming to the master's report.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 525 (H.B. 2197), § 1, effective September 1, 1991.

Sec. 33.76. Jury Trial Demanded.

(a) In a trial on the merits, if a jury trial is demanded and a jury fee is paid, as prescribed by Rule 216, Texas Rules of Civil Procedure, the master shall refer any matters requiring a jury back to the referring court for a full trial before the referring court and jury. However, the master shall conduct all pretrial work necessary to prepare the case for a jury trial.

(b) The master may require all parties to submit a proposed jury charge or other pretrial order or sanction the parties for failure to present or prepare a proper pretrial order.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 525 (H.B. 2197), § 1, effective September 1, 1991.

NOTES TO DECISIONS

CIVIL PROCEDURE
Trials
Jury Trials
Right to Jury Trial. — In taxpayer's appeal from a motion that denied taxpayer's request for a new trial, the court found no error in the decision to hear the case without a jury, even though taxpayer properly requested a jury trial, because the taxpayer failed to appear at a tax master's hearing, and Tex. Tax Code Ann. § 33.76 provided that even when a jury trial was demanded, the master was still required to conducted all pretrial work necessary to prepare the case for trial pursuant to Tex. Tax Code Ann. § 33.76, and taxpayer's failure to appear at the hearing, taxpayer left the responsibility for conducting a trial without a jury with the tax master. Butler-Brown v. Houston Indep. Sch. Dist., No. 01-95-00698-CV, 1996 Tex. App. LEXIS 3419 (Tex. App. Houston 1st Dist. Aug. 8, 1996).

Sec. 33.77. Effect of Master's Report Pending Appeal.

Pending appeal of the master's report to the referring court, the decisions and recommendations of the master are in full force and effect and are enforceable as an order of the referring court, except for orders providing for incarceration or for the appointment of a receiver.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 525 (H.B. 2197), § 1, effective September 1, 1991.

Sec. 33.78. Masters May Not Be Appointed Under Texas Rules of Civil Procedure.

A court may not appoint a master under Rule 171, Texas Rules of Civil Procedure, in a delinquent tax suit.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 525 (H.B. 2197), § 1, effective September 1, 1991.

Sec. 33.79. Immunity.

A master appointed under this subchapter has the judicial immunity of a district judge. All existing immunity granted masters by law, express or implied, continues in full force and effect.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 525 (H.B. 2197), § 1, effective September 1, 1991.

Sec. 33.80. Court Reporter.

A court reporter is not required during a hearing held by a master appointed under this subchapter. A party, the master, or the referring court may provide for a reporter during the hearing. The record may be preserved by any other means approved by the master. The referring court or master may tax the expense of preserving the record as costs.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 525 (H.B. 2197), § 1, effective September 1, 1991.

Secs. 33.81 to 33.90. [Reserved for expansion].

Subchapter E

Seizure of Real Property

Sec. 33.91. Property Subject to Seizure by Municipality.

(a) After notice has been provided to a person, the person's real property, whether improved or unimproved, is subject to seizure by a municipality for the payment of delinquent ad valorem taxes, penalties, and interest the person owes on the property and the amount secured by a municipal health or safety lien on the property if:

(1) the property:

(A) is in a municipality;

(B) is less than one acre; and

(C) has been abandoned for at least one year;

(2) the taxes on the property are delinquent for:

(A) each of the preceding five years; or

(B) each of the preceding three years if a lien on the property has been created on the property in favor of the municipality for the cost of remedying a health or safety hazard on the property; and

(3) the tax collector of the municipality determines that seizure of the property under this subchapter for the payment of the delinquent taxes, penalties, and interest, and of a municipal health and safety lien on the property, would be in the best interest of the municipality and the other taxing units after determining that the sum of all outstanding tax and municipal claims against the property plus the estimated costs under Section 33.48 of a standard judicial foreclosure exceed the anticipated proceeds from a tax sale.

(b) The seizure and sale may not be set aside or voided because of any error in determination.

(c) For purposes of this section, a property is presumed to have been abandoned for at least one year if, during that period, the property has remained vacant and a lawful act of ownership of the property has not been exercised. The tax collector of a municipality may rely on the affidavit of any competent person with personal knowledge of the facts in determining whether a property has been abandoned or vacant. For purposes of this subsection:

(1) property is considered vacant if there is an absence of any activity by the owner, a tenant, or a licensee related to residency, work, trade, business, leisure, or recreation; and

(2) "lawful act of ownership" includes mowing or cutting grass or weeds, repairing or demolishing a structure or fence, removing debris, or other form of property upkeep or maintenance performed by or at the request of the owner of the property.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 1017 (S.B. 1545), § 1, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 1, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 2, effective June 18, 2003.

Sec. 33.911. Property Subject to Seizure by County.

(a) After notice has been provided to a person, the person's real property, whether improved or unimproved, is subject to seizure by a county for the payment of delinquent ad valorem taxes, penalties, and interest the person owes on the property if:

(1) the property:

(A) is in the county;

(B) is not in a municipality; and

(C) has been abandoned for at least one year;

(2) the taxes on the property are delinquent for each of the preceding five years; and

(3) the county tax assessor-collector determines that seizure of the property under this subchapter for the payment of the delinquent taxes, penalties, and interest would be in the best interest of the county and the other taxing units after determining that the sum of all outstanding tax and county claims against the property plus the estimated costs under Section 33.48 of a standard judicial foreclosure exceed the anticipated proceeds from a tax sale.

(b) The seizure and sale may not be set aside or voided because of any error in determination.

(c) For purposes of this section, a property is presumed to have been abandoned for at least one year if, during that period, the property has remained vacant and a lawful act of ownership of the property has not been exercised. The tax collector of a county may rely on the affidavit of any competent person with personal knowledge of the facts in determining whether a property has been abandoned or vacant. For purposes of this subsection:

(1) property is considered vacant if there is an absence of any activity by the owner, a tenant, or a licensee related to residency, work, trade, business, leisure, or recreation; and

(2) "lawful act of ownership" includes mowing or cutting grass or weeds, repairing or demolishing a structure or fence, removing debris, or other form of property upkeep or maintenance performed by or at the request of the owner of the property.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 1, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 3, effective June 18, 2003.

Sec. 33.912. Notice.

(a) A person is considered to have been provided the notice required by Sections 33.91 and 33.911 if by affidavit or otherwise the collector shows that the assessor or collector for the municipality or county mailed the person each bill for municipal or county taxes required to be sent the person by Section 31.01:

(1) in each of the five preceding years, if the taxes on the property are delinquent for each of those years; or

(2) in each of the three preceding years, if:

(A) the taxes on the property are delinquent for each of those years; and

(B) a lien on the property has been created on the property in favor of the municipality for the cost of remedying a health or safety hazard on the property.

(b) If notice under Subsection (a) is not provided, the notice required by Section 33.91 or 33.911 shall be given by the assessor or the collector for the municipality or county, as applicable, by:

(1) serving, in the manner provided by Rule 21a, Texas Rules of Civil Procedure, a true and correct copy of the application for a tax warrant filed under Section 33.92 to each person known, or constructively known through reasonable inquiry, to own or have an interest in the property;

(2) publishing in the English language a notice of the assessor's intent to seize the property in a newspaper published in the county in which the property is located if, after exercising reasonable diligence, the assessor or collector cannot determine ownership or the address of the known owners; or

(3) if required under Subsection (g), posting in the English language a notice of the assessor's intent to seize the property if, after exercising reasonable diligence, the assessor or collector cannot determine ownership or the address of the known owners.

(c) A notice under Subsection (b)(1) shall be provided at the time of filing the application for a tax warrant and must be supported by a certificate of service appearing on the application in the same manner and form as provided by Rule 21a, Texas Rules of Civil Procedure. The notice is sufficient if sent to the person's last known address.

(d) A notice by publication or posting under Subsection (b) must substantially comply with this subsection. The notice must:

(1) be published or posted at least 10 days but not more than 180 days before the date the application for tax warrant under Section 33.92 is filed;

(2) be directed to the owners of the property by name, if known, or, if unknown, to "the unknown owners of the property described below";

(3) state that the assessor or collector intends to seize the property as abandoned property and that the property will be sold at public auction without further notice unless all delinquent taxes, penalties, and interest are paid before the sale of the property; and

(4) describe the property.

(e) A description of the property under Subsection (d)(4) is sufficient if it is the same as the property description appearing on the current tax roll for the county or municipality.

(f) A notice by publication or posting under Subsection (b) may relate to more than one property or to multiple owners of property.

(g) For publishing a notice under Subsection (b)(2), a newspaper may charge a rate that does not exceed the greater of two cents per word or an amount equal to the published word or line rate of that newspaper for the same class of advertising. If notice cannot be provided under Subsection (b)(1) and there is not a newspaper published in the county where the property is located, or a newspaper that will publish the notice for the rate authorized by this subsection, the assessor shall post the notice in writing in three public places in the county. One of the posted notices must be at the door of the county courthouse. Proof of the posting shall be made by affidavit of the person posting the notice or by the attorney for the assessor or collector.

(h) A person is considered to have been provided the notice under Section 33.91 or 33.911 in the manner provided by Subsection (b) if the application for the tax warrant under Section 33.92:

(1) contains the certificate of service as required by Subsection (b)(1);

(2) is accompanied by an affidavit on behalf of the applicable assessor or collector stating the fact of publication under Subsection (b)(2), with a copy of the published notice attached; or

(3) is accompanied by an affidavit of posting on behalf of the applicable assessor or collector under Subsection (g) stating the fact of posting and facts supporting the necessity of posting.

(i) A failure to provide, give, or receive a notice provided under this section does not affect the validity of a sale of the seized property or title to the property.

(j) The costs of publishing notice under this section are chargeable as costs and payable from the proceeds of the sale of the property.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 1, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 4, effective June 18, 2003.

Sec. 33.92. Institution of Seizure.

(a) After property becomes subject to seizure under Section 33.91 or 33.911, the collector for a municipality or a county, as appropriate, may apply for a tax warrant to a district court in the county in which the property is located.

(b) The court shall issue the tax warrant if by affidavit the collector shows that the property is subject to seizure under Section 33.91 or 33.911. The collector may show that the property has been abandoned or vacant for at least one year, as required by Section 33.91(a)(1)(C) or 33.911(a)(1)(C) by affidavit of any competent person with personal knowledge of the relevant facts.

(c) The court issuing the tax warrant shall include a statement as to the appraised value of the property according to the most recent appraisal roll approved by the appraisal review board. That value is presumed to be the market value of the property on the date that the warrant is issued.

(d) The collector is entitled, on request in the application, to recover attorney's fees in an amount equal to the compensation specified in the contract with the attorney for collection of the delinquent taxes, penalties, and interest on the property if:

(1) the taxing unit served by the collector contracts with an attorney under Section 6.30;

(2) the existence of the contract and the amount of attorney's fees that equal the compensation specified in the contract are supported by the affidavit of the collector; and

(3) the delinquent tax sought to be recovered is not subject to an additional penalty under Section 33.07 or 33.08 at the time the application is filed.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 1017 (S.B. 1545), § 1, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 1, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 5, effective June 18, 2003.

Sec. 33.93. Tax Warrant.

(a) A tax warrant shall direct the sheriff or a constable in the county and the collector for the municipality or the county to seize the property described in the warrant, subject to the right of redemption, for the payment of the ad valorem taxes, penalties, and interest owing on the property included in the application, any attorney's fees included in the application as provided by Section 33.92(d), the amount secured by a municipal health or safety lien on the property included in the application, and the costs of seizure and sale. The warrant shall direct the person whose property is seized to disclose to a person executing the warrant the name and address if known of any other person having an interest in the property.

(b) A bond may not be required of a municipality or county for issuance or delivery of a tax warrant, and a fee or court cost may not be charged for issuance or delivery of the warrant.

(c) On issuance of a tax warrant, the collector shall take possession of the property pending its sale by the officer charged with selling the property.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 1017 (S.B. 1545), § 1, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 1, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 6, effective June 18, 2003.

ATTORNEY GENERAL OPINIONS

Executing Warrant.

A sheriff or constable is the only type of peace officer that may execute a tax warrant for seizure of real property under section 33.93 of the Tax Code. A sheriff or constable may seize real property. Seizure requires possession or control of the property. Section 33.93 requires the sheriff or constable to turn the possession of seized real property over to the assessor-collector. 2004 Tex. Op. Att'y Gen. GA-140.

Sec. 33.94. Notice of Tax Sale.

(a) After a seizure of property, the collector for the municipality or county shall make a reasonable inquiry to determine the identity and address of any person, other than the person against whom the tax warrant is issued, having an interest in the property. The collector shall deliver as soon as possible a notice stating the time and place of the sale and briefly describing the property seized to:

(1) the person against whom the warrant is issued, including each person to whom notice was provided under Section 33.912(a);

(2) each person to whom notice was provided under Section 33.912(b)(1); and

(3) any other person the collector determines has an interest in the property if the collector can ascertain the address of the other person.

(b) Failure to send or receive a notice required by this section does not affect the validity of the sale of the seized property or title to the property.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 1017 (S.B. 1545), § 1, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 1, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 7, effective June 18, 2003.

Sec. 33.95. Purchaser.

A purchaser for value at or subsequent to the tax sale may conclusively presume the validity of the sale and takes free

of any claim of a party with a prior interest in the property subject to the provisions of Section 16.002(b), Civil Practice and Remedies Code, and subject to applicable rights of redemption.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 1017 (S.B. 1545), § 1, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 1, effective September 1, 1997.

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GOVERNMENTS
Legislation

Interpretation. — Tex. Tax Code Ann. § 33.95 uses the word property and does not distinguish between realty or personalty; Tex. Tax Code Ann. § 1.04(1) defines property as any matter or thing capable of private ownership; thus, to interpret the statute in a manner that would limit its application solely to real property tax sales, as compared to all property sales, would be contrary to the overall purpose of the chapter. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

LOCAL GOVERNMENTS

Claims By & Against. — Sovereign immunity did not preclude a property owner from suing a city to recover payment of a demolition lien because: (1) under Tex. Loc. Gov't Code Ann. § 214.001(o), a demolition lien was subordinate to a tax lien; (2) because the owner had purchased the property at a tax sale, the demolition lien was extinguished; (3) the city's refusal to release the lien and subsequent acceptance of the owner's payment constituted the collection of an illegal fee; (4) sovereign immunity did not prevent a party who paid illegal government fees under duress from filing a lawsuit to seek their repayment; and (5) the owner had paid off the lien under duress. Saturn Capital Corp. v. City of Houston, 246 S.W.3d 242, 2007 Tex. App. LEXIS 9621 (Tex. App. Houston 14th Dist. Dec. 11, 2007, no pet.).

REAL PROPERTY LAW
Financing
Mortgages & Other Security Instruments
Foreclosures

General Overview. — Summary judgment in favor of the debtors was reversed and remanded because the creditor's deed of trust was a valid lien on the property after the debtors redemption. When the debtors redeemed the property after the tax sale, they restored the title to what it was before the tax sale, except the tax lien had been discharged, the debtors did not discharge their agreement with the creditor reflected in the deed of trust, and the debtors' ownership of the property was subject to the creditor's deed of trust, and that ownership was what they redeemed. Assocs. Home Equity Servs. Co. v. Hunt, 151 S.W.3d 559, 2004 Tex. App. LEXIS 9801 (Tex. App. Beaumont Nov. 4, 2004, no pet.).

REDEMPTION

General Overview. — Summary judgment in favor of the tax-sale purchaser was proper, because a promissory note did not constitute "redemption money" or satisfy the requirement of "paying" sums required to be paid under Tex. Tax Code Ann. § 34.21(a), and the owners wholly defaulted on the promissory note and failed to fulfill their statutory obligation to remit all sums required to redeem the property; the purchaser's conduct was not unconscionable as a matter of law, when it was not inconsistent or unconscionable for the purchaser to accept the statutory benefits acquired at the tax sale then defend its tax title against the bank's claim that the property was redeemed, as it was the public policy of Texas for a purchaser at a tax sale to retain title if the property was not timely and properly redeemed. Deutsche Bank Nat'l Trust Co. v. Stockdick Land Co., 367 S.W.3d 308, 2012 Tex. App. LEXIS 1516 (Tex. App. Houston 14th Dist. Feb. 28, 2012, no pet.).

NONMORTGAGE LIENS

Lien Priorities. — The court rejected appellant's argument that a provision of Tex. Tax Code Ann. § 33.95 which is found in the Subchapter headed "Seizure of Real Property," had no application because the manufactured home was considered personal property; appellant reasoned that the absence of a comparable provision from the subchapter titled "Seizure of Personal Property" indicated legislative intent that a tax sale should not extinguish pre-existing junior liens after a properly conducted tax sale. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — Mobile home purchaser, who had bought the mobile home at a tax sale for delinquent taxes, held a junior lien to the finance company; the application of real property nonjudicial procedures to the disposition of personal property was a reasonable application, and the tax sale extinguished the purchaser's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

COLLECTION

Tax Deeds & Tax Sales. — Summary judgment in favor of the tax-sale purchaser was proper, because a promissory note did not constitute "redemption money" or satisfy the requirement of "paying" sums required to be paid under Tex. Tax Code Ann. § 34.21(a), and the owners wholly defaulted on the promissory note and failed to fulfill their statutory obligation to remit all sums required to redeem the property; the purchaser's conduct was not unconscionable as a matter of law, when it was not inconsistent or unconscionable for the purchaser to accept the statutory benefits acquired at the tax sale then defend its tax title against the bank's claim that the property was redeemed, as it was the public policy of Texas for a purchaser at a tax sale to retain title if the property was not timely and properly redeemed. Deutsche Bank Nat'l Trust Co. v. Stockdick Land Co., 367 S.W.3d 308, 2012 Tex. App. LEXIS 1516 (Tex. App. Houston 14th Dist. Feb. 28, 2012, no pet.).

Sovereign immunity did not preclude a property owner from suing a city to recover payment of a demolition lien because: (1) under Tex. Loc. Gov't Code Ann. § 214.001(o), a demolition lien was subordinate to a tax lien; (2) because the owner had purchased the property at a tax sale, the demolition lien was extinguished; (3) the city's refusal to release the lien and subsequent acceptance of the owner's payment constituted the collec-

tion of an illegal fee; (4) sovereign immunity did not prevent a party who paid illegal government fees under duress from filing a lawsuit to seek their repayment; and (5) the owner had paid off the lien under duress. Saturn Capital Corp. v. City of Houston, 246 S.W.3d 242, 2007 Tex. App. LEXIS 9621 (Tex. App. Houston 14th Dist. Dec. 11, 2007, no pet.).

CHAPTER 34

Tax Sales and Redemption

Subchapter A. Tax Sales

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34.015.	Persons Eligible to Purchase Real Property.
34.02.	Distribution of Proceeds.
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Subchapter B. Redemption

34.21.	Right of Redemption.
34.22.	Evidence of Title to Redeem Real Property.
34.23.	Distribution of Redemption Proceeds.

Subchapter A

Tax Sales

Sec. 34.01. Sale of Property.

(a) Real property seized under a tax warrant issued under Subchapter E, Chapter 33, or ordered sold pursuant to foreclosure of a tax lien shall be sold by the officer charged with selling the property, unless otherwise directed by the taxing unit that requested the warrant or order of sale or by an authorized agent or attorney for that unit. The sale shall be conducted in the manner similar property is sold under execution except as otherwise provided by this subtitle.

(a-1) The commissioners court of a county by official action may authorize the officer charged with selling property under this section to conduct a public auction using online bidding and sale. The commissioners court may adopt rules governing online auctions authorized under this subsection. Rules adopted by the commissioners court under this subsection take effect on the 90th day after the date the rules are published in the real property records of the county.

(b) On receipt of an order of sale of real property, the officer charged with selling the property shall endorse on the order the date and exact time when the officer received the order. The endorsement is a levy on the property without necessity for going upon the ground. The officer shall calculate the total amount due under the judgment, including all taxes, penalties, and interest, plus any other amount awarded by the judgment, court costs, and the costs of the sale. The costs of a sale include the costs of advertising, an auctioneer's commission and fees, and deed recording fees anticipated to be paid in connection with the sale of the property. To assist the officer in making the calculation, the collector of any taxing unit that is party to the judgment may provide the officer with a certified tax statement showing the amount of the taxes included in the judgment that remain due that taxing unit and all penalties, interest, and attorney's fees provided by the judgment as of the date of the proposed sale. If a certified tax statement is provided to the officer, the officer shall rely on the amount included in the statement and is not responsible or liable for the accuracy of the applicable portion of the calculation. A certified tax statement is not required to be sworn to and is sufficient if the tax collector or the collector's deputy signs the statement.

(c) The officer charged with the sale shall give written notice of the sale in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure, as amended, or that rule's successor to each person who was a defendant to the judgment or that person's attorney.

(d) An officer's failure to send the written notice of sale or a defendant's failure to receive that notice is insufficient by itself to invalidate:

(1) the sale of the property; or

(2) the title conveyed by that sale.

(e) A notice of sale under Subsection (c) must substantially comply with this subsection. The notice must include:

(1) a statement of the authority under which the sale is to be made;

(2) the date, time, and location of the sale; and

(3) a brief description of the property to be sold.

(f) A notice of sale is not required to include field notes describing the property. A description of the property is sufficient if the notice:

(1) states the number of acres and identifies the original survey;

(2) as to property located in a platted subdivision or addition, regardless of whether the subdivision or addition is recorded, states the name by which the land is generally known with reference to that subdivision or addition; or

(3) by reference adopts the description of the property contained in the judgment.

(g) For publishing a notice of sale, a newspaper may charge a rate that does not exceed the greater of:

(1) two cents per word; or

(2) an amount equal to the published word or line rate of that newspaper for the same class of advertising.

(h) If there is not a newspaper published in the county of the sale, or a newspaper that will publish the notice of sale for the rate authorized by Subsection (g), the officer shall post the notice in writing in three public places in the county not later than the 20th day before the date of the sale. One of the notices must be posted at the door of the county courthouse.

(i) The owner of real property subject to sale may file with the officer charged with the sale a written request that the property be divided and that only as many portions be sold as necessary to pay the amount due against the property, as calculated under Subsection (b). In the request the owner shall describe the desired portions and shall specify the order in which the portions should be sold. The owner may not specify more than four portions or a portion that divides a building or other contiguous improvement. The request must be delivered to the officer not later than the seventh day before the date of the sale.

(j) If a bid sufficient to pay the lesser of the amount calculated under Subsection (b) or the adjudged value is not received, the taxing unit that requested the order of sale may terminate the sale. If the taxing unit does not terminate the sale, the officer making the sale shall bid the property off to the taxing unit that requested the order of sale, unless otherwise agreed by each other taxing unit that is a party to the judgment, for the aggregate amount of the judgment against the property or for the market value of the property as specified in the judgment, whichever is less. The duty of the officer conducting the sale to bid off the property to a taxing unit under this subsection is self-executing. The actual attendance of a representative of the taxing unit at the sale is not a prerequisite to that duty.

(k) The taxing unit to which the property is bid off takes title to the property for the use and benefit of itself and all other taxing units that established tax liens in the suit. The taxing unit's title includes all the interest owned by the defendant, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption. Payments in satisfaction of the judgment and any costs or expenses of the sale may not be required of the purchasing taxing unit until the property is redeemed or resold by the purchasing taxing unit.

(*l*) Notwithstanding that property is bid off to a taxing unit under this section, a taxing unit that established a tax lien in the suit may continue to enforce collection of any amount for which a former owner of the property is liable to the taxing unit, including any post-judgment taxes, penalties, and interest, in any other manner provided by law.

(m) The officer making the sale shall prepare a deed to the purchaser of real property at the sale, to any other person whom the purchaser may specify, or to the taxing unit to which the property was bid off. The taxing unit that requested the order of sale may elect to prepare a deed for execution by the officer. If the taxing unit prepares the deed, the officer shall execute that deed. An officer who executes a deed prepared by the taxing unit is not responsible or liable for any inconsistency, error, or other defect in the form of the deed. As soon as practicable after a deed is executed by the officer, the officer shall either file the deed for recording with the county clerk or deliver the executed deed to the taxing unit that requested the order of sale, which shall file the deed for recording with the county clerk. The county clerk shall file and record each deed filed under this subsection and after recording shall return the deed to the grantee.

(n) The deed vests good and perfect title in the purchaser or the purchaser's assigns to the interest owned by the defendant in the property subject to the foreclosure, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption, the terms of a recorded restrictive covenant running with the land that was recorded before January 1 of the year in which the tax lien on the property arose, a recorded lien that arose under that restrictive covenant that was not extinguished in the judgment foreclosing the tax lien, and each valid easement of record as of the date of the sale that was recorded before January 1 of the year the tax lien arose. The deed may be impeached only for fraud.

(o) If a bid sufficient to pay the amount specified by Subsection (p) is not received, the officer making the sale, with the consent of the collector who applied for the tax warrant, may offer property seized under Subchapter E, Chapter 33, to a person described by Section 11.181 or 11.20 for less than that amount. If the property is offered to a person described by Section 11.181 or 11.20, the officer making the sale shall reopen the bidding at the amount of that person's bid and bid off the property to the highest bidder. Consent to the sale by the taxing units entitled to receive proceeds of the sale is not required. The acceptance of a bid by the officer under this subsection is conclusive and binding on the question of its sufficiency. An action to set aside the sale on the grounds that a bid is insufficient may not be sustained, except that a taxing unit that participates in distribution of proceeds of the sale may file an action before the first anniversary of the date of the sale to set aside the sale on the grounds of fraud or collusion between the officer making the sale and the purchaser.

(p) Except as provided by Subsection (o), property seized under Subchapter E, Chapter 33, may not be sold for an amount that is less than the lesser of the market value of the property as specified in the warrant or the total amount of taxes, penalties, interest, costs, auctioneer's commission and fees, and other claims for which the warrant was issued. If a sufficient bid is not received by the officer making the sale, the officer shall bid off the property to a taxing unit in the manner specified by Subsection (j) and subject to the other provisions of that subsection. A taxing unit that takes title to property under this subsection takes title for the use and benefit of that taxing unit and all other taxing units that established tax liens in the suit or that, on the date of the seizure, were owed delinquent taxes on the property.

(q) A sale of property under this section to a purchaser other than a taxing unit:

(1) extinguishes each lien securing payment of the delinquent taxes, penalties, and interest against that property and included in the judgment; and

(2) does not affect the personal liability of any person for those taxes, penalties, and interest included in the judgment that are not satisfied from the proceeds of the sale.

(r) Except as provided by Subsection (a-1) and this subsection, a sale of real property under this section must take place at the county courthouse in the county in which the land is located. The commissioners court of the county may designate an area other than an area at the county courthouse where sales under this section will take place that is in a public place within a reasonable proximity of the county courthouse as determined by the commissioners court and in a location as accessible to the public as the courthouse door. The commissioners court shall record that designation in the real property records of the county. A designation by a commissioners court under this section is not a ground for challenging or invalidating any sale. A sale must be held at an area designated under this subsection if the sale is held on or after the 90th day after the date the designation is recorded.

(r-1) A sale of real property under this section, other than a sale conducted by means of a public auction using online bidding and sale under Subsection (a-1), must take place between 10 a.m. and 4 p.m. on the first Tuesday of a month or, if the first Tuesday of a month occurs on January 1 or July 4, between 10 a.m. and 4 p.m. on the first Wednesday of the month.

(r-2) A sale of real property conducted by means of a public auction using online bidding and sale under Subsection (a-1) may begin at any time and must conclude at 4 p.m. on the first Tuesday of a month or, if the first Tuesday of a month occurs on January 1 or July 4, at 4 p.m. on the first Wednesday of the month.

(s) To the extent of a conflict between this section and a provision of the Texas Rules of Civil Procedure that relates to an execution, this section controls.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 32, effective June 15, 1989; am. Acts 1991, 72nd Leg., ch. 854 (S.B. 1426), § 2, effective June 16, 1991; am. Acts 1995, 74th Leg., ch. 1017 (S.B. 1545), § 2, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 817 (H.B. 1604), § 2, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 24, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 26, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 8, effective June 18, 2003; am. Acts 2013, 83rd Leg., ch. 642 (H.B. 699), § 3, effective October 1, 2013; am. Acts 2015, 84th Leg., ch. 27 (S.B. 1452), § 1, effective May 15, 2015; am. Acts 2017, 85th Leg., ch. 133 (H.B. 1128), § 4, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 293 (H.B. 2650), § 1, effective May 29, 2019.

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CIVIL PROCEDURE
Summary Judgment
Standards

General Overview. — Where the assignee of a possibility of reverter interest owned no taxable interest in the property, the assignee could not be delinquent in its tax obligation and its interest could not be extinguished by a foreclosure sale and any purchaser of the owner of the property's interest in a foreclosure sale would take the owner's title with knowledge of and subject to the assignee's possibility of reverter pursuant to Tex. Tax. Code Ann. § 34.01(n); thus, the trial court properly granted the assignee's traditional motion for summary judgment pursuant to Tex. R. Civ. P. 166a(c) on that issue. Cypress-Fairbanks Indep. Sch. Dist. v. Glenn W. Loggins, Inc., 115 S.W.3d 67, 2003 Tex. App. LEXIS 5536 (Tex. App. San Antonio July 2, 2003, no pet.).

CONSTITUTIONAL LAW
Bill of Rights
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Procedural Due Process

Scope of Protection. — In a case involving a former property owner's claim for excess proceeds from a tax sale, the district clerk's notice of excess funds did not deprive the former owner of due process because the notice afforded the former owner an ample opportunity to be heard at a meaningful time and in a meaningful manner to assert a claim for excess proceeds, given that the notice informed him that he had two years from the date of the tax sale to file a petition to claim the excess proceeds and that the notice indicated that the sale had occurred prior to the issuance of the notice of excess proceeds. Galvan v. Midland Cent. Appraisal Dist., No. 11-17-00316-CV, 2019 Tex. App. LEXIS 7522 (Tex. App. Eastland Aug. 22, 2019).

REAL PROPERTY LAW
Deeds
Types

Sheriff's Deeds. — Court interprets Tex. Tax Code Ann. § 34.01(n), consistent with case law, as providing that the deed

vests title in the property interest that was foreclosed upon and ordered sold and not necessarily the entire property. City of Alvin v. Zindle, No. 14-06-01147-CV, 2007 Tex. App. LEXIS 8346 (Tex. App. Houston 14th Dist. Oct. 23, 2007).

Sheriff could not have legally conveyed property interests that were not foreclosed upon and ordered sold, for purposes of Tex. Tax Code Ann. § 34.01(n), and although the record contained the sheriff's deed purporting to convey title in the property, neither party introduced the underlying foreclosure judgment or order of sale as summary judgment proof, and the agreed stipulation of facts did not obviate the need for these documents; the stipulation left open the question of whether the foreclosure judgment affected a severance of any mineral rights, and because the judgment and order of sale were essential to deciding who owned the mineral rights, including the royalty interest and right of reverter, neither party presented conclusive evidence that it had title to the property at issue and remand was required. City of Alvin v. Zindle, No. 14-06-01147-CV, 2007 Tex. App. LEXIS 8346 (Tex. App. Houston 14th Dist. Oct. 23, 2007).

TAX DEEDS. — Purported owner was unable to meet the burden of proof required in a trespass to try title case since it did not show the receipt of good and perfect title under Tex. Tax Code Ann. § 34.01(n) based on a tax sale; a constable's deed did not furnish within itself, or by reference to some other writing, the means of data by which the land conveyed could have been identified with reasonable certainty. The property acquired by the owner was subject to an easement by necessity because a grant of "all rights-of-way" within a 50-acre tract was insufficient since there was no metes and bounds description, a conveyance of an unidentified piece of land within a larger identifiable tract was improper, there was no existing writing that referred to a tax plat, and the deed did not provide any means by which a surveyor could have located and identified the "rights-of-way." D & KW Family, L.P. v. Bidinger, No. 01-08-00260-CV, 2009 Tex. App. LEXIS 4202 (Tex. App. Houston 1st Dist. June 11, 2009).

ESTATES

Future Interests

General Overview. — Phrase "the interest owned by the defendant" in Tex. Tax Code Ann. § 34.01 does not include an entity holding a possibility of reverter because that interest is nontaxable; therefore, the holder of that interest cannot be delinquent in its tax obligation or be a proper defendant to a tax foreclosure sale. Cypress-Fairbanks Indep. Sch. Dist. v. Glenn W. Loggins, Inc., 115 S.W.3d 67, 2003 Tex. App. LEXIS 5536 (Tex. App. San Antonio July 2, 2003, no pet.).

PRESENT ESTATES

Fee Simple Estates. — Trial court did not err in finding that a mortgagee did not acquire fee simple title to the mortgaged property by virtue of its redemption where the redemption statute, in effect, classified the mortgagee and the mortgagor as co-owners of the property, and the mortgagee was equitably estopped from claiming that it did anything other than redeem the property. The mortgagee did not strengthen its title by virtue of the redemption, and before the tax sale of the property, the mortgagee's interest in the property was limited to its rights under the deed of trust, and that interest was what the mortgagee redeemed and the only interest that the mortgagee retained. UMLIC VP LLC v. T&M Sales & Envtl. Sys., 176 S.W.3d 595, 2005 Tex. App. LEXIS 7623 (Tex. App. Corpus Christi Sept. 15, 2005), reh'g denied, No. 13-02-634-CV, 2005 Tex. App. LEXIS 10375 (Tex. App. Corpus Christi Nov. 10, 2005).

FINANCING

Mortgages & Other Security Instruments

Foreclosures

General Overview. — Court interprets Tex. Tax Code Ann. § 34.01(n), consistent with case law, as providing that the deed vests title in the property interest that was foreclosed upon and ordered sold and not necessarily the entire property. City of Alvin v. Zindle, No. 14-06-01147-CV, 2007 Tex. App. LEXIS 8346 (Tex. App. Houston 14th Dist. Oct. 23, 2007).

Sheriff could not have legally conveyed property interests that were not foreclosed upon and ordered sold, for purposes of Tex. Tax Code Ann. § 34.01(n), and although the record contained the sheriff's deed purporting to convey title in the property, neither party introduced the underlying foreclosure judgment or order of sale as summary judgment proof, and the agreed stipulation of facts did not obviate the need for these documents; the stipulation left open the question of whether the foreclosure judgment affected a severance of any mineral rights, and because the judgment and order of sale were essential to deciding who owned the mineral rights, including the royalty interest and right of reverter, neither party presented conclusive evidence that it had title to the property at issue and remand was required. City of Alvin v. Zindle, No. 14-06-01147-CV, 2007 Tex. App. LEXIS 8346 (Tex. App. Houston 14th Dist. Oct. 23, 2007).

Trial court did not err in finding that a mortgagee did not acquire fee simple title to the mortgaged property by virtue of its redemption where the redemption statute, in effect, classified the mortgagee and the mortgagor as co-owners of the property, and the mortgagee was equitably estopped from claiming that it did anything other than redeem the property. The mortgagee did not strengthen its title by virtue of the redemption, and before the tax sale of the property, the mortgagee's interest in the property was limited to its rights under the deed of trust, and that interest was what the mortgagee redeemed and the only interest that the mortgagee retained. UMLIC VP LLC v. T&M Sales & Envtl. Sys., 176 S.W.3d 595, 2005 Tex. App. LEXIS 7623 (Tex. App. Corpus Christi Sept. 15, 2005), reh'g denied, No. 13-02-634-CV, 2005 Tex. App. LEXIS 10375 (Tex. App. Corpus Christi Nov. 10, 2005).

Under Tex. Tax Code Ann. § 34.01(c), when read in light of the minimum bid requirements of Tex. Tax Code Ann. § 33.50(b), if the highest bidder of property sold at a sheriff's sale was either a party to the suit or a person with an interest in the property, and the bid did not meet the minimum bid requirements, the bid was insufficient, and the property was sold to the taxing entity. Cash Invs. v. Clint Indep. Sch. Dist., 940 S.W.2d 693, 1996 Tex. App. LEXIS 5313 (Tex. App. El Paso Nov. 21, 1996), writ granted No. 97-0309 (Tex. 1997), rev'd, 970 S.W.2d 535, 1998 Tex. LEXIS 98 (Tex. 1998).

REDEMPTION

General Overview. — Summary judgment in favor of the tax-sale purchaser was proper, because a promissory note did not constitute "redemption money" or satisfy the requirement of "paying" sums required to be paid under Tex. Tax Code Ann. § 34.21(a), and the owners wholly defaulted on the promissory note and failed to fulfill their statutory obligation to remit all sums required to redeem the property; the purchaser's conduct was not unconscionable as a matter of law, when it was not inconsistent or unconscionable for the purchaser to accept the statutory benefits acquired at the tax sale then defend its tax title against the bank's claim that the property was redeemed, as it was the public policy of Texas for a purchaser at a tax sale to retain title if the property was not timely and properly redeemed. Deutsche Bank Nat'l Trust Co. v. Stockdick Land Co., 367 S.W.3d 308, 2012 Tex. App. LEXIS 1516 (Tex. App. Houston 14th Dist. Feb. 28, 2012, no pet.).

LIMITED USE RIGHTS

Easements

Creation

Easement by Necessity. — Purported owner was unable to meet the burden of proof required in a trespass to try title case since it did not show the receipt of good and perfect title under Tex. Tax Code Ann. § 34.01(n) based on a tax sale; a constable's deed did not furnish within itself, or by reference to some other writing, the means of data by which the land conveyed could have been identified with reasonable certainty. The property acquired by the owner was subject to an easement by necessity because a grant of "all rights-of-way" within a 50-acre tract was insufficient since there was no metes and bounds description, a conveyance of an unidentified piece of land within a larger identifiable tract was improper, there was no existing writing that referred to a tax plat, and the deed did not provide any means by which a surveyor could have located and identified the "rights-of-way." D & KW Family, L.P. v. Bidinger, No. 01-08-00260-CV, 2009 Tex. App. LEXIS 4202 (Tex. App. Houston 1st Dist. June 11, 2009).

NONMORTGAGE LIENS

Lien Priorities. — In a dispute over excess funds from the foreclosure sale on property within a property association's subdivision, disbursement of the funds to the association, and not to the former owner, was proper under Tex. Tax Code Ann. § 34.04(c) as the association established an amount due under its lien, its claim was superior to the owner's claim, and it filed its claim within two years of the sale. By recording the deed restrictions in the real property records, the association provided notice to all persons of the existence of the instrument; and as the purchaser of the property, the owner had constructive notice of the covenant to pay association fees. Belt v. Point Venture Prop. Owners' Ass'n, No. 03-07-00701-CV, 2008 Tex. App. LEXIS 5816 (Tex. App. Austin July 30, 2008).

Tax liens are, by Tex. Tax Code Ann. § 32.05, given express priority status over security interests noted on certificates of title, and Tex. Tax Code Ann. § 34.01 addresses the procedures required for a proper tax sale; it does not convert a tax lien into a judicial lien therefore, the January 17 tax sale extinguished appellant financing company's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

MECHANICS' LIENS. — Subrogating a bank to tax liens would have prejudiced a builder with possible mechanic's liens because the subrogation would have altered the foreclosure requirement of a judicial proceeding with the builder as a party; that requirement was eliminated by the bank's deed of trust. Lyda Swinerton Builders, Inc. v. Cathay Bank, 409 S.W.3d 221, 2013 Tex. App. LEXIS 10081 (Tex. App. Houston 14th Dist. Aug. 13, 2013, no pet.).

TAX LIENS. — Subrogating a bank to tax liens would have prejudiced a builder with possible mechanic's liens because the subrogation would have altered the foreclosure requirement of a judicial proceeding with the builder as a party; that requirement was eliminated by the bank's deed of trust. Lyda Swinerton Builders, Inc. v. Cathay Bank, 409 S.W.3d 221, 2013 Tex. App. LEXIS 10081 (Tex. App. Houston 14th Dist. Aug. 13, 2013, no pet.).

Procedural requirement to pay property taxes into the registry of the court before commencing suit was inapposite in a case that did not involve the validity of a tax sale under Tex. Tax Code Ann. ch. 34 but rather tax-lien transfer under Tex. Tax Code Ann. ch. 32. Hunt v. CIT Group/Consumer Fin., Inc., No. 03-09-00046-CV, 2010 Tex. App. LEXIS 2767 (Tex. App. Austin Apr. 15, 2010).

Taxing authority had only lien claims, it had no claim to the real properties beyond the amount it was owed for taxes, and Tex. Tax Code Ann. § 33.53(e) required the taxing unit to release a tax lien if the owner paid the delinquent taxes before a foreclosure sale; the judgments that a taxing unit obtained ordering foreclosure of its tax liens on properties, did not transfer title to the taxing unit or extinguish the tax liens, and Tex. Tax Code Ann. § 34.01(k) provided that property may be bid off to taxing unit, which then takes title for all taxing units holding liens. Andrews v. Aldine Indep. Sch. Dist., 116 S.W.3d 407, 2003 Tex. App. LEXIS 7772 (Tex. App. Houston 14th Dist. Sept. 4, 2003, no pet.).

TITLE QUALITY

Adverse Claim Actions

General Overview. — In a real property claimant's action for trespass to try title, Tex. Tax Code Ann. § 33.54 prevented him from challenging an opposing claimant's title to the land purchased at a tax sale because well over two years had elapsed after the opposing claimant's tax deed was recorded before the claimant brought his suit. The claimant, as a claimant of limitations title through adverse possession, was served by posting, there was no evidence to the contrary that the property obtained through the tax sale did not encompass the disputed property, and the tax foreclosure suit appeared to have included the record owners, lienholders, and all parties owning or claiming any interest in the property, as required by Tex. Tax Code Ann. § 34.01(n). Session v. Woods, 206 S.W.3d 772, 2006 Tex. App. LEXIS 9470 (Tex. App. Texarkana Nov. 2, 2006, no pet.).

TAX LAW

State & Local Taxes

Personal Property Tax

Tangible Property

General Overview. — Mobile home purchaser, who had bought the mobile home at a tax sale for delinquent taxes, held a junior lien to the finance company; the application of real property nonjudicial procedures to the disposition of personal property was a reasonable application, and the tax sale extinguished the purchaser's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

REAL PROPERTY TAX

General Overview. — Mobile home purchaser, who had bought the mobile home at a tax sale for delinquent taxes, held a junior lien to the finance company; the application of real property nonjudicial procedures to the disposition of personal property was a reasonable application, and the tax sale extinguished the purchaser's junior lien. Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc., 120 S.W.3d 878, 2003 Tex. App. LEXIS 8850 (Tex. App. Fort Worth Oct. 16, 2003, no pet.).

Entry of summary judgment for the reverter was affirmed because: (1) Tex. Tax Code Ann. §§ 33.54 and 32.05 did not apply to extinguish the reverter interest in that the possibility of reverter interest was not a claim, it was an interest in the property distinct from the trustee's interest, and the reverter would not have had to institute an action relating to the title of property to invoke its possibility of reverter interest, (2) the reverter was not a "defendant" under Tex. Tax Code Ann. § 34.01(n) because it owned a nontaxable interest, (3) a tax lien was inferior to a claim under a recorded restrictive covenant running with the land under Tex. Tax Code Ann. § 32.05(c), (4) the reverter's interest was nontaxable, and it could not have been extinguished by a foreclosure sale, and (5) the reverter's appeal on the issue of attorney fees was not properly preserved. Cypress-Fairbanks Indep. Sch. Dist. v. Glenn W. Loggins, Inc., No. 04-02-00513-CV, 2003 Tex. App. LEXIS 3441 (Tex. App. San Antonio Apr. 23, 2003), op. withdrawn, sub. op., 115 S.W.3d 67, 2003 Tex. App. LEXIS 5536 (Tex. App. San Antonio July 2, 2003).

Order recognizing a tax lien under Tex. Tax Code Ann. § 34.01 and compelling the sale of certain real property was reversed as an existing final judgment rendered on the merits. Orange County Dev. Co. v. Orange County Appraisal Dist., 810 S.W.2d 884, 1991 Tex. App. LEXIS 1857 (Tex. App. Beaumont June 20, 1991, no writ).

COLLECTION

Tax Deeds & Tax Sales. — In a case involving a former property owner's claim for excess proceeds from a tax sale, the district clerk's notice of excess funds did not deprive the former owner of due process because the notice afforded the former owner an ample opportunity to be heard at a meaningful time and in a meaningful manner to assert a claim for excess proceeds, given that the notice informed him that he had two years from the date of the tax sale to file a petition to claim the excess proceeds and that the notice indicated that the sale had occurred prior to the issuance of the notice of excess proceeds. Galvan v. Midland Cent. Appraisal Dist., No. 11-17-00316-CV, 2019 Tex. App. LEXIS 7522 (Tex. App. Eastland Aug. 22, 2019).

Summary judgment in favor of the tax-sale purchaser was proper, because a promissory note did not constitute "redemption money" or satisfy the requirement of "paying" sums required to be paid under Tex. Tax Code Ann. § 34.21(a), and the owners wholly defaulted on the promissory note and failed to fulfill their statutory obligation to remit all sums required to redeem the property; the purchaser's conduct was not unconscionable as a matter of law, when it was not inconsistent or unconscionable for the purchaser to accept the statutory benefits acquired at the tax sale then defend its tax title against the bank's claim that the property was redeemed, as it was the public policy of Texas for a purchaser at a tax sale to retain title if the property was not timely and properly redeemed. Deutsche Bank Nat'l Trust Co. v. Stockdick Land Co., 367 S.W.3d 308, 2012 Tex. App. LEXIS 1516 (Tex. App. Houston 14th Dist. Feb. 28, 2012, no pet.).

In a dispute over excess funds from the foreclosure sale on property within a property association's subdivision, disbursement of the funds to the association, and not to the former owner, was proper under Tex. Tax Code Ann. § 34.04(c) as the association established an amount due under its lien, its claim was superior to the owner's claim, and it filed its claim within two years of the sale. By recording the deed restrictions in the real property records, the association provided notice to all persons of the existence of the instrument; and as the purchaser of the property, the owner had constructive notice of the covenant to pay association fees. Belt v. Point Venture Prop. Owners' Ass'n, No. 03-07-00701-CV, 2008 Tex. App. LEXIS 5816 (Tex. App. Austin July 30, 2008).

Purchaser of property from a school district at a tax resale was liable for taxes that had accrued from the date of the property's original tax sale until the date that the property was struck off to the district because such taxes did not merge with the property's title at the time of the resale. Irannezhad v. Aldine Indep. Sch. Dist., 257 S.W.3d 260, 2008 Tex. App. LEXIS 2059 (Tex. App. Houston 1st Dist. Mar. 20, 2008, no pet.).

Tax sale purchaser's 2003 tax deed was evidence of the purchaser's continued ownership of the property in 2006 because continued ownership would be presumed absent evidence to the contrary. Hutson v. Tri-County Props., LLC, 240 S.W.3d 484, 2007 Tex. App. LEXIS 8933 (Tex. App. Fort Worth Nov. 8, 2007, no pet.).

In a real property claimant's action for trespass to try title, Tex. Tax Code Ann. § 33.54 prevented him from challenging an opposing claimant's title to the land purchased at a tax sale because well over two years had elapsed after the opposing claimant's tax deed was recorded before the claimant brought his suit. The claimant, as a claimant of limitations title through adverse possession, was served by posting, there was no evidence to the contrary that the property obtained through the tax sale did not encompass the disputed property, and the tax foreclosure suit appeared to have included the record owners, lienholders, and all parties owning or claiming any interest in the property, as required by Tex. Tax Code Ann. § 34.01(n). Session v. Woods, 206 S.W.3d 772, 2006 Tex. App. LEXIS 9470 (Tex. App. Texarkana Nov. 2, 2006, no pet.).

TAX LIENS. — Purchaser of property from a school district at a tax resale was liable for taxes that had accrued from the date of the property's original tax sale until the date that the property was struck off to the district because such taxes did not merge with the property's title at the time of the resale. Irannezhad v. Aldine Indep. Sch. Dist., 257 S.W.3d 260, 2008 Tex. App. LEXIS 2059 (Tex. App. Houston 1st Dist. Mar. 20, 2008, no pet.).

ATTORNEY GENERAL OPINIONS

Analysis

Foreclosure Required.
Redemption by Property Owner.
Sale of Seized Property.

Foreclosure Required.

Neither the Tax Assessor-Collector nor anyone else has the power or authority to levy on and sell real estate for delinquent taxes except after foreclosure of the tax lien by a court. 1939 Tex. Op. Att'y Gen. O-683.

Redemption by Property Owner.

Where a tract of land was sold for taxes and bid in for the state, but the Sheriff failed to execute the deed for two years, the original owner my pay the taxes, interest, and penalties due and thus redeem the land as if the suit had never existed. 1944 Tex. Op. Att'y Gen. O-5771.

Sale of Seized Property.

Seized real property must be sold by "the officer charged with selling" it, unless directed otherwise by the taxing unit that requested the warrant. The officer who conducted the sale must distribute the proceeds. Seized personal property may be sold at any time, unless the warrant or agreement with an auctioneer specifies otherwise. 2004 Tex. Op. Att'y Gen. GA-140.

Sec. 34.011. Bidder Registration.

(a) This section applies only to a sale of real property under this chapter conducted in a county in which the commissioners court by order has adopted the provisions of this section.

(b) A commissioners court may require that, to be eligible to bid at a sale of real property under this chapter, a person must be registered as a bidder with the county assessor-collector before the sale begins. The county assessor-collector may adopt rules governing the registration of bidders under this section. The county assessor-collector may require a person registering as a bidder:

(1) to designate the person's name and address;

(2) to provide valid proof of identification;

(3) to provide written proof of authority to bid on behalf of another person, if applicable;

(4) to provide any additional information reasonably required by the county assessor-collector; and

(5) to at least annually execute a statement on a form provided by the county assessor-collector certifying that there are no delinquent ad valorem taxes owed by the person registering as a bidder to the county or to any taxing unit having territory in the county.

(c) The county assessor-collector shall issue a written registration statement to a person who has registered as a bidder under this section. A person is not eligible to bid at a sale of real property under this chapter unless the county assessor-collector has issued a written registration statement to the person before the sale begins.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1126 (H.B. 3951), § 1, effective January 1, 2016.

Sec. 34.015. Persons Eligible to Purchase Real Property.

(a) In this section, "person" does not include a taxing unit or an individual acting on behalf of a taxing unit.

(b) An officer conducting a sale of real property under Section 34.01 may not execute a deed in the name of or deliver a deed to any person other than the person who was the successful bidder. The officer may not execute or deliver a deed to the purchaser of the property unless the purchaser exhibits to the officer an unexpired written statement issued under this section to the person by the county assessor-collector of the county in which the sale is conducted showing that:

(1) there are no delinquent taxes owed by the person to that county; and

(2) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality.

(c) On the written request of any person, a county assessor-collector shall issue a written statement stating whether there are any delinquent taxes owed by the person to that county or to a school district or municipality having territory in that county. A request for the issuance of a statement by the county assessor-collector under this subsection must:

(1) sufficiently identify any property subject to taxation by the county or by a school district or municipality having territory in the county, regardless of whether the property is located in the county, that the person owns or formerly owned so that the county assessor-collector and the collector for each school district or municipality having territory in the county may determine whether the property is included on a current or a cumulative delinquent tax roll for the county, the school district, or the municipality under Section 33.03;

(2) specify the address to which the county assessor-collector should send the statement;

(3) include any additional information reasonably required by the county assessor-collector; and

(4) be sworn to and signed by the person requesting the statement.

(d) On receipt of a request under Subsection (c), the county assessor-collector shall send to the collector for each school district and municipality having territory in the county, other than a school district or municipality for which the county assessor-collector is the collector, a request for information as to whether there are any delinquent taxes owed by the person to that school district or municipality. The county assessor-collector shall specify the date by which the collector must respond to the request.

(e) If the county assessor-collector determines that there are delinquent taxes owed to the county, the county assessor-collector shall include in the statement issued under Subsection (c) the amount of delinquent taxes owed by the person to that county. If the county assessor-collector is the collector for a school district or municipality having territory in the county and the county assessor-collector determines that there are delinquent ad valorem taxes owed by the person to the school district or municipality, the assessor-collector shall include in the statement issued under Subsection (c) the amount of delinquent taxes owed by the person to that school district or municipality.

(f) If the county assessor-collector receives a response from the collector for a school district or municipality having territory in the county indicating that there are delinquent taxes owed to that school district or municipality on the person's current or former property for which the person is personally liable, the county assessor-collector shall include in the statement issued under Subsection (c):

(1) the amount of delinquent taxes owed by the person to that school district or municipality; and

(2) the name and address of the collector for that school district or municipality.

(g) If the county assessor-collector determines that there are no delinquent taxes owed by the person to the county or to a school district or municipality for which the county assessor-collector is the collector, the county assessor-collector shall indicate in the statement issued under Subsection (c) that there are no delinquent ad valorem taxes owed by the person to the county or to the school district or municipality.

(h) If the county assessor-collector receives a response from the collector for any school district or municipality having territory in that county indicating that there are no delinquent ad valorem taxes owed by the person to that school district or municipality, the county assessor-collector shall indicate in the statement issued under Subsection (c) that there are no delinquent ad valorem taxes owed by the person to that school district or municipality.

(i) If the county assessor-collector does not receive a response from the collector for any school district or municipality to whom the county assessor-collector sent a request under Subsection (d) as to whether there are delinquent taxes on the person's current or former property owed by the person to that school district or municipality, the county assessor-collector shall indicate in the statement issued under Subsection (c) that there are no reported delinquent taxes owed by the person to that school district or municipality.

(j) To cover the costs associated with the issuance of statements under Subsection (c), a county assessor-collector may charge the person requesting a statement a fee not to exceed $10 for each statement requested.

(k) A statement under Subsection (c) must be issued in the name of the requestor, bear the requestor's name, include the dates of issuance and expiration, and be eligible for recording under Section 12.001(b), Property Code. A statement expires on the 90th day after the date of issuance.

(k-1) If within six months of the date of a sale of real property under Section 34.01, the successful bidder does not exhibit to the officer who conducted the sale an unexpired statement that complies with Subsection (k), the officer who conducted the sale shall provide a copy of the officer's return to the county assessor-collector for each county in which the real property is located. On receipt of the officer's return, the county assessor-collector shall file the copy with the county clerk of the county in which the county assessor-collector serves. The county clerk shall record the return in records kept for that purpose and shall index and cross-index the return in the name of the successful bidder at the auction and each former owner of the property. The chief appraiser of each appraisal district that appraises the real property for taxation may list the successful bidder in the appraisal records of that district as the owner of the property.

(*l*) The deed executed by the officer conducting the sale must name the successful bidder as the grantee and recite that the successful bidder exhibited to that officer an unexpired written statement issued to the person in the manner prescribed by this section, showing that the county assessor-collector of the county in which the sale was conducted determined that:

(1) there are no delinquent ad valorem taxes owed by the person to that county; and

(2) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality.

(m) If a deed contains the recital required by Subsection (*l*), it is conclusively presumed that this section was complied with.

(n) A person who knowingly violates this section commits an offense. An offense under this subsection is a Class B misdemeanor.

(o) To the extent of a conflict between this section and any other law, this section controls.

(p) This section applies only to a sale of real property under Section 34.01 that is conducted in:

(1) a county with a population of 250,000 or more in which the commissioners court has not by order adopted the provisions of Section 34.011; or

(2) a county with a population of less than 250,000 in which the commissioners court by order has adopted the provisions of this section.

HISTORY: Enacted Acts 2003, 78th Leg., ch. 1010 (H.B. 335), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 86 (S.B. 644), § 2, effective May 17, 2005; am. Acts 2005, 79th Leg., ch. 1147 (H.B. 2926), § 1, effective June 18, 2005; am. Acts 2015, 84th Leg., ch. 1126 (H.B. 3951), § 2, effective January 1, 2016.

NOTES TO DECISIONS

REAL PROPERTY LAW
Financing
Mortgages & Other Security Instruments
Foreclosures

General Overview. — When a sheriff's sale purchaser of foreclosed land claimed the land's occupier occupied the land under a fraudulent deed, and the occupier's counterclaim sought a declaratory judgment voiding the sale at which the purchaser bought the land, summary judgment in favor of the purchaser did not fail to dispose of the counterclaim because (1) the purchaser said the counterclaim was not viable as the "person" buying the land had to file a tax certificate, which "person" was not a corporate entity's member or shareholder, under Tex. Tax Code Ann. § 34.015(b)(1) and (2) and Tex. Gov't Code Ann. § 311.005(2), and (2) the occupier argued no other construction, so the trial court necessarily denied the counterclaim. Brewer v. Green Lizard Holdings, L.L.C., 406 S.W.3d 399, 2013 Tex. App. LEXIS 8919 (Tex. App. Fort Worth July 18, 2013, no pet.).

Sec. 34.02. Distribution of Proceeds.

(a) The proceeds of a tax sale under Section 33.94 or 34.01 shall be applied in the order prescribed by Subsection (b). The amount included under each subdivision of Subsection (b) must be fully paid before any of the proceeds may be applied to the amount included under a subsequent subdivision.

(b) The proceeds shall be applied to:

(1) the costs of advertising the tax sale;

(2) any fees ordered by the judgment to be paid to an appointed attorney ad litem;

(3) the original court costs payable to the clerk of the court;

(4) the fees and commissions payable to the officer conducting the sale;

(5) the expenses incurred by a taxing unit in determining necessary parties and in procuring necessary legal descriptions of the property if those expenses were awarded to the taxing unit by the judgment under Section 33.48(a)(4);

(6) the taxes, penalties, interest, and attorney's fees that are due under the judgment; and

(7) any other amount awarded to a taxing unit under the judgment.

(c) If the proceeds are not sufficient to pay the total amount included under any subdivision of Subsection (b), each participant in the amount included under that subdivision is entitled to a share of the proceeds in an amount equal to the proportion its entitlement bears to the total amount included under that subdivision.

(d) The officer conducting a sale under Section 33.94 or 34.01 shall pay any excess proceeds after payment of all amounts due all participants in the sale as specified by Subsection (b) to the clerk of the court issuing the warrant or order of sale.

(e) In this section, "taxes" includes a charge, fee, or expense that is expressly authorized by Section 32.06 or 32.065.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1995, 74th Leg., ch. 131 (S.B. 1387), § 2, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 25, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 9, effective June 18, 2003.

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CIVIL PROCEDURE
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Statutory Awards. — To the extent Tex. R. Civ. P. 141 conflicted with Tex. Tax Code Ann. § 33.49, the statute prevailed pursuant to Tex. Gov't Code Ann. § 22.004, and a county could not be held liable for the attorney's fees of an attorney ad litem appointed to represent absent taxpayers pursuant to Tex. R. Civ. P. 244. The attorney could be compensated out of the proceeds of the foreclosure sale pursuant to Tex. Tax Code Ann. § 34.02(a), (b). Lee County v. Everett, No. 03-05-00821-CV, 2009 Tex. App. LEXIS 3993 (Tex. App. Austin May 29, 2009).

CONSTITUTIONAL LAW
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General Overview. — Award of excess proceeds from a tax sale of real property to the taxing units needed to be affirmed, because the property owner failed to establish that the 1999 amendments to Tex. Tax Code Ann. § 34.02 were unconstitutional and failed to rebut the presumption that the statute was valid. Hall v. Aldine Indep. Sch. Dist., 95 S.W.3d 485, 2002 Tex. App. LEXIS 8493 (Tex. App. Houston 1st Dist. Nov. 27, 2002, no pet.).

REAL PROPERTY LAW
Financing
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General Overview. — Award of excess proceeds from the tax sale to the taxing units was affirmed, where the owner failed to rebut the presumption that Tex. Tax Code Ann. § 34.02(c) of the Property Tax Code was valid, and failed to establish that the 1999 amendments to the Property Tax Code were unconstitutional. Hall v. Aldine Indep. Sch. Dist., 95 S.W.3d 485, 2002 Tex. App. LEXIS 8493 (Tex. App. Houston 1st Dist. Nov. 27, 2002, no pet.).

TAX LAW
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Failure to Pay Tax. — To the extent Tex. R. Civ. P. 141 conflicted with Tex. Tax Code Ann. § 33.49, the statute prevailed pursuant to Tex. Gov't Code Ann. § 22.004, and a county could not be held liable for the attorney's fees of an attorney ad litem appointed to represent absent taxpayers pursuant to Tex. R. Civ. P. 244. The attorney could be compensated out of the proceeds of the foreclosure sale pursuant to Tex. Tax Code Ann. § 34.02(a), (b). Lee County v. Everett, No. 03-05-00821-CV, 2009 Tex. App. LEXIS 3993 (Tex. App. Austin May 29, 2009).

REAL PROPERTY TAX

General Overview. — School district was required to deposit any excess proceeds from the sale of foreclosed property in the registry of the court even though the resale occurred after the redemption period expired under Tex. Tax. Code Ann. § 34.02 and Tex. Tax. Code Ann. § 34.06. Syntax, Inc. v. Hall, 899 S.W.2d 189, 1995 Tex. LEXIS 61 (Tex. 1995).

Tex. Tax Code Ann. § 34.02(c) addresses only the excess proceeds from the initial sale of property at a tax foreclosure sale, not a later resale. Syntax, Inc. v. Hall, 881 S.W.2d 719, 1994 Tex. App. LEXIS 906 (Tex. App. Houston 1st Dist. Apr. 21, 1994), writ granted No. 94-0922 (Tex. 1994), rev'd, 899 S.W.2d 189, 1995 Tex. LEXIS 61 (Tex. 1995).

Sec. 34.021. Distribution of Excess Proceeds in Other Tax Foreclosure Proceedings.

A person conducting a sale for the foreclosure of a tax lien under Rule 736 of the Texas Rules of Civil Procedure shall, within 10 days of the sale, pay any excess proceeds after payment of all amounts due all participants in the sale to the clerk of the court that issued the order authorizing the sale. The excess proceeds from such a sale shall be handled according to Sections 34.03 and 34.04 of this code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 254 (H.B. 406), § 1, effective September 1, 2009.

Sec. 34.03. Disposition of Excess Proceeds.

(a) The clerk of the court shall:

(1) if the amount of excess proceeds is more than $25, before the 31st day after the date the excess proceeds are received by the clerk, send by certified mail, return receipt requested, a written notice to the former owner of the property, at the former owner's last known address according to the records of the court or any other source reasonably available to the court, that:

(A) states the amount of the excess proceeds;

(B) informs the former owner of that owner's rights to claim the excess proceeds under Section 34.04; and

(C) includes a copy or the complete text of this section and Section 34.04;

(2) regardless of the amount, keep the excess proceeds paid into court as provided by Section 34.02(d) for a period of two years after the date of the sale unless otherwise ordered by the court; and

(3) regardless of the amount, send to the attorney general notice of the deposit and amount of excess proceeds if the attorney general or a state agency represented by the attorney general is named as an in rem defendant in the underlying suit for seizure of the property or foreclosure of a tax lien on the property.

(b) If no claimant establishes entitlement to the proceeds within the period provided by Subsection (a), the clerk shall distribute the excess proceeds to each taxing unit participating in the sale in an amount equal to the proportion its taxes, penalties, and interests bear to the total amount of taxes, penalties, and interest due all participants in the sale.

(c) The clerk shall note on the execution docket in each case the amount of the excess proceeds, the date they were received, and the date they were transmitted to the taxing units participating in the sale. Any local government record data may be stored electronically in addition to or instead of source documents in paper or other media.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 132, effective August 14, 1981; am. Acts 1999, 76th Leg., ch. 1185 (S.B. 337), § 1, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 421 (S.B. 886), § 2, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 636 (S.B. 1725), § 1, effective September 1, 2015.

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CIVIL PROCEDURE
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Standing

General Overview. — County did not lack standing to file a response in opposition to appellant assignee's petition to recover excess proceeds from a delinquent tax sale under Tex. Tax Code Ann. § 34.04 because the county had a justiciable interest in the controversy concerning the excess proceeds that would be resolved by the judicial declaration sought. The underlying judgment was granted in favor of the county for its benefit, as well as for the benefit of all political subdivisions for which the county collected taxes. Hamilton v. County of Bastrop, No. 03-09-00612-CV, 2010 Tex. App. LEXIS 2371 (Tex. App. Austin Apr. 1, 2010).

APPEALS
Appellate Jurisdiction

Interlocutory Orders. — Appellate court had no jurisdiction to review an interlocutory ruling of the tax court directing the clerk to issue a payment out of the proceeds of a foreclosure sale of a tax lien deposited with the court clerk as provided by Tex. Tax Code § 34.04 where the order was not final, as it did not dispose of all of the claims by other parties entitled to a portion of the proceeds pursuant to Tex. Tax Code § 34.03. Nelson v. Lubbock Cent. Appraisal Dist., No. 07-02-0349-CV, 2003 Tex. App. LEXIS 3733 (Tex. App. Amarillo Apr. 30, 2003).

STANDARDS OF REVIEW
General Overview. — Creditor who sought the excess funds from a tax sale pursuant to Tex. Tax Code Ann. §§ 34.03 and 34.04 failed to demonstrate that it was entitled to the funds by showing that the party from whom it had an assignment of judgment was the same person who had owned the property or that the owner, whose title was as trustee, owned the property individually. Edgewater Seed Mkt. v. Magnolia Indep. Sch. Dist., No. 11-07-00136-CV, 2008 Tex. App. LEXIS 7550 (Tex. App. Eastland Oct. 9, 2008).

CONSTITUTIONAL LAW
Bill of Rights
Fundamental Rights
Procedural Due Process

Scope of Protection. — In a case involving a former property owner's claim for excess proceeds from a tax sale, the district clerk's notice of excess funds did not deprive the former owner of due process because the notice afforded the former owner an ample opportunity to be heard at a meaningful time and in a meaningful manner to assert a claim for excess proceeds, given that the notice informed him that he had two years from the date of the tax sale to file a petition to claim the excess proceeds and that the notice indicated that the sale had occurred prior to the issuance of the notice of excess proceeds. Galvan v. Midland Cent. Appraisal Dist., No. 11-17-00316-CV, 2019 Tex. App. LEXIS 7522 (Tex. App. Eastland Aug. 22, 2019).

Trial court erred in finding in favor of a county on its two post-foreclosure escheat claims for excess proceeds following tax foreclosure judgments rendered against former property owners because the county district clerk failed to provide the required statutory notice to the former owners, and such lack of notice violated the former owners' procedural due process rights to the excess proceeds. Coleman v. Victoria County, 385 S.W.3d 608, 2012 Tex. App. LEXIS 7105 (Tex. App. Corpus Christi Aug. 23, 2012, no pet.).

TAX LAW
State & Local Taxes

Administration & Proceedings. — In a case involving a former property owner's claim for excess proceeds from a tax sale, the notice of excess funds provided by the district clerk to the former owner complied with the reasonable strictness standard for notice under Tex. Tax Code Ann. § 34.03 because the clerk's clerical omission of the reference to "the Title IV-D agency" set out in Tex. Tax Code Ann. § 34.04 did not deprive the former owner of notice of his right to timely make a claim to the excess proceeds, which was the purpose of the notice requirement. Galvan v. Midland Cent. Appraisal Dist., No. 11-17-00316-CV, 2019 Tex. App. LEXIS 7522 (Tex. App. Eastland Aug. 22, 2019).

ADMINISTRATION & PROCEEDINGS
Tax Liens. — Trial court erred in finding in favor of a county on its two post-foreclosure escheat claims for excess proceeds following tax foreclosure judgments rendered against former property owners because the county district clerk failed to provide the required statutory notice to the former owners, and such lack of notice violated the former owners' procedural due process rights to the excess proceeds. Coleman v. Victoria County, 385 S.W.3d 608, 2012 Tex. App. LEXIS 7105 (Tex. App. Corpus Christi Aug. 23, 2012, no pet.).

REAL PROPERTY TAX
General Overview. — Trial court erroneously denied property owner excess taxes where he filed his motion within two years of a tax sale but who did not obtain a hearing on the motion before the two year period had elapsed; although he failed to establish his claim within two years of the sale, a judicial determination of

ownership more than two years after the tax sale was not precluded by statute. Franks v. Woodville Indep. Sch. Dist., 132 S.W.3d 167, 2004 Tex. App. LEXIS 2902 (Tex. App. Beaumont Apr. 1, 2004, no pet.).

COLLECTION

Tax Deeds & Tax Sales. — In a case involving a former property owner's claim for excess proceeds from a tax sale, the notice of excess funds provided by the district clerk to the former owner complied with the reasonable strictness standard for notice under Tex. Tax Code Ann. § 34.03 because the clerk's clerical omission of the reference to "the Title IV-D agency" set out in Tex. Tax Code Ann. § 34.04 did not deprive the former owner of notice of his right to timely make a claim to the excess proceeds, which was the purpose of the notice requirement. Galvan v. Midland Cent. Appraisal Dist., No. 11-17-00316-CV, 2019 Tex. App. LEXIS 7522 (Tex. App. Eastland Aug. 22, 2019).

In a case involving a former property owner's claim for excess proceeds from a tax sale, the district clerk's notice of excess funds did not deprive the former owner of due process because the notice afforded the former owner an ample opportunity to be heard at a meaningful time and in a meaningful manner to assert a claim for excess proceeds, given that the notice informed him that he had two years from the date of the tax sale to file a petition to claim the excess proceeds and that the notice indicated that the sale had occurred prior to the issuance of the notice of excess proceeds. Galvan v. Midland Cent. Appraisal Dist., No. 11-17-00316-CV, 2019 Tex. App. LEXIS 7522 (Tex. App. Eastland Aug. 22, 2019).

County did not lack standing to file a response in opposition to appellant assignee's petition to recover excess proceeds from a delinquent tax sale under Tex. Tax Code Ann. § 34.04 because the county had a justiciable interest in the controversy concerning the excess proceeds that would be resolved by the judicial declaration sought. The underlying judgment was granted in favor of the county for its benefit, as well as for the benefit of all political subdivisions for which the county collected taxes. Hamilton v. County of Bastrop, No. 03-09-00612-CV, 2010 Tex. App. LEXIS 2371 (Tex. App. Austin Apr. 1, 2010).

Creditor who sought the excess funds from a tax sale pursuant to Tex. Tax Code Ann. §§ 34.03 and 34.04 failed to demonstrate that it was entitled to the funds by showing that the party from whom it had an assignment of judgment was the same person who had owned the property or that the owner, whose title was as trustee, owned the property individually. Edgewater Seed Mkt. v. Magnolia Indep. Sch. Dist., No. 11-07-00136-CV, 2008 Tex. App. LEXIS 7550 (Tex. App. Eastland Oct. 9, 2008).

Sec. 34.04. Claims for Excess Proceeds.

(a) A person, including a taxing unit and the Title IV-D agency, may file a petition in the court that ordered the seizure or sale setting forth a claim to the excess proceeds. The petition must be filed before the second anniversary of the date of the sale of the property. The petition is not required to be filed as an original suit separate from the underlying suit for seizure of the property or foreclosure of a tax lien on the property but may be filed under the cause number of the underlying suit.

(b) A copy of the petition shall be served, in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure, as amended, or that rule's successor, on all parties to the underlying action not later than the 20th day before the date set for a hearing on the petition.

(c) At the hearing the court shall order that the proceeds be paid according to the following priorities to each party that establishes its claim to the proceeds:

(1) to the tax sale purchaser if the tax sale has been adjudged to be void and the purchaser has prevailed in an action against the taxing units under Section 34.07(d) by final judgment;

(2) to a taxing unit for any taxes, penalties, or interest that have become due or delinquent on the subject property subsequent to the date of the judgment or that were omitted from the judgment by accident or mistake;

(3) to any other lienholder, consensual or otherwise, for the amount due under a lien, in accordance with the priorities established by applicable law;

(4) to a taxing unit for any unpaid taxes, penalties, interest, or other amounts adjudged due under the judgment that were not satisfied from the proceeds from the tax sale; and

(5) to each former owner of the property, as the interest of each may appear, provided that the former owner:

(A) was a defendant in the judgment;

(B) is related within the third degree by consanguinity or affinity to a former owner that was a defendant in the judgment; or

(C) acquired by will or intestate succession the interest in the property of a former owner that was a defendant in the judgment.

(c-1) Except as provided by Subsections (c)(5)(B) and (C), a former owner of the property that acquired an interest in the property after the date of the judgment may not establish a claim to the proceeds. For purposes of this subsection, a former owner of the property is considered to have acquired an interest in the property after the date of the judgment if the deed by which the former owner acquired the interest was recorded in the real property records of the county in which the property is located after the date of the judgment.

(d) Interest or costs may not be allowed under this section.

(e) An order under this section directing that all or part of the excess proceeds be paid to a party is appealable.

(f) A person may not take an assignment or other transfer of an owner's claim to excess proceeds unless:

(1) the assignment or transfer is taken on or after the 36th day after the date the excess proceeds are deposited in the registry of the court;

(2) the assignment or transfer is in writing and signed by the assignor or transferor;

(3) the assignment or transfer is not the result of an in-person or telephone solicitation;

(4) the assignee or transferee pays the assignor or transferor on the date of the assignment or transfer an amount equal to at least 80 percent of the amount of the assignor's or transferor's claim to the excess proceeds; and

(5) the assignment or transfer document contains a sworn statement by the assignor or transferor affirming:

(A) that the assignment or transfer was given voluntarily;

(B) the date on which the assignment or transfer was made and that the date was not earlier than the 36th day after the date the excess proceeds were deposited in the registry of the court;

(C) that the assignor or transferor has received the notice from the clerk required by Section 34.03;

(D) the nature and specific amount of consideration given for the assignment or transfer;

(E) the circumstances under which the excess proceeds are in the registry of the court;

(F) the amount of the claim to excess proceeds in the registry of the court;

(G) that the assignor or transferor has made no other assignments or transfers of the assignor's or transferor's claim to the excess proceeds;

(H) that the assignor or transferor knows that the assignor or transferor may retain counsel; and

(I) that the consideration was paid in full on the date of the assignment or transfer and that the consideration paid was an amount equal to at least 80 percent of the amount of the assignor's or transferor's claim to the excess proceeds.

(g) An assignee or transferee who obtains excess proceeds without complying with Subsection (f) is liable to the assignor or transferor for the amount of excess proceeds obtained plus attorney's fees and expenses. An assignee or transferee who attempts to obtain excess proceeds without complying with Subsection (f) is liable to the assignor or transferor for attorney's fees and expenses.

(h) An assignee or transferee who files a petition setting forth a claim to excess proceeds must attach a copy of the assignment or transfer document and produce the original of the assignment or transfer document in court at the hearing on the petition. If the original assignment or transfer document is lost, the assignee or transferee must obtain the presence of the assignor or transferor to testify at the hearing. In addition, the assignee or transferee must produce at the hearing the original of any evidence verifying the payment of the consideration given for the assignment or transfer. If the original of any evidence of the payment is lost or if the payment was in cash, the assignee or transferee must obtain the presence of the assignor or transferor to testify at the hearing.

(i) A fee charged by an attorney to obtain excess proceeds for an owner may not be greater than 25 percent of the amount obtained or $1,000, whichever is less. A person who is not an attorney may not charge a fee to obtain excess proceeds for an owner.

(j) The amount of the excess proceeds the court may order be paid to an assignee or transferee may not exceed 125 percent of the amount the assignee or transferee paid the assignor or transferor on the date of the assignment or transfer.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 26, effective August 29, 1983; am. Acts 1999, 76th Leg., ch. 1185 (S.B. 337), § 2, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 26, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 18.007, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 27, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 10, effective June 18, 2003; am. Acts 2009, 81st Leg., ch. 254 (H.B. 406), § 2, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 508 (H.B. 1674), § 22, effective September 1, 2011.

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CIVIL PROCEDURE

Justiciability

Standing

General Overview. — County did not lack standing to file a response in opposition to appellant assignee's petition to recover excess proceeds from a delinquent tax sale under Tex. Tax Code Ann. § 34.04 because the county had a justiciable interest in the controversy concerning the excess proceeds that would be resolved by the judicial declaration sought. The underlying judg-

ment was granted in favor of the county for its benefit, as well as for the benefit of all political subdivisions for which the county collected taxes. Hamilton v. County of Bastrop, No. 03-09-00612-CV, 2010 Tex. App. LEXIS 2371 (Tex. App. Austin Apr. 1, 2010).

PLEADING & PRACTICE
Service of Process
Methods

General Overview. — Because a lender failed to serve a borrower's attorney of record with a petition claiming the excess proceeds of a tax sale as required by Tex. Tax Code Ann. § 34. 04 and Tex. R. Civ. P. 8 and 21a, the trial court did not err in refusing to enforce its order rescinding a prior disbursement order awarding the excess proceeds to the borrower. In re Household Fin. Corp. III, No. 14-08-00673-CV, 2008 Tex. App. LEXIS 9288 (Tex. App. Houston 14th Dist. Dec. 11, 2008).

JUDGMENTS
Preclusion & Effect of Judgments
Estoppel

Collateral Estoppel. — In a trespass to title action, the claimant was collaterally estopped from relitigating the ownership of the property because a prior determination in a tax foreclosure suit as to which party had the right to the excess proceeds from the tax sale necessarily determined the ownership of the property under Tex. Tax Code Ann. § 34.04(c). Trust Inv. Group Mortg. Div., Inc. v. Alief Indep. Sch. Dist., No. 01-04-00762-CV, 2006 Tex. App. LEXIS 293 (Tex. App. Houston 1st Dist. Jan. 12, 2006), sub. op., op. withdrawn, reh'g denied, No. 01-04-00762-CV, 2006 Tex. App. LEXIS 6892 (Tex. App. Houston 1st Dist. Aug. 3, 2006).

REMEDIES
Costs & Attorney Fees
Attorney Expenses & Fees

General Overview. — Trial court did not err in awarding $ 3500 to the attorney who obtained excess proceeds from a tax sale of real property under Tex. Tax Code Ann. § 34.04 because a fee under this section was not capped at 25 % or $ 1000 for the entire fund; rather the cap was the lesser of 25 % or $ 1000 for each owner for whom fees were obtained; also the $ 3500 fee award was less than the half the 25 % cap and no owner was responsible for more than $ 1000. Davis v. Kaufman County, 195 S.W.3d 847, 2006 Tex. App. LEXIS 5539 (Tex. App. Dallas June 29, 2006, no pet.).

APPEALS
Appellate Jurisdiction

General Overview. — Appellate court lacked jurisdiction to hear an appeal from a consent order entered after a final judgment in a tax delinquency case because, although the order was appealable under Tex. Tax Code Ann. § 34.04(e), an appeal was not filed within the applicable time limit. This resulted in a waiver of a challenge to the consent order. Royal Indep. Sch. Dist. v. Ragsdale, 273 S.W.3d 759, 2008 Tex. App. LEXIS 8989 (Tex. App. Houston 14th Dist. Nov. 25, 2008, no pet.).

INTERLOCUTORY ORDERS. — Appellate court had no jurisdiction to review an interlocutory ruling of the tax court directing the clerk to issue a payment out of the proceeds of a foreclosure sale of a tax lien deposited with the court clerk as provided by Tex. Tax Code § 34.04 where the order did not dispose of all of the claims for payment, and therefore, was not a final judgment. Nelson v. Lubbock Cent. Appraisal Dist., No. 07-02-0349-CV, 2003 Tex. App. LEXIS 3733 (Tex. App. Amarillo Apr. 30, 2003).

REVIEWABILITY

Preservation for Review. — Trial court's order requiring appellant to pay appellee excess proceeds from a tax sale under Tex. Tax Code Ann. § 34.04(e) was affirmed because appellant failed to preserve its points of error for appellate review as required by Tex. R. App. P. 33.1, as nowhere in its brief did appellant challenge the trial court's implied finding that appellee did not sign the deed on April 30, 2005; even though appellant affirmatively stated in its reply brief that sufficiency of the evidence was not an issue, the reporter's record contained conflicting evidence on when appellee signed the deed. N.K. Res., Inc. v. Durham, No. 01-06-00904-CV, 2007 Tex. App. LEXIS 5268 (Tex. App. Houston 1st Dist. July 6, 2007).

TIME LIMITATIONS. — Appellate court lacked jurisdiction to hear an appeal from a consent order entered after a final judgment in a tax delinquency case because, although the order was appealable under Tex. Tax Code Ann. § 34.04(e), an appeal was not filed within the applicable time limit. This resulted in a waiver of a challenge to the consent order. Royal Indep. Sch. Dist. v. Ragsdale, 273 S.W.3d 759, 2008 Tex. App. LEXIS 8989 (Tex. App. Houston 14th Dist. Nov. 25, 2008, no pet.).

STANDARDS OF REVIEW

General Overview. — Creditor who sought the excess funds from a tax sale pursuant to Tex. Tax Code Ann. §§ 34.03 and 34.04 failed to demonstrate that it was entitled to the funds by showing that the party from whom it had an assignment of judgment was the same person who had owned the property or that the owner, whose title was as trustee, owned the property individually. Edgewater Seed Mkt. v. Magnolia Indep. Sch. Dist., No. 11-07-00136-CV, 2008 Tex. App. LEXIS 7550 (Tex. App. Eastland Oct. 9, 2008).

SUBSTANTIAL EVIDENCE

Sufficiency of Evidence. — Trial court's order requiring appellant to pay appellee excess proceeds from a tax sale under Tex. Tax Code Ann. § 34.04(e) was affirmed because appellant failed to preserve its points of error for appellate review as required by Tex. R. App. P. 33.1, as nowhere in its brief did appellant challenge the trial court's implied finding that appellee did not sign the deed on April 30, 2005; even though appellant affirmatively stated in its reply brief that sufficiency of the evidence was not an issue, the reporter's record contained conflicting evidence on when appellee signed the deed. N.K. Res., Inc. v. Durham, No. 01-06-00904-CV, 2007 Tex. App. LEXIS 5268 (Tex. App. Houston 1st Dist. July 6, 2007).

GOVERNMENTS
Legislation
Effect & Operation

Prospective Operation. — In a case in which appellant assignee filed a petition to recover excess proceeds from a delinquent tax sale under Tex. Tax Code Ann. § 34.04, which was based on his claims on purported assignments to a total of $ 10,396 of the excess proceeds that he had obtained from the property owner's heirs, but the trial court awarded only $ 2,500, the trial court did not err in relying on amendments to § 34.04 that took effect during the pendency of appellant's petition because the legislature plainly made the amendments applicable to excess proceeds still pending disposition as of September 1, 2009, as were the excess proceeds appellant assignee was claiming. The judgment ordering the disposition of excess proceeds was signed on September 30, 2009, and the distribution was made on October 9, 2009. Hamilton v. County of Bastrop, No. 03-09-00612-CV, 2010 Tex. App. LEXIS 2371 (Tex. App. Austin Apr. 1, 2010).

Tex. Tax Code Ann. § 34.04(f), (g), (i) which specifically addressed assignment of a property owner's claim to excess proceeds from a tax sale and the fee that could be charged to the owner to obtain the excess proceeds, did not apply to an owner who had assigned the excess proceeds from a tax foreclosure sale of his property where the order to disburse the proceeds had already been issued pursuant to the law as it existed prior to the enactment of § 34.04(f), (g), (i). Section § 34.04(f), (g), (i) only applied to cases in which a disposition of the excess proceeds was yet to occur. Loera v. Interstate Inv. Corp., 93 S.W.3d 224, 2002 Tex. App. LEXIS 5533 (Tex. App. Houston 14th Dist. July 25, 2002, pet. filed).

REAL PROPERTY LAW
Nonmortgage Liens

Lien Priorities. — In a dispute over excess funds from the foreclosure sale on property within a property association's subdivision, disbursement of the funds to the association, and not to the former owner, was proper under Tex. Tax Code Ann. § 34.04(c) as the association established an amount due under its

lien, its claim was superior to the owner's claim, and it filed its claim within two years of the sale. By recording the deed restrictions in the real property records, the association provided notice to all persons of the existence of the instrument; and as the purchaser of the property, the owner had constructive notice of the covenant to pay association fees. Belt v. Point Venture Prop. Owners' Ass'n, No. 03-07-00701-CV, 2008 Tex. App. LEXIS 5816 (Tex. App. Austin July 30, 2008).

TAX LIENS. — Appellee, who acquired title to property by quitclaim deed two weeks before a tax foreclosure sale, was entitled to the excess proceeds under former Tex. Tax Code Ann. § 34.04(c) because the conveyance did not constitute a de facto assignment and only subsequent amendments changed who could file a claim to those who had an interest in the property prior to a foreclosure judgment. Strauss v. Belt, 322 S.W.3d 707, 2010 Tex. App. LEXIS 5866 (Tex. App. Austin July 23, 2010, no pet.).

TAX LAW

State & Local Taxes

Administration & Proceedings. — In a case involving a former property owner's claim for excess proceeds from a tax sale, the notice of excess funds provided by the district clerk to the former owner complied with the reasonable strictness standard for notice under Tex. Tax Code Ann. § 34.03 because the clerk's clerical omission of the reference to "the Title IV-D agency" set out in Tex. Tax Code Ann. § 34.04 did not deprive the former owner of notice of his right to timely make a claim to the excess proceeds, which was the purpose of the notice requirement. Galvan v. Midland Cent. Appraisal Dist., No. 11-17-00316-CV, 2019 Tex. App. LEXIS 7522 (Tex. App. Eastland Aug. 22, 2019).

ADMINISTRATION & PROCEEDINGS

General Overview. — Trial court properly denied property owner's request for excess proceeds because the record did not indicate the date of tax foreclosure sale. Tex. Tax Code Ann. § 34.04(f) is applicable only to an assignment of excess foreclosure proceeds given after the tax foreclosure sale by one who owned the property at the time of the foreclosure sale. N.K. Res., Inc. v. Sheldon Rd. Mun. Util. Dist., No. 01-04-00261-CV, 2005 Tex. App. LEXIS 3604 (Tex. App. Houston 1st Dist. May 12, 2005).

Trial court's order denying a claim filed by an attorney seeking the release of excess funds generated by a tax sale to the attorney on the grounds that the attorney obtained the assignment of the property owner's claim to the excess by fraud was reversed where the trial court based its ruling, in part, on an ex parte conversation with the property owner that was not recorded for the record and was not made under oath. Lubbock County Cent. Appraisal Dist. v. Contrarez, 102 S.W.3d 424, 2003 Tex. App. LEXIS 2965 (Tex. App. Amarillo Apr. 7, 2003, no pet.).

REAL PROPERTY TAX

General Overview. — In a trespass to title action, the claimant was collaterally estopped from relitigating the ownership of the property because a prior determination in a tax foreclosure suit as to which party had the right to the excess proceeds from the tax sale necessarily determined the ownership of the property under Tex. Tax Code Ann. § 34.04(c). Trust Inv. Group Mortg. Div., Inc. v. Alief Indep. Sch. Dist., No. 01-04-00762-CV, 2006 Tex. App. LEXIS 293 (Tex. App. Houston 1st Dist. Jan. 12, 2006), sub. op., op. withdrawn, reh'g denied, No. 01-04-00762-CV, 2006 Tex. App. LEXIS 6892 (Tex. App. Houston 1st Dist. Aug. 3, 2006).

Trial court properly denied property owner's request for excess proceeds because the record did not indicate the date of tax foreclosure sale. Tex. Tax Code Ann. § 34.04(f) is applicable only to an assignment of excess foreclosure proceeds given after the tax foreclosure sale by one who owned the property at the time of the foreclosure sale. N.K. Res., Inc. v. Sheldon Rd. Mun. Util. Dist., No. 01-04-00261-CV, 2005 Tex. App. LEXIS 3604 (Tex. App. Houston 1st Dist. May 12, 2005).

Trial court did not err in ruling that the excess proceeds of $13,922 from the sale of two properties should be applied to the remaining judgment deficiency on the third property because sale proceeds in excess of the taxes, penalties, and interest due on one property could be applied to the deficiencies remaining on other properties included in the same judgment. Day v. Knox County Appraisal Dist., No. 11-03-00086-CV, 2004 Tex. App. LEXIS 8199 (Tex. App. Eastland Sept. 9, 2004).

Where delinquent property tax payor had assigned rights to excess foreclosure sale proceeds, the assignment was not rendered void by the amendment to Tex. Tax Code Ann. 34.04(f). Loera v. Interstate Inv. Corp., 93 S.W.3d 224, 2002 Tex. App. LEXIS 5533 (Tex. App. Houston 14th Dist. July 25, 2002, pet. filed).

ASSESSMENT & VALUATION

General Overview. — Fact that one or more of the taxpayers held title to the property before it was sold established their right to claim the excess proceeds as the former owner; because the taxpayers made a claim based on ownership, within two years, they were entitled to the excess proceeds. Dallas County City of Grand Prairie v. Sides, 430 S.W.3d 649, 2014 Tex. App. LEXIS 5042 (Tex. App. Dallas May 8, 2014, no pet.).

COLLECTION

General Overview. — Under Tex. Tax Code Ann. § 34.04(c)(3), a trial court did not err in finding that excess proceeds from the foreclosure of a tax lien on one lot should be available to satisfy a deficiency and post judgment taxes, penalties and interest owing on a second lot because both properties were made the subject of the same tax judgment. Nipper-Bertram Trust v. Aldine Indep. Sch. Dist., 76 S.W.3d 788, 2002 Tex. App. LEXIS 3321 (Tex. App. Houston 14th Dist. May 9, 2002, pet. filed).

Excess proceeds after a foreclosure sale of a property to satisfy a tax judgment against two taxpayers were properly paid to the taxing authorities to satisfy further taxes, penalties, and interest due on the property and a deficiency remaining after the sale of another property owned by the taxpayers; the taxing authorities had obtained one judgment against the taxpayers for unpaid taxes, and the taxing authorities were not precluded from using the sale proceeds of one property to satisfy any unpaid taxes, penalties, interest, or other amounts adjudged due under judgment on the other property. Nipper-Bertram Trust v. Aldine Indep. Sch. Dist., 76 S.W.3d 788, 2002 Tex. App. LEXIS 3321 (Tex. App. Houston 14th Dist. May 9, 2002, pet. filed).

TAX DEEDS & TAX SALES. — In a case involving a former property owner's claim for excess proceeds from a tax sale, the notice of excess funds provided by the district clerk to the former owner complied with the reasonable strictness standard for notice under Tex. Tax Code Ann. § 34.03 because the clerk's clerical omission of the reference to "the Title IV-D agency" set out in Tex. Tax Code Ann. § 34.04 did not deprive the former owner of notice of his right to timely make a claim to the excess proceeds, which was the purpose of the notice requirement. Galvan v. Midland Cent. Appraisal Dist., No. 11-17-00316-CV, 2019 Tex. App. LEXIS 7522 (Tex. App. Eastland Aug. 22, 2019).

Assignment of the Home Equity Deed of Trust to the lender was effective to support the lender's claim to the excess proceeds, and its claim had priority over the landowners' claim as former owners of the property, Tex. Tax Code Ann. § /Aa34.04(c)(3), (Crowell v. Bexar County, 351 S.W.3d 114, 2011 Tex. App. LEXIS 6005 (Tex. App. San Antonio Aug. 3, 2011, no pet.).

Appellee, who acquired title to property by quitclaim deed two weeks before a tax foreclosure sale, was entitled to the excess proceeds under former Tex. Tax Code Ann. § 34.04(c) because the conveyance did not constitute a de facto assignment and only subsequent amendments changed who could file a claim to those who had an interest in the property prior to a foreclosure judgment. Strauss v. Belt, 322 S.W.3d 707, 2010 Tex. App. LEXIS 5866 (Tex. App. Austin July 23, 2010, no pet.).

County did not lack standing to file a response in opposition to appellant assignee's petition to recover excess proceeds from a delinquent tax sale under Tex. Tax Code Ann. § 34.04 because the county had a justiciable interest in the controversy concerning the excess proceeds that would be resolved by the judicial declaration sought. The underlying judgment was granted in favor of the county for its benefit, as well as for the benefit of all political subdivisions for which the county collected taxes. Hamilton v. County of Bastrop, No. 03-09-00612-CV, 2010 Tex. App. LEXIS 2371 (Tex. App. Austin Apr. 1, 2010).

In a case in which appellant assignee filed a petition to recover excess proceeds from a delinquent tax sale under Tex. Tax Code Ann. § 34.04, which was based on his claims on purported assignments to a total of $ 10,396 of the excess proceeds that he had obtained from the property owner's heirs, the trial court's application of the amended version of § 34.04 did not infringe the constitutional rights that appellant invoked because he had no vested right until September 30, 2009, which was after the effective date of the amendments to § 34.04. Appellant had no vested right in excess proceeds until the district court determined his claim in light of other potential claims and entered its final judgment on September 30, 2009. Hamilton v. County of Bastrop, No. 03-09-00612-CV, 2010 Tex. App. LEXIS 2371 (Tex. App. Austin Apr. 1, 2010).

In a case in which appellant assignee filed a petition to recover excess proceeds from a delinquent tax sale under Tex. Tax Code Ann. § 34.04, which was based on his claims on purported assignments to a total of $ 10,396 of the excess proceeds that he had obtained from the property owner's heirs, but the trial court awarded only $ 2,500, the trial court did not err in relying on amendments to § 34.04 that took effect during the pendency of appellant's petition because the legislature plainly made the amendments applicable to excess proceeds still pending disposition as of September 1, 2009, as were the excess proceeds appellant assignee was claiming. The judgment ordering the disposition of excess proceeds was signed on September 30, 2009, and the distribution was made on October 9, 2009. Hamilton v. County of Bastrop, No. 03-09-00612-CV, 2010 Tex. App. LEXIS 2371 (Tex. App. Austin Apr. 1, 2010).

Because a lender failed to serve a borrower's attorney of record with a petition claiming the excess proceeds of a tax sale as required by Tex. Tax Code Ann. § 34. 04 and Tex. R. Civ. P. 8 and 21a, the trial court did not err in refusing to enforce its order rescinding a prior disbursement order awarding the excess proceeds to the borrower. In re Household Fin. Corp. III, No. 14-08-00673-CV, 2008 Tex. App. LEXIS 9288 (Tex. App. Houston 14th Dist. Dec. 11, 2008).

Creditor who sought the excess funds from a tax sale pursuant to Tex. Tax Code Ann. §§ 34.03 and 34.04 failed to demonstrate that it was entitled to the funds by showing that the party from whom it had an assignment of judgment was the same person who had owned the property or that the owner, whose title was as trustee, owned the property individually. Edgewater Seed Mkt. v. Magnolia Indep. Sch. Dist., No. 11-07-00136-CV, 2008 Tex. App. LEXIS 7550 (Tex. App. Eastland Oct. 9, 2008).

In a dispute over excess funds from the foreclosure sale on property within a property association's subdivision, disbursement of the funds to the association, and not to the former owner, was proper under Tex. Tax Code Ann. § 34.04(c) as the association established an amount due under its lien, its claim was superior to the owner's claim, and it filed its claim within two years of the sale. By recording the deed restrictions in the real property records, the association provided notice to all persons of the existence of the instrument; and as the purchaser of the property, the owner had constructive notice of the covenant to pay association fees. Belt v. Point Venture Prop. Owners' Ass'n, No. 03-07-00701-CV, 2008 Tex. App. LEXIS 5816 (Tex. App. Austin July 30, 2008).

Trial court did not err in awarding $ 3500 to the attorney who obtained excess proceeds from a tax sale of real property under Tex. Tax Code Ann. § 34.04 because a fee under this section was not capped at 25 % or $ 1000 for the entire fund; rather the cap was the lesser of 25 % or $ 1000 for each owner for whom fees were obtained; also the $ 3500 fee award was less than the half the 25 % cap and no owner was responsible for more than $ 1000. Davis v. Kaufman County, 195 S.W.3d 847, 2006 Tex. App. LEXIS 5539 (Tex. App. Dallas June 29, 2006, no pet.).

ATTORNEY GENERAL OPINIONS

Recovery of Excess Tax Proceeds.

Section 34.04(a) of the Tax Code does not require a claimant to file a new lawsuit, separate from the underlying action to foreclose the tax lien, to recover excess tax proceeds. 1993 Tex. Op. Att'y Gen. DM-0195.

Sec. 34.05. Resale by Taxing Unit.

(a) If property is sold to a taxing unit that is a party to the judgment, the taxing unit may sell the property at any time by public or private sale. In selling the property, the taxing unit may, but is not required to, use the procedures provided by Section 263.001, Local Government Code, or Section 272.001, Local Government Code. The sale is subject to any right of redemption of the former owner. The redemption period begins on the date the deed to the taxing unit is filed for record.

(b) Property sold pursuant to Subsections (c) and (d) of this section may be sold for any amount. This subsection does not authorize a sale of property in violation of Section 52, Article III, Texas Constitution.

(c) The taxing unit purchasing the property by resolution of its governing body may request the sheriff or a constable to sell the property at a public sale. If the purchasing taxing unit has not sold the property within six months after the date on which the owner's right of redemption terminates, any taxing unit that is entitled to receive proceeds of the sale by resolution of its governing body may request the sheriff or a constable in writing to sell the property at a public sale. On receipt of a request made under this subsection, the sheriff or constable shall sell the property as provided by Subsection (d), unless the property is sold under Subsection (h) or (i) before the date set for the public sale.

(d) Except as provided by this subsection, all public sales requested as provided by Subsection (c) must be conducted in the manner prescribed by the Texas Rules of Civil Procedure for the sale of property under execution or, if directed by the commissioners court of the county, in accordance with Section 34.01(a-1) and the rules adopted under that section providing for public auction using online bidding and sale. The notice of the sale must contain a description of the property to be sold, the number and style of the suit under which the property was sold at the tax foreclosure sale, and the date of the tax foreclosure sale. The description of the property in the notice is sufficient if it is stated in the manner provided by Section 34.01(f). If the commissioners court of a county by order specifies the date or time at which or location in the county where a public sale requested under Subsection (c) shall be conducted, the sale shall be conducted on the date and at the time and location specified in the order. The acceptance of a bid by the officer conducting the sale is conclusive and binding on the question of its sufficiency. An action to set aside the sale on the grounds that the bid is insufficient may not be sustained in court, except that a taxing unit that participates in distribution of proceeds of the sale may file an action before the first anniversary of the date of the sale to set aside the sale on the grounds of fraud or collusion between the officer making the sale and the purchaser. On conclusion of the sale, the officer making the sale shall prepare a deed to the purchaser. The taxing unit that requested the sale may elect to prepare a deed for execution

by the officer. If the taxing unit prepares the deed, the officer shall execute that deed. An officer who executes a deed prepared by the taxing unit is not responsible or liable for any inconsistency, error, or other defect in the form of the deed. As soon as practicable after a deed is executed by the officer, the officer shall either file the deed for recording with the county clerk or deliver the executed deed to the taxing unit that requested the sale, which shall file the deed for recording with the county clerk. The county clerk shall file and record each deed under this subsection and after recording shall return the deed to the grantee.

(e) The presiding officer of a taxing unit selling real property under Subsection (h) or (i), under Section 34.051, or under Section 253.010, Local Government Code, or the sheriff or constable selling real property under Subsections (c) and (d) shall execute a deed to the property conveying to the purchaser the right, title, and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property. The conveyance shall be made subject to any remaining right of redemption at the time of the sale.

(f) An action attacking the validity of a resale of property pursuant to this section may not be instituted after the expiration of one year after the date of the resale.

(g) A taxing unit to which property is bid off may recover its costs of upkeep, maintenance, and environmental cleanup from the resale proceeds without further court order.

(h) In lieu of a sale pursuant to Subsections (c) and (d) of this section, the taxing unit that purchased the property may sell the property at a private sale. Consent of each taxing unit entitled to receive proceeds of the sale under the judgment is not required. Property sold under this subsection may not be sold for an amount that is less than the lesser of:

(1) the market value specified in the judgment of foreclosure; or

(2) the total amount of the judgments against the property.

(i) In lieu of a sale pursuant to Subsections (c) and (d) of this section, the taxing unit that purchased the property may sell the property at a private sale for an amount less than required under Subsection (h) of this section with the consent of each taxing unit entitled to receive proceeds of the sale under the judgment. This subsection does not authorize a sale of property in violation of Section 52, Article III, Texas Constitution.

(j) In lieu of a sale pursuant to Subsections (c) and (d), the taxing unit that purchased the property may sell the property at a private sale for an amount equal to or greater than its market value, as shown by the most recent certified appraisal roll, if:

(1) the sum of the amount of the judgment plus post-judgment taxes, penalties, and interest owing against the property exceeds the market value; and

(2) each taxing unit entitled to receive proceeds of the sale consents to the sale for that amount.

(k) A sale under Subsection (j) discharges and extinguishes all liens foreclosed by the judgment and, with the exception of the prorated tax for the current year that is assessed under Section 26.10, the liens for post-judgment taxes that accrued from the date of judgment until the date the taxing unit purchased the property. The presiding officer of a taxing unit selling real property under Subsection (j) shall execute a deed to the property conveying to the purchaser the right, title, and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property. The conveyance is subject to any remaining right of redemption at the time of the sale and to the purchaser's obligation to pay the prorated taxes for the current year as provided by Section 26.10. The deed must recite that the liens foreclosed by the judgment and the post-judgment tax liens are discharged and extinguished by virtue of the conveyance.

(*l*) A taxing unit that does not consent to a sale under Subsection (j) is liable to the taxing unit that purchased the property for a pro rata share of the costs incurred by the purchasing unit in maintaining the property, including the costs of preventing the property from becoming a public nuisance, a danger to the public, or a threat to the public health. The nonconsenting unit's share of the costs described by this subsection is calculated from the date the unit fails to consent to the sale and is equal to the percentage of the proceeds from a sale of the property to which the nonconsenting unit would be entitled multiplied by the costs incurred by the purchasing unit to maintain the property.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 851 (H.B. 1203), § 27, effective August 29, 1983; am. Acts 1995, 74th Leg., ch. 499 (H.B. 742), § 1, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 310 (H.B. 1651), § 1, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 712 (H.B. 110), §§ 3, 4, effective June 17, 1997; am. Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 9, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 1111 (H.B. 2587), §§ 5, 8, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1136 (H.B. 3263), § 2, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1192 (S.B. 1249), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 16.07, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), §§ 27—29, 42(2), effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 28, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 740 (H.B. 1118), § 2, effective June 17, 2011; am. Acts 2019, 86th Leg., ch. 1075 (H.B. 1652), § 1, effective June 14, 2019.

NOTES TO DECISIONS

Analysis

Governments
•Legislation
••Statutes of Limitations
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Tax Law
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GOVERNMENTS
Legislation
Statutes of Limitations

Time Limitations. — Heirs were not precluded from challenging a foreclosure and sale and did so successfully in regards to the royalty interest and taxing units acquired only the surface estate; the limitations provisions in Tex. Tax Code Ann. §§ 34.08(a), (b), 34.05(f) did preclude the heirs' challenge to the sale of the surface estate along with the possibility of reverter and their attempt to circumvent these provisions by pointing to alleged defects of parties and in service was without merit. Pounds v. Jurgens, 296 S.W.3d 100, 170 Oil & Gas Rep. 630, 2009 Tex. App. LEXIS 4729 (Tex. App. Houston 14th Dist. June 18, 2009, no pet.).

REAL PROPERTY LAW
Nonmortgage Liens

Tax Liens. — Where property was sold due to delinquent ad velorem taxes, conveyed by constable's deed to the taxing district and a business, and later sold to a business and private individual who acquired it by a writ of possession, a taxpayer's action to redeem the property was properly dismissed because the taxpayer had failed to make sufficient tender under Tex. Tax Code Ann. § 34.21(a) by merely offering to pay taxes, penalties and interest, and expenses of the sale, and had not made a proper tender within two years under Tex. Tax Code Ann. § 34.05(a) Burkholder v. Klein Indep. Sch. Dist., 897 S.W.2d 417, 1995 Tex. App. LEXIS 421 (Tex. App. Corpus Christi Mar. 2, 1995, no writ).

TAX LAW
State & Local Taxes
Real Property Tax
Collection

Tax Deeds & Tax Sales. — Heirs were not precluded from challenging a foreclosure and sale and did so successfully in regards to the royalty interest and taxing units acquired only the surface estate; the limitations provisions in Tex. Tax Code Ann. §§ 34.08(a), (b), 34.05(f) did preclude the heirs' challenge to the sale of the surface estate along with the possibility of reverter and their attempt to circumvent these provisions by pointing to alleged defects of parties and in service was without merit. Pounds v. Jurgens, 296 S.W.3d 100, 170 Oil & Gas Rep. 630, 2009 Tex. App. LEXIS 4729 (Tex. App. Houston 14th Dist. June 18, 2009, no pet.).

Purchaser of property from a school district at a tax resale was liable for taxes that had accrued from the date of the property's original tax sale until the date that the property was struck off to the district because such taxes did not merge with the property's title at the time of the resale. Irannezhad v. Aldine Indep. Sch. Dist., 257 S.W.3d 260, 2008 Tex. App. LEXIS 2059 (Tex. App. Houston 1st Dist. Mar. 20, 2008, no pet.).

TAX LIENS. — Purchaser of property from a school district at a tax resale was liable for taxes that had accrued from the date of the property's original tax sale until the date that the property was struck off to the district because such taxes did not merge with the property's title at the time of the resale. Irannezhad v. Aldine Indep. Sch. Dist., 257 S.W.3d 260, 2008 Tex. App. LEXIS 2059 (Tex. App. Houston 1st Dist. Mar. 20, 2008, no pet.).

ATTORNEY GENERAL OPINIONS

Analysis

Authorization of Tax Foreclosure Sales.
Resale of Tax Sale Property.
Sale and Rental of Tax Sale Property.

Authorization of Tax Foreclosure Sales.

A taxing unit may not delegate its authority to direct the resale of specific property at a public sale by authorizing its private tax-collection attorneys to direct the sheriff or a constable as to when specific properties are sold. 2001 Tex. Op. Att'y Gen. JC-0377.

Resale of Tax Sale Property.

Subsections (a) and (b) of section 34.05 of the Tax Code impliedly authorizes a county to resell real property that it purchases at a tax sale; chapters 263 and 272 of the Local Government Code do not apply in such situations. 1990 Tex. Op. Att'y Gen. JM-1232.

Sale and Rental of Tax Sale Property.

The following holdings are made relative to real property purchased at delinquent ad valorem tax sale: (1) The State may sell the property before expiration of the two year redemption period. (2) The State and County are authorized to rent the property. Rent money accruing from the property after its purchase belongs pro rata to the taxing units and should be deposited for their use in their respective funds like any other revenues collected. Rent money on such property accruing after foreclosure sale and before final sale should be prorated among taxing units having liens on property. 1972 Tex. Op. Att'y Gen. M-1263.

Sec. 34.051. Resale by Taxing Unit for the Purpose of Urban Redevelopment.

(a) A municipality is authorized to resell tax foreclosed property for less than the market value specified in the judgment of foreclosure or less than the total amount of the judgments against the property if consent to the conveyance is evidenced by an interlocal agreement between the municipality and each taxing unit that is a party to the judgment, provided, however, that the interlocal agreement complies with the requirements of Subsection (b).

(b) Any taxing unit may enter into an interlocal agreement with the municipality for the resale of tax foreclosed properties to be used for a purpose consistent with the municipality's urban redevelopment plans or the municipality's affordable housing policy. If the tax foreclosed property is resold pursuant to this section to be used for a purpose consistent with the municipality's urban redevelopment plan or affordable housing policy, the deed of conveyance must refer to or set forth the applicable terms of the urban redevelopment plan or affordable housing policy. Any such interlocal agreement should include the following:

(1) a general statement and goals of the municipality's urban redevelopment plans or affordable housing policy, as applicable;

(2) a statement that the interlocal agreement concerns only tax foreclosed property that is either vacant or distressed and has a tax delinquency of six or more years;

(3) a statement that the properties will be used only for a purpose consistent with an urban redevelopment plan or affordable housing policy, as applicable, that is primarily aimed at providing housing for families of low or moderate income;

(4) a statement that the principal goal of the interlocal agreement is to provide an efficient mechanism for returning deteriorated or unproductive properties to the tax rolls, enhancing the value of ownership to the surrounding properties, and improving the safety and quality of life in deteriorating neighborhoods; and

(5) a provision that all properties are sold subject to any right of redemption.

(c) The deed of conveyance of property sold under this section conveys to the purchaser the right, title, and interest acquired or held by each taxing unit that was a party to the judgment of foreclosure, subject to any remaining right of redemption at the time of the sale.

(d) An action attacking the validity of a sale of property pursuant to this section may not be instituted after the expiration of one year after the date of the sale and then only after the unconditional tender into the registry of the court of an amount equal to all taxes, penalties, interest, costs, and post-judgment interest of all judgments on which the original foreclosure sale was based.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1136 (H.B. 3263), § 3, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 819 (H.B. 858), § 1, effective June 14, 2001; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 29, effective September 1, 2001.

Sec. 34.06. Distribution of Proceeds of Resale.

(a) The proceeds of a resale of property purchased by a taxing unit at a tax foreclosure sale shall be paid to the purchasing taxing unit.

(b) The proceeds of the resale shall be distributed as required by Subsections (c)—(e).

(c) The purchasing taxing unit shall first retain an amount from the proceeds to reimburse the unit for reasonable costs, as defined by Section 34.21, incurred by the unit for:

(1) maintaining, preserving, and safekeeping the property;

(2) marketing the property for resale; and

(3) costs described by Subsection (f).

(d) After retaining the amount authorized by Subsection (c), the purchasing taxing unit shall then pay all costs of the suit and the sale of the property in the same manner and in the same order of priority as provided by Sections 34.02(b)(1)—(5).

(e) After making the distribution under Subsection (d), any remaining balance of the proceeds shall be paid to each taxing unit participating in the sale in an amount equal to the proportion each participant's taxes, penalties, and interest bear to the total amount of taxes, penalties, and interest adjudged to be due all participants in the sale.

(f) The purchasing taxing unit is entitled to recover from the proceeds of a resale of the property any cost incurred by the taxing unit in inspecting the property to determine whether there is a release or threatened release of solid waste from the property in violation of Chapter 361, Health and Safety Code, or a rule adopted or permit or order issued by the Texas Natural Resource Conservation Commission under that chapter, or a discharge or threatened discharge of waste or a pollutant into or adjacent to water in this state from a point of discharge on the property in violation of Chapter 26, Water Code, or a rule adopted or permit or order issued by the commission under that chapter, and in taking action to remove or remediate the release or threatened release or discharge or threatened discharge regardless of whether the taxing unit:

(1) was required by law to incur the cost; or

(2) obtained the consent of each taxing unit entitled to receive proceeds of the sale under the judgment of foreclosure to incur the cost.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 38 (S.B. 974), § 1, effective May 5, 1997; am. Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 10, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 3, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 30, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 11, effective June 18, 2003.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — School district was required to deposit any excess proceeds from the sale of foreclosed property in the registry of the court even though the resale occurred after the redemption period expired under Tex. Tax. Code Ann. § 34.02 and Tex. Tax. Code Ann. § 34.06. Syntax, Inc. v. Hall, 899 S.W.2d 189, 1995 Tex. LEXIS 61 (Tex. 1995).

Sec. 34.07. Subrogation of Purchaser at Void Sale.

(a) The purchaser at a void or defective tax sale or tax resale is subrogated to the rights of the taxing unit in whose behalf the property was sold or resold to the same extent a purchaser at a void or defective sale conducted in behalf of a judgment creditor is subrogated to the rights of the judgment creditor.

(b) Except as provided by Subsection (c), the purchaser at a void or defective tax sale or tax resale is subrogated to the tax lien of the taxing unit in whose behalf the property was sold or resold to the same extent a purchaser at a void or defective mortgage or other lien foreclosure sale is subrogated to the lien of the lienholder, and the purchaser is entitled to a reforeclosure of the lien to which the purchaser is subrogated.

(c) If the purchaser at a void or defective tax sale or tax resale paid less than the total amount of the judgment against the property, the purchaser is subrogated to the tax lien only in the amount the purchaser paid at the sale or resale.

(d) In lieu of pursuing the subrogation rights provided by this section to which a purchaser is subrogated, a purchaser at a void tax sale or tax resale may elect to file an action against the taxing units to which proceeds of the sale were distributed to recover an amount from each taxing unit equal to the distribution of taxes, penalties, interest, and attorney's fees the taxing unit received. In a suit filed under this subsection, the purchaser may include a claim for, and is entitled to recover, any excess proceeds of the sale that remain on deposit in the registry of the court or, in the alternative, is entitled to have judgment against any party to whom the excess proceeds have been distributed. A purchaser who files a suit authorized by this subsection waives all rights of subrogation otherwise provided by this section. This subsection applies only to an original purchaser at a tax sale or resale and only if that purchaser has not subsequently sold the property to another person.

(e) If the purchaser prevails in a suit filed under Subsection (d), the court shall expressly provide in its final judgment that:

(1) the tax sale is vacated and set aside; and

(2) any lien on the property extinguished by the tax sale is reinstated on the property effective as of the date on which the lien originally attached to the property.

(f) A suit filed against the taxing units under Subsection (d) may not be maintained unless the action is instituted before the first anniversary of the date of sale or resale. In this subsection:

(1) "Date of sale" means the date on which the sheriff or constable conducted the sale of the property under Section 34.01.

(2) "Date of resale" means the date on which the grantor's acknowledgment was taken or, in the case of multiple grantors, the latest date of acknowledgment by the grantors as shown in the deed.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 31, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 30, effective September 1, 2001; am. Acts 2017, 85th Leg., ch. 133 (H.B. 1128), § 5, effective September 1, 2017.

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TAX LAW
State & Local Taxes
Real Property Tax
Collection

Tax Deeds & Tax Sales. — In a case centering on property described in a sheriff's tax deed that was purchased at an allegedly void tax sale, appellant was not entitled to the remedy for void or defective tax sales because he had sold the property. Yammine v. Wise County, No. 02-11-00178-CV, 2012 Tex. App. LEXIS 3715 (Tex. App. Fort Worth May 10, 2012).

If a tax sale is determined to be void or defective, the purchaser at a void tax sale is subrogated to the rights of the taxing unit in whose behalf the property was sold, and in lieu of pursuing the subrogation rights, the purchaser may elect to sue the taxing entities, within a limitation period, to recover as provided by the statute; therefore, the State has a legitimate interest in requiring a party challenging the tax sale to deposit the taxes into the registry of the court. John K. Harrison Holdings, LLC v. Strauss, 221 S.W.3d 785, 2007 Tex. App. LEXIS 2169 (Tex. App. Beaumont Mar. 22, 2007, no pet.).

Sec. 34.08. Challenge to Validity of Tax Sale.

(a) A person may not commence an action that challenges the validity of a tax sale under this chapter unless the person:

(1) deposits into the registry of the court an amount equal to the amount of the delinquent taxes, penalties, and interest specified in the judgment of foreclosure obtained against the property plus all costs of the tax sale; or

(2) files an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure.

(b) A person may not commence an action challenging the validity of a tax sale after the time set forth in Section 33.54(a)(1) or (2), as applicable to the property, against a subsequent purchaser for value who acquired the property in reliance on the tax sale. The purchaser may conclusively presume that the tax sale was valid and shall have full title to the property free and clear of the right, title, and interest of any person that arose before the tax sale, subject only to recorded restrictive covenants and valid easements of record set forth in Section 34.01(n) and subject to applicable rights of redemption.

(c) If a person is not barred from bringing an action challenging the validity of a tax sale under Subsection (b) or any other provision of this title or applicable law, the person must bring an action no later than two years after the cause of action accrues to recover real property claimed by another who:

(1) pays applicable taxes on the real property before overdue; and

(2) claims the property under a registered deed executed pursuant to Section 34.01.

(d) Subsection (c) does not apply to a claim based on a forged deed.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1136 (H.B. 3263), § 4, effective September 1, 1997; enacted by Acts 1997, 75th Leg., ch. 1192 (S.B. 1249), § 3, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 32, effective September 1, 1999.

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CIVIL PROCEDURE
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Deposits in Court. — Record owner of property could not challenge a tax sale of the property that failed to give him notice of the sale because he did not file suit within one year as required by Tex. Tax Code Ann. § 33.54(a), and he did not pay taxes on the property or deposit the delinquent taxes as required by Tex. Tax Code Ann. § 34.08(a). Holmes v. Cassel, No. 14-12-00964-CV, 2013 Tex. App. LEXIS 9605 (Tex. App. Houston 14th Dist. Aug. 1, 2013), op. withdrawn, sub. op., No. 14-12-00964-CV, 2013 Tex. App. LEXIS 10266 (Tex. App. Houston 14th Dist. Aug. 15, 2013).

GOVERNMENTS
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Statutes of Limitations

Pleading & Proof. — Property owner's challenge to a tax sale of his property more than 15 years earlier failed because he failed to bring his action within one year as required by Tex. Tax Code Ann. § 33.54; and he failed to deposit an amount equal to the delinquent taxes, penalties, and interest into the court registry as required by Tex. Tax Code Ann. § 34.08(a). Holmes v. Cassel, No. 14-12-00964-CV, 2013 Tex. App. LEXIS 10266 (Tex. App. Houston 14th Dist. Aug. 15, 2013), cert. denied, 135 S. Ct. 1900, 191 L. Ed. 2d 765, 2015 U.S. LEXIS 2928 (U.S. 2015).

TIME LIMITATIONS. — Heirs were not precluded from challenging a foreclosure and sale and did so successfully in regards to the royalty interest and taxing units acquired only the surface estate; the limitations provisions in Tex. Tax Code Ann. §§ 34.08(a), (b), 34.05(f) did preclude the heirs' challenge to the sale of the surface estate along with the possibility of reverter and their attempt to circumvent these provisions by pointing to alleged defects of parties and in service was without merit. Pounds v. Jurgens, 296 S.W.3d 100, 170 Oil & Gas Rep. 630, 2009 Tex. App. LEXIS 4729 (Tex. App. Houston 14th Dist. June 18, 2009, no pet.).

In a case arising from a tax sale of a mineral interest, summary judgment was properly granted to a transferee because a joint venture did not challenge the sale for almost four years, which was outside the limitations period in Tex. Tax Code Ann. § 33.54; there was no open courts violation under Tex. Const. art. I, § 13 since there was a mechanism for an owner to recoup its property, the discovery rule did not apply since a specific time limit was set under § 33.54, and, regardless of the merits of the joint venture's argument that it received no notice, the argument was still time-barred. Therefore, the transferee was entitled to presume that it was the owner of the mineral interest. W.L. Pickens Grandchildren's Joint Venture v. DOH Oil Co., 281 S.W.3d 116, 178 Oil & Gas Rep. 886, 2008 Tex. App. LEXIS 5982 (Tex. App. El Paso Aug. 7, 2008, no pet.).

REAL PROPERTY LAW
Nonmortgage Liens

Tax Liens. — Executors were precluded under Tex. Tax Code Ann. § 33.54 from challenging the landowner's title to two tracts of land because (1) the executors did not commence their action by the one-year anniversary of the recording of the deed, and the landowner asserted limitations as an affirmative defense to the executors' trespass to try title action under Tex. Prop. Code Ann. § 22.001, (2) under Tex. Tax. Code Ann. § 34.08(a)(1), the executors did not deposit funds into the court as required to commence an action challenging the validity of the tax sale to either tract, and (3) the landowner was entitled to presume that the tax sale was valid. In light of the plain language of Tex. Tax. Code Ann. § 33.54 and case law, the court rejected the executors' claim that the landowner was required to introduce the tax judgment and order of sale in order to rely on the statute. Jordan v. Bustamante, 158 S.W.3d 29, 2005 Tex. App. LEXIS 490 (Tex. App. Houston 14th Dist. Jan. 25, 2005, no pet.).

TITLE QUALITY
Adverse Claim Actions

General Overview. — In a real property claimant's action for trespass to try title, Tex. Tax Code Ann. § 33.54 prevented him from challenging an opposing claimant's title to the land purchased at a tax sale because well over two years had elapsed after the opposing claimant's tax deed was recorded before the claimant brought his suit. The claimant, as a claimant of limitations title through adverse possession, was served by posting, there was no evidence to the contrary that the property obtained through the tax sale did not encompass the disputed property, and the tax foreclosure suit appeared to have included the record owners, lienholders, and all parties owning or claiming any interest in the property, as required by Tex. Tax Code Ann. § 34.01(n). Session v. Woods, 206 S.W.3d 772, 2006 Tex. App. LEXIS 9470 (Tex. App. Texarkana Nov. 2, 2006, no pet.).

TORTS
Trespass to Real Property. — Where a developer claimed its title to certain property on the ground that a prior owner had been granted a rescission of a tax deed because the deed was void, because the developer was not challenging the validity of a tax sale to the prior owner, the developer was not required to comply with the requirements of Tex. Tax Code Ann. § 34.08 before commencing its trespass to try title action against the current owner. Mem'l Park Med. Ctr., Inc. v. River Bend Dev. Group, L.P., 264 S.W.3d 810, 2008 Tex. App. LEXIS 4711 (Tex. App. Eastland June 26, 2008, no pet.).

TAX LAW
State & Local Taxes

Real Property Tax

Collection

Methods & Timing. — When a bank contested the foreclosure of tax liens on property on which the bank held a mortgage lien, the bank was entitled to successfully contest the tax lien foreclosure, despite the bank's failure to pay the deposit required by Tex. Tax Code Ann. § 34.08, because a complete failure to provide the bank with notice of the tax foreclosure and subsequent tax sale of the property violated the bank's due process right to protect the bank's interest in the property. Sec. State Bank & Trust v. Bexar County, No. 04-11-00928-CV, 2012 Tex. App. LEXIS 9842 (Tex. App. San Antonio Nov. 30, 2012), op. withdrawn, sub. op., reh'g denied, 397 S.W.3d 715, 2012 Tex. App. LEXIS 10557 (Tex. App. San Antonio Dec. 21, 2012).

TAX DEEDS & TAX SALES. — Trial court erred in concluding that a taxpayer's suit was an impermissible attack on a 2009 tax sale because his 2010 lawsuit was timely under the statute; nonetheless, the error was harmless because the taxpayer was allowed to present his attack of the tax sale. Cooper v. Hamilton County, No. 10-12-00427-CV, 2014 Tex. App. LEXIS 1066 (Tex.

App. Waco Jan. 30, 2014), pet. denied No. 14-0203, 2014 Tex. LEXIS 433 (Tex. May 23, 2014).

Property owner's challenge to a tax sale of his property more than 15 years earlier failed because he failed to bring his action within one year as required by Tex. Tax Code Ann. § 33.54; and he failed to deposit an amount equal to the delinquent taxes, penalties, and interest into the court registry as required by Tex. Tax Code Ann. § 34.08(a). Holmes v. Cassel, No. 14-12-00964-CV, 2013 Tex. App. LEXIS 10266 (Tex. App. Houston 14th Dist. Aug. 15, 2013), cert. denied, 135 S. Ct. 1900, 191 L. Ed. 2d 765, 2015 U.S. LEXIS 2928 (U.S. 2015).

Record owner of property could not challenge a tax sale of the property that failed to give him notice of the sale because he did not file suit within one year as required by Tex. Tax Code Ann. § 33.54(a), and he did not pay taxes on the property or deposit the delinquent taxes as required by Tex. Tax Code Ann. § 34.08(a). Holmes v. Cassel, No. 14-12-00964-CV, 2013 Tex. App. LEXIS 9605 (Tex. App. Houston 14th Dist. Aug. 1, 2013), op. withdrawn, sub. op., No. 14-12-00964-CV, 2013 Tex. App. LEXIS 10266 (Tex. App. Houston 14th Dist. Aug. 15, 2013).

When a bank contested the foreclosure of tax liens on property on which the bank held a mortgage lien, the bank was entitled to successfully contest the tax lien foreclosure, despite the bank's failure to pay the deposit required by Tex. Tax Code Ann. § 34.08, because a complete failure to provide the bank with notice of the tax foreclosure and subsequent tax sale of the property violated the bank's due process right to protect the bank's interest in the property. Sec. State Bank & Trust v. Bexar County, No. 04-11-00928-CV, 2012 Tex. App. LEXIS 9842 (Tex. App. San Antonio Nov. 30, 2012), op. withdrawn, sub. op., reh'g denied, 397 S.W.3d 715, 2012 Tex. App. LEXIS 10557 (Tex. App. San Antonio Dec. 21, 2012).

Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

In an action brought under Tex. Tax Code Ann. § 34.08, the taxpayer was not entitled to set aside the tax sale pursuant to Tex. Tax Code Ann. § 33.53(e) based on payment of the amount shown on the delinquent property tax statement because the taxpayer failed to pay the court costs and fees, which were not de minimis, and the taxpayer could not invoke the principle of substantial compliance. Mekhail v. Duncan-Jackson Mortuary, Inc., 369 S.W.3d 482, 2012 Tex. App. LEXIS 1594 (Tex. App. Houston 1st Dist. Mar. 1, 2012), reh'g denied, No. 01-11-00485-CV, 2012 Tex. App. LEXIS 6240 (Tex. App. Houston 1st Dist. May 2, 2012).

Claimant failed to comply with the requirements of Tex. Tax Code Ann. § 34.08(a), because the buyer attached a district clerk's certificate showing that the claimant failed to make the requisite deposit into the court's registry or file an affidavit of inability to pay, and the claimant presented no evidence to the contrary. Roberts v. T.P. Three Enters., 321 S.W.3d 674, 2010 Tex. App. LEXIS 6203 (Tex. App. Houston 14th Dist. Aug. 3, 2010, no pet.).

Heirs were not precluded from challenging a foreclosure and sale and did so successfully in regards to the royalty interest and taxing units acquired only the surface estate; the limitations provisions in Tex. Tax Code Ann. §§ 34.08(a), (b), 34.05(f) did preclude the heirs' challenge to the sale of the surface estate along with the possibility of reverter and their attempt to circumvent these provisions by pointing to alleged defects of parties and in service was without merit. Pounds v. Jurgens, 296 S.W.3d 100, 170 Oil & Gas Rep. 630, 2009 Tex. App. LEXIS 4729 (Tex. App. Houston 14th Dist. June 18, 2009, no pet.).

Based on the clear language of Tex. Tax Code Ann. § 34.08(a), there were two impediments to applying it to heirs' challenge to sale of their royalty interest in the present case: (1) the heirs did not commence the interpleader action that resulted invalidation of the tax sale of the royalty interest, and (2) the taxing units admitted there were no delinquent taxes on the royalty, such that the heirs had no amount to deposit. Pounds v. Jurgens, 296 S.W.3d 100, 170 Oil & Gas Rep. 630, 2009 Tex. App. LEXIS 4729 (Tex. App. Houston 14th Dist. June 18, 2009, no pet.).

In a case arising from a tax sale of a mineral interest, summary judgment was properly granted to a transferee because a joint venture did not challenge the sale for almost four years, which was outside the limitations period in Tex. Tax Code Ann. § 33.54; there was no open courts violation under Tex. Const. art. I, § 13 since there was a mechanism for an owner to recoup its property, the discovery rule did not apply since a specific time limit was set under § 33.54, and, regardless of the merits of the joint venture's argument that it received no notice, the argument was still time-barred. Therefore, the transferee was entitled to presume that it was the owner of the mineral interest. W.L. Pickens Grandchildren's Joint Venture v. DOH Oil Co., 281 S.W.3d 116, 178 Oil & Gas Rep. 886, 2008 Tex. App. LEXIS 5982 (Tex. App. El Paso Aug. 7, 2008, no pet.).

Where a developer claimed its title to certain property on the ground that a prior owner had been granted a rescission of a tax deed because the deed was void, because the developer was not challenging the validity of a tax sale to the prior owner, the developer was not required to comply with the requirements of Tex. Tax Code Ann. § 34.08 before commencing its trespass to try title action against the current owner. Mem'l Park Med. Ctr., Inc. v. River Bend Dev. Group, L.P., 264 S.W.3d 810, 2008 Tex. App. LEXIS 4711 (Tex. App. Eastland June 26, 2008, no pet.).

In a real property claimant's action for trespass to try title, Tex. Tax Code Ann. § 33.54 prevented him from challenging an opposing claimant's title to the land purchased at a tax sale because well over two years had elapsed after the opposing claimant's tax deed was recorded before the claimant brought his suit. The claimant, as a claimant of limitations title through adverse possession, was served by posting, there was no evidence to the contrary that the property obtained through the tax sale did not encompass the disputed property, and the tax foreclosure suit appeared to have included the record owners, lienholders, and all parties owning or claiming any interest in the property, as required by Tex. Tax Code Ann. § 34.01(n). Session v. Woods, 206 S.W.3d 772, 2006 Tex. App. LEXIS 9470 (Tex. App. Texarkana Nov. 2, 2006, no pet.).

TAX LIENS. — Court erred in granting summary judgment in favor of the lienholder in the tax sale foreclosure action, because the record did not address critical fact issues concerning notice and filing that were necessary for the appellate court to determine whether the lienholder, as a matter of law, was entitled to foreclosure of his liens upon the tax sale buyer's property, when the lienholder did not intervene in the tax suit prior to judgment, nor was he joined by any of the taxing units; although the lienholder testified that he did not receive notice of the tax sale, he did not provide any direct testimony that he did not receive or obtain actual notice of the pending foreclosure proceedings. Kothari v. Oyervidez, 373 S.W.3d 801, 2012 Tex. App. LEXIS 4605 (Tex. App. Houston 1st Dist. June 7, 2012, no pet.).

In an action brought under Tex. Tax Code Ann. § 34.08, the taxpayer was not entitled to set aside the tax sale pursuant to Tex. Tax Code Ann. § 33.53(e) based on payment of the amount shown on the delinquent property tax statement because the taxpayer failed to pay the court costs and fees, which were not de minimis, and the taxpayer could not invoke the principle of substantial compliance. Mekhail v. Duncan-Jackson Mortuary, Inc., 369 S.W.3d 482, 2012 Tex. App. LEXIS 1594 (Tex. App. Houston 1st Dist. Mar. 1, 2012), reh'g denied, No. 01-11-00485-CV, 2012 Tex. App. LEXIS 6240 (Tex. App. Houston 1st Dist. May 2, 2012).

Secs. 34.09 to 34.20. [Reserved for expansion].

Subchapter B

Redemption

Sec. 34.21. Right of Redemption.

(a) The owner of real property sold at a tax sale to a purchaser other than a taxing unit that was used as the residence homestead of the owner or that was land designated for agricultural use when the suit or the application for the warrant was filed, or the owner of a mineral interest sold at a tax sale to a purchaser other than a taxing unit, may redeem the property on or before the second anniversary of the date on which the purchaser's deed is filed for record by paying the purchaser the amount the purchaser bid for the property, the amount of the deed recording fee, and the amount paid by the purchaser as taxes, penalties, interest, and costs on the property, plus a redemption premium of 25 percent of the aggregate total if the property is redeemed during the first year of the redemption period or 50 percent of the aggregate total if the property is redeemed during the second year of the redemption period.

(b) If property that was used as the owner's residence homestead or was land designated for agricultural use when the suit or the application for the warrant was filed, or that is a mineral interest, is bid off to a taxing unit under Section 34.01(j) or (p) and has not been resold by the taxing unit, the owner having a right of redemption may redeem the property on or before the second anniversary of the date on which the deed of the taxing unit is filed for record by paying the taxing unit:

(1) the lesser of the amount of the judgment against the property or the market value of the property as specified in that judgment, plus the amount of the fee for filing the taxing unit's deed and the amount spent by the taxing unit as costs on the property, if the property was judicially foreclosed and bid off to the taxing unit under Section 34.01(j); or

(2) the lesser of the amount of taxes, penalties, interest, and costs for which the warrant was issued or the market value of the property as specified in the warrant, plus the amount of the fee for filing the taxing unit's deed and the amount spent by the taxing unit as costs on the property, if the property was seized under Subchapter E, Chapter 33, and bid off to the taxing unit under Section 34.01(p).

(c) If real property that was used as the owner's residence homestead or was land designated for agricultural use when the suit or the application for the warrant was filed, or that is a mineral interest, has been resold by the taxing unit under Section 34.05, the owner of the property having a right of redemption may redeem the property on or before the second anniversary of the date on which the taxing unit files for record the deed from the sheriff or constable by paying the person who purchased the property from the taxing unit the amount the purchaser paid for the property, the amount of the fee for filing the purchaser's deed for record, the amount paid by the purchaser as taxes, penalties, interest, and costs on the property, plus a redemption premium of 25 percent of the aggregate total if the property is redeemed in the first year of the redemption period or 50 percent of the aggregate total if the property is redeemed in the second year of the redemption period.

(d) If the amount paid by the owner of the property under Subsection (c) is less than the amount of the judgment under which the property was sold, the owner shall pay to the taxing unit to which the property was bid off under Section 34.01 an amount equal to the difference between the amount paid under Subsection (c) and the amount of the judgment. The taxing unit shall issue a receipt for a payment received under this subsection and shall distribute the amount received to each taxing unit that participated in the judgment and sale in an amount proportional to the unit's share of the total amount of the aggregate judgments of the participating taxing units. The owner of the property shall deliver the receipt received from the taxing unit to the person from whom the property is redeemed.

(e) The owner of real property sold at a tax sale other than property that was used as the residence homestead of the owner or that was land designated for agricultural use when the suit or the application for the warrant was filed, or that is a mineral interest, may redeem the property in the same manner and by paying the same amounts as prescribed by Subsection (a), (b), (c), or (d), as applicable, except that:

(1) the owner's right of redemption may be exercised not later than the 180th day following the date on which the purchaser's or taxing unit's deed is filed for record; and

(2) the redemption premium payable by the owner to a purchaser other than a taxing unit may not exceed 25 percent.

(f) The owner of real property sold at a tax sale may redeem the real property by paying the required amount as prescribed by this section to the assessor-collector for the county in which the property was sold, if the owner of the real property makes an affidavit stating:

(1) that the period in which the owner's right of redemption must be exercised has not expired; and

(2) that the owner has made diligent search in the county in which the property is located for the purchaser at the tax sale or for the purchaser at resale, and has failed to find the purchaser, that the purchaser is not a resident of the county in which the property is located, that the owner and the purchaser cannot agree on the amount of redemption money due, or that the purchaser refuses to give the owner a quitclaim deed to the property.

(f-1) An assessor-collector who receives an affidavit and payment under Subsection (f) shall accept that the assertions set out in the affidavit are true and correct. The assessor-collector receiving the payment shall give the owner a signed

receipt witnessed by two persons. The receipt, when recorded, is notice to all persons that the property described has been redeemed. The assessor-collector shall on demand pay the money received by the assessor-collector to the purchaser. An assessor-collector is not liable to any person for performing the assessor-collector's duties under this subsection in reliance on the assertions contained in an affidavit.

(g) In this section:

(1) "Land designated for agricultural use" means land for which an application for appraisal under Subchapter C or D, Chapter 23, has been finally approved.

(2) "Costs" includes:

(A) the amount reasonably spent by the purchaser for maintaining, preserving, and safekeeping the property, including the cost of:

(i) property insurance;

(ii) repairs or improvements required by a local ordinance or building code or by a lease of the property in effect on the date of the sale;

(iii) discharging a lien imposed by a municipality to secure expenses incurred by the municipality in remedying a health or safety hazard on the property;

(iv) dues or assessments for maintenance paid to a property owners' association under a recorded restrictive covenant to which the property is subject; and

(v) impact or standby fees imposed under the Local Government Code or Water Code and paid to a political subdivision; and

(B) if the purchaser is a taxing unit to which the property is bid off under Section 34.01, personnel and overhead costs reasonably incurred by the purchaser in connection with maintaining, preserving, safekeeping, managing, and reselling the property.

(3) "Purchaser" includes a taxing unit to which property is bid off under Section 34.01.

(4) "Residence homestead" has the meaning assigned by Section 11.13.

(h) The right of redemption does not grant or reserve in the former owner of the real property the right to the use or possession of the property, or to receive rents, income, or other benefits from the property while the right of redemption exists.

(i) The owner of property who is entitled to redeem the property under this section may request that the purchaser of the property, or the taxing unit to which the property was bid off, provide that owner a written itemization of all amounts spent by the purchaser or taxing unit in costs on the property. The owner must make the request in writing and send the request to the purchaser at the address shown for the purchaser in the purchaser's deed for the property, or to the business address of the collector for the taxing unit, as applicable. The purchaser or the collector shall itemize all amounts spent on the property in costs and deliver the itemization in writing to the owner not later than the 10th day after the date the written request is received. Delivery of the itemization to the owner may be made by depositing the document in the United States mail, postage prepaid, addressed to the owner at the address provided in the owner's written request. Only those amounts included in the itemization provided to the owner may be allowed as costs for purposes of redemption.

(j) A quitclaim deed to an owner redeeming property under this section is not notice of an unrecorded instrument. The grantee of a quitclaim deed and a successor or assign of the grantee may be a bona fide purchaser in good faith for value under recording laws.

(k) The inclusion of dues and assessments for maintenance paid to a property owners' association within the definition of "costs" under Subsection (g) may not be construed as:

(1) a waiver of any immunity to which a taxing unit may be entitled from a suit or from liability for those dues or assessments; or

(2) authority for a taxing unit to make an expenditure of public funds in violation of Section 50, 51, or 52(a), Article III, or Section 3, Article XI, Texas Constitution.

(*l*) An owner of real property who is entitled to redeem the property under this section may not transfer the owner's right of redemption to another person. Any instrument purporting to transfer the owner's right of redemption is void.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 33, effective June 15, 1989; am. Acts 1991, 72nd Leg., ch. 419 (S.B. 1042), § 1, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 349 (S.B. 355), § 1, effective January 1, 1994; am. Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 11, effective January 1, 1998; am. Acts 1997, 75th Leg., ch. 914 (S.B. 141), § 4, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1111 (H.B. 2587), §§ 6, 8, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 33, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 231 (S.B. 256), § 1, effective May 22, 2001; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 31, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 319 (H.B. 3419), § 12, effective June 18, 2003; am. Acts 2003, 78th Leg., ch. 510 (H.B. 1125), § 1, effective January 1, 2004; am. Acts 2009, 81st Leg., ch. 374 (H.B. 1407), § 1, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 1345 (S.B. 1642), § 1, effective June 14, 2019.

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CIVIL PROCEDURE
Pleading & Practice
Pleadings
Amended Pleadings

General Overview. — Looking at the entirety of borrowers' petition against a lender, there simply was no way to infer a claim of redemption in the borrowers' petition. The borrowers never amended their petition to add the new cause of action, although it seemed to have been the cornerstone of their argument at the motion for summary judgment hearing. Sanders v. Household Mortg. Servs., No. 10-07-00233-CV, 2009 Tex. App. LEXIS 4988 (Tex. App. Waco July 1, 2009).

DISMISSALS
Involuntary Dismissals

General Overview. — Court affirmed dismissal of taxpayer's action to set aside a tax sale of property pursuant to a judgment for delinquent ad valorem taxes where even assuming the taxpayer's property qualified for the two-year redemption period, his letter was insufficient as a matter of law because it was mailed more than two years after two of the sheriff's deeds were recorded and because it was not an unconditional tender of the amount owed. Day v. Knox County Appraisal Dist., No. 11-04-00269-CV, 2006 Tex. App. LEXIS 2497 (Tex. App. Eastland Mar. 30, 2006).

JUDGMENTS
Entry of Judgments
Enforcement & Execution

Writs of Execution. — Trial court's order granting summary judgment in favor of owner, in a declaratory judgment action brought by a purchaser seeking to determine ownership of property acquired at a tax sale, was affirmed; the owner had the right under Tex. Tax Code Ann. § 34.21(a), to redeem the property by paying the purchaser the bid price plus the outstanding taxes. Rogers v. Yarborough, 923 S.W.2d 667, 1996 Tex. App. LEXIS 865 (Tex. App. Tyler Feb. 29, 1996, no writ).

Where a property owner made a good-faith attempt to get accurate information from the tax collector to ascertain the total amount of taxes, penalty, and interest paid by a subsequent tax-sale buyer to redeem the property pursuant to former Tex. Rev. Civ. Stat. Ann. art. 7345b, § 12(2), a discrepancy of less than one percent of the property amount was de minimus. Page v. Burk, 582 S.W.2d 512, 1979 Tex. App. LEXIS 3816 (Tex. Civ. App. Dallas June 14, 1979, no writ).

RELIEF FROM JUDGMENT

Independent Actions. — Taxing authorities were entitled to summary judgment dismissing a bill of review that challenged a sheriff's sale of real property for delinquent taxes because the bill of review was filed within the two-year period when a new trial could have been sought under Tex. R. Civ. P. 329(a) or the property redeemed under Tex. Tax Code Ann. § 34.21. Olivares v. State, No. 04-04-00744-CV, 2005 Tex. App. LEXIS 6277 (Tex. App. San Antonio Aug. 10, 2005).

MOTIONS FOR NEW TRIALS. — Taxing authorities were entitled to summary judgment dismissing a bill of review that challenged a sheriff's sale of real property for delinquent taxes because the bill of review was filed within the two-year period when a new trial could have been sought under Tex. R. Civ. P. 329(a) or the property redeemed under Tex. Tax Code Ann. § 34.21. Olivares v. State, No. 04-04-00744-CV, 2005 Tex. App. LEXIS 6277 (Tex. App. San Antonio Aug. 10, 2005).

ESTATE, GIFT & TRUST LAW
Trusts

Constructive Trusts. — Owner of property sold at a tax sale was entitled, on a constructive trust theory, to recover a prorated portion of advance rent collected by the tax sale buyers before the owner redeemed the property; the buyers' conduct was an assertion of right inconsistent with the owner's right of redemption and amounted to conversion. Leach v. Conner, No. 13-01-468-CV, 2003 Tex. App. LEXIS 10173 (Tex. App. Corpus Christi Dec. 4, 2003).

EVIDENCE
Procedural Considerations
Burdens of Proof

Allocation. — In a declaratory judgment proceeding, the purchaser of a real property at a tax foreclosure sale had the burden to prove, under Tex. Tax Code Ann. § 34.21 as it applied in 2008, whether the original owners properly exercised their right to redeem. Gonzalez v. Razi, 338 S.W.3d 167, 2011 Tex. App. LEXIS 2141 (Tex. App. Houston 1st Dist. Mar. 24, 2011, no pet.).

REAL PROPERTY LAW
Deeds
Types

Tax Deeds. — Owners did not effectively redeem property by giving the tax sale purchaser cash for the amount it had paid and a promissory note for the redemption premium. The promissory note did not constitute either payment or substantial compliance with the requirement of paying the redemption amount under Tex. Tax Code Ann. § 34.21(a). Deutsche Bank Nat'l Trust Co. v.

Stockdick Land Co., No. 14-09-00617-CV, 2011 Tex. App. LEXIS 783 (Tex. App. Houston 14th Dist. Feb. 3, 2011), op. withdrawn, sub. op., 367 S.W.3d 308, 2012 Tex. App. LEXIS 1516 (Tex. App. Houston 14th Dist. Feb. 28, 2012).

Owner may not provide a promissory note to a tax sale purchaser to satisfy the requirement of paying the redemption amount under Tex. Tax Code Ann. § 34.21(a), nor does a promissory note constitute substantial compliance with the statute. Deutsche Bank Nat'l Trust Co. v. Stockdick Land Co., No. 14-09-00617-CV, 2011 Tex. App. LEXIS 783 (Tex. App. Houston 14th Dist. Feb. 3, 2011), op. withdrawn, sub. op., 367 S.W.3d 308, 2012 Tex. App. LEXIS 1516 (Tex. App. Houston 14th Dist. Feb. 28, 2012).

ESTATES

Present Estates

Fee Simple Estates. — Trial court did not err in finding that a mortgagee did not acquire fee simple title to the mortgaged property by virtue of its redemption where the redemption statute, in effect, classified the mortgagee and the mortgagor as co-owners of the property, and the mortgagee was equitably estopped from claiming that it did anything other than redeem the property. The mortgagee did not strengthen its title by virtue of the redemption, and before the tax sale of the property, the mortgagee's interest in the property was limited to its rights under the deed of trust, and that interest was what the mortgagee redeemed and the only interest that the mortgagee retained. UMLIC VP LLC v. T&M Sales & Envtl. Sys., 176 S.W.3d 595, 2005 Tex. App. LEXIS 7623 (Tex. App. Corpus Christi Sept. 15, 2005), reh'g denied, No. 13-02-634-CV, 2005 Tex. App. LEXIS 10375 (Tex. App. Corpus Christi Nov. 10, 2005).

FINANCING

Mortgages & Other Security Instruments

Foreclosures

General Overview. — Term "owner" in Tex. Tax Code Ann. § 34.21 includes any person who had an ownership interest in the property; therefore, a deed of trust holder's purchase of property from a bidder at a tax sale constituted a redemption under Tex. Tax Code Ann. § 34.21. This did not change the mortgagor-mortgagee relationship, but merely extinguished the tax lien. T & M Sales & Envtl. Sys. v. LSS Invs., No. 13-03-659-CV, 2005 Tex. App. LEXIS 8874 (Tex. App. Corpus Christi Oct. 27, 2005).

Trial court did not err in finding that a mortgagee did not acquire fee simple title to the mortgaged property by virtue of its redemption where the redemption statute, in effect, classified the mortgagee and the mortgagor as co-owners of the property, and the mortgagee was equitably estopped from claiming that it did anything other than redeem the property. The mortgagee did not strengthen its title by virtue of the redemption, and before the tax sale of the property, the mortgagee's interest in the property was limited to its rights under the deed of trust, and that interest was what the mortgagee redeemed and the only interest that the mortgagee retained. UMLIC VP LLC v. T&M Sales & Envtl. Sys., 176 S.W.3d 595, 2005 Tex. App. LEXIS 7623 (Tex. App. Corpus Christi Sept. 15, 2005), reh'g denied, No. 13-02-634-CV, 2005 Tex. App. LEXIS 10375 (Tex. App. Corpus Christi Nov. 10, 2005).

Summary judgment in favor of the debtors was reversed and remanded because the creditor's deed of trust was a valid lien on the property after the debtors redemption. When the debtors redeemed the property after the tax sale, they restored the title to what it was before the tax sale, except the tax lien had been discharged, the debtors did not discharge their agreement with the creditor reflected in the deed of trust, and the debtors' ownership of the property was subject to the creditor's deed of trust, and that ownership was what they redeemed. Assocs. Home Equity Servs. Co. v. Hunt, 151 S.W.3d 559, 2004 Tex. App. LEXIS 9801 (Tex. App. Beaumont Nov. 4, 2004, no pet.).

Where the property owner tendered the amount of judgment to the taxing districts, the judgment was satisfied and the property was redeemed, and any error in the judgment could not be transformed into a cause of action for recision of the deed; Tex. Tax Code Ann. § 34.21 provided no such remedy to the taxing districts, and there was no precedent for recision of a redemption deed acquired in full compliance with the Texas Tax Code. Whitehead v. Jasper County Water Control & Improvement Dist. No. 1, 118 S.W.3d 485, 2003 Tex. App. LEXIS 8741 (Tex. App. Beaumont Oct. 9, 2003, no pet.).

REDEMPTION

General Overview. — Summary judgment in favor of the tax-sale purchaser was proper, because a promissory note did not constitute "redemption money" or satisfy the requirement of "paying" sums required to be paid under Tex. Tax Code Ann. § 34.21(a), and the owners wholly defaulted on the promissory note and failed to fulfill their statutory obligation to remit all sums required to redeem the property; the purchaser's conduct was not unconscionable as a matter of law, when it was not inconsistent or unconscionable for the purchaser to accept the statutory benefits acquired at the tax sale then defend its tax title against the bank's claim that the property was redeemed, as it was the public policy of Texas for a purchaser at a tax sale to retain title if the property was not timely and properly redeemed. Deutsche Bank Nat'l Trust Co. v. Stockdick Land Co., 367 S.W.3d 308, 2012 Tex. App. LEXIS 1516 (Tex. App. Houston 14th Dist. Feb. 28, 2012, no pet.).

HOMESTEAD EXEMPTIONS. — Evidence was insufficient to show that a property was not a homestead, within the meaning of Tex. Tax Code Ann. § 34.21 and Tex. Tax Code Ann. § 11.13, even though the purchaser testified that the original owners were not present on the property at the time of sale and that the home was uninhabitable, because the purchaser did not establish that this had been true for a period of over two years prior to the sale. Accordingly, the original owners had two years to seek redemption of their homestead property. Gonzalez v. Razi, 338 S.W.3d 167, 2011 Tex. App. LEXIS 2141 (Tex. App. Houston 1st Dist. Mar. 24, 2011, no pet.).

In holding a redemption of property from a tax sale untimely, a trial court did not err in relying on the definition of "residence homestead" in Tex. Tax Code Ann. § 11.13(j)(1) rather than the property code's definition of "homestead" because the protection given to a "homestead" (the prevention of a forced sale to pay general debts) and the protection given to a "residence homestead" (allowing for redemption after a constitution-sanctioned tax sale) arose in distinct contexts. Hutson v. Tri-County Props., LLC, 240 S.W.3d 484, 2007 Tex. App. LEXIS 8933 (Tex. App. Fort Worth Nov. 8, 2007, no pet.).

LANDLORD & TENANT

Landlord's Remedies & Rights

Eviction Actions

General Overview. — Tax sale evidence and prior owner's two-year right of redemption under Tex. Tax Code Ann. § 34.21(a) was relevant to right of possession in landlord's forcible detainer action against condominium unit occupant and therefore admissible. Goggins v. Leo, 849 S.W.2d 373, 1993 Tex. App. LEXIS 435 (Tex. App. Houston 14th Dist. Feb. 4, 1993, no writ).

NONMORTGAGE LIENS

Tax Liens. — Term "owner" in Tex. Tax Code Ann. § 34.21 includes any person who had an ownership interest in the property; therefore, a deed of trust holder's purchase of property from a bidder at a tax sale constituted a redemption under Tex. Tax Code Ann. § 34.21. This did not change the mortgagor-mortgagee relationship, but merely extinguished the tax lien. T & M Sales & Envtl. Sys. v. LSS Invs., No. 13-03-659-CV, 2005 Tex. App. LEXIS 8874 (Tex. App. Corpus Christi Oct. 27, 2005).

Where property was sold due to delinquent ad velorem taxes, conveyed by constable's deed to the taxing district and a business, and later sold to a business and private individual who acquired it by a writ of possession, a taxpayer's action to redeem the property was properly dismissed because the taxpayer had failed to make sufficient tender under Tex. Tax Code Ann. § 34.21(a) by merely offering to pay taxes, penalties and interest, and expenses of the sale, and had not made a proper tender within two years under Tex. Tax Code Ann. § 34.05(a) Burkholder v. Klein Indep. Sch. Dist., 897 S.W.2d 417, 1995 Tex. App. LEXIS 421 (Tex. App. Corpus Christi Mar. 2, 1995, no writ).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Definition of "costs" related to redemption of property under Tex. Tax Code Ann. § 34.21(e)(2) prevails over the definition of costs under § 34.21(i) and applies retroactively where the original property owners' tender of approximately $9,000 to redeem the property during the second year after the sale was not justified because it was significantly less than the 150 percent compensation owed to the purchasers that included back taxes owed, a recording fee, and costs incurred to bring a septic system on the property into compliance with the law. Burd v. Armistead, 982 S.W.2d 31, 1998 Tex. App. LEXIS 1975 (Tex. App. Houston 1st Dist. Mar. 26, 1998, no pet.).

REAL PROPERTY TAX

General Overview. — Looking at the entirety of borrowers' petition against a lender, there simply was no way to infer a claim of redemption in the borrowers' petition. The borrowers never amended their petition to add the new cause of action, although it seemed to have been the cornerstone of their argument at the motion for summary judgment hearing. Sanders v. Household Mortg. Servs., No. 10-07-00233-CV, 2009 Tex. App. LEXIS 4988 (Tex. App. Waco July 1, 2009).

Taxing authorities were entitled to summary judgment dismissing a bill of review that challenged a sheriff's sale of real property for delinquent taxes because the bill of review was filed within the two-year period when a new trial could have been sought under Tex. R. Civ. P. 329(a) or the property redeemed under Tex. Tax Code Ann. § 34.21. Olivares v. State, No. 04-04-00744-CV, 2005 Tex. App. LEXIS 6277 (Tex. App. San Antonio Aug. 10, 2005).

Third party's attempt to equitably redeem property by depositing the redemption amount in the court registry was unavailing, as the deposit was made after the statutory redemption period had expired. Optimum Fund, L.L.C. v. Cito Int'l, Inc., No. 05-00-01240-CV, 2001 Tex. App. LEXIS 7659 (Tex. App. Dallas Nov. 15, 2001).

Where taxpayer's tender of an amount to redeem its real property from the tax-sale buyer was short by $17,000, this tender did not substantially comply with the redemption statute, as the amount of the shortfall was not de minimis. Optimum Fund, L.L.C. v. Cito Int'l, Inc., No. 05-00-01240-CV, 2001 Tex. App. LEXIS 7659 (Tex. App. Dallas Nov. 15, 2001).

Whether a buyer of real estate and the holder of a vendor's lien had an insurable interest in real estate that was bought at a sheriff's sale and destroyed by fire three days later was a question of material fact for the jury, where the buyer had a right of redemption under Tex. Tax. Code Ann. § 34.21 at the time of the fire. Watts v. St. Katherine Ins. Co., 820 S.W.2d 259, 1991 Tex. App. LEXIS 3224 (Tex. App. Beaumont Dec. 19, 1991, writ denied).

COLLECTION

General Overview. — Term "owner" in Tex. Tax Code Ann. § 34.21 includes any person who had an ownership interest in the property; therefore, a deed of trust holder's purchase of property from a bidder at a tax sale constituted a redemption under Tex. Tax Code Ann. § 34.21. This did not change the mortgagor-mortgagee relationship, but merely extinguished the tax lien. T & M Sales & Envtl. Sys. v. LSS Invs., No. 13-03-659-CV, 2005 Tex. App. LEXIS 8874 (Tex. App. Corpus Christi Oct. 27, 2005).

TAX DEEDS & TAX SALES. — Summary judgment in favor of appellees was proper, because the administratrix failed to comply with Tex. Tax Code Ann. § 34.21, when she did not make unconditional payment of the amount required for redemption within the statutory period; the administratrix's letter was ineffective for redemption since the administratrix's tender of the required amount was conditional, as appellees were permitted to take the administratrix at her word and honor her instruction to not deposit the funds, thereby rendering the payment conditional. Bluntson v. Wuensche Servs., 374 S.W.3d 503, 2012 Tex. App. LEXIS 4616 (Tex. App. Houston 14th Dist. June 12, 2012, no pet.).

Summary judgment in favor of the tax-sale purchaser was proper, because a promissory note did not constitute "redemption money" or satisfy the requirement of "paying" sums required to be paid under Tex. Tax Code Ann. § 34.21(a), and the owners wholly defaulted on the promissory note and failed to fulfill their statutory obligation to remit all sums required to redeem the property; the purchaser's conduct was not unconscionable as a matter of law, when it was not inconsistent or unconscionable for the purchaser to accept the statutory benefits acquired at the tax sale then defend its tax title against the bank's claim that the property was redeemed, as it was the public policy of Texas for a purchaser at a tax sale to retain title if the property was not timely and properly redeemed. Deutsche Bank Nat'l Trust Co. v. Stockdick Land Co., 367 S.W.3d 308, 2012 Tex. App. LEXIS 1516 (Tex. App. Houston 14th Dist. Feb. 28, 2012, no pet.).

Original owners substantially complied with the redemption requirements of Tex. Tax Code Ann. § 34.21(g)(2) by paying the foreclosure purchaser 98 percent of what was owed, which included the amount paid at the foreclosure sale and taxes paid by the purchaser, but not expenses associated with removing a mobile home and an eviction. Gonzalez v. Razi, 338 S.W.3d 167, 2011 Tex. App. LEXIS 2141 (Tex. App. Houston 1st Dist. Mar. 24, 2011, no pet.).

Owners did not effectively redeem property by giving the tax sale purchaser cash for the amount it had paid and a promissory note for the redemption premium. The promissory note did not constitute either payment or substantial compliance with the requirement of paying the redemption amount under Tex. Tax Code Ann. § 34.21(a). Deutsche Bank Nat'l Trust Co. v. Stockdick Land Co., No. 14-09-00617-CV, 2011 Tex. App. LEXIS 783 (Tex. App. Houston 14th Dist. Feb. 3, 2011), op. withdrawn, sub. op., 367 S.W.3d 308, 2012 Tex. App. LEXIS 1516 (Tex. App. Houston 14th Dist. Feb. 28, 2012).

Owner may not provide a promissory note to a tax sale purchaser to satisfy the requirement of paying the redemption amount under Tex. Tax Code Ann. § 34.21(a), nor does a promissory note constitute substantial compliance with the statute. Deutsche Bank Nat'l Trust Co. v. Stockdick Land Co., No. 14-09-00617-CV, 2011 Tex. App. LEXIS 783 (Tex. App. Houston 14th Dist. Feb. 3, 2011), op. withdrawn, sub. op., 367 S.W.3d 308, 2012 Tex. App. LEXIS 1516 (Tex. App. Houston 14th Dist. Feb. 28, 2012).

In holding a redemption of property from a tax sale untimely, a trial court did not err in relying on the definition of "residence homestead" in Tex. Tax Code Ann. § 11.13(j)(1) rather than the property code's definition of "homestead" because the protection given to a "homestead" (the prevention of a forced sale to pay general debts) and the protection given to a "residence homestead" (allowing for redemption after a constitution-sanctioned tax sale) arose in distinct contexts. Hutson v. Tri-County Props., LLC, 240 S.W.3d 484, 2007 Tex. App. LEXIS 8933 (Tex. App. Fort Worth Nov. 8, 2007, no pet.).

Trial court's finding that the redemption price was $ 45,625 was erroneous as a matter of law because it did not include the buyer's taxes and costs before calculating the redemption premium. Jensen v. Covington, 234 S.W.3d 198, 2007 Tex. App. LEXIS 6373 (Tex. App. Waco Aug. 8, 2007), reh'g denied, No. 10-06-00159-CV, 2007 Tex. App. LEXIS 8428 (Tex. App. Waco Sept. 18, 2007).

Judgment that the owner did not redeem the property under Tex. Tax. Code Ann. § 34.21, was reversed and remanded because the owner sufficiently tendered the redemption price funds, and the owner's tender was not improperly conditional; the attempts by the owner's attorney to pay the redemption price were reasonable efforts to relinquish possession of the funds for a sufficient time and under such circumstances to enable the buyer, without special effort on his part, to acquire them because the buyer provided the attorney no reasonable opportunity to place the funds in his hands, and the record left no doubt that the buyer avoided the attorney in numerous respects. Jensen v. Covington, 234 S.W.3d 198, 2007 Tex. App. LEXIS 6373 (Tex. App. Waco Aug. 8, 2007), reh'g denied, No. 10-06-00159-CV, 2007 Tex. App. LEXIS 8428 (Tex. App. Waco Sept. 18, 2007).

In a redemption of real property purchased at a non-judicial tax foreclosure sale, the costs included in the redemption amount were those reasonably spent by the purchaser for maintaining, preserving, and safekeeping the property, as indicated in an

analogous provision, Tex. Tax Code Ann. § 34.21(g)(2)(A). Canfield v. Wells Fargo Bank, N.A., No. 09-06-089-CV, 2006 Tex. App. LEXIS 8486 (Tex. App. Beaumont Sept. 28, 2006).

ATTORNEY GENERAL OPINIONS

Analysis

Sale and Rental During Redemption Period.
Sale for Lesser Amount.

Sale and Rental During Redemption Period.

The following holdings are made relative to real property purchased at delinquent ad valorem tax sale: (1) The State may sell the property before expiration of the two year redemption period. (2) The State and County are authorized to rent the property. Rent money accruing from the property after its purchase belongs pro rata to the taxing units and should be deposited for their use in their respective funds like any other revenues collected. Rent money on such property accruing after foreclosure sale and before final sale should be prorated among taxing units having liens on property. 1972 Tex. Op. Att'y Gen. M-1263.

Sale for Lesser Amount.

A taxing unit may sell property which it has purchased at a tax foreclosure sale within the two year period of redemption for an amount less than the adjudged value or amount of the judgment in the tax suit, whichever is lower, when said taxing unit obtains the written consent of the other taxing units which, in the judgment, have been found to have tax liens against the property. 1940 Tex. Op. Att'y Gen. O-2004.

Sec. 34.22. Evidence of Title to Redeem Real Property.

(a) A person asserting ownership of real property sold for taxes is entitled to redeem the property if he had title to the property or he was in possession of the property in person or by tenant either at the time suit to foreclose the tax lien on the property was instituted or at the time the property was sold. A defect in the chain of title to the property does not defeat an offer to redeem.

(b) A person who establishes title to real property that is superior to the title of one who has previously redeemed the property is entitled to redeem the property during the redemption period by paying the amounts provided by law to the person who previously redeemed the property.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 34.23. Distribution of Redemption Proceeds.

(a) If the owner of property sold for taxes to a taxing unit redeems the property before the property is resold, the taxing unit shall distribute the redemption proceeds in the manner that proceeds of the resale of property are distributed.

(b) Except as provided by Section 34.21(e), the owner of property sold for taxes to a taxing unit may not redeem the property from the taxing unit after the property has been resold.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 12, effective January 1, 1998.

CHAPTERS 35 TO 40

[Reserved for expansion]

SUBTITLE F

REMEDIES

CHAPTER 41

Local Review

Subchapter A. Review of Appraisal Records by Appraisal Review Board

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41.21.	Scope of Review [Repealed].
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41.415.	[2 Versions: As added by Acts 2009, 81st Leg., ch. 1370] Electronic Filing of Notice of Protest.
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Subchapter A

Review of Appraisal Records by Appraisal Review Board

Sec. 41.01. Duties of Appraisal Review Board.

(a) The appraisal review board shall:

(1) determine protests initiated by property owners;

(2) determine challenges initiated by taxing units;

(3) correct clerical errors in the appraisal records and the appraisal rolls;

(4) act on motions to correct appraisal rolls under Section 25.25;

(5) determine whether an exemption or a partial exemption is improperly granted and whether land is improperly granted appraisal as provided by Subchapter C, D, E, or H, Chapter 23; and

(6) take any other action or make any other determination that this title specifically authorizes or requires.

(b) The board may not review or reject an agreement between a property owner or the owner's agent and the chief appraiser under Section 1.111(e).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 133, effective August 14, 1981; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 5, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 37, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 9, effective September 1, 1999.

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ADMINISTRATIVE LAW
Agency Adjudication

Review of Initial Decisions. — Statute should be read and construed in conjunction with Tex. Tax Code Ann. chs. 41 and 42. Cameron Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 443 S.W.3d 212, 2013 Tex. App. LEXIS 9967 (Tex. App. Corpus Christi Aug. 8, 2013, no pet.).

JUDICIAL REVIEW
Reviewability

Exhaustion of Remedies. — When appellant homeowners received notices pursuant to Tex. Tax Code Ann. § 25.21 that their properties had been omitted from the appraisal rolls and they owed back taxes for the past five years, appellants pleaded claims for declaratory judgment, injunctive relief, and mandamus against appellees, the city, the county appraisal district, the appraisal review board members, and the county tax assessor. Appellants claims were not barred for failure to exhaust their administrative remedies as set forth in Tex. Tax Code Ann. ch. 41; because actions taken by the government officials were outside the scope of their authority, appellants' failure to pursue any type of protest procedure fell within an exception to the exhaustion of administrative remedies doctrine. Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

GOVERNMENTS
Local Governments

Claims By & Against. — Allegations regarding breach of an appraisal agreement did not implicate governmental immunity

from suit because a Tex. Tax Code Ann. § 1.111(e) appraisal agreement is not a contract; rather, the suit was a proper declaratory action for a determination of whether the reappraisal was contrary to Tex. Tax Code Ann. § 41.01(b), and the trial court had subject matter jurisdiction to rule on declaratory relief, including attorney fees and court costs under Tex. Civ. Prac. & Rem. Code Ann. § 37.009. MHCB (USA) Leasing & Fin. Corp. v. Galveston Cent. Appraisal Dist., 249 S.W.3d 68, 2007 Tex. App. LEXIS 7669 (Tex. App. Houston 1st Dist. Sept. 20, 2007), reh'g denied, No. 01-06-00529-CV, 2007 Tex. App. LEXIS 10146 (Tex. App. Houston 1st Dist. Nov. 6, 2007).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Taxing units could not avoid the procedures and remedies in the Tax Code by characterizing a statutory tax case as a common law fraud case; market value for ad valorem tax purposes is determined by appraisal districts and appraisal review boards. Jim Wells County v. El Paso Prod. Oil & Gas Co., 189 S.W.3d 861, 162 Oil & Gas Rep. 140, 2006 Tex. App. LEXIS 737 (Tex. App. Houston 1st Dist. Jan. 26, 2006, no pet.).

Under Tex. Tax Code Ann. § 41.01 et seq., a remedy is available for a taxpayer to receive an allocation, if the request is timely filed. Harris County Appraisal Dist. v. Tex. E. Transmission Corp., 99 S.W.3d 849, 2003 Tex. App. LEXIS 1699 (Tex. App. Houston 14th Dist. Feb. 27, 2003, no pet.).

Provisions of the Tax Code, Tex. Tax Code Ann. §§ 41.01—41.70, 42.01—42.43, recent state case law, and a distinguishable post-code factual situation where two corporate taxpayers both unwittingly paid property tax on the same parcel of property, rendered taxing entities' estoppel by rendition argument inapplicable in a claim for a refund of the overpayment. Brooks County Cent. Appraisal Dist. v. Tipperary Energy Corp., 847 S.W.2d 592, 1992 Tex. App. LEXIS 3287 (Tex. App. San Antonio Nov. 30, 1992, no writ).

Corporate taxpayers that both unwittingly paid property tax on the same parcel of property were not necessarily required to file a "protest" under Tex. Tax Code Ann. §§ 41.01—41.70, 42.01—42.43 to exhaust their administrative remedies on a claim for a refund. Brooks County Cent. Appraisal Dist. v. Tipperary Energy Corp., 847 S.W.2d 592, 1992 Tex. App. LEXIS 3287 (Tex. App. San Antonio Nov. 30, 1992, no writ).

In wife's appeal from an adverse judgment in a tax collection case, the court remanded for a determination of the value of the property and permitted the tax assessor to re-assess the property value under former Tex. Rev. Civ. Stat. art. 7346 (now Tex. Tax. Code Ann. § 41.01). ARNOLD v. CROCKETT INDEP. SCH. DIST., 1984 Tex. App. LEXIS 6885 (Tex. App. Tyler Dec. 31, 1984).

ASSESSMENTS. — Statute should be read and construed in conjunction with Tex. Tax Code Ann. chs. 41 and 42. Cameron Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 443 S.W.3d 212, 2013 Tex. App. LEXIS 9967 (Tex. App. Corpus Christi Aug. 8, 2013, no pet.).

Allegations regarding breach of an appraisal agreement did not implicate governmental immunity from suit because a Tex. Tax Code Ann. § 1.111(e) appraisal agreement is not a contract; rather, the suit was a proper declaratory action for a determination of whether the reappraisal was contrary to Tex. Tax Code Ann. § 41.01(b), and the trial court had subject matter jurisdiction to rule on declaratory relief, including attorney fees and court costs under Tex. Civ. Prac. & Rem. Code Ann. § 37.009. MHCB (USA) Leasing & Fin. Corp. v. Galveston Cent. Appraisal Dist., 249 S.W.3d 68, 2007 Tex. App. LEXIS 7669 (Tex. App. Houston 1st Dist. Sept. 20, 2007), reh'g denied, No. 01-06-00529-CV, 2007 Tex. App. LEXIS 10146 (Tex. App. Houston 1st Dist. Nov. 6, 2007).

JUDICIAL REVIEW. — When appellant homeowners received notices pursuant to Tex. Tax Code Ann. § 25.21 that their properties had been omitted from the appraisal rolls and they owed back taxes for the past five years, appellants pleaded claims for declaratory judgment, injunctive relief, and mandamus against appellees, the city, the county appraisal district, the appraisal review board members, and the county tax assessor. Appellants claims were not barred for failure to exhaust their administrative remedies as set forth in Tex. Tax Code Ann. ch. 41; because actions taken by the government officials were outside the scope of their authority, appellants' failure to pursue any type of protest procedure fell within an exception to the exhaustion of administrative remedies doctrine. Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

Because a county appraisal district's chief appraiser could delegate authority to appraisal district employees to appear at protest hearings and present a valuation opinion, by stating the same opinion regarding the value of the property, a taxpayer's agent and the district's representative had reached an agreement pursuant to Tex. Tax Code Ann. § 1.111(e), thereby precluding the taxpayer from seeking judicial review of a subsequent order of the county's appraisal review board. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Agreement between a property owner's agent and an appraisal district representative-as opposed to the chief appraiser-qualifies as a Tex. Tax Code Ann. § 1.111(e) agreement that precludes a suit for judicial review, and this issue may permissibly be determined via a plea to the jurisdiction. Section 1.111(e) does not require that a chief appraiser delegate to the representative of the appraisal district in each case the specific authority to enter into an agreement with the property owner before a court may determine that a § 1.111(e) agreement has been reached, and § 1.111(e) also does not require the parties to act on an agreement or announce the agreement to the court. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

SETTLEMENTS. — Because a county appraisal district's chief appraiser could delegate authority to appraisal district employees to appear at protest hearings and present a valuation opinion, by stating the same opinion regarding the value of the property, a taxpayer's agent and the district's representative had reached an agreement pursuant to Tex. Tax Code Ann. § 1.111(e), thereby precluding the taxpayer from seeking judicial review of a subsequent order of the county's appraisal review board. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Agreement between a property owner's agent and an appraisal district representative-as opposed to the chief appraiser-qualifies as a Tex. Tax Code Ann. § 1.111(e) agreement that precludes a suit for judicial review, and this issue may permissibly be determined via a plea to the jurisdiction. Section 1.111(e) does not require that a chief appraiser delegate to the representative of the appraisal district in each case the specific authority to enter into an agreement with the property owner before a court may determine that a § 1.111(e) agreement has been reached, and § 1.111(e) also does not require the parties to act on an agreement or announce the agreement to the court. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

REAL PROPERTY TAX

General Overview. — Taxing units could not avoid the procedures and remedies in the Tax Code by characterizing a statutory tax case as a common law fraud case; market value for ad valorem tax purposes is determined by appraisal districts and appraisal review boards. Jim Wells County v. El Paso Prod. Oil & Gas Co., 189 S.W.3d 861, 162 Oil & Gas Rep. 140, 2006 Tex. App. LEXIS 737 (Tex. App. Houston 1st Dist. Jan. 26, 2006, no pet.).

ASSESSMENT & VALUATION

General Overview. — When a company challenged the appraisal of its spaghetti sauce plant, it was not a party unit to the taxing unit challenge proceedings, and as an individual taxpayer,

it was not entitled to notice of the proceedings. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

A school district had improperly assessed the land of property owners for a number a years where the assessment of the land should have been as agricultural use land, and was enjoined from reassessing the land in question as agricultural use lands; former Tex. Rev. Civ. Stat. Ann. art. 7346 (now Tex. Tax. Code Ann. § 41.01) allowed a taxing agency to reassess property where its prior assessment was found invalid in the courts. Grandview Independent School Dist. v. Storey, 590 S.W.2d 215, 1979 Tex. App. LEXIS 4305 (Tex. Civ. App. Waco Nov. 1, 1979, no writ).

ATTORNEY GENERAL OPINIONS

New Board Member.

The equalizing of property values for tax purposes is an act and duty performed by the Board of Equalization, as a Board and as an entity, and not be the various members of the Board in their individual capacities. Hence, it is not necessary to review valuations when a new Board member is appointed. 1942 Tex. Op. Att'y Gen. O-4568.

Sec. 41.02. Action by Board.

After making a determination or decision under Section 41.01, the appraisal review board shall by written order direct the chief appraiser to correct or change the appraisal records or the appraisal roll to conform the appraisal records or the appraisal roll to the board's determination or decision.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 6, effective September 1, 1993.

Sec. 41.03. Challenge by Taxing Unit.

(a) **[Effective until January 1, 2020]** A taxing unit is entitled to challenge before the appraisal review board:

(1) the level of appraisals of any category of property in the district or in any territory in the district, but not the appraised value of a single taxpayer's property;

(2) an exclusion of property from the appraisal records;

(3) a grant in whole or in part of a partial exemption;

(4) a determination that land qualifies for appraisal as provided by Subchapter C, D, E, or H, Chapter 23; or

(5) failure to identify the taxing unit as one in which a particular property is taxable.

(a) **[2 Versions: Effective unless and until Acts 2019, 86th Leg., H.J.R. No. 34 is approved by the voters and the ballot certified]** A taxing unit is entitled to challenge before the appraisal review board:

(1) the level of appraisals of any category of property in the district or in any territory in the district, but not the appraised value of a single taxpayer's property;

(2) an exclusion of property from the appraisal records;

(3) a grant in whole or in part of a partial exemption;

(4) a determination that land qualifies for appraisal as provided by Subchapter C, D, E, or H, Chapter 23; or

(5) failure to identify the taxing unit as one in which a particular property is taxable.

(a) **[2 Versions: Proposed Amendment by Acts 2019, 86th Leg., H.J.R. No. 34, contingent on Voter Approval]** A taxing unit is entitled to challenge before the appraisal review board:

(1) an exclusion of property from the appraisal records;

(2) a grant in whole or in part of a partial exemption, other than an exemption under Section 11.35;

(3) a determination that land qualifies for appraisal as provided by Subchapter C, D, E, or H, Chapter 23; or

(4) a failure to identify the taxing unit as one in which a particular property is taxable.

(b) If a taxing unit challenges a determination that land qualifies for appraisal under Subchapter H, Chapter 23, on the ground that the land is not located in an aesthetic management zone, critical wildlife habitat zone, or streamside management zone, the taxing unit must first seek a determination letter from the director of the Texas Forest Service. The appraisal review board shall accept the letter as conclusive proof of the type, size, and location of the zone.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 134, effective January 1, 1984; am. Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 10, effective September 1, 1999; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 60, effective January 1, 2020; am. Acts 2019, 86th Leg., ch. 1034 (H.B. 492), § 6.

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TAX LAW
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Administration & Proceedings

General Overview. — Tax Code provided at least two remedies for any alleged fraud by taxpayers which resulted in undervaluation of property; first, under Tex. Tax Code Ann. § 41.03(a)(1), the taxing units could have filed a challenge to the appraisal review board's valuation of the oil and gas properties; alternatively, the taxing units could have petitioned the chief

appraiser to void the original appraisal and back-appraise the properties in accordance with Tex. Tax Code Ann. § 25.21. Jim Wells County v. El Paso Prod. Oil & Gas Co., 189 S.W.3d 861, 162 Oil & Gas Rep. 140, 2006 Tex. App. LEXIS 737 (Tex. App. Houston 1st Dist. Jan. 26, 2006, no pet.).

REAL PROPERTY TAX
General Overview. — Tax Code provided at least two remedies for any alleged fraud by taxpayers which resulted in undervaluation of property; first, under Tex. Tax Code Ann. § 41.03(a)(1), the taxing units could have filed a challenge to the appraisal review board's valuation of the oil and gas properties; alternatively, the taxing units could have petitioned the chief appraiser to void the original appraisal and back-appraise the properties in accordance with Tex. Tax Code Ann. § 25.21. Jim Wells County v. El Paso Prod. Oil & Gas Co., 189 S.W.3d 861, 162 Oil & Gas Rep. 140, 2006 Tex. App. LEXIS 737 (Tex. App. Houston 1st Dist. Jan. 26, 2006, no pet.).

Under Tex. Tax. Code Ann. § 41.03(a)(1), a taxing unit is entitled to challenge before the appraisal review board the level of appraisals of any category of property, but not the appraised value of a single taxpayer's property. State v. Heal, 884 S.W.2d 864, 1994 Tex. App. LEXIS 2592 (Tex. App. Dallas Aug. 31, 1994), writ granted No. 94-1187 (Tex. 1995), rev'd, No. 94-1187, 1995 Tex. LEXIS 145 (Tex. Nov. 2, 1995).

Sec. 41.04. Challenge Petition.

The appraisal review board is not required to hear or determine a challenge unless the taxing unit initiating the challenge files a petition with the board before June 1 or within 15 days after the date that the appraisal records are submitted to the appraisal review board, whichever is later. The petition must include an explanation of the grounds for the challenge.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 134, effective August 14, 1981.

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TAX LAW
State & Local Taxes
Real Property Tax
Assessment & Valuation
General Overview. — When a company challenged the appraisal of its spaghetti sauce plant, it was not a party unit to the taxing unit challenge proceedings, and as an individual taxpayer, it was not entitled to notice of the appraisal review board proceedings. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

Sec. 41.05. Hearing on Challenge.

(a) On the filing of a challenge petition, the appraisal review board shall schedule a hearing on the challenge.

(b) The taxing unit initiating the challenge and each taxing unit in which property involved in the challenge is or may be taxable are entitled to an opportunity to appear to offer evidence or argument.

(c) The chief appraiser shall appear at each hearing to represent the appraisal office.

(d) If the challenge relates to a taxable leasehold or other possessory interest in real property that is owned by this state or a political subdivision of this state, the attorney general or a representative of the state agency that owns the real property, if the real property is owned by this state, or a person designated by the political subdivision that owns the real property, as applicable, is entitled to appear at the hearing and offer evidence and argument.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1999, 76th Leg., ch. 416 (S.B. 1097), § 1, effective September 1, 1999.

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TAX LAW
State & Local Taxes
Administration & Proceedings
General Overview. — Although a company argued that, pursuant to Tex. Tax Code Ann. § 41.05 and Tex. Tax Code Ann. § 41.06, it was entitled to notice and the opportunity to be heard at a hearing challenging the appraisal of the company's plant, Tex. Tax Code Ann. § 41.05 and Tex. Tax Code Ann. § 41.06 do not provide for any notice to individual taxpayers of such hearings. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

REAL PROPERTY TAX
Assessment & Valuation
General Overview. — When a company challenged the appraisal of its spaghetti sauce plant, it was not a party unit to the taxing unit challenge proceedings, and as an individual taxpayer, it was not entitled to notice of the appraisal review board proceedings. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

Sec. 41.06. Notice of Challenge Hearing.

(a) The secretary of the appraisal review board shall deliver to the presiding officer of the governing body of each taxing unit entitled to appear at a challenge hearing written notice of the date, time, and place fixed for the hearing. The secretary shall deliver the notice not later than the 10th day before the date of the hearing.

(b) The secretary shall give the chief appraiser advance notice of the date, time, place, and subject matter of each challenge hearing.

(c) If the challenge relates to a taxable leasehold or other possessory interest in real property that is owned by this state or a political subdivision of this state, the secretary shall deliver notice of the hearing as provided by Subsection (a) to:

(1) the attorney general and the state agency that owns the real property, in the case of real property owned by this state; or

(2) the governing body of the political subdivision, in the case of real property owned by a political subdivision.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1999, 76th Leg., ch. 416 (S.B. 1097), § 2, effective September 1, 1999.

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TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Although a company argued that, pursuant to Tex. Tax Code Ann. § 41.05 and Tex. Tax Code Ann. § 41.06, it was entitled to notice and the opportunity to be heard at a hearing challenging the appraisal of the company's plant, Tex. Tax Code Ann. § 41.05 and Tex. Tax Code Ann. § 41.06 do not provide for any notice to individual taxpayers of such hearings. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — When a company challenged the appraisal of its spaghetti sauce plant, it was not a party unit to the taxing unit challenge proceedings, and as an individual taxpayer, it was not entitled to notice of the appraisal review board proceedings. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

Sec. 41.07. Determination of Challenge.

(a) The appraisal review board shall determine each challenge and make its decision by written order.

(b) If on determining a challenge the board finds that the appraisal records are incorrect in some respect raised by the challenge, the board shall refer the matter to the appraisal office and by its order shall direct the chief appraiser to make the reappraisals or corrections in the records that are necessary to conform the records to the requirements of law.

(c) The board shall determine all challenges before approval of the appraisal records as provided by Section 41.12 of this code.

(d) The board shall deliver by certified mail a notice of the issuance of the order and a copy of the order to the taxing unit.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 135, effective August 14, 1981.

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Judicial Review. — Based on the presumption in Tex. Tax Code Ann. § 1.07(c) that an appraisal review board's decision was received at the time it was mailed on August 29, a taxpayer's petition filed on October 16 was untimely under former Tex. Tax Code Ann. § 42.21(a), requiring dismissal under Tex. R. App. P. 42.3. Palaniappan v. Harris County Appraisal Dist., No. 01-11-00344-CV, 2012 Tex. App. LEXIS 10335 (Tex. App. Houston 1st Dist. Dec. 13, 2012), op. withdrawn, sub. op., No. 01-11-00344-CV, 2013 Tex. App. LEXIS 15460 (Tex. App. Houston 1st Dist. Dec. 31, 2013).

REAL PROPERTY TAX
Assessment & Valuation

Valuation. — Based on the presumption in Tex. Tax Code Ann. § 1.07(c) that an appraisal review board's decision was received at the time it was mailed on August 29, a taxpayer's petition filed on October 16 was untimely under former Tex. Tax Code Ann. § 42.21(a), requiring dismissal under Tex. R. App. P. 42.3. Palaniappan v. Harris County Appraisal Dist., No. 01-11-00344-CV, 2012 Tex. App. LEXIS 10335 (Tex. App. Houston 1st Dist. Dec. 13, 2012), op. withdrawn, sub. op., No. 01-11-00344-CV, 2013 Tex. App. LEXIS 15460 (Tex. App. Houston 1st Dist. Dec. 31, 2013).

Sec. 41.08. Correction of Records on Order of Board.

The chief appraiser shall make the reappraisals or other corrections of the appraisal records ordered by the appraisal review board as provided by this subchapter. The chief appraiser shall submit a copy of the corrected records to the board for its approval as promptly as practicable.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

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TAX LAW
State & Local Taxes
Administration & Proceedings
General Overview. — Property owner failed to exhaust its administrative remedies for correcting a tax appraisal error under Tex. Tax. Code Ann. § 41.08 where it waited 4 ½ months after the appraisal records were approved to file its complaint. Matagorda County Appraisal Dist. v. Conquest Exploration Co., 788 S.W.2d 687, 108 Oil & Gas Rep. 402, 1990 Tex. App. LEXIS 930 (Tex. App. Corpus Christi Apr. 19, 1990, no writ).

Sec. 41.09. Clerical Errors.

At any time before approval of the appraisal records as provided by Section 41.12 of this code, the appraisal review board in writing may correct a clerical error in the records without referring the matter to the appraisal office if the correction will not affect the tax liability of a property owner and if the chief appraiser does not object in writing.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

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TAX LAW
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Assessment & Valuation
General Overview. — Chapter 41 of the tax code applies when the chief appraiser purposefully increases the appraisal value of property and sends notice thereof pursuant to Tex. Tax Code Ann. § 25.19, or when a clerical error occurs and the chief appraiser or the board catches it and is able to correct it before the records are approved pursuant to Tex. Tax Code Ann. §§ 41.09 and 41.10. Liland v. Dallas County Appraisal Dist., 731 S.W.2d 109, 1987 Tex. App. LEXIS 7689 (Tex. App. Dallas Apr. 28, 1987, no writ).

Sec. 41.10. Correction of Records on Recommendation of Chief Appraiser.

At any time before approval of the appraisal records as provided by Section 41.12 of this code, the chief appraiser may submit written recommendations to the appraisal review board for corrections in the records. If the board approves a recommended correction and it will not result in an increase in the tax liability of a property owner, the board may make the correction by written order.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 41.11. Notice to Property Owner of Change in Records.

(a) Not later than the date the appraisal review board approves the appraisal records as provided by Section 41.12, the secretary of the board shall deliver written notice to a property owner of any change in the records that is ordered by the board as provided by this subchapter and that will result in an increase in the tax liability of the property owner. An owner who receives a notice as provided by this section shall be entitled to protest such action as provided by Section 41.44(a)(2) .

(b) The secretary shall include in the notice a brief explanation of the procedure for protesting the change.

(c) Failure to deliver notice to a property owner as required by this section nullifies the change in the records to the extent the change is applicable to that property owner.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 906 (H.B. 3306), § 13, effective January 1, 1998; am. Acts 2007, 80th Leg., ch. 1106 (H.B. 3496), § 3, effective January 1, 2008; am. Acts 2017, 85th Leg., ch. 357 (H.B. 2228), § 4, effective January 1, 2018.

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State & Local Taxes
Administration & Proceedings
General Overview. — By restricting the nullification of the change in appraisal valuation in a particular year to changes that applied only to the owner in that year, Tex. Tax Code Ann. § 41.11(c) cut off the rights of the subsequent owner to rely on a claim of lack of notice to the prior owner. Houston Land & Cattle Co. L.C. v. Harris County Appraisal Dist., 104 S.W.3d 622, 2003 Tex. App. LEXIS 1778 (Tex. App. Houston 1st Dist. Feb. 27, 2003, no pet.).

Legislature's intent is clearly expressed in Tex. Tax Code Ann. § 41.11(a) and (c) that notice of any increase in a taxpayer's appraised value, occurring as a result of a taxing unit challenge, be made as specified therein. Tex. Tax Code Ann. § 41.11(a) and (c) states in no uncertain terms that, unless the taxpayer is notified as required by statute, the increase is a nullity as to that property. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

TAXPAYER PROTESTS. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the

2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

Appraisal district and appraisal review board (ARB) argued that the trial court erred in its ruling that failure to give notice to a company of the appraisal proceeding required that a tax assessment be set aside; nevertheless, the appellate court noted that an ambiguity existed within the statutory taxing scheme, and construed the statute in favor of the taxpayer, as the statutory scheme for tax unit challenges provides that the challenge by the taxing unit be filed before June 1, or within fifteen days after the appraisal records are certified, and under the appellate court's construction, the ARB and the chief appraiser would still have time to comply with the July 20 deadline if they acted with dispatch on any taxing unit challenge. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

Appraisal district and appraisal review board argued that the trial court erred in its ruling that failure to give notice to a company of the appraisal proceeding required that a tax assessment be set aside; nevertheless, no notice was required in this matter as the chief appraiser had not yet completed her reappraisal of the property. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

Sec. 41.12. Approval of Appraisal Records by Board.

(a) By July 20, the appraisal review board shall:

(1) hear and determine all or substantially all timely filed protests;

(2) determine all timely filed challenges;

(3) submit a list of its approved changes in the records to the chief appraiser; and

(4) approve the records.

(b) The appraisal review board must complete substantially all timely filed protests before approving the appraisal records and may not approve the records if the sum of the appraised values, as determined by the chief appraiser, of all properties on which a protest has been filed but not determined is more than five percent of the total appraised value of all other taxable properties.

(c) The board of directors of an appraisal district established for a county with a population of at least one million by resolution may:

(1) postpone the deadline established by Subsection (a) for the performance of the functions listed in that subsection to a date not later than August 30; or

(2) provide that the appraisal review board may approve the appraisal records if the sum of the appraised values, as determined by the chief appraiser, of all properties on which a protest has been filed but not determined does not exceed 10 percent of the total appraised value of all other taxable properties.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 136, effective August 14, 1981; am. Acts 1985, 69th Leg., ch. 312 (H.B. 2301), § 4, effective June 7, 1985; am. Acts 1985, 69th Leg., ch. 630 (S.B. 575), § 1, effective June 14, 1985; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), §§ 7, 8, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 626 (H.B. 538), § 1, effective January 1, 2008.

NOTES TO DECISIONS

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ADMINISTRATIVE LAW
Judicial Review
Reviewability

Exhaustion of Remedies. — Trial court's judgment dismissing the company's suit for want of jurisdiction was affirmed where (1) the company presented no evidence of the date that the 1999 tax appraisal records were approved as required by Tex. Tax Code Ann. § 41.12(a)(4); (2) even if Tex. Tax. Code Ann. § 11.439 was procedural and controlled pending litigation, the company failed to establish its entitlement to relief; and (3) under Tex. Tax. Code Ann. §§ 41.41(a)(9), 41.44, 41.45, 42.01(1)(A), 42.21(a), 42.09, the company did not exhaust its administrative remedies and was not entitled to judicial review; the company did not assert that the cover letter attached to its late application for a freeport exemption under Tex. Tax Code Ann. § 11.43(d), (e) was a request for extension of time and that the letter stated good cause for the tardy filing. Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Tex. Tax Code Ann. § 41.12(a)(4) requires a tax appraisal review board to, among other things, approve the appraisal records by July 20; the statute thus sets a final deadline by which the records must be approved, and it does not prohibit the board from approving the records before the July 20 deadline. Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

TAXPAYER PROTESTS. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

Appraisal district and appraisal review board argued that the trial court erred in its ruling that failure to give notice to a company of the appraisal proceeding required that a tax assessment be set aside; nevertheless, no notice was required in this matter, as the chief appraiser had not yet completed her reappraisal of the property, and the company was not a party to the taxing unit challenge. Lamar County Appraisal Dist. v. Campbell Soup Co., 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

Secs. 41.13 to 41.20. [Reserved for expansion].

Subchapter B

Equalization by Commissioners Court
[Repealed]

Sec. 41.21. Scope of Review [Repealed].

Repealed by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 167(a), effective January 1, 1982.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 41.22. Action by Commissioners Court [Repealed].

Repealed by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 167(a), effective January 1, 1982.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 41.23. Correction of Records on Order of Commissioners Court [Repealed].

Repealed by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 167(a), effective January 1, 1982.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 41.24. Clerical Errors [Repealed].

Repealed by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 167(a), effective January 1, 1982.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 41.25. Correction of Records on Recommendation of Assessor-Collector [Repealed].

Repealed by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 167(a), effective January 1, 1982.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 41.26. Notice to Property Owner of Change in Records [Repealed].

Repealed by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 167(a), effective January 1, 1982.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 41.27. Completion of Review by Commissioners Court [Repealed].

Repealed by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 167(a), effective January 1, 1982.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Secs. 41.28 to 41.40. [Reserved for expansion].

Subchapter C

Taxpayer Protest

Sec. 41.41. Right of Protest.

(a) A property owner is entitled to protest before the appraisal review board the following actions:

(1) determination of the appraised value of the owner's property or, in the case of land appraised as provided by Subchapter C, D, E, or H, Chapter 23, determination of its appraised or market value;

(2) unequal appraisal of the owner's property;

(3) inclusion of the owner's property on the appraisal records;

(4) denial to the property owner in whole or in part of a partial exemption;

(5) determination that the owner's land does not qualify for appraisal as provided by Subchapter C, D, E, or H, Chapter 23;

(6) identification of the taxing units in which the owner's property is taxable in the case of the appraisal district's appraisal roll;

(7) determination that the property owner is the owner of property;

(8) a determination that a change in use of land appraised under Subchapter C, D, E, or H, Chapter 23, has occurred; or

(9) any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner.

(b) Each year the chief appraiser for each appraisal district shall publicize in a manner reasonably designed to notify all residents of the district:

(1) the provisions of this section; and

(2) the method by which a property owner may protest an action before the appraisal review board.

(c) **[As added by Acts 2019, 86th Leg., ch. 1034 (H.B. 492), Proposed Amendment by Acts 2019, 86th Leg., H.J.R. 34, Contingent on Voter Approval]** Notwithstanding Subsection (a), a property owner is entitled to protest before the appraisal review board only the following actions of the chief appraiser in relation to an exemption under Section 11.35:

(1) the modification or denial of an application for an exemption under that section; or

(2) the determination of the appropriate damage assessment rating for an item of qualified property under that section.

(c) **[As added by Acts 2019, 86th Leg., ch. 1284 (H.B. 1313); Effective January 1, 2020]** An appraisal district or the appraisal review board for an appraisal district may not require a property owner to pay a fee in connection with a protest filed by the owner with the board.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 137, effective August 14, 1981; am. Acts 1985, 69th Leg., ch. 823 (S.B. 908), § 3, effective January 1, 1986; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 34, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 113 (S.B. 93), § 1, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 11, effective September 1, 1999; am. Acts 2019, 86th Leg., ch. 1034 (H.B. 492), § 7; am. Acts 2019, 86th Leg., ch. 1284 (H.B. 1313), § 3, effective January 1, 2020.

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ADMINISTRATIVE LAW
Judicial Review
Reviewability

Exhaustion of Remedies. — Trial court's judgment dismissing the company's suit for want of jurisdiction was affirmed where (1) the company presented no evidence of the date that the 1999 tax appraisal records were approved as required by Tex. Tax Code Ann. § 41.12(a)(4); (2) even if Tex. Tax. Code Ann. § 11.439 was procedural and controlled pending litigation, the company failed to establish its entitlement to relief; and (3) under Tex. Tax. Code Ann. §§ 41.41(a)(9), 41.44, 41.45, 42.01(1)(A), 42.21(a), 42.09, the company did not exhaust its administrative remedies and was not entitled to judicial review; the company did not assert that the cover letter attached to its late application for a freeport exemption under Tex. Tax Code Ann. § 11.43(d), (e) was a request for extension of time and that the letter stated good cause for the tardy filing. Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

CIVIL PROCEDURE
Justiciability
Standing

General Overview. — In response to a plea to the jurisdiction by a county appraisal district, a trial court did not err in dismissing without prejudice a suit brought by a property seller and its buyer for judicial review of resolution of an ad valorem tax-valuation protest for the 2005 tax year where neither the seller nor the buyer had standing in the district court because: (1) the seller did not own the property on January 1, 2005, and thus had no legal right to appeal under Tex. Tax Code Ann. § 42.01(1)(A), and its lack of standing as owner thus precluded its "party" status under Tex. Tax Code Ann. § 42.21(a); (2) the buyer had neither a legal right to enforce, nor any real controversy for the trial court to determine, as the buyer did not pursue its Tex. Tax Code Ann. ch. 41 right to protest the valuation before the district's appraisal review board, and thus the board never determined a protest by the buyer as the property owner pursuant to Tex. Tax Code Ann. § 42.01(a); and (3) no proper party having appealed to the district court within the 45-day time limit of Tex. Tax Code Ann. § 42.21(a), it never acquired subject-matter jurisdiction, and the board's valuation became final when those 45 days expired. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

Buyer had standing as the new owner under Tex. Tax Code Ann. § 41.412 to protest a reappraisal of a refinery unit as excessive and unequal; the seller could not assert that claim, however, because it did not have standing under Tex. Tax Code Ann. § 41.41 to file a protest for the same property in the same tax year. MHCB (USA) Leasing & Fin. Corp. v. Galveston Cent. Appraisal Dist., 249 S.W.3d 68, 2007 Tex. App. LEXIS 7669 (Tex. App. Houston 1st Dist. Sept. 20, 2007), reh'g denied, No. 01-06-00529-CV, 2007 Tex. App. LEXIS 10146 (Tex. App. Houston 1st Dist. Nov. 6, 2007).

PLEADING & PRACTICE
Defenses, Demurrers & Objections
Affirmative Defenses

Duress. — Because taxpayers could have administratively challenged the disputed amount of taxes they paid, they could not claim duress based on the consequences resulting from their failure to make that challenge, nor could they pursue as plaintiffs an affirmative claim for refund of taxes paid under duress. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

PLEADINGS
Amended Pleadings

General Overview. — Where on appeal of a corporate taxpayer's challenge to Tex. Tax. Code Ann. § 23.56(3) the statute was held unconstitutional in a separate case, the taxpayer was required by Tex. Tax. Code Ann. § 42.21 to exhaust its administrative remedies for each year at issue on appeal, and the trial court on remand had jurisdiction to consider only those years in which the taxpayer applied for open-space land designation pursuant to Tex. Tax. Code Ann. § 23.54 and protested the denial of that application pursuant to Tex. Tax. Code Ann. § 41.41. Henderson County Appraisal Dist. v. HL Farm Corp., 956 S.W.2d 672, 1997 Tex. App. LEXIS 5563 (Tex. App. Eastland Oct. 23, 1997, no pet.).

SUMMARY JUDGMENT
Burdens of Production & Proof

Movants. — Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

JUDGMENTS
Preclusion & Effect of Judgments
Estoppel

Judicial Estoppel. — Judicial estoppel did not preclude property owners from asserting on appeal in the district court that the tax appraisal value of the property should be less than the value they asserted at the appraisal review board, because judicial estoppel only applied in subsequent actions, and the appeal constituted the same proceeding. Curry v. Harris County Appraisal Dist., 434 S.W.3d 815, 2014 Tex. App. LEXIS 6151 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

REMEDIES
Costs & Attorney Fees
Attorney Expenses & Fees

Statutory Awards. — Taxpayers whose travel trailers and recreational vehicles were not improvements or real property but were tangible personal property exempt from taxation under Tex. Tax Code Ann. § 11.14, and who successfully protested the denial of the exemption under Tex. Tax. Code Ann. § 41.41(4), were entitled to mandatory attorney's fees under Tex. Tax. Code Ann. § 42.29. Rourk v. Cameron Appraisal Dist., No. 13-11-00751-CV, 2013 Tex. App. LEXIS 8947 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 443 S.W.3d 217, 2013 Tex. App. LEXIS 10348 (Tex. App. Corpus Christi Aug. 15, 2013).

Trial court erred in finding that taxpayers were not entitled to attorney's fees, because the taxpayers had successfully protested the denial of a partial exemption under Tex. Tax Code Ann. 41.41(4) and were therefore entitled to mandatory attorney's fees under Tex. Tax Code Ann. 42.29. Boll v. Cameron Appraisal Dist., No. 13-11-00750-CV, 2013 Tex. App. LEXIS 8946 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 445 S.W.3d 397, 2013 Tex. App. LEXIS 10345 (Tex. App. Corpus Christi Aug. 15, 2013).

Tex. Tax Code Ann. § 42.29 authorized attorney's fees for only two distinct types of protest: excessive value and unequal appraisal; therefore, because a protest to an appraisal district's ability to tax oil located in an interstate pipeline did not fall under Tex. Tax Code Ann. §§ 42.25, 42.26, several oil companies were not able to recover such fees. In addition, the appraisal district did not waive a complaint to an award of attorney's fees because repeated objections were made. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

APPEALS
Appellate Jurisdiction

Final Judgment Rule. — Where taxpayer was entitled to protest the appraised value of property before the county appraisal review board under Tex. Tax Code Ann. § 41.41, and taxpayer did not file the notice of protest within thirty days after receiving the notice of the change in appraisal as required by Tex. Tax Code Ann. § 41.44(a), those remedies were exclusive, and failure to pursue them precluded judicial review of the appraisal under Tex. Tax Code Ann. § 42.09. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

REVIEWABILITY

Preservation for Review. — Where a taxpayer did not protest the determination of the appraised value of the property or any other action of an appraisal review board, the taxpayer was not entitled, pursuant to Tex. Tax Code Ann. §§ 41.41 and 42.09, to do so in litigation brought by a county and a city to collect delinquent taxes, and thus, the only issue before the court was whether the trial court abused its discretion in ordering that the taxpayer's tort claims against the city be tried in a previously filed lawsuit; because the taxpayer's claims were already asserted in the previously filed lawsuit, and they did not involve the same proof as the city's claim for delinquent taxes, the taxpayer's tort claims were properly dismissed. Qualls v. Angelina County, 98 S.W.3d 369, 2003 Tex. App. LEXIS 973 (Tex. App. Beaumont Jan. 30, 2003, no pet.).

CONSTITUTIONAL LAW
Bill of Rights
Fundamental Rights
Procedural Due Process

Scope of Protection. — Taxpayers were not deprived of due process due to lack of notice where the record showed that they received actual notice at least one year before trial and that they failed to administratively protest the failure to give notice through the administrative procedures in the Texas Tax Code. The taxpayers had a right to and could have challenged their non-ownership of the property they paid taxes on under the administrative provisions of the Tax Code. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

Appraisal district's inaction on an untimely application for an open-space agricultural appraisal did not violate an energy company's due process rights; the energy company should have notified the appraisal district that it was no longer using the land at issue for a public purpose beginning in 1999. It could have filed at that time for the open-space agricultural appraisal, and then used the procedures set forth for protests. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

GOVERNMENTS
Courts

Judicial Precedents. — Texas Supreme Court decision holding Tex. Tax. Code Ann. § 23.56(3), which denied open-space designation to foreign entities, unconstitutional, was to be applied retroactively; therefore, a corporate taxpayer that had been in litigation challenging the statute was allowed a recovery for the years in which it had exhausted its administrative remedies under Tex. Tax. Code Ann. §§ 23.54 and 41.41. Henderson County Appraisal Dist. v. HL Farm Corp., 956 S.W.2d 672, 1997 Tex. App. LEXIS 5563 (Tex. App. Eastland Oct. 23, 1997, no pet.).

STATE & TERRITORIAL GOVERNMENTS

Finance. — Appellant tax collector was not in a position to challenge the decision of appellee board concerning taxing units because Tex. Tax Code § 41.41 did not give appellant authorization to challenge appellee's decision. Carr v. Bell Sav. & Loan Ass'n, 786 S.W.2d 761, 1990 Tex. App. LEXIS 162 (Tex. App. Texarkana Jan. 23, 1990, writ denied).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

Since the basis of taxpayer's complaint in the trial court was not a ground of protest contained under Tex. Tax Code Ann. § 41.41 seeking to recover a refund of penalties, fees, and interest allegedly imposed on its property without proper notice and in violation of due process of law, the exclusivity provision of Tex.Tax Code Ann. § 42.09 was not applicable and did not preclude the trial court from exercising subject matter jurisdiction over the taxpayer's lawsuit. Dallas Cent. Appraisal Dist. v. 1420 Viceroy Ltd., 180 S.W.3d 267, 2005 Tex. App. LEXIS 9699 (Tex. App. Dallas Nov. 18, 2005, no pet.).

Assuming without deciding that taxing authorities sent the taxpayers defective notice, Tex. Tax Code Ann. §§ 41.41(a)(1), (3), (9), 41.411(a) provided the taxpayers with administrative procedures to allow them to protest; because the taxpayers were presented with an opportunity to be heard but did not avail themselves of these remedies, deprivations of property that stemmed from the addition of omitted property were not unconstitutional. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

Because the questions the taxpayers raised had already been dedicated to taxing authorities to decide pursuant to Tex. Tax Code Ann. §§ 22.23(c), 41.41(a)(1), (3), (9), 41.411(a), the taxpayers could not collaterally attack the decisions of the authorities on the grounds that they were excused from exhausting administrative remedies because the matters were pure questions of law. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

Although the housing development corporation was entitled to protest the county taxing authority's denial of the housing development authority's request for a tax exemption for a particular tax year, and also had the right after filing a notice of protest to appear and present evidence or argument to the appraisal review board before filing an adverse decision of the appraisal review board to the trial court, exact compliance with those procedures was mandatory before it could maintain a challenge in the trial court; the failure to file its notice of protest within 30 days after receiving notice of the county taxing authority's decision regarding the adverse decision meant the trial court lacked jurisdiction to grant summary judgment to the county taxing authority regarding its denial of the tax exemption request, and the appellate court only had the authority to set aside the judgment

and dismiss the housing development corporation's appeal of that denial. Found. of Hope, Inc. v. San Patricio County Appraisal Dist., No. 13-02-083-CV, 2003 Tex. App. LEXIS 7922 (Tex. App. Corpus Christi Sept. 11, 2003).

Property owner is entitled to protest before the appraisal review board any action by the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner under Tex. Tax Code Ann. § 41.41(a)(9), and after filing the required notice of protest, the property owner is entitled to an opportunity to appear and present evidence or argument to the appraisal review board pursuant to Tex. Tax Code Ann. § 41.44 and Tex. Tax Code Ann. § 41.45; if the property owner is aggrieved by the determination of the appraisal review board following the protest hearing, the property owner is then entitled to appeal the decision to the district court under Tex. Tax Code Ann. § 42.01(1)(A) and Tex. Tax Code Ann. § 42.21(a). Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

By failing to timely file a protest as required by Tex. Tax Code Ann. § 41.41, an aviation company waived its right to allocation of the market value of its aircraft under Tex. Tax. Code Ann. § 21.03 to reflect its use in Texas during a period from which the appraisal district appraised the aircraft for tax purposes. Kellair Aviation Co. v. Travis Cent. Appraisal Dist., 99 S.W.3d 704, 2003 Tex. App. LEXIS 1085 (Tex. App. Austin Feb. 6, 2003, no pet.).

A taxpayer that appealed the appraisal of his real estate by the county review board under Tex. Tax Code Ann. § 25.25, a provision that permitted only correction motions, was foreclosed from also pursuing arbitration under Tex. Tax Code Ann. § 41.41, which authorized arbitration as an avenue of appeal; the provisions were mutually exclusive and distinct, and the unambiguous language of § 42.01 foreclosed arbitration under Chapter 42 as an avenue of appeal from the corrective measure listed in § 25.25. Harris County Appraisal Dist. v. World Houston, 905 S.W.2d 594, 1995 Tex. App. LEXIS 2128 (Tex. App. Houston 14th Dist. Aug. 24, 1995, no writ).

Because Tex. Tax Code Ann. §§ 23.54 and 25.19 were not contradictory and were to be given equal effect, the taxpayer's remedy for an erroneous appraisal was pursuant to Tex. Tax Code Ann. § 41.41, at which administrative hearing the taxpayer could address improper notice concerns. Harris County Appraisal Dist. v. Dincans, 882 S.W.2d 75, 1994 Tex. App. LEXIS 1881 (Tex. App. Houston 14th Dist. July 28, 1994, writ denied).

A bank's claim for refund of tax, on the basis that it had been erroneously assessed against the bank for its stock rather than against the holders of the stock, was dismissed because the bank filed its protest under Tex. Tax Code Ann. § 31.11, which applied to erroneous payments, rather than under Tex. Tax Code Ann. § 41.41(a)(1), which applied to determinations of ownership; thus, the bank had not exhausted its administrative remedies. First Bank of Deer Park v. Harris County, No. 01-88-00501-CV, 1989 Tex. App. LEXIS 1930 (Tex. App. Houston 1st Dist. July 27, 1989), op. withdrawn, sub. op., No. 01-88-00501-CV, 1990 Tex. App. LEXIS 492 (Tex. App. Houston 1st Dist. Mar. 8, 1990).

ASSESSMENTS. — Buyer had standing as the new owner under Tex. Tax Code Ann. § 41.412 to protest a reappraisal of a refinery unit as excessive and unequal; the seller could not assert that claim, however, because it did not have standing under Tex. Tax Code Ann. § 41.41 to file a protest for the same property in the same tax year. MHCB (USA) Leasing & Fin. Corp. v. Galveston Cent. Appraisal Dist., 249 S.W.3d 68, 2007 Tex. App. LEXIS 7669 (Tex. App. Houston 1st Dist. Sept. 20, 2007), reh'g denied, No. 01-06-00529-CV, 2007 Tex. App. LEXIS 10146 (Tex. App. Houston 1st Dist. Nov. 6, 2007).

JUDICIAL REVIEW. — Owner was not "adversely affected" by an act of the county appraisal district or the Review Board in this case, and it was undisputed that the Review Board appraised the value of the owner's travel trailer property at zero; the owner, therefore, could not have been "adversely affected" by this action because she did not pay any taxes on her travel trailer in 2011, Tex. Tax Code Ann. § 41.41. Groves v. Cameron Appraisal Dist., No. 13-12-00149-CV, 2012 Tex. App. LEXIS 7461 (Tex. App. Corpus Christi Aug. 31, 2012).

Dry dock owner had actual notice of the tax assessment against it, and the owner did not file a timely protest under Tex. Tax Code Ann. §§ 41.41—.47, 41.411; because the owner failed to exhaust its administrative remedies concerning its claim of improper notice, the trial court was without jurisdiction to entertain those claims. Thames Shipyard & Repair Co. v. Galveston Cent. Appraisal Dist., No. 14-10-01142-CV, 2011 Tex. App. LEXIS 8463 (Tex. App. Houston 14th Dist. Oct. 25, 2011).

Trial court erred by denying the taxing units' plea to the jurisdiction because the taxpayers were "property owners" under Tex. Tax Code Ann. § 41.41(a)(7), as they were listed as the owner in the tax appraisal rolls, entitled to administrative challenge, and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), the trial court did not have jurisdiction over their case seeking a refund. The exception of § 42.09(b) did not apply because when the taxing units nonsuited their claims for delinquent taxes, the taxpayers' affirmative defense became moot. Houston Indep. Sch. Dist. v. Morris, 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011), reh'g denied, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 10297 (Tex. App. Houston 1st Dist. July 13, 2011), rev'd, 388 S.W.3d 310, 2012 Tex. LEXIS 898 (Tex. 2012).

Because taxpayers could have administratively challenged the disputed amount of taxes they paid, they could not claim duress based on the consequences resulting from their failure to make that challenge, nor could they pursue as plaintiffs an affirmative claim for refund of taxes paid under duress. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

Because the ground for taxpayers' protest was provided for in Tex. Tax Code Ann. § 41.41, the Texas Tax Code exclusively controlled the disposition of the case. Because the taxpayers' affirmative claims for refund on the grounds of non-ownership was controlled by the Tax Code, and because those claims failed to meet the requirements of the code, a district court lacked jurisdiction over the taxpayers' claims. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

At least as it is used in Tex. Tax Code Ann. § 41.41(a)(7), the term "property owner" includes one listed as the owner in the tax appraisal rolls who is challenging the determination that he is the owner of property. Accordingly, taxpayers-regardless of whether they were in fact the true owners of the property at issue-were entitled to protest an appraisal review board's determination that they were the owners of the property, and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), a district court did not obtain jurisdiction over their case by an appeal under that portion of the statute. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003. Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal

Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Where the evidence showed that another entity owned property and a trustee was not liable for taxes on this property, he had no standing to bring an action challenging the denial of an exemption under Tex. Tax Code Ann. § 11.20. Therefore, a dismissal for lack of subject matter jurisdiction was warranted. Bernard Dolenz Life Estate v. Dallas Cent. Appraisal Dist. & Appraisal Review Bd., 293 S.W.3d 920, 2009 Tex. App. LEXIS 6313 (Tex. App. Dallas Aug. 13, 2009, no pet.).

District court had jurisdiction over a taxpayer's action challenging the denial of its tax protest because the taxpayer had exhausted its administrative remedies as required by Tex. Tax Code Ann. § 42.09, as it filed its protest in accordance with the Tax Code by protesting that the county was not the taxable situs for its airplane, sending the county's appraisal district a letter, disputing the appraised value of the airplane, attended the appraisal review board, and received an order from the board denying its protest. The county appraisal review board considered the substantive matters ultimately appealed to the district court. Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741, 2009 Tex. App. LEXIS 2097 (Tex. App. Houston 1st Dist. Mar. 26, 2009, no pet.).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

In a tax dispute that arose after a county appraisal district denied a property owner a foreign-trade zone (FTZ) exemption from county ad valorem taxes for inventory located in the owner's foreign-trade subzone, the district, the appraisal review board, and the trial court had jurisdiction to review the owner's protest where the owner properly pursued its tax protest action under the prescribed procedures of the Texas Property Tax Code because the owner had claimed entitlement to the FTZ exemption pursuant to Tex. Tax Code Ann. § 11.12 and would have been precluded from claiming the FTZ exemption had it not timely followed the exclusive procedures set out in the Tax Code; the district had miscast the case as a contract dispute improperly brought under the Tax Code, and filing a common law contract action against the county to review an agreement between the county and the owner and determine the obligations under that agreement would have neither brought relief to the owner nor settled the present dispute, as the county had no authority to grant the owner the requested FTZ exemption, even if it agreed that the owner was entitled to the exemption based on the agreement. Harris County Appraisal Dist. v. Shell Oil Co., No. 14-07-00106-CV, 2008 Tex. App. LEXIS 3671 (Tex. App. Houston 14th Dist. May 22, 2008).

In response to a plea to the jurisdiction by a county appraisal district, a trial court did not err in dismissing without prejudice a suit brought by a property seller and its buyer for judicial review of resolution of an ad valorem tax-valuation protest for the 2005 tax year where neither the seller nor the buyer had standing in the district court because: (1) the seller did not own the property on January 1, 2005, and thus had no legal right to appeal under Tex. Tax Code Ann. § 42.01(1)(A), and its lack of standing as owner thus precluded its "party" status under Tex. Tax Code Ann. § 42.21(a); (2) the buyer had neither a legal right to enforce, nor any real controversy for the trial court to determine, as the buyer did not pursue its Tex. Tax Code Ann. ch. 41 right to protest the valuation before the district's appraisal review board, and thus the board never determined a protest by the buyer as the property owner pursuant to Tex. Tax Code Ann. § 42.01(a); and (3) no proper party having appealed to the district court within the 45-day time limit of Tex. Tax Code Ann. § 42.21(a), it never acquired subject-matter jurisdiction, and the board's valuation became final when those 45 days expired. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

Owners' claims in an ad valorem property tax case that their property was unequally and excessively appraised lacked merit because an agreement related to a matter specified under Tex. Tax Code Ann. § 1.111(e) was reached between the owners, through their agent, and the county appraisal district, and even though the owners contended that the lack of an agreement was evidenced by the fact that the parties did not act upon the agreement or announce the agreement to the court, Tex. Tax Code Ann. § 1.111(e) does not require such actions. Sondock v. Harris County Appraisal Dist., 231 S.W.3d 65, 2007 Tex. App. LEXIS 4361 (Tex. App. Houston 14th Dist. May 31, 2007, no pet.).

Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected by the county appraisal review board; the claim was not only discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

TAXPAYER PROTESTS. — Taxpayers whose travel trailers and recreational vehicles were not improvements or real property but were tangible personal property exempt from taxation under Tex. Tax Code Ann. § 11.14, and who successfully protested the denial of the exemption under Tex. Tax. Code Ann. § 41.41(4),

were entitled to mandatory attorney's fees under Tex. Tax. Code Ann. § 42.29. Rourk v. Cameron Appraisal Dist., No. 13-11-00751-CV, 2013 Tex. App. LEXIS 8947 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 443 S.W.3d 217, 2013 Tex. App. LEXIS 10348 (Tex. App. Corpus Christi Aug. 15, 2013).

Trial court erred in finding that taxpayers were not entitled to attorney's fees, because the taxpayers had successfully protested the denial of a partial exemption under Tex. Tax Code Ann. 41.41(4) and were therefore entitled to mandatory attorney's fees under Tex. Tax Code Ann. 42.29. Boll v. Cameron Appraisal Dist., No. 13-11-00750-CV, 2013 Tex. App. LEXIS 8946 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 445 S.W.3d 397, 2013 Tex. App. LEXIS 10345 (Tex. App. Corpus Christi Aug. 15, 2013).

Taxpayer failed to exhaust its administrative remedies as to its complaint that its natural gas was exempt from taxation under the interstate commerce clause; thus, trial court lacked jurisdiction to address that complaint, Tex. Tax Code Ann. §§ 41.41, 41.47, and Tex. Tax Code Ann. § 25.25(c)(3) was not the appropriate vehicle for seeking the requested relief. Harris County Appraisal Dist. v. ETC Mktg., 399 S.W.3d 364, 2013 Tex. App. LEXIS 4177 (Tex. App. Houston 14th Dist. Apr. 2, 2013, no pet.).

Trial court lacked jurisdiction to impose sanctions against an appraisal district pursuant its order relating to a taxpayer's pollution-control exemption in one tax year because the sanctions were for later years as to which the taxpayer failed to utilize the exclusive remedies in the tax code for protesting the assessments. Travis Cent. Appraisal Dist. v. Wells Fargo Bank Minn., N.A., 382 S.W.3d 636, 2012 Tex. App. LEXIS 8636 (Tex. App. Austin Oct. 12, 2012, no pet.).

By not protesting, for purposes of Tex. Tax Code Ann. §§ 41.41, 41.44, 42.01, the taxpayer's defenses were limited to showing it did not own the property in question or that the property was not in the taxing district's boundaries, and having failed to file and perfect appeals, the taxpayer was limited to those defenses, for purposes of Tex. Tax Code Ann. § 42.09, but did not assert them. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Although a taxpayer delayed payment thinking it would receive corrected bills for each tax year, the taxpayer did not protest or comply with procedures to contest the assessments at issue, for purposes of Tex. Tax Code Ann. §§ 41.41, 41.44, 42.01, and delinquent taxes incurred penalties and interest under Tex. Tax Code Ann. § 33.01. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Taxpayer's argument that the county calculated taxes based on the wrong footage, which it raised as constitutional claims under Tex. Const. art. I, §§ 3, 17, 19 and Tex. Const. VIII, §§ 1, 2, were foreclosed by the failure of the taxpayer to exhaust administrative remedies, for purposes of Tex. Tax Code Ann. § 42.09(a)(1), and because the taxpayer failed to file a protest, the trial court committed no error in rejecting the constitutional claims. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

For purposes of Tex. Tax Code Ann. § 33.47(a), the county's tax records were prima facie evidence of the amount owed, such that the burden shifted to the taxpayer to raise a defense, presumably under Tex. Tax Code Ann. § 42.09; however, the defenses asserted were not among those available to a taxpayer who failed to timely protest, and the trial court properly granted the county summary judgment. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Hidalgo County Appraisal District's alleged failure to properly assess the market value of the taxpayer's inventory was not clerical error, Tex. Tax Code Ann. § /Aa1.04(18), but as a result of error in methodology, procedure, and/or computation, and Tex. Tax Code Ann. § /Aa25.25(c) was not available to remedy issues pertaining to disputed property valuations. Lack's Valley Stores, Ltd. v. Hidalgo County Appraisal Dist., No. 13-10-500-CV, 2011 Tex. App. LEXIS 4752 (Tex. App. Corpus Christi June 23, 2011), pet. dism'd w.o.j. No. 11-0590, 2011 Tex. LEXIS 997 (Tex. Dec. 16, 2011).

Term "property owner" with respect to Tex. Tax Code Ann. § 41.41(a) (7) is interpreted as having a consistent meaning, a person listed as the property owner in the tax appraisal rolls; under the court's interpretation, § 41.41(a)(7) provides that a person listed as the property owner in the tax appraisal rolls is entitled to protest before the appraisal review board the determination that the person listed as the property owner in the tax appraisal rolls is the owner of property. The court's interpretation is consistent with the definition of a tax protest because it provides that the person against whom the tax is assessed not the untaxed actual property owner has the administrative right to challenge the tax erroneously assessed against him. Houston Indep. Sch. Dist. v. Morris, 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011), reh'g denied, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 10297 (Tex. App. Houston 1st Dist. July 13, 2011), rev'd, 388 S.W.3d 310, 2012 Tex. LEXIS 898 (Tex. 2012).

Trial court erred by denying the taxing units' plea to the jurisdiction because the taxpayers were "property owners" under Tex. Tax Code Ann. § 41.41(a)(7), as they were listed as the owner in the tax appraisal rolls, entitled to administrative challenge, and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), the trial court did not have jurisdiction over their case seeking a refund. The exception of § 42.09(b) did not apply because when the taxing units nonsuited their claims for delinquent taxes, the taxpayers' affirmative defense became moot. Houston Indep. Sch. Dist. v. Morris, 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011), reh'g denied, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 10297 (Tex. App. Houston 1st Dist. July 13, 2011), rev'd, 388 S.W.3d 310, 2012 Tex. LEXIS 898 (Tex. 2012).

Actual property owner could not establish that it operated its business under a common name based solely upon the fact that the name was so reflected in the records of the appraisal district, but there was other evidence that the partnership actually filed both the administrative protest and the suit for judicial review; there was a question of fact about the identity of the party filing the tax protest and suit for judicial review, which precluded dismissal of the case on a plea to the jurisdiction. 730 N. Post Oak Office Park v. Harris County Appraisal Dist., No. 01-10-00011-CV, 2011 Tex. App. LEXIS 1956 (Tex. App. Houston 1st Dist. Mar. 17, 2011), op. withdrawn, sub. op., vacated, No. 01-10-00011-CV, 2011 Tex. App. LEXIS 4787 (Tex. App. Houston 1st Dist. June 23, 2011).

Taxpayers were not deprived of due process due to lack of notice where the record showed that they received actual notice at least one year before trial and that they failed to administratively protest the failure to give notice through the administrative procedures in the Texas Tax Code. The taxpayers had a right to and could have challenged their non-ownership of the property they paid taxes on under the administrative provisions of the Tax Code. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

At least as it is used in Tex. Tax Code Ann. § 41.41(a)(7), the term "property owner" includes one listed as the owner in the tax appraisal rolls who is challenging the determination that he is the owner of property. Accordingly, taxpayers-regardless of whether they were in fact the true owners of the property at issue-were entitled to protest an appraisal review board's determination that they were the owners of the property, and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), a district court did not obtain jurisdiction over their case by an appeal under that portion of the statute. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003.

Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

Where the evidence showed that another entity owned property and a trustee was not liable for taxes on this property, he had no standing to bring an action challenging the denial of an exemption under Tex. Tax Code Ann. § 11.20. Therefore, a dismissal for lack of subject matter jurisdiction was warranted. Bernard Dolenz Life Estate v. Dallas Cent. Appraisal Dist. & Appraisal Review Bd., 293 S.W.3d 920, 2009 Tex. App. LEXIS 6313 (Tex. App. Dallas Aug. 13, 2009, no pet.).

Motor vehicle dealer was not denied due process under Tex. Const. art. I, §§ 19, 27 because the actual market value of its inventory for a given year was not based on the dealer's actual sales in that calendar year but was the actual market value of inventory as of January 1 based on sales in the previous calendar year under Tex. Tax. Code Ann. § 23.121. Thus, the actual sales in the later calendar year were irrelevant to the dealer's protest and the dealer could have timely protested the valuation under Tex. Tax Code Ann. §§ 41.41 and 41.44. Expo Motorcars, L.L.C. v. Harris County Appraisal Dist., No. 01-08-00473-CV, 2009 Tex. App. LEXIS 5738 (Tex. App. Houston 1st Dist. July 23, 2009).

Taxpayer was not entitled to a hearing under Tex. Tax Code Ann. § 41.411 because it did not receive notice until after the taxes had become delinquent, and therefore the taxpayer could not timely file a protest under that section, and the taxpayer's protest made pursuant to Tex. Tax Code Ann. § 41.41 was untimely because it was made after the taxes had been assessed and had become delinquent; the Tax Code, as it existed prior to 2008, contained no procedural mechanisms to provide the taxpayer a hearing on its protest, and thus the trial court properly denied the taxpayer's motion for summary judgment on its claim for a judgment compelling a hearing pursuant to Tex. Tax Code Ann. § 41.45(f). Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Tex. Tax Code Ann. § 42.29 authorized attorney's fees for only two distinct types of protest: excessive value and unequal appraisal; therefore, because a protest to an appraisal district's ability to tax oil located in an interstate pipeline did not fall under Tex. Tax Code Ann. §§ 42.25, 42.26, several oil companies were not able to recover such fees. In addition, the appraisal district did not waive a complaint to an award of attorney's fees because repeated objections were made. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Taxpayer could not assert inadequate notice under Tex. Tax Code Ann. § 11.43(c) of the removal of its Tex. Tax Code Ann. § 11.18(a)(1)-(2) charitable property tax exemption because it did not file a protest under Tex. Tax Code Ann. §§ 41.41(a)(9), 41.411(a) after being advised it could do so; Tex. Tax Code Ann. § 42.09(a)(1) makes the administrative protest procedures exclusive. Public, Inc. v. County of Galveston, 264 S.W.3d 338, 2008 Tex. App. LEXIS 9235 (Tex. App. Houston 14th Dist. July 10, 2008, no pet.).

In a tax dispute that arose after a county appraisal district denied a property owner a foreign-trade zone (FTZ) exemption from county ad valorem taxes for inventory located in the owner's foreign-trade subzone, the district, the appraisal review board, and the trial court had jurisdiction to review the owner's protest where the owner properly pursued its tax protest action under the prescribed procedures of the Texas Property Tax Code because the owner had claimed entitlement to the FTZ exemption pursuant to Tex. Tax Code Ann. § 11.12 and would have been precluded from claiming the FTZ exemption had it not timely followed the exclusive procedures set out in the Tax Code; the district had miscast the case as a contract dispute improperly brought under the Tax Code, and filing a common law contract action against the county to review an agreement between the county and the owner and determine the obligations under that agreement would have neither brought relief to the owner nor settled the present dispute, as the county had no authority to grant the owner the requested FTZ exemption, even if it agreed that the owner was entitled to the exemption based on the agreement. Harris County Appraisal Dist. v. Shell Oil Co., No. 14-07-00106-CV, 2008 Tex. App. LEXIS 3671 (Tex. App. Houston 14th Dist. May 22, 2008).

In a case involving a tax reappraisal, a jurisdictional challenge should not have been granted because several property owners were permitted to seek relief under Tex. Tax Code Ann. § 42.25 without filing an administrative protest under Tex. Tax Code Ann. § 41.41(a); they filed a protest under Tex. Tax Code Ann. § 25.25 instead. Benson Chevrolet, Inc. v. Bexar Appraisal Dist., 242 S.W.3d 54, 2007 Tex. App. LEXIS 6452 (Tex. App. San Antonio Aug. 15, 2007), reh'g denied, No. 04-07-00204-CV, 2007 Tex. App. LEXIS 10109 (Tex. App. San Antonio Oct. 1, 2007).

No language within Tex. Tax Code Ann. § 42.25 limits its application to only Tex. Tax Code Ann. § 41.41(a) excessive appraisal challenges, and, because no such limitation exists within Tex. Tax Code Ann. § 42.25, there is no reason why property owners filing administrative challenges under Tex. Tax Code Ann. § 25.25(d) are precluded from seeking relief under Tex. Tax Code Ann. § 42.25 in a district court; an excessive appraisal challenge brought under Tex. Tax Code Ann. § 25.25(d) must allege the appraisal district over-valued a property by more than one-third; therefore, it logically follows that Tex. Tax Code Ann. § 42.25 applies on judicial review of such administrative challenge since Tex. Tax Code Ann. § 42.25 explicitly authorizes a court to remedy an excessive valuation by an appraisal district. Benson Chevrolet, Inc. v. Bexar Appraisal Dist., 242 S.W.3d 54, 2007 Tex. App. LEXIS 6452 (Tex. App. San Antonio Aug. 15, 2007), reh'g denied, No. 04-07-00204-CV, 2007 Tex. App. LEXIS 10109 (Tex. App. San Antonio Oct. 1, 2007).

Owners' claims in an ad valorem property tax case that their property was unequally and excessively appraised lacked merit because an agreement related to a matter specified under Tex. Tax Code Ann. § 1.111(e) was reached between the owners, through their agent, and the county appraisal district, and even though the owners contended that the lack of an agreement was evidenced by the fact that the parties did not act upon the agreement or announce the agreement to the court, Tex. Tax Code Ann. § 1.111(e) does not require such actions. Sondock v. Harris County Appraisal Dist., 231 S.W.3d 65, 2007 Tex. App. LEXIS 4361 (Tex. App. Houston 14th Dist. May 31, 2007, no pet.).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected

by the county appraisal review board; the claim was not only discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

PERSONAL PROPERTY TAX

Intangible Property

Imposition of Tax. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

TANGIBLE PROPERTY

General Overview. — Taxpayer failed to exhaust its administrative remedies as to its complaint that its natural gas was exempt from taxation under the interstate commerce clause; thus, trial court lacked jurisdiction to address that complaint, Tex. Tax Code Ann. §§ 41.41, 41.47, and Tex. Tax Code Ann. § 25.25(c)(3) was not the appropriate vehicle for seeking the requested relief. Harris County Appraisal Dist. v. ETC Mktg., 399 S.W.3d 364, 2013 Tex. App. LEXIS 4177 (Tex. App. Houston 14th Dist. Apr. 2, 2013, no pet.).

Under Tex. Tax Code Ann. §§ 41.41, 42.09, for those accounts of a taxpayer containing a single, grand total assessment upon multiple units, a taxpayer is not required to prove that it does not own each and every unit in the account in order to show it is not responsible for the tax assessed on that account. General Elec. Capital Corp. v. Corpus Christi, 850 S.W.2d 596, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 468 (Tex. App. Corpus Christi Feb. 11, 1993, writ denied), modified in part, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 790 (Tex. App. Corpus Christi 1993).

Where the taxing authorities introduced delinquent tax rolls under Tex. Tax Code Ann. §§ 33.47(a), 41.41, 42.09(b)(1), (2), the taxpayer waived any complaint about the manner in which the taxing authorities determined that the taxpayer was the party responsible for the taxes because the taxpayer's failure to pursue administrative remedies precluded any protest in a subsequent suit for delinquent taxes, except for the affirmative defenses of non-ownership and the taxing authority's lack of jurisdiction over the property. General Elec. Capital Corp. v. Corpus Christi, 850 S.W.2d 596, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 468 (Tex. App. Corpus Christi Feb. 11, 1993, writ denied), modified in part, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 790 (Tex. App. Corpus Christi 1993).

Taxpayer was not entitled to a temporary injunction against the county appraisal district and the county appraisal review board because Tex. Tax Code Ann. §§ 41.41, 42.01, and 42.21 provided an adequate legal remedy for the taxpayer. Further, the proper district court could redress any harm that the taxpayer suffered as a result of administrative actions. Brazoria County Appraisal Dist. v. Notlef, Inc., 721 S.W.2d 391, 1986 Tex. App. LEXIS 8835 (Tex. App. Corpus Christi Oct. 16, 1986, no writ).

IMPOSITION OF TAX. — Motor vehicle dealer was not denied due process under Tex. Const. art. I, §§ 19, 27 because the actual market value of its inventory for a given year was not based on the dealer's actual sales in that calendar year but was the actual market value of inventory as of January 1 based on sales in the previous calendar year under Tex. Tax. Code Ann. § 23.121. Thus, the actual sales in the later calendar year were irrelevant to the dealer's protest and the dealer could have timely protested the valuation under Tex. Tax Code Ann. §§ 41.41 and 41.44. Expo Motorcars, L.L.C. v. Harris County Appraisal Dist., No. 01-08-00473-CV, 2009 Tex. App. LEXIS 5738 (Tex. App. Houston 1st Dist. July 23, 2009).

REAL PROPERTY TAX

General Overview. — Where county had properly provided taxpayer with notice of reappraisal of property, and taxpayer failed to protest the reappraisal within 30 days after receipt of notification, taxpayer had failed to exhaust exclusive administrative remedies as required by Tex. Tax Code Ann. § 41.41 which precluded judicial review of the appraisal. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

Because Tex. Tax Code Ann. § 41.41 identified a protest for a determination that land did not qualify for an appraisal separately from a protest for an excessive or unequal appraisal, and because an appeal protesting the denial of the designation concerned the use of the property, not its value, taxpayers' protests of the denial of their applications were not also protests of excessive appraisals. Dallas Cent. Appraisal Dist. v. Seven Inv. Co., 835 S.W.2d 75, 1992 Tex. LEXIS 67 (Tex. 1992).

Where plaintiff taxpayer acquired certain real property by foreclosure but did not receive notice of the property's appraisal until the time period for protesting the property's valuation had expired, the methods of protesting tax appraisals set forth in Tex. Tax Code Ann. §§ 41.41, 41.44, were inadequate and deprived defendant of due process of law; plaintiff was entitled to a new administrative hearing to protest defendant appraisal district review board's assessment on the property. Bank of America Nat'l Trust & Sav Asso. v. Dallas Cent. Appraisal Dist., 765 S.W.2d 451, 1988 Tex. App. LEXIS 3418 (Tex. App. Dallas Dec. 14, 1988, writ denied).

ASSESSMENT & VALUATION

General Overview. — Dry dock owner had actual notice of the tax assessment against it, and the owner did not file a timely protest under Tex. Tax Code Ann. §§ 41.41-.47, 41.411; because the owner failed to exhaust its administrative remedies concerning its claim of improper notice, the trial court was without jurisdiction to entertain those claims. Thames Shipyard & Repair Co. v. Galveston Cent. Appraisal Dist., No. 14-10-01142-CV, 2011 Tex. App. LEXIS 8463 (Tex. App. Houston 14th Dist. Oct. 25, 2011).

Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Since the basis of taxpayer's complaint in the trial court was not a ground of protest contained under Tex. Tax Code Ann. § 41.41 seeking to recover a refund of penalties, fees, and interest allegedly imposed on its property without proper notice and in violation of due process of law, the exclusivity provision of Tex.Tax Code Ann. § 42.09 was not applicable and did not preclude the trial court from exercising subject matter jurisdiction over the taxpayer's lawsuit. Dallas Cent. Appraisal Dist. v. 1420 Viceroy Ltd., 180 S.W.3d 267, 2005 Tex. App. LEXIS 9699 (Tex. App. Dallas Nov. 18, 2005, no pet.).

Where county had properly provided taxpayer with notice of reappraisal of property, and taxpayer failed to protest the reappraisal within 30 days after receipt of notification, taxpayer had failed to exhaust exclusive administrative remedies as required by Tex. Tax Code Ann. § 41.41 which precluded judicial review of the appraisal. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

Taxpayer protests to an appraisal district's determination of a property's use had to be challenged under Tex. Tax Code Ann. §§ 41.41(5), 41.411, or 41.44. Collin County Appraisal Dist. v.

Northeast Dallas Assocs., 855 S.W.2d 843, 1993 Tex. App. LEXIS 1907 (Tex. App. Dallas May 18, 1993, no writ).

Texas Tax Code remedies of administrative and judicial review are a property owner's exclusive remedies when he is dissatisfied with his property appraisal or any other aspect of his ad valorem tax falling within the grounds of protest allowed him under Tex. Tax. Code. Ann. § 41.41. Valero Transmission Co. v. Hays Consol. Independent School Dist., 704 S.W.2d 857, 1985 Tex. App. LEXIS 12908 (Tex. App. Austin Dec. 18, 1985, writ ref'd n.r.e.).

Tex. Tax Code Ann. Chapters 41, 42, which contained the exclusive remedies under which plaintiff property owners could challenge defendant appraiser's appraisal of their properties, met the requirements of due process. Brooks v. Bachus, 661 S.W.2d 288, 1983 Tex. App. LEXIS 5721 (Tex. App. Eastland Nov. 3, 1983, no writ).

VALUATION. — Judicial estoppel did not preclude property owners from asserting on appeal in the district court that the tax appraisal value of the property should be less than the value they asserted at the appraisal review board, because judicial estoppel only applied in subsequent actions, and the appeal constituted the same proceeding. Curry v. Harris County Appraisal Dist., 434 S.W.3d 815, 2014 Tex. App. LEXIS 6151 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

Owner was not "adversely affected" by an act of the county appraisal district or the Review Board in this case, and it was undisputed that the Review Board appraised the value of the owner's travel trailer property at zero; the owner, therefore, could not have been "adversely affected" by this action because she did not pay any taxes on her travel trailer in 2011, Tex. Tax Code Ann. § 41.41. Groves v. Cameron Appraisal Dist., No. 13-12-00149-CV, 2012 Tex. App. LEXIS 7461 (Tex. App. Corpus Christi Aug. 31, 2012).

Hidalgo County Appraisal District's alleged failure to properly assess the market value of the taxpayer's inventory was not clerical error, Tex. Tax Code Ann. § /Aa1.04(18), but as a result of error in methodology, procedure, and/or computation, and Tex. Tax Code Ann. § /Aa25.25(c) was not available to remedy issues pertaining to disputed property valuations. Lack's Valley Stores, Ltd. v. Hidalgo County Appraisal Dist., No. 13-10-500-CV, 2011 Tex. App. LEXIS 4752 (Tex. App. Corpus Christi June 23, 2011), pet. dism'd w.o.j. No. 11-0590, 2011 Tex. LEXIS 997 (Tex. Dec. 16, 2011).

Since "unfair" valuation of property was not a defense to a tax delinquency suit, an appellate court lacked jurisdiction to consider an heir's challenge to the valuation of property that had been ordered sold to satisfy the delinquency. The remedy set forth for valuation challenges was exclusive, pursuant to Tex. Tax Code Ann. § 42.09(a)(1). Gilbert v. Houston Indep. Sch. Dist., No. 01-06-00159-CV, 2009 Tex. App. LEXIS 7496 (Tex. App. Houston 1st Dist. Sept. 24, 2009).

Appraisal district's inaction on an untimely application for an open-space agricultural appraisal did not violate an energy company's due process rights; the energy company should have notified the appraisal district that it was no longer using the land at issue for a public purpose beginning in 1999. It could have filed at that time for the open-space agricultural appraisal, and then used the procedures set forth for protests. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

In a case involving a tax reappraisal, a jurisdictional challenge should not have been granted because several property owners were permitted to seek relief under Tex. Tax Code Ann. § 42.25 without filing an administrative protest under Tex. Tax Code Ann. § 41.41(a); they filed a protest under Tex. Tax Code Ann. § 25.25 instead. Benson Chevrolet, Inc. v. Bexar Appraisal Dist., 242 S.W.3d 54, 2007 Tex. App. LEXIS 6452 (Tex. App. San Antonio Aug. 15, 2007), reh'g denied, No. 04-07-00204-CV, 2007 Tex. App. LEXIS 10109 (Tex. App. San Antonio Oct. 1, 2007).

No language within Tex. Tax Code Ann. § 42.25 limits its application to only Tex. Tax Code Ann. § 41.41(a) excessive appraisal challenges, and, because no such limitation exists within Tex. Tax Code Ann. § 42.25, there is no reason why property owners filing administrative challenges under Tex. Tax Code Ann. § 25.25(d) are precluded from seeking relief under Tex. Tax Code Ann. § 42.25 in a district court; an excessive appraisal challenge brought under Tex. Tax Code Ann. § 25.25(d) must allege the appraisal district over-valued a property by more than one-third; therefore, it logically follows that Tex. Tax Code Ann. § 42.25 applies on judicial review of such administrative challenge since Tex. Tax Code Ann. § 42.25 explicitly authorizes a court to remedy an excessive valuation by an appraisal district. Benson Chevrolet, Inc. v. Bexar Appraisal Dist., 242 S.W.3d 54, 2007 Tex. App. LEXIS 6452 (Tex. App. San Antonio Aug. 15, 2007), reh'g denied, No. 04-07-00204-CV, 2007 Tex. App. LEXIS 10109 (Tex. App. San Antonio Oct. 1, 2007).

COLLECTION

Tax Deeds & Tax Sales. — Since "unfair" valuation of property was not a defense to a tax delinquency suit, an appellate court lacked jurisdiction to consider an heir's challenge to the valuation of property that had been ordered sold to satisfy the delinquency. The remedy set forth for valuation challenges was exclusive, pursuant to Tex. Tax Code Ann. § 42.09(a)(1). Gilbert v. Houston Indep. Sch. Dist., No. 01-06-00159-CV, 2009 Tex. App. LEXIS 7496 (Tex. App. Houston 1st Dist. Sept. 24, 2009).

EXEMPTIONS. — Taxpayer could not assert inadequate notice under Tex. Tax Code Ann. § 11.43(c) of the removal of its Tex. Tax Code Ann. § 11.18(a)(1)-(2) charitable property tax exemption because it did not file a protest under Tex. Tax Code Ann. §§ 41.41(a)(9), 41.411(a) after being advised it could do so; Tex. Tax Code Ann. § 42.09(a)(1) makes the administrative protest procedures exclusive. Public, Inc. v. County of Galveston, 264 S.W.3d 338, 2008 Tex. App. LEXIS 9235 (Tex. App. Houston 14th Dist. July 10, 2008, no pet.).

Sec. 41.411. Protest of Failure to Give Notice.

(a) A property owner is entitled to protest before the appraisal review board the failure of the chief appraiser or the appraisal review board to provide or deliver any notice to which the property owner is entitled.

(b) If failure to provide or deliver the notice is established, the appraisal review board shall determine a protest made by the property owner on any other grounds of protest authorized by this title relating to the property to which the notice applies.

(c) A property owner who protests as provided by this section must comply with the payment requirements of Section 41.4115 or the property owner forfeits the property owner's right to a final determination of the protest.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 504 (S.B. 760), § 1, effective June 12, 1985; am. Acts 2007, 80th Leg., ch. 1106 (H.B. 3496), § 4(a), effective January 1, 2008; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 8, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 793 (H.B. 2220), § 3, effective June 17, 2011.

NOTES TO DECISIONS

Analysis

Administrative Law
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Civil Procedure
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ADMINISTRATIVE LAW
Judicial Review
Reviewability

Exhaustion of Remedies. — Where the owner of an aircraft failed to file a timely protest asserting that appraisal authorities failed to provide the owner with the requisite notice of the tax appraisal of the aircraft, the protest procedure was the owner's exclusive remedy and judicial review was thus precluded by the owner's failure to exhaust administrative remedies. Denton Cent. Appraisal Dist. v. CIT Leasing Corp., 115 S.W.3d 261, 2003 Tex. App. LEXIS 7592 (Tex. App. Fort Worth Aug. 25, 2003), cert. denied, 543 U.S. 869, 125 S. Ct. 106, 160 L. Ed. 2d 115, 2004 U.S. LEXIS 6555 (U.S. 2004).

CIVIL PROCEDURE
Jurisdiction
Subject Matter Jurisdiction
Jurisdiction Over Actions

General Overview. — Trial court did not have jurisdiction to hear a property owner's complaint regarding lack of notice because the owner did not raise this issue before the appraisal review board by filing a protest of failure to give notice under Tex. Tax Code Ann. § 41.411. Moreover, even if the appraisal district misled the owner by providing inaccurate or incomplete information regarding which administrative remedy the owner should pursue, such conduct did not confer jurisdiction on the trial court. Interstate Apt. Enters., L.C. v. Wichita Appraisal Dist., 164 S.W.3d 448, 2005 Tex. App. LEXIS 3060 (Tex. App. Fort Worth Apr. 21, 2005, no pet.).

SUMMARY JUDGMENT
Burdens of Production & Proof

Movants. — Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

CONSTITUTIONAL LAW
Bill of Rights
Fundamental Rights
Procedural Due Process

Scope of Protection. — In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

While a taxpayer claimed that he was denied due process because a county appraisal district failed to comply with Tex. Tax. Code Ann. § 25.11(c) (2008), the taxpayer was not denied the opportunity to be heard under Tex. Tax Code Ann. § 41.411(a) as he alleged that he appeared before the appraisal review board. Bolkcom v. Cameron Appraisal Dist., No. 13-09-00577-CV, 2010 Tex. App. LEXIS 6596 (Tex. App. Corpus Christi Aug. 12, 2010), reh'g denied, No. 13-09-557-CV, 2010 Tex. App. LEXIS 10233 (Tex. App. Corpus Christi Nov. 9, 2010).

Regardless of whether the owner of an aircraft received timely notice of an appraisal of the aircraft, no lack of due process was shown since the owner was statutorily provided with opportunities to be heard at both the administrative and trial court level. Denton Cent. Appraisal Dist. v. CIT Leasing Corp., 115 S.W.3d 261, 2003 Tex. App. LEXIS 7592 (Tex. App. Fort Worth Aug. 25, 2003), cert. denied, 543 U.S. 869, 125 S. Ct. 106, 160 L. Ed. 2d 115, 2004 U.S. LEXIS 6555 (U.S. 2004).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Tex. Tax Code Ann. § 41.111 provided the opportunity for a hearing on the failure of a taxpayer to receive notice of an assessment increase; however, the business's failure to file a notice of the protest and pay the lesser of the taxes due or the undisputed portion of the taxes due, it forfeited its protest rights under the tax code. Dan's Big & Tall Shop, Inc. v. County of Dallas, 160 S.W.3d 307, 2005 Tex. App. LEXIS 2805 (Tex. App. Dallas Apr. 13, 2005, no pet.).

Property owner was entitled to receive notice when the appraised value of its property was greater than the appraised value was in the preceding year and Tex. Tax Code Ann. § 41.411 had been held to satisfy due process concerns by affording the property owner the opportunity to be heard at some stage of the administrative proceeding and in the trial court. Dan's Big & Tall Shop, Inc. v. County of Dallas, 160 S.W.3d 307, 2005 Tex. App. LEXIS 2805 (Tex. App. Dallas Apr. 13, 2005, no pet.).

Assuming without deciding that taxing authorities sent the taxpayers defective notice, Tex. Tax Code Ann. §§ 41.41(a)(1), (3), (9), 41.411(a) provided the taxpayers with administrative procedures to allow them to protest; because the taxpayers were presented with an opportunity to be heard but did not avail

themselves of these remedies, deprivations of property that stemmed from the addition of omitted property were not unconstitutional. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

Each of the provisions, Tex. Tax Code Ann. §§ 25.19(a)(3), (d), 41.411 is evidence that the legislature did not intend that the notice required under the former statute be a prerequisite to a taxing district's jurisdiction; therefore, the failure to provide notice of appraised value is not jurisdictional and does not render an appraisal void. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

Because the questions the taxpayers raised had already been dedicated to taxing authorities to decide pursuant to Tex. Tax Code Ann. §§ 22.23(c), 41.41(a)(1), (3), (9), 41.411(a), the taxpayers could not collaterally attack the decisions of the authorities on the grounds that they were excused from exhausting administrative remedies because the matters were pure questions of law. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

Statutory scheme does not force taxpayers to pay all of the taxes assessed, but rather requires only that taxpayers pay the portion of the assessed taxes with which they have no disagreement, pursuant to Tex. Tax Code Ann. §§ 41.411(c), 42.08(a); therefore, paying the taxes the taxpayers agreed were due would not have caused them harm, and the taxpayers could have paid the disputed portions and been entitled to a refund under Tex. Tax Code Ann. § 42.43(a) if they prevailed in their protest. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

Purpose of Tex. Tax Code Ann. § 41.411 is to determine whether a property owner failed to receive notice of a tax assessment, thereby depriving it of the right to be heard at the administrative level; because the section gives the property owner the right to be heard if it is determined that the owner was not provided the requisite notice, the statute satisfies due process. Denton Cent. Appraisal Dist. v. CIT Leasing Corp., 115 S.W.3d 261, 2003 Tex. App. LEXIS 7592 (Tex. App. Fort Worth Aug. 25, 2003), cert. denied, 543 U.S. 869, 125 S. Ct. 106, 160 L. Ed. 2d 115, 2004 U.S. LEXIS 6555 (U.S. 2004).

Where a corporation had timely filed a protest with the appraisal review board under Tex. Tax Code Ann. § 41.411 and with the trial court, and the trial court had dismissed the protest, the court had jurisdiction over the corporation's appeal; the court granted the protest on the grounds that the appraisal district had failed to provide proper notice to the corporation and that the potential for confusion was great because the notice did not reference the property by legal description or a taxpayer account number. Valero South Tex. Processing Co. v. Starr County Appraisal Dist., 954 S.W.2d 863, 1997 Tex. App. LEXIS 5078 (Tex. App. San Antonio Sept. 24, 1997, no pet.).

Tex. Tax Code Ann. sec. 41.411 contemplates a two stage process in which the appraisal review board first holds an evidentiary hearing to determine whether the property owner was not sent or did not recevied the required notice and, if not, the board then must proceed to hear and determine the owner's protest as to value or other dispute. Harris County Appraisal Review Bd. v. General Electric Corp., 819 S.W.2d 915, 1991 Tex. App. LEXIS 2706 (Tex. App. Houston 14th Dist. Nov. 7, 1991, writ denied).

Tex. Tax Code Ann. sec. 41.411 entitles a taxpayer to file a protest even after the appraisal review board has approved the appraisal records if the taxpayer's complaint is that it did not receive notice from the appraisal district or the appraisal review board. Harris County Appraisal Review Bd. v. General Electric Corp., 819 S.W.2d 915, 1991 Tex. App. LEXIS 2706 (Tex. App. Houston 14th Dist. Nov. 7, 1991, writ denied).

JUDICIAL REVIEW. — Dry dock owner had actual notice of the tax assessment against it, and the owner did not file a timely protest under Tex. Tax Code Ann. §§ 41.41—.47, 41.411; because the owner failed to exhaust its administrative remedies concerning its claim of improper notice, the trial court was without jurisdiction to entertain those claims. Thames Shipyard & Repair Co. v. Galveston Cent. Appraisal Dist., No. 14-10-01142-CV, 2011 Tex. App. LEXIS 8463 (Tex. App. Houston 14th Dist. Oct. 25, 2011).

Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

TAXPAYER PROTESTS. — Taxpayer's notice of protest was untimely and no appeal could be taken because written notice of taxes was provided when the taxpayer was served with citation in a delinquent tax suit, not when the taxpayer subsequently received a tax bill; moreover, the taxpayer could not assert a counterclaim in the delinquent tax suit based on its grounds of protest. Rio Valley, LLC v. City of El Paso, 441 S.W.3d 482, 2014 Tex. App. LEXIS 3031 (Tex. App. El Paso Mar. 19, 2014, no pet.).

Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

Trial court lacked jurisdiction to impose sanctions against an appraisal district pursuant its order relating to a taxpayer's pollution-control exemption in one tax year because the sanctions were for later years as to which the taxpayer failed to utilize the exclusive remedies in the tax code for protesting the assessments. Travis Cent. Appraisal Dist. v. Wells Fargo Bank Minn., N.A., 382 S.W.3d 636, 2012 Tex. App. LEXIS 8636 (Tex. App. Austin Oct. 12, 2012, no pet.).

While a taxpayer claimed that he was denied due process because a county appraisal district failed to comply with Tex. Tax. Code Ann. § 25.11(c) (2008), the taxpayer was not denied the opportunity to be heard under Tex. Tax Code Ann. § 41.411(a) as he alleged that he appeared before the appraisal review board. Bolkcom v. Cameron Appraisal Dist., No. 13-09-00577-CV, 2010 Tex. App. LEXIS 6596 (Tex. App. Corpus Christi Aug. 12, 2010),

reh'g denied, No. 13-09-557-CV, 2010 Tex. App. LEXIS 10233 (Tex. App. Corpus Christi Nov. 9, 2010).

While it is certainly advisable for a property owner to keep the taxing authorities informed of any change of address, the Tax Code does not require a property owner to inform the appraisal district of his current address nor does it provide that failure to do so waives the right to notice, and the Tax Code does not state that the appraisal district's obligation to provide the notice required by Tex. Tax Code Ann. § 25.19 is contingent upon the property owner notifying the tax assessor of its current address; there are no cases cited that hold that a property owner forfeits his right to due process if he fails to inform the taxing authorities of his current address and the argument is also undercut by Tex. Tax Code Ann. § 41.411. A taxpayer's ability to seek relief pursuant to § 41.411 is not contingent on the property owner keeping the taxing authorities informed of his current address, and if it is correct that a property owner forfeits his right to due process if he does not keep the taxing authorities informed of his current address, the remedy provided by § 41.411 would be limited to those cases where the taxpayer is not at fault. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Taxpayer was not entitled to a hearing under Tex. Tax Code Ann. § 41.411 because it did not receive notice until after the taxes had become delinquent, and therefore the taxpayer could not timely file a protest under that section, and the taxpayer's protest made pursuant to Tex. Tax Code Ann. § 41.41 was untimely because it was made after the taxes had been assessed and had become delinquent; the Tax Code, as it existed prior to 2008, contained no procedural mechanisms to provide the taxpayer a hearing on its protest, and thus the trial court properly denied the taxpayer's motion for summary judgment on its claim for a judgment compelling a hearing pursuant to Tex. Tax Code Ann. § 41.45(f). Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Undisputed evidence established that a taxpayer did not have notice that certain radio towers were included on an appraisal roll or that taxes had been assessed until after the taxes were delinquent; thus, the Texas Tax Code did not provide the taxpayer with any remedies and the trial court erred in granting the taxing entities summary judgment on the ground that the taxpayer failed to exhaust its administrative remedies, specifically under Tex. Tax Code Ann. § 41.411. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Taxpayer could not filed a Tex. Tax Code Ann. § 41.411 protest because it did not get notice that property had been included on a 2003 appraisal roll until after the taxes became delinquent, and thus case law did not support the taxing entities' argument that the taxpayer had constructive notice that it owed some amount of taxes before the due date and failed to exhaust its administrative remedies. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Taxing entities argued that the taxpayer failed to exhaust its administrative remedies because it did not file a protest under Tex. Tax Code Ann. § 41.411, but such a protest must be filed before the date on which the taxes on the subject property become delinquent, and in this case, by the time the taxpayer received notice from the entities, the taxes were already delinquent, such that the remedy provided by § 41.411 was unavailable to the taxpayer. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Given the unavailability of any remedies provided by the Tax Code, it was appropriate to look to the equitable remedies available in cases decided prior to enactment of Tex. Tax Code Ann. § 41.411; because a taxpayer did not receive notice under Tex. Tax Code Ann. § 25.19 of the inclusion of radio towers on the 2003 tax roll and it did not have an opportunity to protest the 2003 appraisals on that property, the 2003 taxes assessed on the radio towers and the associated penalties were void. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Application of Tex. Tax Code Ann. § 25.19(d) is reasonable where a taxpayer has an opportunity to protest a lack of notice pursuant to Tex. Tax Code Ann. § 41.411 and other Tax Code provisions permit the correction of the records and issuance of supplemental tax bills after a taxpayer has been given an opportunity to be heard, but if the court applies Tex. Tax Code Ann. § 25.19(d) literally, this taxpayer is left without a remedy for a due process violation; the pre-2008 version of the Tax Code simply does not provide a remedy for the situation presented by this case, where the taxpayer did not receive notice until after the taxes were delinquent and the remedy afforded by Tex. Tax Code Ann. § 41.411 was not available, and thus the court found that Tex. Tax Code Ann. § 25.19(d) was inapplicable to these unique facts. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Taxpayer established that it did not receive notice under Tex. Tax Code Ann. § 25.19 of the inclusion of three radio towers on the 2003 appraisal roll and it did not have an opportunity to protest the appraised values of the property before taxes were assessed on the property, and because the taxpayer did not receive notice prior to the taxes on the property becoming delinquent, the remedy provided by Tex. Tax Code Ann. § 41.411 was unavailable and the Tax Code did not provide any other backward-looking relief to rectify the unconstitutional deprivation; thus, the taxpayer established that its right to due process was violated and the trial court erred by denying the taxpayer's motion for summary judgment on its declaratory judgment action. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Authors of one law review article had concluded that the pre-2008 version of Tex. Tax Code Ann. § 41.411 left open a small gap in which the Tax Code failed to provide adequate due process for a taxpayer who did not receive notice in time to take advantage of § 41.411, and appropriate pre-Code remedies might still be available; the 2007 amendment to § 41.411(c) and the addition of Tex. Tax Code Ann. § 41.44(c-3) presumably close this gap, but the amendments did not apply to this case. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Taxpayer could not assert inadequate notice under Tex. Tax Code Ann. § 11.43(c) of the removal of its Tex. Tax Code Ann. § 11.18(a)(1)-(2) charitable property tax exemption because it did not file a protest under Tex. Tax Code Ann. §§ 41.41(a)(9), 41.411(a) after being advised it could do so; Tex. Tax Code Ann. § 42.09(a)(1) makes the administrative protest procedures exclusive. Public, Inc. v. County of Galveston, 264 S.W.3d 338, 2008 Tex. App. LEXIS 9235 (Tex. App. Houston 14th Dist. July 10, 2008, no pet.).

REAL PROPERTY TAX

Assessment & Valuation

General Overview. — Pleas to the jurisdiction were properly granted, because the challenge to the denial of the 2009 tax year exemption from ad valorem taxes and the assessment of the 2009 taxes was time-barred, when the county's denial of the 2009 tax exemption application was not void and was susceptible only to a direct attack and could not be challenged collaterally; the property owners were not denied due process since they received notice of the denial and were provided an opportunity to be heard. Waters at Northern Hills, LLC v. Bexar Appraisal Dist., 414 S.W.3d 897, 2013 Tex. App. LEXIS 12278 (Tex. App. San Antonio Oct. 2, 2013, no pet.).

Dry dock owner had actual notice of the tax assessment against it, and the owner did not file a timely protest under Tex. Tax Code Ann. §§ 41.41—.47, 41.411; because the owner failed to exhaust its administrative remedies concerning its claim of improper notice, the trial court was without jurisdiction to entertain those claims. Thames Shipyard & Repair Co. v. Galveston Cent. Appraisal Dist., No. 14-10-01142-CV, 2011 Tex. App. LEXIS 8463 (Tex. App. Houston 14th Dist. Oct. 25, 2011).

Where a taxpayer neglected to file a timely written protest of assessed property taxes pursuant to Tex. Tax Code Ann. § 41.44(a)(1) or timely request a hearing pursuant to Tex. Tax Code Ann. § 41.411(a) regarding an alleged failure to provide or timely deliver notice under Tex. Tax Code Ann. § 25.19 of cancellation of ad valorem property tax exemptions, the failure to pursue and exhaust administrative remedies as required by Tex. Tax Code Ann. § 42.09(a) precluded recovery, and the alleged failure of notice did not violate due process; hence, the taxing authorities were entitled to summary judgment. ABT Galveston L.P. v. Galveston Cent. Appraisal Dist., 137 S.W.3d 146, 2004 Tex. App. LEXIS 2940 (Tex. App. Houston 1st Dist. Mar. 30, 2004, no pet.).

Taxpayer protests to an appraisal district's determination of a property's use had to be challenged under Tex. Tax Code Ann. §§ 41.41(5), 41.411, or 41.44. Collin County Appraisal Dist. v. Northeast Dallas Assocs., 855 S.W.2d 843, 1993 Tex. App. LEXIS 1907 (Tex. App. Dallas May 18, 1993, no writ).

EXEMPTIONS. — Taxpayer could not assert inadequate notice under Tex. Tax Code Ann. § 11.43(c) of the removal of its Tex. Tax Code Ann. § 11.18(a)(1)-(2) charitable property tax exemption because it did not file a protest under Tex. Tax Code Ann. §§ 41.41(a)(9), 41.411(a) after being advised it could do so; Tex. Tax Code Ann. § 42.09(a)(1) makes the administrative protest procedures exclusive. Public, Inc. v. County of Galveston, 264 S.W.3d 338, 2008 Tex. App. LEXIS 9235 (Tex. App. Houston 14th Dist. July 10, 2008, no pet.).

Sec. 41.4115. Forfeiture of Remedy for Nonpayment of Taxes.

(a) The pendency of a protest under Section 41.411 does not affect the delinquency date for the taxes on the property subject to the protest. However, that delinquency date applies only to the amount of taxes required to be paid under Subsection (b) and, for purposes of Subsection (b), that delinquency date is postponed to the 125th day after the date one or more taxing units first delivered written notice of the taxes due on the property, as determined by the appraisal review board at a hearing under Section 41.44(c-3). If the property owner complies with Subsection (b), the delinquency date for any additional amount of taxes due on the property is determined in the manner provided by Section 42.42(c) for the determination of the delinquency date for additional taxes finally determined to be due in an appeal under Chapter 42, and that additional amount is not delinquent before that date.

(b) Except as provided in Subsection (d), a property owner who files a protest under Section 41.411 must pay the amount of taxes due on the portion of the taxable value of the property subject to the protest that is not in dispute before the delinquency date or the property owner forfeits the right to proceed to a final determination of the protest.

(c) A property owner who pays an amount of taxes greater than that required by Subsection (b) does not forfeit the property owner's right to a final determination of the protest by making the payment. If the property owner files a timely protest under Section 41.411, taxes paid on the property are considered paid under protest, even if paid before the protest is filed.

(d) After filing an oath of inability to pay the taxes at issue, a property owner may be excused from the requirement of prepayment of tax as a prerequisite to the determination of a protest if the appraisal review board, after notice and hearing, finds that such prepayment would constitute an unreasonable restraint on the property owner's right of access to the board. On the motion of a party, the board shall hold a hearing to review and determine compliance with this section, and the reviewing board may set such terms and conditions on any grant of relief as may be reasonably required by the circumstances. If the board determines that the property owner has not substantially complied with this section, the board shall dismiss the pending protest. If the board determines that the property owner has substantially but not fully complied with this section, the board shall dismiss the pending protest unless the property owner fully complies with the board's determination within 30 days of the determination.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 9, effective September 1, 2011; Enacted by Acts 2011, 82nd Leg., ch. 793 (H.B. 2220), § 4, effective June 17, 2011.

Sec. 41.412. Person Acquiring Property After January 1.

(a) A person who acquires property after January 1 and before the deadline for filing notice of the protest may pursue a protest under this subchapter in the same manner as a property owner who owned the property on January 1.

(b) If during the pendency of a protest under this subchapter the ownership of the property subject to the protest changes, the new owner of the property on application to the appraisal review board may proceed with the protest in the same manner as the property owner who initiated the protest.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 451 (H.B. 190), § 1, effective August 31, 1987.

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CIVIL PROCEDURE
Justiciability
Standing

General Overview. — Given the state supreme court's having unequivocally enforced Tex. Tax Code Ann. § 42.09 as mandatory and jurisdictional, and the buyer's failure to exhaust its remedies by filing a protest to the board, though authorized to do so by Tex. Tax Code Ann. § 41.412, the buyer's failure to pursue its remedies also barred the trial court's subject-matter jurisdiction to review determination of the protest filed by the seller. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

Buyer had standing as the new owner under Tex. Tax Code Ann. § 41.412 to protest a reappraisal of a refinery unit as excessive and unequal; the seller could not assert that claim, however, because it did not have standing under Tex. Tax Code Ann. § 41.41 to file a protest for the same property in the same tax year. MHCB (USA) Leasing & Fin. Corp. v. Galveston Cent. Appraisal Dist., 249 S.W.3d 68, 2007 Tex. App. LEXIS 7669 (Tex. App. Houston 1st Dist. Sept. 20, 2007), reh'g denied, No. 01-06-00529-CV, 2007 Tex. App. LEXIS 10146 (Tex. App. Houston 1st Dist. Nov. 6, 2007).

TAX LAW
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Assessments. — Buyer had standing as the new owner under Tex. Tax Code Ann. § 41.412 to protest a reappraisal of a refinery unit as excessive and unequal; the seller could not assert that claim, however, because it did not have standing under Tex. Tax Code Ann. § 41.41 to file a protest for the same property in the same tax year. MHCB (USA) Leasing & Fin. Corp. v. Galveston Cent. Appraisal Dist., 249 S.W.3d 68, 2007 Tex. App. LEXIS 7669 (Tex. App. Houston 1st Dist. Sept. 20, 2007), reh'g denied, No. 01-06-00529-CV, 2007 Tex. App. LEXIS 10146 (Tex. App. Houston 1st Dist. Nov. 6, 2007).

JUDICIAL REVIEW. — Given the state supreme court's having unequivocally enforced Tex. Tax Code Ann. § 42.09 as mandatory and jurisdictional, and the buyer's failure to exhaust its remedies by filing a protest to the board, though authorized to do so by Tex. Tax Code Ann. § 41.412, the buyer's failure to pursue its remedies also barred the trial court's subject-matter jurisdiction to review determination of the protest filed by the seller. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

Sec. 41.413. Protest by Person Leasing Property.

(a) A person leasing tangible personal property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to protest before the appraisal review board a determination of the appraised value of the property if the property owner does not file a protest relating to the property.

(b) A person leasing real property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to protest before the appraisal review board a determination of the appraised value of the property if the property owner does not file a protest relating to the property. The protest provided by this subsection is limited to a single protest by either the property owner or the lessee.

(c) A person bringing a protest under this section is considered the owner of the property for purposes of the protest. The appraisal review board shall deliver a copy of any notice relating to the protest and of the order determining the protest to the owner of the property and the person bringing the protest.

(d) A property owner shall send to a person leasing property under a contract described by this section a copy of any notice of appraised value of the property received by the property owner. The property owner must send the notice not later than the 10th day after the date the property owner receives the notice. Failure of the property owner to send a copy of the notice to the person leasing the property does not affect the time within which the person leasing the property may protest the appraised value. This subsection does not apply if the property owner and the person leasing the property have agreed in the contract to waive the requirements of this subsection or that the person leasing the property will not protest the appraised value of the property.

(e) A person leasing property under a contract described by this section may request that the chief appraiser of the appraisal district in which the property is located send the notice described by Subsection (d) to the person. Except as provided by Subsection (f), the chief appraiser shall send the notice to the person leasing the property not later than the fifth day after the date the notice is sent to the property owner if the person demonstrates that the person is contractually obligated to reimburse the property owner for the taxes imposed on the property.

(f) A chief appraiser who receives a request under Subsection (e) is not required to send the notice requested under that subsection if the appraisal district in which the property that is the subject of the notice is located posts the appraised value of the property on the district's Internet website not later than the fifth day after the date the notice is sent to the property owner.

(g) A person leasing property under a contract described by this section may designate another person to act as the agent of the lessee for any purpose under this title. The lessee must make the designation in the manner provided by Section 1.111. An agent designated under this subsection has the same authority and is subject to the same limitations as an agent designated by a property owner under Section 1.111.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 581 (S.B. 783), § 1, effective August 28, 1995; am. Acts 2017, 85th Leg., ch. 332 (H.B. 804), § 1, effective September 1, 2017.

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CIVIL PROCEDURE

Justiciability

Standing

General Overview. — Where neither a property's seller nor its buyer fulfilled the jurisdictional prerequisites to seeking judicial review of a county appraisal review board's adverse determination of a property-valuation protest, both entities lacked standing to appeal the board's order to the district court because although the seller timely filed a petition for review, it did not own the property on the date at issue and was not a designated agent or lessee of the buyer, the actual record owner of the property. The buyer did not complete the administrative protest process before the board and could not take advantage of Tex. Tax Code Ann. § 42.21(e) to change the named plaintiff from one party who did not have standing to seek judicial review—the seller—to another party who did not have standing—the buyer. GSL Welcome BP 32 LLC v. Harris County Appraisal Dist., No. 01-10-00189-CV, 2010 Tex. App. LEXIS 8950 (Tex. App. Houston 1st Dist. Nov. 10, 2010).

Trial court lacked subject matter jurisdiction over two lawsuits filed to challenge a decision from an appraisal review board regarding real property taxes because a limited partner was not a record owner of the property, a lessee, or an authorized agent; strict compliance with Tex. Tax Code Ann. §§ 1.111, 41.413(b), 42.01, 42.21(b) was required. Therefore, a plea to the jurisdiction was properly granted. Ray v. Bexar Appraisal Dist., No. 04-08-00210-CV, No. 04-08-00212-CV, 2009 Tex. App. LEXIS 1812 (Tex. App. San Antonio Mar. 18, 2009).

In response to a plea to the jurisdiction by a county appraisal district, a trial court did not err in dismissing without prejudice a suit brought by a property seller and its buyer for judicial review of resolution of an ad valorem tax-valuation protest for the 2005 tax year where neither the seller nor the buyer had standing in the district court because: (1) the seller did not own the property on January 1, 2005, and thus had no legal right to appeal under Tex. Tax Code Ann. § 42.01(1)(A), and its lack of standing as owner thus precluded its "party" status under Tex. Tax Code Ann. § 42.21(a); (2) the buyer had neither a legal right to enforce, nor any real controversy for the trial court to determine, as the buyer did not pursue its Tex. Tax Code Ann. ch. 41 right to protest the valuation before the district's appraisal review board, and thus the board never determined a protest by the buyer as the property owner pursuant to Tex. Tax Code Ann. § 42.01(a); and (3) no proper party having appealed to the district court within the 45-day time limit of Tex. Tax Code Ann. § 42.21(a), it never acquired subject-matter jurisdiction, and the board's valuation became final when those 45 days expired. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

Where the appraised value of the specific property at issue, two salt dome storage caverns, was not protested by the corporation that leased the storage space to the company, the company having appealed the decision of the Matagorda County Appraisal District, and as a result, the company had standing; the appellate court had subject matter jurisdiction over the case, wherein the appellate court went on to hold that the salt dome storage caverns did not fit the tax code's definition of an "improvement," and that the leasing company was not subject to an appraisal separate from the surface land. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., 118 S.W.3d 464, 160 Oil & Gas Rep. 969, 2003 Tex. App. LEXIS 7577 (Tex. App. Corpus Christi Aug. 29, 2003), rev'd, 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

PARTIES

Fictitious Names. — In an action in which a property seller sought judicial review of a county appraisal district's resolution of an ad valorem tax protest, the trial court erred in denying the district's plea to the jurisdiction, which claimed that the seller was not the property owner for the tax year at issue, where the seller and the buyer of the property lacked standing to bring suit because the seller did not claim rights to protest under the Texas Tax Code as either a lessee or an agent, and because the record did not reflect that the buyer pursued its right of protest as the actual property owner. Because neither the seller nor the buyer was a proper party entitled to judicial review under the Texas Tax Code, Tex. Tax Code Ann. § 42.21(e)(1) did not apply to change the name of the plaintiff, and, likewise, because there was no evidence in the record that the buyer was doing business as the seller or that the entities used the name the seller as a common name for the buyer, Tex. R. Civ. P. 28 could not be used to substitute the buyer for the seller. Harris County Appraisal Dist. v. KMI Yorktown LP, No. 01-09-00661-CV, 2010 Tex. App. LEXIS 3201 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

TAX LAW

State & Local Taxes

Administration & Proceedings

General Overview. — In a tax case involving a challenge to an appraisal district, there was insufficient evidence that two identical challenges were made, even though one was filed by a lessee and a lessor, because a transcript showed that the lessor limited its challenge to property on which it actually paid taxes. Matagorda County Appraisal Dist. v. Coastal Liquids Partners, L.P., 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

JUDICIAL REVIEW. — To qualify as a party who appealed by seeking judicial review of an appraisal-review board's tax determination under Tex. Tax Code Ann. § 42.21(a), a prior owner had to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property under the circumstances stated in Tex. Tax Code Ann. § 41.413. Braniff CB Ltd. v. Harris County Appraisal Dist., No. 14-10-00089-CV, 2010 Tex. App. LEXIS 9192 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

Prior owner did not own the property as of January 1, 2008, and the prior owner did not claim rights to protest as either a lessee or an agent under Tex. Tax Code Ann. § 41.413; thus, the prior owner lacked standing to pursue judicial review as a party who appealed under Tex. Tax Code Ann. § 42.21(a). Braniff CB Ltd. v. Harris County Appraisal Dist., No. 14-10-00089-CV, 2010 Tex. App. LEXIS 9192 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

To qualify as a party who appealed by seeking judicial review of a tax determination under Tex. Tax Code Ann. § 42.21(a), a prior owner had to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property under the circumstances stated in Tex. Tax Code Ann. § 41.413. Hartman Reit Operating P'ship III, L.P. v. Harris County Appraisal Dist., No. 14-10-00242-CV, 2010 Tex. App. LEXIS 9181 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

Prior owner did not own the property as of January 1, 2008 and did not claim rights to protest as either a lessee or an agent under Tex. Tax Code Ann. § 41.413; therefore, the prior owner lacked standing to pursue judicial review as a party who appealed under Tex. Tax Code Ann. § 42.21(a). Hartman Reit Operating P'ship III, L.P. v. Harris County Appraisal Dist., No. 14-10-00242-CV, 2010 Tex. App. LEXIS 9181 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

Where neither a property's seller nor its buyer fulfilled the jurisdictional prerequisites to seeking judicial review of a county appraisal review board's adverse determination of a property-valuation protest, both entities lacked standing to appeal the board's order to the district court because although the seller timely filed a petition for review, it did not own the property on the date at issue and was not a designated agent or lessee of the buyer, the actual record owner of the property. The buyer did not complete the administrative protest process before the board and could not take advantage of Tex. Tax Code Ann. § 42.21(e) to change the named plaintiff from one party who did not have standing to seek judicial review—the seller—to another party who did not have standing—the buyer. GSL Welcome BP 32 LLC v. Harris County Appraisal Dist., No. 01-10-00189-CV, 2010 Tex. App. LEXIS 8950 (Tex. App. Houston 1st Dist. Nov. 10, 2010).

In an action in which a property seller sought judicial review of a county appraisal district's resolution of an ad valorem tax protest, the trial court erred in denying the district's plea to the jurisdiction, which claimed that the seller was not the property owner for the tax year at issue, where the seller and the buyer of the property lacked standing to bring suit because the seller did not claim rights to protest under the Texas Tax Code as either a lessee or an agent, and because the record did not reflect that the buyer pursued its right of protest as the actual property owner. Because neither the seller nor the buyer was a proper party entitled to judicial review under the Texas Tax Code, Tex. Tax Code Ann. § 42.21(e)(1) did not apply to change the name of the plaintiff, and, likewise, because there was no evidence in the record that the buyer was doing business as the seller or that the entities used the name the seller as a common name for the buyer, Tex. R. Civ. P. 28 could not be used to substitute the buyer for the seller. Harris County Appraisal Dist. v. KMI Yorktown LP, No. 01-09-00661-CV, 2010 Tex. App. LEXIS 3201 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Plea to the jurisdiction filed by the county appraisal district was proper, because the partnership, which filed the tax assessment protest, did not own the property as of January 1, 2007 and did not claim rights to protest as either a lessee or an agent, the record did not reflect that the company pursued its right of protest as the actual property owner and was not named as a party until February 2009, and when no proper party timely appealed, the trial court did not acquire subject matter jurisdiction and the appraisal review board's determination became final. Woodway Drive LLC v. Harris County Appraisal Dist., 311 S.W.3d 649, 2010 Tex. App. LEXIS 2494 (Tex. App. Houston 14th Dist. Apr. 8, 2010, no pet.).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a property seller's action that challenged a 2007 tax assessment of the property because the seller did not own the property as of January 1, 2007; the seller did not claim rights to protest under Tex. Tax Code Ann. § 41.413(b) as either a lessee or an agent. Scott Plaza Assocs. v. Harris County Appraisal Dist., No. 14-09-00707-CV, 2010 Tex. App. LEXIS 1532 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction on a property seller's petition that challenged a 2008 tax assessment for the property because the seller did not own the property as of January 1, 2008; the seller did not claim rights to protest under Tex. Tax Code Ann. § 41.413(b) as either a lessee or an agent. Woodway Drive LLC v. Harris County Appraisal Dist., No. 14-09-00524-CV, 2010 Tex. App. LEXIS 1527 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Neither the owner nor the third-party had standing to petition for judicial review of the 2007 property valuation, because the third-party sued to challenge the appraisal review board's order determining protest, the owner was the proper party to pursue a protest, and the owner did not complete the administrative protest process before the appraisal review board. KM-Timbercreek, LLC v. Harris County Appraisal Dist., 312 S.W.3d 722, 2009 Tex. App. LEXIS 8065 (Tex. App. Houston 1st Dist. Oct. 15, 2009, no pet.).

Where the evidence showed that another entity owned property and a trustee was not liable for taxes on this property, he had no standing to bring an action challenging the denial of an exemption under Tex. Tax Code Ann. § 11.20. Therefore, a dismissal for lack of subject matter jurisdiction was warranted. Bernard Dolenz Life Estate v. Dallas Cent. Appraisal Dist. & Appraisal Review Bd., 293 S.W.3d 920, 2009 Tex. App. LEXIS 6313 (Tex. App. Dallas Aug. 13, 2009, no pet.).

Trial court lacked subject matter jurisdiction over two lawsuits filed to challenge a decision from an appraisal review board regarding real property taxes because a limited partner was not a record owner of the property, a lessee, or an authorized agent; strict compliance with Tex. Tax Code Ann. §§ 1.111, 41.413(b), 42.01, 42.21(b) was required. Therefore, a plea to the jurisdiction was properly granted. Ray v. Bexar Appraisal Dist., No. 04-08-00210-CV, No. 04-08-00212-CV, 2009 Tex. App. LEXIS 1812 (Tex. App. San Antonio Mar. 18, 2009).

In response to a plea to the jurisdiction by a county appraisal district, a trial court did not err in dismissing without prejudice a suit brought by a property seller and its buyer for judicial review of resolution of an ad valorem tax-valuation protest for the 2005 tax year where neither the seller nor the buyer had standing in the district court because: (1) the seller did not own the property on January 1, 2005, and thus had no legal right to appeal under Tex. Tax Code Ann. § 42.01(1)(A), and its lack of standing as owner thus precluded its "party" status under Tex. Tax Code Ann. § 42.21(a); (2) the buyer had neither a legal right to enforce, nor any real controversy for the trial court to determine, as the buyer did not pursue its Tex. Tax Code Ann. ch. 41 right to protest the valuation before the district's appraisal review board, and thus the board never determined a protest by the buyer as the property owner pursuant to Tex. Tax Code Ann. § 42.01(a); and (3) no proper party having appealed to the district court within the 45-day time limit of Tex. Tax Code Ann. § 42.21(a), it never acquired subject-matter jurisdiction, and the board's valuation became final when those 45 days expired. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

TAXPAYER PROTESTS. — To qualify as a party who appeals by seeking judicial review of an appraisal review board's tax determination under Tex. Tax Code Ann. § 42.21(a), a company had to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property under the circumstances stated in Tex. Tax Code Ann. § 41.413. Grocers Supply Co. v. Harris County Appraisal Dist., No. 14-10-00243-CV, 2011 Tex. App. LEXIS 1356 (Tex. App. Houston 14th Dist. Feb. 24, 2011).

Company did not own the property as of January 1, 2009 and it did not claim rights to protest as an lessee or agent under Tex. Tax Code Ann. § 41.413, such that the company lacked standing to pursue judicial review as a party who appealed under Tex. Tax Code Ann. § 42.21(a); the company had conveyed the property to a business, the record did not show that the business pursued its right of protest, and the board had not determined a protest by the business, for purposes of Tex. Tax Code Ann. §§ 42.01(1)(A), 42.21(a). Grocers Supply Co. v. Harris County Appraisal Dist., No.

14-10-00243-CV, 2011 Tex. App. LEXIS 1356 (Tex. App. Houston 14th Dist. Feb. 24, 2011).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a real property seller's action challenging a 2008 tax assessment for the property because the seller lacked standing to pursue judicial review; the seller did not claim rights to protest under the Texas Tax Code as either a lessee or an agent pursuant to Tex. Tax Code Ann. § 41.413(b). RRB Land Invs., Ltd. v. County Appraisal Dist., No. 01-09-00519-CV, 2010 Tex. App. LEXIS 3191 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court erred in denying an appraisal district's plea to the jurisdiction in a property seller's petition for judicial review of a 2007 tax assessment for the property because the seller lacked standing to prosecute the buyer's tax protest; the seller did not own the property as of January 1, 2007 and did not claim rights to protest as either a lessee or an agent. Harris County Appraisal Dist. v. Shen, No. 01-09-00652-CV, 2010 Tex. App. LEXIS 3202 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in real property sellers' action challenging a 2008 tax assessment for the properties because the buyers were the legal owners of the properties on January 1, 2008; the sellers did not claim rights to protest as lessees under Tex. Tax Code Ann. § 41.413(b). Milbank 521 Sam Houston I, LLC v. Harris Cnty. Appraisal Dist., No. 01-09-00541-CV, 2010 Tex. App. LEXIS 3154 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Plea to the jurisdiction filed by the county appraisal district was proper, because the partnership, which filed the tax assessment protest, did not own the property as of January 1, 2007 and did not claim rights to protest as either a lessee or an agent, the record did not reflect that the company pursued its right of protest as the actual property owner and was not named as a party until February 2009, and when no proper party timely appealed, the trial court did not acquire subject matter jurisdiction and the appraisal review board's determination became final. Woodway Drive LLC v. Harris County Appraisal Dist., 311 S.W.3d 649, 2010 Tex. App. LEXIS 2494 (Tex. App. Houston 14th Dist. Apr. 8, 2010, no pet.).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a property seller's action that challenged a 2007 tax assessment of the property because the seller did not own the property as of January 1, 2007; the seller did not claim rights to protest under Tex. Tax Code Ann. § 41.413(b) as either a lessee or an agent. Scott Plaza Assocs. v. Harris County Appraisal Dist., No. 14-09-00707-CV, 2010 Tex. App. LEXIS 1532 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction on a property seller's petition that challenged a 2008 tax assessment for the property because the seller did not own the property as of January 1, 2008; the seller did not claim rights to protest under Tex. Tax Code Ann. § 41.413(b) as either a lessee or an agent. Woodway Drive LLC v. Harris County Appraisal Dist., No. 14-09-00524-CV, 2010 Tex. App. LEXIS 1527 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Neither the owner nor the third-party had standing to petition for judicial review of the 2007 property valuation, because the third-party sued to challenge the appraisal review board's order determining protest, the owner was the proper party to pursue a protest, and the owner did not complete the administrative protest process before the appraisal review board. KM-Timbercreek, LLC v. Harris County Appraisal Dist., 312 S.W.3d 722, 2009 Tex. App. LEXIS 8065 (Tex. App. Houston 1st Dist. Oct. 15, 2009, no pet.).

Where the evidence showed that another entity owned property and a trustee was not liable for taxes on this property, he had no standing to bring an action challenging the denial of an exemption under Tex. Tax Code Ann. § 11.20. Therefore, a dismissal for lack of subject matter jurisdiction was warranted. Bernard Dolenz Life Estate v. Dallas Cent. Appraisal Dist. & Appraisal Review Bd., 293 S.W.3d 920, 2009 Tex. App. LEXIS 6313 (Tex. App. Dallas Aug. 13, 2009, no pet.).

REAL PROPERTY TAX

General Overview. — Salt dome storage caverns, which were expanded to meet the needs of the company leasing the storage space, did not fit the tax code's definition of an "improvement," and they were not subject to an appraisal separate from the surface land. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., 118 S.W.3d 464, 160 Oil & Gas Rep. 969, 2003 Tex. App. LEXIS 7577 (Tex. App. Corpus Christi Aug. 29, 2003), rev'd, 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

ASSESSMENT & VALUATION

General Overview. — Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Salt dome storage caverns, which were expanded to meet the needs of the company leasing the storage space, did not fit the tax code's definition of an "improvement," and they were not subject to an appraisal separate from the surface land. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., 118 S.W.3d 464, 160 Oil & Gas Rep. 969, 2003 Tex. App. LEXIS 7577 (Tex. App. Corpus Christi Aug. 29, 2003), rev'd, 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

VALUATION. — Trial court properly granted a county appraisal district's plea to the jurisdiction in a real property seller's action challenging a 2008 tax assessment for the property because the seller lacked standing to pursue judicial review; the seller did not claim rights to protest under the Texas Tax Code as either a lessee or an agent pursuant to Tex. Tax Code Ann. § 41.413(b). RRB Land Invs., Ltd. v. County Appraisal Dist., No. 01-09-00519-CV, 2010 Tex. App. LEXIS 3191 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court erred in denying an appraisal district's plea to the jurisdiction in a property seller's petition for judicial review of a 2007 tax assessment for the property because the seller lacked standing to prosecute the buyer's tax protest; the seller did not own the property as of January 1, 2007 and did not claim rights to protest as either a lessee or an agent. Harris County Appraisal Dist. v. Shen, No. 01-09-00652-CV, 2010 Tex. App. LEXIS 3202 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in real property sellers' action challenging a 2008 tax assessment for the properties because the buyers were the legal owners of the properties on January 1, 2008; the sellers did not claim rights to protest as lessees under Tex. Tax Code Ann. § 41.413(b). Milbank 521 Sam Houston I, LLC v. Harris Cnty. Appraisal Dist., No. 01-09-00541-CV, 2010 Tex. App. LEXIS 3154 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Sec. 41.415. [2 Versions: As added by Acts 2009, 81st Leg., ch. 1267] Electronic Filing of Notice of Protest.

(a) This section applies only to an appraisal district established for a county having a population of 500,000 or more.

(b) The appraisal district shall implement a system that allows the owner of a property that for the current tax year

has been granted a residence homestead exemption under Section 11.13, in connection with the property, to electronically:

(1) file a notice of protest under Section 41.41(a)(1) or (2) with the appraisal review board;

(2) receive and review comparable sales data and other evidence that the chief appraiser intends to use at the protest hearing before the board;

(3) receive, as applicable:

(A) a settlement offer from the district to correct the appraisal records by changing the market value and, if applicable, the appraised value of the property to the value as redetermined by the district; or

(B) a notice from the district that a settlement offer will not be made; and

(4) accept or reject a settlement offer received from the appraisal district under Subdivision (3)(A).

(c) With each notice sent under Section 25.19 to an eligible property owner, the chief appraiser shall include information about the system required by this section, including instructions for accessing and using the system.

(d) A notice of protest filed electronically under this section must include, at a minimum:

(1) a statement as to whether the protest is brought under Section 41.41(a)(1) or under Section 41.41(a)(2);

(2) a statement of the property owner's good faith estimate of the value of the property; and

(3) an electronic mail address that the district may use to communicate electronically with the property owner in connection with the protest.

(e) If the property owner accepts a settlement offer made by the appraisal district, the chief appraiser shall enter the settlement in the appraisal records as an agreement made under Section 1.111(e).

(f) If the property owner rejects a settlement offer, the appraisal review board shall hear and determine the property owner's protest in the manner otherwise provided by this subchapter and Subchapter D.

(g) An appraisal district is not required to make the system required by this section available to an owner of a residence homestead located in an area in which the chief appraiser determines that the factors affecting the market value of real property are unusually complex or to an owner who has designated an agent to represent the owner in a protest as provided by Section 1.111.

(h) An electronic mail address provided by a property owner to an appraisal district under Subsection (d)(3) is confidential and may not be disclosed by the district.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1267 (H.B. 1030), § 3, effective January 1, 2010.

Sec. 41.415. [2 Versions: As added by Acts 2009, 81st Leg., ch. 1370] Electronic Filing of Notice of Protest.

(a) This section applies only to an appraisal district that:

(1) on January 1, 2008, maintained an Internet website accessible to the public; or

(2) after that date established or establishes such an Internet website.

(b) Each appraisal district shall implement a system that allows the owner of a property that for the current tax year has been granted a residence homestead exemption under Section 11.13, in connection with the property, to electronically:

(1) file a notice of protest under Section 41.41(a)(1) or (2) with the appraisal review board;

(2) receive and review comparable sales data and other evidence that the chief appraiser intends to use at the protest hearing before the board;

(3) receive, as applicable:

(A) a settlement offer from the district to correct the appraisal records by changing the market value and, if applicable, the appraised value of the property to the value as redetermined by the district; or

(B) a notice from the district that a settlement offer will not be made; and

(4) accept or reject a settlement offer received from the appraisal district under Subdivision (3)(A).

(c) With each notice sent under Section 25.19 to an eligible property owner, the chief appraiser shall include information about the system required by this section, including instructions for accessing and using the system.

(d) A notice of protest filed electronically under this section must include, at a minimum:

(1) a statement as to whether the protest is brought under Section 41.41(a)(1) or under Section 41.41(a)(2);

(2) a statement of the property owner's good faith estimate of the value of the property; and

(3) an electronic mail address that the district may use to communicate electronically with the property owner in connection with the protest.

(e) If the property owner accepts a settlement offer made by the appraisal district, the chief appraiser shall enter the settlement in the appraisal records as an agreement made under Section 1.111(e).

(f) If the property owner rejects a settlement offer, the appraisal review board shall hear and determine the property owner's protest in the manner otherwise provided by this subchapter and Subchapter D.

(g) An appraisal district is not required to make the system required by this section available to an owner of a residence homestead located in an area in which the chief appraiser determines that the factors affecting the market value of real property are unusually complex.

(h) An electronic mail address provided by a property owner to an appraisal district under Subsection (d)(3) is confidential and may not be disclosed by the district.

(i) [Expired pursuant to Acts 2009, 81st Leg., ch. 1370 (S.B. 873), § 1, effective January 1, 2014.]

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1370 (S.B. 873), § 1, effective January 1, 2011.

Sec. 41.42. Protest of Situs.

A protest against the inclusion of property on the appraisal records for an appraisal district on the ground that the property does not have taxable situs in that district shall be determined in favor of the protesting party if he establishes that the property is subject to appraisal by another district or that the property is not taxable in this state. The chief appraiser of a district in which the property owner prevails in a protest of situs shall notify the appraisal office of the district in which the property owner has established situs.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 137, effective August 14, 1981; am. Acts 1983, 68th Leg., ch. 906 (H.B. 1582), § 1, effective January 1, 1984.

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TAX LAW
State & Local Taxes
Administration & Proceedings
Judicial Review. — Situs of the property was an issue on which a property owner had to first exhaust its administrative remedies before asserting the issue in a lawsuit. Thames Shipyard & Repair Co. v. Galveston Cent. Appraisal Dist., No. 14-10-01142-CV, 2011 Tex. App. LEXIS 8463 (Tex. App. Houston 14th Dist. Oct. 25, 2011).

REAL PROPERTY TAX
Assessment & Valuation
General Overview. — Situs of the property was an issue on which a property owner had to first exhaust its administrative remedies before asserting the issue in a lawsuit. Thames Shipyard & Repair Co. v. Galveston Cent. Appraisal Dist., No. 14-10-01142-CV, 2011 Tex. App. LEXIS 8463 (Tex. App. Houston 14th Dist. Oct. 25, 2011).

Taxpayer challenging property tax assessment had to exhaust administrative remedies in multiple forums as provided for under the law before seeking review and pursuing their case in the Texas trial courts. General Electric Credit Corp. v. Midland Cent. Appraisal Dist., 808 S.W.2d 169, 1991 Tex. App. LEXIS 728 (Tex. App. El Paso Mar. 27, 1991), rev'd in part, 826 S.W.2d 124, 1991 Tex. LEXIS 116 (Tex. 1991).

Sec. 41.43. Protest of Determination of Value or Inequality of Appraisal.

(a) Except as provided by Subsections (a-1), (a-3), and (d), in a protest authorized by Section 41.41(a)(1) or (2), the appraisal district has the burden of establishing the value of the property by a preponderance of the evidence presented at the hearing. If the appraisal district fails to meet that standard, the protest shall be determined in favor of the property owner.

(a-1) If in the protest relating to a property with a market or appraised value of $1 million or less as determined by the appraisal district the property owner files with the appraisal review board and, not later than the 14th day before the date of the first day of the hearing, delivers to the chief appraiser a copy of an appraisal of the property performed not later than the 180th day before the date of the first day of the hearing by an appraiser certified under Chapter 1103, Occupations Code, that supports the appraised or market value of the property asserted by the property owner, the appraisal district has the burden of establishing the value of the property by clear and convincing evidence presented at the hearing. If the appraisal district fails to meet that standard, the protest shall be determined in favor of the property owner.

(a-2) To be valid, an appraisal filed under Subsection (a-1) must be attested to before an officer authorized to administer oaths and include:

(1) the name and business address of the certified appraiser;

(2) a description of the property that was the subject of the appraisal;

(3) a statement that the appraised or market value of the property:

(A) was, as applicable, the appraised or market value of the property as of January 1 of the current tax year; and

(B) was determined using a method of appraisal authorized or required by Chapter 23; and

(4) a statement that the appraisal was performed in accordance with the Uniform Standards of Professional Appraisal Practice.

(a-3) In a protest authorized by Section 41.41(a)(1) or (2), the appraisal district has the burden of establishing the value of the property by clear and convincing evidence presented at the hearing if:

(1) the appraised value of the property was lowered under this subtitle in the preceding tax year;

(2) the appraised value of the property in the preceding tax year was not established as a result of a written agreement between the property owner or the owner's agent and the appraisal district under Section 1.111(e); and

(3) not later than the 14th day before the date of the first day of the hearing, the property owner files with the appraisal review board and delivers to the chief appraiser:

(A) information, such as income and expense statements or information regarding comparable sales, that is sufficient to allow for a determination of the appraised or market value of the property if the protest is authorized by Section 41.41(a)(1); or

(B) information that is sufficient to allow for a determination of whether the property was appraised unequally if the protest is authorized by Section 41.41(a)(2).

(a-4) If the appraisal district has the burden of establishing the value of property by clear and convincing evidence presented at the hearing on a protest as provided by Subsection (a-3) and the appraisal district fails to meet that standard, the protest shall be determined in favor of the property owner.

(a-5) Subsection (a-3)(3) does not impose a duty on a property owner to provide any information in a protest authorized by Section 41.41(a)(1) or (2). That subdivision is merely a condition to the applicability of the standard of evidence provided by Subsection (a-3).

(b) A protest on the ground of unequal appraisal of property shall be determined in favor of the protesting party unless the appraisal district establishes that:

(1) the appraisal ratio of the property is equal to or less than the median level of appraisal of a reasonable and representative sample of other properties in the appraisal district;

(2) the appraisal ratio of the property is equal to or less than the median level of appraisal of a sample of properties in the appraisal district consisting of a reasonable number of other properties similarly situated to, or of the same general kind or character as, the property subject to the protest; or

(3) the appraised value of the property is equal to or less than the median appraised value of a reasonable number of comparable properties appropriately adjusted.

(c) For purposes of this section, evidence includes the data, schedules, formulas, or other information used to establish the matter at issue.

(d) If the property owner fails to deliver, before the date of the hearing, a rendition statement or property report required by Chapter 22 or a response to the chief appraiser's request for information under Section 22.07(c), the property owner has the burden of establishing the value of the property by a preponderance of the evidence presented at the hearing. If the property owner fails to meet that standard, the protest shall be determined in favor of the appraisal district.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 137, effective August 14, 1981; am. Acts 1983, 68th Leg., ch. 877 (H.B. 1395), § 2, effective January 1, 1984; am. Acts 1985, 69th Leg., ch. 823 (S.B. 908), § 3, effective January 1, 1986; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 35, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 37, effective January 1, 1998; am. Acts 2003, 78th Leg., ch. 1041 (H.B. 1082), § 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1173 (S.B. 340), § 11, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1085 (H.B. 3024), § 1, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 20(a), effective September 1, 2013.

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EVIDENCE
Inferences & Presumptions

General Overview. — Supreme Court of Texas disagrees with the proposition that cases asserting double taxation should be determined by presumption rather than proof; nothing in civil suits suggests that the court should ignore evidence about what property was or was not included in making its decision. Matagorda County Appraisal Dist. v. Coastal Liquids Partners, L.P., 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

TAX LAW
State & Local Taxes
Administration & Proceedings

Judicial Review. — District court had jurisdiction over a taxpayer's action challenging the denial of its tax protest because the taxpayer had exhausted its administrative remedies as required by Tex. Tax Code Ann. § 42.09, as it filed its protest in accordance with the Tax Code by protesting that the county was not the taxable situs for its airplane, sending the county's appraisal district a letter, disputing the appraised value of the airplane, attended the appraisal review board, and received an order from the board denying its protest. The county appraisal review board considered the substantive matters ultimately appealed to the district court. Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741, 2009 Tex. App. LEXIS 2097 (Tex. App. Houston 1st Dist. Mar. 26, 2009, no pet.).

TAXPAYER PROTESTS. — County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

REAL PROPERTY TAX
Assessment & Valuation

Valuation. — County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

Sec. 41.44. Notice of Protest.

(a) **[2 Versions: Effective unless and until Acts 2019, 86th Leg., H.J.R. No. 34 is approved by the voters and the ballot certified]** Except as provided by Subsections (b), (c), (c-1), and (c-2), to be entitled to a hearing and determination of a protest, the property owner initiating the protest must file a written notice of the protest with the appraisal review board having authority to hear the matter protested:

(1) not later than May 15 or the 30th day after the date that notice to the property owner was delivered to the property owner as provided by Section 25.19, whichever is later;

(2) in the case of a protest of a change in the appraisal records ordered as provided by Subchapter A of this chapter or by Chapter 25, not later than the 30th day after the date notice of the change is delivered to the property owner;

(3) in the case of a determination that a change in the use of land appraised under Subchapter C, D, E, or H, Chapter 23, has occurred, not later than the 30th day after the date the notice of the determination is delivered to the property owner; or

(4) in the case of a determination of eligibility for a refund under Section 23.1243, not later than the 30th day after the date the notice of the determination is delivered to the property owner.

(a) **[2 Versions: Proposed Amendment by Acts 2019, 86th Leg., H.J.R. 34, contingent on Voter Approval]** Except as provided by Subsections (b), (c), (c-1), and (c-2), to be entitled to a hearing and determination of a protest, the property owner initiating the protest must file a written notice of the protest with the appraisal review board having authority to hear the matter protested:

(1) not later than May 15 or the 30th day after the date that notice to the property owner was delivered to the property owner as provided by Section 25.19, whichever is later;

(2) in the case of a protest of a change in the appraisal records ordered as provided by Subchapter A of this chapter or by Chapter 25, not later than the 30th day after the date notice of the change is delivered to the property owner;

(3) in the case of a determination that a change in the use of land appraised under Subchapter C, D, E, or H, Chapter 23, has occurred, not later than the 30th day after the date the notice of the determination is delivered to the property owner;

(4) in the case of a determination of eligibility for a refund under Section 23.1243, not later than the 30th day after the date the notice of the determination is delivered to the property owner; or

(5) in the case of a protest of the modification or denial of an application for an exemption under Section 11.35, or the determination of an appropriate damage assessment rating for an item of qualified property under that section, not later than the 30th day after the date the property owner receives the notice required under Section 11.45(e).

(b) A property owner who files his notice of protest after the deadline prescribed by Subsection (a) of this section but before the appraisal review board approves the appraisal records is entitled to a hearing and determination of the protest if he shows good cause as determined by the board for failure to file the notice on time.

(b-1) [Repealed.]

(c) A property owner who files notice of a protest authorized by Section 41.411 is entitled to a hearing and determination of the protest if the property owner files the notice prior to the date the taxes on the property to which the notice applies become delinquent. An owner of land who files a notice of protest under Subsection (a)(3) is entitled to a hearing and determination of the protest without regard to whether the appraisal records are approved.

(c-1) A property owner who files a notice of protest after the deadline prescribed by Subsection (a) but before the taxes on the property to which the notice applies become delinquent is entitled to a hearing and determination of the protest if the property owner was continuously employed in the Gulf of Mexico, including employment on an offshore drilling or production facility or on a vessel, for a period of not less than 20 days during which the deadline prescribed by Subsection (a) passed, and the property owner provides the appraisal review board with evidence of that fact through submission of a letter from the property owner's employer or supervisor or, if the property owner is self-employed, a sworn affidavit.

(c-2) A property owner who files a notice of protest after the deadline prescribed by Subsection (a) but before the taxes on the property to which the notice applies become delinquent is entitled to a hearing and determination of the protest if the property owner was serving on full-time active duty in the United States armed forces outside the United States on the day on which the deadline prescribed by Subsection (a) passed and the property owner provides the appraisal review board with evidence of that fact through submission of a valid military identification card from the United States Department of Defense and a deployment order.

(c-3) Notwithstanding Subsection (c), a property owner who files a protest under Section 41.411 on or after the date the taxes on the property to which the notice applies become delinquent, but not later than the 125th day after the property owner, in the protest filed, claims to have first received written notice of the taxes in question, is entitled to a hearing solely on the issue of whether one or more taxing units timely delivered a tax bill. If at the hearing the appraisal review board determines that all of the taxing units failed to timely deliver a tax bill, the board shall determine the date on which at least one taxing unit first delivered written notice of the taxes in question, and for the purposes of this section the delinquency date is postponed to the 125th day after that date.

(d) **[Effective until September 1, 2020]** A notice of protest is sufficient if it identifies the protesting property owner, including a person claiming an ownership interest in the property even if that person is not listed on the appraisal records as an owner of the property, identifies the property that is the subject of the protest, and indicates apparent dissatisfaction with some determination of the appraisal office. The notice need not be on an official form, but the

comptroller shall prescribe a form that provides for more detail about the nature of the protest. The form must permit a property owner to include each property in the appraisal district that is the subject of a protest. The comptroller, each appraisal office, and each appraisal review board shall make the forms readily available and deliver one to a property owner on request.

(d) **[Effective September 1, 2020]** A notice of protest is sufficient if it identifies the protesting property owner, including a person claiming an ownership interest in the property even if that person is not listed on the appraisal records as an owner of the property, identifies the property that is the subject of the protest, and indicates apparent dissatisfaction with some determination of the appraisal office. The notice need not be on an official form, but the comptroller shall prescribe a form that provides for more detail about the nature of the protest. The form must permit a property owner to include each property in the appraisal district that is the subject of a protest. The form must permit a property owner to request that the protest be heard by a special panel established under Section 6.425 if the protest will be determined by an appraisal review board to which that section applies and the property is included in a classification described by Section 6.425(b). The comptroller, each appraisal office, and each appraisal review board shall make the forms readily available and deliver one to a property owner on request.

(e) Notwithstanding any other provision of this section, a notice of protest may not be found to be untimely or insufficient based on a finding of incorrect ownership if the notice:

(1) identifies as the property owner a person who is, for the tax year at issue:

(A) an owner of the property at any time during the tax year;

(B) the person shown on the appraisal records as the owner of the property, if that person filed the protest;

(C) a lessee authorized to file a protest; or

(D) an affiliate of or entity related to a person described by this subdivision; or

(2) uses a misnomer of a person described by Subdivision (1).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 137, effective August 14, 1981; am. Acts 1983, 68th Leg., ch. 884 (H.B. 1446), § 1, effective January 1, 1984; am. Acts 1985, 69th Leg., ch. 504 (S.B. 760), § 2, effective June 12, 1985; am. Acts 1987, 70th Leg., ch. 185 (S.B. 618), § 3, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 36, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 50, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 1.4, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 631 (S.B. 977), § 12, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 829 (S.B. 828), § 1, effective January 1, 2006; am. Acts 2007, 80th Leg., ch. 1106 (H.B. 3496), §§ 4(b), 5, effective January 1, 2008; am. Acts 2011, 82nd Leg., ch. 322 (H.B. 2476), § 5, effective January 1, 2012; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 10, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 357 (H.B. 2228), §§ 5, 6, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 61, effective September 1, 2020; am. Acts 2019, 86th Leg., ch. 1034 (H.B. 492), § 8, effective January 1, 2020.

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ADMINISTRATIVE LAW
Judicial Review
Reviewability

Exhaustion of Remedies. — Trial court's judgment dismissing the company's suit for want of jurisdiction was affirmed where (1) the company presented no evidence of the date that the 1999 tax appraisal records were approved as required by Tex. Tax Code Ann. § 41.12(a)(4); (2) even if Tex. Tax. Code Ann. § 11.439 was procedural and controlled pending litigation, the company failed to establish its entitlement to relief; and (3) under Tex. Tax. Code Ann. §§ 41.41(a)(9), 41.44, 41.45, 42.01(1)(A), 42.21(a), 42.09, the company did not exhaust its administrative remedies and was not entitled to judicial review; the company did not assert that the cover letter attached to its late application for a freeport exemption under Tex. Tax Code Ann. § 11.43(d), (e) was a request for extension of time and that the letter stated good cause for the tardy filing. Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

CIVIL PROCEDURE
Appeals
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Final Judgment Rule. — Where taxpayer was entitled to protest the appraised value of property before the county appraisal review board under Tex. Tax Code Ann. § 41.41, and taxpayer did not file the notice of protest within thirty days after receiving the notice of the change in appraisal as required by Tex. Tax Code Ann. § 41.44(a), those remedies were exclusive, and failure to pursue them precluded judicial review of the appraisal under Tex. Tax Code Ann. § 42.09. Escamilla v. City of Laredo, 9

S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

CONSTITUTIONAL LAW
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Scope of Protection. — In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

TAX LAW
Federal Tax Administration & Procedure

Tax Injunction Act. — In a 42 U.S.C.S. § 1983 case in which: (1) two pro se property owners were challenging the constitutionality of Texas state property tax assessments; (2) a letter sent by the owners to numerous tax officials did not count as an attempt to initiate the administrative review procedures; (3) pursuant to Tex. Tax Code Ann. § 41.44, an appraisal review board will only schedule a protest hearing if the parties file a notice of protest; and (4) Texas state remedial procedures were available, a district court's Fed. R. Civ. P. 12(b)(1) dismissal of the case was affirmed; the district court determined that federal jurisdiction was barred by the Tax Injunction Act, 28 U.S.C.S. § 1341, because the owners had failed to exhaust available state remedies. Clark v. Andrews County Appraisal Dist., 251 Fed. Appx. 267, 2007 U.S. App. LEXIS 8436 (5th Cir. Tex. 2007).

STATE & LOCAL TAXES
Administration & Proceedings

General Overview. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

Where appraisal districts were allowed a level of certainty when setting the tax roll, and impacted local government decisions on whether or not a change in tax rates was warranted, the corporation's taxable personal property was disallowed; the corporation failed to request an allocation of its aircraft during the annual protest period. WB Summit Props. v. Midland Cent. Appraisal Dist., 122 S.W.3d 374, 2003 Tex. App. LEXIS 10045 (Tex. App. El Paso Nov. 26, 2003, no pet.).

Although the housing development corporation was entitled to protest the county taxing authority's denial of the housing development authority's request for a tax exemption for a particular tax year, and also had the right after filing a notice of protest to appear and present evidence or argument to the appraisal review board before filing an adverse decision of the appraisal review board to the trial court, exact compliance with those procedures was mandatory before it could maintain a challenge in the trial court; the failure to file its notice of protest within 30 days after receiving notice of the county taxing authority's decision regarding the adverse decision meant the trial court lacked jurisdiction to grant summary judgment to the county taxing authority regarding its denial of the tax exemption request, and the appellate court only had the authority to set aside the judgment and dismiss the housing development corporation's appeal of that denial. Found. of Hope, Inc. v. San Patricio County Appraisal Dist., No. 13-02-083-CV, 2003 Tex. App. LEXIS 7922 (Tex. App. Corpus Christi Sept. 11, 2003).

Property owner is entitled to protest before the appraisal review board any action by the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner under Tex. Tax Code Ann. § 41.41(a)(9), and after filing the required notice of protest, the property owner is entitled to an opportunity to appear and present evidence or argument to the appraisal review board pursuant to Tex. Tax Code Ann. § 41.44 and Tex. Tax Code Ann. § 41.45; if the property owner is aggrieved by the determination of the appraisal review board following the protest hearing, the property owner is then entitled to appeal the decision to the district court under Tex. Tax Code Ann. § 42.01(1)(A) and Tex. Tax Code Ann. § 42.21(a). Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

Taxpayer, who failed to timely file an administrative protest to an appraisal, waived its right to relief, and the taxpayer was not permitted to seek relief in the trial court to correct the appraisal. A & S Air Serv. v. Denton Cent. Appraisal Dist., 99 S.W.3d 340, 2003 Tex. App. LEXIS 1397 (Tex. App. Fort Worth Feb. 13, 2003, no pet.).

Taxpayer's protest of denial of a property exemption was properly dismissed by the district court because the taxpayer did not meet the procedural requirements for protesting under Tex. Tax Code Ann. § 41.44; having failed to timely and properly present the protest and obtain an order, he was not entitled to appeal to the district court. Peil v. Waller County Appraisal Dist., 737 S.W.2d 33, 1987 Tex. App. LEXIS 7902 (Tex. App. Houston 14th Dist. July 23, 1987, no writ).

ASSESSMENTS. — Executor failed to follow all necessary administrative procedures to appeal the 2003 and 2004 tax year valuations to the district court because the original petition failed to complain about the Board's 2003 order, instead focusing on tax year 2002. The executor only sought relief from the 2003 order when he filed an amended petition on August 20, 2004; however, that date was more than a year after the July 9, 2003, issuance of the Board's order pertaining to the 2003 valuation. Canales v. Kleberg County Appraisal Dist., No. 13-07-666-CV, 2008 Tex. App. LEXIS 6165 (Tex. App. Corpus Christi Aug. 14, 2008).

JUDICIAL REVIEW. — Trial court erred by denying the taxing units' plea to the jurisdiction because the taxpayers were "property owners" under Tex. Tax Code Ann. § 41.41(a)(7), as they were listed as the owner in the tax appraisal rolls, entitled to administrative challenge, and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), the trial court did not have jurisdiction over their case seeking a refund. The exception of § 42.09(b) did not apply because when the taxing units nonsuited their claims for delinquent taxes, the taxpayers' affirmative defense became moot. Houston Indep. Sch. Dist. v. Morris, 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011), reh'g denied, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 10297 (Tex. App. Houston 1st Dist. July 13, 2011), rev'd, 388 S.W.3d 310, 2012 Tex. LEXIS 898 (Tex. 2012).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected by the county appraisal review board; the claim was not only

discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

TAXPAYER PROTESTS. — Taxpayer's notice of protest was untimely and no appeal could be taken because written notice of taxes was provided when the taxpayer was served with citation in a delinquent tax suit, not when the taxpayer subsequently received a tax bill; moreover, the taxpayer could not assert a counterclaim in the delinquent tax suit based on its grounds of protest. Rio Valley, LLC v. City of El Paso, 441 S.W.3d 482, 2014 Tex. App. LEXIS 3031 (Tex. App. El Paso Mar. 19, 2014, no pet.).

Trial court lacked jurisdiction to consider a taxpayer's claims regarding the valuation of two saltwater disposal wells for the 2007 tax year because the taxpayer missed the 30-day deadline under Tex. Tax Code Ann. § 41.44(a)(1) for filing a protest. Key Energy Servs., LLC v. Shelby County Appraisal Dist., 428 S.W.3d 133, 2014 Tex. App. LEXIS 439 (Tex. App. Tyler Jan. 15, 2014, no pet.).

In a Tex. Tax Code Ann. § 33.41 action to recover delinquent ad valorem taxes for shrimp boats, summary judgment was improper because the taxpayers' evidence that they had not been named as the owners on the tax roll rebutted any presumption of notice under Tex. Tax Code Ann. § 33.47(a) arising from the tax notices, which would have been sent under Tex. Tax Code Ann. § 1.07(b) to the previous owners. Moreover, the taxpayers could not have filed a protest pursuant to Tex. Tax Code Ann. § 41.411 to assert a due process claim, which was not provided for in either former Tex. Tax Code Ann. § 41.44 or Tex. Tax Code Ann. § 25.25, and exhaustion of administrative remedies would not be required if the taxes were void for lack of proper notice. Ike & Zack, Inc. v. Matagorda County, No. 13-12-00314-CV, 2013 Tex. App. LEXIS 2625 (Tex. App. Corpus Christi Mar. 14, 2013).

Trial court lacked jurisdiction to impose sanctions against an appraisal district pursuant its order relating to a taxpayer's pollution-control exemption in one tax year because the sanctions were for later years as to which the taxpayer failed to utilize the exclusive remedies in the tax code for protesting the assessments. Travis Cent. Appraisal Dist. v. Wells Fargo Bank Minn., N.A., 382 S.W.3d 636, 2012 Tex. App. LEXIS 8636 (Tex. App. Austin Oct. 12, 2012, no pet.).

For purposes of Tex. Tax Code Ann. § 33.47(a), the county's tax records were prima facie evidence of the amount owed, such that the burden shifted to the taxpayer to raise a defense, presumably under Tex. Tax Code Ann. § 42.09; however, the defenses asserted were not among those available to a taxpayer who failed to timely protest, and the trial court properly granted the county summary judgment. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Although a taxpayer delayed payment thinking it would receive corrected bills for each tax year, the taxpayer did not protest or comply with procedures to contest the assessments at issue, for purposes of Tex. Tax Code Ann. §§ 41.41, 41.44, 42.01, and delinquent taxes incurred penalties and interest under Tex. Tax Code Ann. § 33.01. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

By not protesting, for purposes of Tex. Tax Code Ann. §§ 41.41, 41.44, 42.01, the taxpayer's defenses were limited to showing it did not own the property in question or that the property was not in the taxing district's boundaries, and having failed to file and perfect appeals, the taxpayer was limited to those defenses, for purposes of Tex. Tax Code Ann. § 42.09, but did not assert them. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Trial court erred by denying the taxing units' plea to the jurisdiction because the taxpayers were "property owners" under Tex. Tax Code Ann. § 41.41(a)(7), as they were listed as the owner in the tax appraisal rolls, entitled to administrative challenge, and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), the trial court did not have jurisdiction over their case seeking a refund. The exception of § 42.09(b) did not apply because when the taxing units nonsuited their claims for delinquent taxes, the taxpayers' affirmative defense became moot. Houston Indep. Sch. Dist. v. Morris, 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011), reh'g denied, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 10297 (Tex. App. Houston 1st Dist. July 13, 2011), rev'd, 388 S.W.3d 310, 2012 Tex. LEXIS 898 (Tex. 2012).

Given that (1) no application for open-space appraisal was ever filed as required by Tex. Tax Code Ann. § 23.54, and (2) the owners' written notice of protest was filed well after the approval of the appraisal records, for purposes of Tex. Tax Code Ann. § 41.44(b), the owners failed to exhaust their administrative remedies, which was a jurisdictional prerequisite to obtaining judicial review, and thus the trial court properly granted appellees' plea to the jurisdiction. Daughtry v. Atascosa County Appraisal Dist., 307 S.W.3d 343, 2009 Tex. App. LEXIS 8441 (Tex. App. San Antonio Nov. 4, 2009, no pet.).

Motor vehicle dealer was not denied due process under Tex. Const. art. I, §§ 19, 27 because the actual market value of its inventory for a given year was not based on the dealer's actual sales in that calendar year but was the actual market value of inventory as of January 1 based on sales in the previous calendar year under Tex. Tax. Code Ann. § 23.121. Thus, the actual sales in the later calendar year were irrelevant to the dealer's protest and the dealer could have timely protested the valuation under Tex. Tax Code Ann. §§ 41.41 and 41.44. Expo Motorcars, L.L.C. v. Harris County Appraisal Dist., No. 01-08-00473-CV, 2009 Tex. App. LEXIS 5738 (Tex. App. Houston 1st Dist. July 23, 2009).

Authors of one law review article had concluded that the pre-2008 version of Tex. Tax Code Ann. § 41.411 left open a small gap in which the Tax Code failed to provide adequate due process for a taxpayer who did not receive notice in time to take advantage of § 41.411, and appropriate pre-Code remedies might still be available; the 2007 amendment to § 41.411(c) and the addition of Tex. Tax Code Ann. § 41.44(c-3) presumably close this gap, but the amendments did not apply to this case. Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected by the county appraisal review board; the claim was not only discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices

highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

PERSONAL PROPERTY TAX

Intangible Property

Imposition of Tax. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

TANGIBLE PROPERTY

General Overview. — Under Tex. Tax Code Ann. § 41.44, an owner may protest a property valuation before June 1 of the applicable tax year or within 30 days after the owner receives notice of the appraised value. Harris County Appraisal Dist. v. Tex. E. Transmission Corp., 99 S.W.3d 849, 2003 Tex. App. LEXIS 1699 (Tex. App. Houston 14th Dist. Feb. 27, 2003, no pet.).

IMPOSITION OF TAX. — Motor vehicle dealer was not denied due process under Tex. Const. art. I, §§ 19, 27 because the actual market value of its inventory for a given year was not based on the dealer's actual sales in that calendar year but was the actual market value of inventory as of January 1 based on sales in the previous calendar year under Tex. Tax. Code Ann. § 23.121. Thus, the actual sales in the later calendar year were irrelevant to the dealer's protest and the dealer could have timely protested the valuation under Tex. Tax Code Ann. §§ 41.41 and 41.44. Expo Motorcars, L.L.C. v. Harris County Appraisal Dist., No. 01-08-00473-CV, 2009 Tex. App. LEXIS 5738 (Tex. App. Houston 1st Dist. July 23, 2009).

REAL PROPERTY TAX

General Overview. — Where county had properly provided taxpayer with notice of reappraisal of property, and taxpayer failed to protest the reappraisal within 30 days after receipt of the notification was required by Tex. Tax Code Ann. § 41.44(a), taxpayer had failed to exhaust exclusive administrative remedies which precluded judicial review of the appraisal. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

Taxpayer who protested the appraisal of its property was not required to seek administrative resolution in subsequent years, despite the fact that the appraisals were revised downward, and was permitted to amend its suit to include those years. Harris County Appraisal Dist. v. Bradford Realty, 919 S.W.2d 131, 1994 Tex. App. LEXIS 3065 (Tex. App. Houston 14th Dist. Dec. 15, 1994, no writ).

A letter sent by a corporate taxpayer to a county appraisal district stating the taxpayer's disagreement with the appraisal constituted a "notice of protest" under Tex. Tax. Code Ann. § 41.44, rather than a mere "rendition" of value, and thereby entitled the taxpayer to a hearing before the county appraisal review board pursuant to § 41.45, even though the letter was filed with the district rather than with the board; not only did the letter satisfy the statutory criteria for a "notice of protest," because it identified the property owner and the property that was the subject of the protest, and indicated dissatisfaction with the appraisal office's determination, but also the notice sent to the district was effective notice to the board, as they shared the same address and staff. Burnet County Appraisal Dist. v. J. M. Huber Corp., Calcium Carbonate Div., 808 S.W.2d 613, 1991 Tex. App. LEXIS 980 (Tex. App. Austin Apr. 17, 1991, writ denied).

Where plaintiff taxpayer acquired certain real property by foreclosure but did not receive notice of the property's appraisal until the time period for protesting the property's valuation had expired, the methods of protesting tax appraisals set forth in Tex. Tax Code Ann. §§ 41.41, 41.44, were inadequate and deprived defendant of due process of law; plaintiff was entitled to a new administrative hearing to protest defendant appraisal district review board's assessment on the property. Bank of America Nat'l Trust & Sav Asso. v. Dallas Cent. Appraisal Dist., 765 S.W.2d 451, 1988 Tex. App. LEXIS 3418 (Tex. App. Dallas Dec. 14, 1988, writ denied).

ASSESSMENT & VALUATION

General Overview. — Executor failed to follow all necessary administrative procedures to appeal the 2003 and 2004 tax year valuations to the district court because the original petition failed to complain about the Board's 2003 order, instead focusing on tax year 2002. The executor only sought relief from the 2003 order when he filed an amended petition on August 20, 2004; however, that date was more than a year after the July 9, 2003, issuance of the Board's order pertaining to the 2003 valuation. Canales v. Kleberg County Appraisal Dist., No. 13-07-666-CV, 2008 Tex. App. LEXIS 6165 (Tex. App. Corpus Christi Aug. 14, 2008).

Where a taxpayer neglected to file a timely written protest of assessed property taxes pursuant to Tex. Tax Code Ann. § 41.44(a)(1) or timely request a hearing pursuant to Tex. Tax Code Ann. § 41.411(a) regarding an alleged failure to provide or timely deliver notice under Tex. Tax Code Ann. § 25.19 of cancellation of ad valorem property tax exemptions, the failure to pursue and exhaust administrative remedies as required by Tex. Tax Code Ann. § 42.09(a) precluded recovery, and the alleged failure of notice did not violate due process; hence, the taxing authorities were entitled to summary judgment. ABT Galveston L.P. v. Galveston Cent. Appraisal Dist., 137 S.W.3d 146, 2004 Tex. App. LEXIS 2940 (Tex. App. Houston 1st Dist. Mar. 30, 2004, no pet.).

Where county had properly provided taxpayer with notice of reappraisal of property, and taxpayer failed to protest the reappraisal within 30 days after receipt of the notification was required by Tex. Tax Code Ann. § 41.44(a), taxpayer had failed to exhaust exclusive administrative remedies which precluded judicial review of the appraisal. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

Taxpayer protests to an appraisal district's determination of a property's use had to be challenged under Tex. Tax Code Ann. §§ 41.41(5), 41.411, or 41.44. Collin County Appraisal Dist. v. Northeast Dallas Assocs., 855 S.W.2d 843, 1993 Tex. App. LEXIS 1907 (Tex. App. Dallas May 18, 1993, no writ).

VALUATION. — Trial court lacked jurisdiction to consider a taxpayer's claims regarding the valuation of two saltwater disposal wells for the 2007 tax year because the taxpayer missed the 30-day deadline under Tex. Tax Code Ann. § 41.44(a)(1) for filing a protest. Key Energy Servs., LLC v. Shelby County Appraisal Dist., 428 S.W.3d 133, 2014 Tex. App. LEXIS 439 (Tex. App. Tyler Jan. 15, 2014, no pet.).

Sec. 41.45. Hearing on Protest.

(a) On the filing of a notice as required by Section 41.44, the appraisal review board shall schedule a hearing on the protest. If more than one protest is filed relating to the same property, the appraisal review board shall schedule a single hearing on all timely filed protests relating to the property. A hearing for a property that is owned in undivided or

fractional interests, including separate interests in a mineral in place, shall be scheduled to provide for participation by all owners who have timely filed a protest.

(b) A property owner initiating a protest is entitled to appear to offer evidence or argument. A property owner may offer evidence or argument by affidavit without personally appearing and may appear by telephone conference call to offer argument. A property owner who appears by telephone conference call must offer any evidence by affidavit. A property owner must submit an affidavit described by this subsection to the board hearing the protest before the board begins the hearing on the protest. On receipt of an affidavit, the board shall notify the chief appraiser. The chief appraiser may inspect the affidavit and is entitled to a copy on request.

(b-1) An appraisal review board shall conduct a hearing on a protest by telephone conference call if:

(1) the property owner notifies the board that the property owner intends to appear by telephone conference call in the owner's notice of protest or by written notice filed with the board not later than the 10th day before the date of the hearing; or

(2) the board proposes that the hearing be conducted by telephone conference call and the property owner agrees to the hearing being conducted in that manner.

(b-2) If a property owner elects to have a hearing on a protest conducted by telephone conference call, the appraisal review board shall:

(1) provide a telephone number for the property owner to call to participate in the hearing; and

(2) hold the hearing in a location equipped with telephone equipment that allows each board member and the other parties to the protest who are present at the hearing to hear the property owner offer argument.

(b-3) A property owner is responsible for providing access to a hearing on a protest conducted by telephone conference call to another person that the owner invites to participate in the hearing.

(c) The chief appraiser shall appear at each protest hearing before the appraisal review board to represent the appraisal office.

(d) **[Effective until September 1, 2020]** An appraisal review board consisting of more than three members may sit in panels of not fewer than three members to conduct protest hearings. However, the determination of a protest heard by a panel must be made by the board. If the recommendation of a panel is not accepted by the board, the board may refer the matter for rehearing to a panel composed of members who did not hear the original hearing or, if there are not at least three members who did not hear the original protest, the board may determine the protest. Before determining a protest or conducting a rehearing before a new panel or the board, the board shall deliver notice of the hearing or meeting to determine the protest in accordance with the provisions of this subchapter.

(d) **[Effective September 1, 2020]** This subsection does not apply to a special panel established under Section 6.425. An appraisal review board consisting of more than three members may sit in panels of not fewer than three members to conduct protest hearings. If the recommendation of a panel is not accepted by the board, the board may refer the matter for rehearing to a panel composed of members who did not hear the original protest or, if there are not at least three members who did not hear the original protest, the board may determine the protest.

(d-1) **[Effective September 1, 2020]** An appraisal review board to which Section 6.425 applies shall sit in special panels established under that section to conduct protest hearings. A special panel may conduct a protest hearing relating to property only if the property is described by Section 6.425(b) and the property owner has requested that a special panel conduct the hearing or if the protest is assigned to the special panel under Section 6.425(f). If the recommendation of a special panel is not accepted by the board, the board may refer the matter for rehearing to another special panel composed of members who did not hear the original protest or, if there are not at least three other special panel members who did not hear the original protest, the board may determine the protest.

(d-2) **[Effective September 1, 2020]** The determination of a protest heard by a panel under Subsection (d) or (d-1) must be made by the board.

(d-3) **[Effective September 1, 2020]** The board must deliver notice of a hearing or meeting to determine a protest heard by a panel, or to rehear a protest, under Subsection (d) or (d-1) in accordance with the provisions of this subchapter.

(e) On request made to the appraisal review board before the date of the hearing, a property owner who has not designated an agent under Section 1.111 to represent the owner at the hearing is entitled to one postponement of the hearing to a later date without showing cause. In addition and without limitation as to the number of postponements, the board shall postpone the hearing to a later date if the property owner or the owner's agent at any time shows good cause for the postponement or if the chief appraiser consents to the postponement. The hearing may not be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought unless the date and time of the hearing as postponed are agreed to by the chairman of the appraisal review board or the chairman's representative, the property owner, and the chief appraiser. A request by a property owner for a postponement under this subsection may be made in writing, including by facsimile transmission or electronic mail, by telephone, or in person to the appraisal review board, a panel of the board, or the chairman of the board. The chairman or the chairman's representative may take action on a postponement under this subsection without the necessity of action by the full board if the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the board. The granting by the appraisal review board, the chairman, or the chairman's representative of a postponement under this subsection does not require the delivery of additional written notice to the property owner.

(e-1) A property owner or a person designated by the property owner as the owner's agent to represent the owner at the hearing who fails to appear at the hearing is entitled to a new hearing if the property owner or the owner's agent files, not later than the fourth day after the date the hearing occurred, a written statement with the appraisal review board showing good cause for the failure to appear and requesting a new hearing.

(e-2) For purposes of Subsections (e) and (e-1), "good cause" means a reason that includes an error or mistake that:

(1) was not intentional or the result of conscious indifference; and

(2) will not cause undue delay or other injury to the person authorized to extend the deadline or grant a rescheduling.

(f) A property owner who has been denied a hearing to which the property owner is entitled under this chapter may bring suit against the appraisal review board by filing a petition or application in district court to compel the board to provide the hearing. If the property owner is entitled to the hearing, the court shall order the hearing to be held and may award court costs and reasonable attorney fees to the property owner.

(g) In addition to the grounds for a postponement under Subsection (e), the board shall postpone the hearing to a later date if:

(1) the owner of the property or the owner's agent is also scheduled to appear at a hearing on a protest filed with the appraisal review board of another appraisal district;

(2) the hearing before the other appraisal review board is scheduled to occur on the same date as the hearing set by the appraisal review board from which the postponement is sought;

(3) the notice of hearing delivered to the property owner or the owner's agent by the other appraisal review board bears an earlier postmark than the notice of hearing delivered by the board from which the postponement is sought or, if the date of the postmark is identical, the property owner or agent has not requested a postponement of the other hearing; and

(4) the property owner or the owner's agent includes with the request for a postponement a copy of the notice of hearing delivered to the property owner or the owner's agent by the other appraisal review board.

(h) Before the hearing on a protest or immediately after the hearing begins, the chief appraiser and the property owner or the owner's agent shall each provide the other with a copy of any written material or material preserved on a portable device designed to maintain a reproduction of a document or image that the person intends to offer or submit to the appraisal review board at the hearing. Each person must provide the copy of material in the manner and form prescribed by comptroller rule.

(i) To be valid, an affidavit offered under Subsection (b) must be attested to before an officer authorized to administer oaths and include:

(1) the name of the property owner initiating the protest;

(2) a description of the property that is the subject of the protest; and

(3) evidence or argument.

(j) A statement from the property owner that specifies the determination or other action of the chief appraiser, appraisal district, or appraisal review board relating to the subject property from which the property owner seeks relief constitutes sufficient argument under Subsection (i).

(k) The comptroller shall prescribe a standard form for an affidavit offered under Subsection (b). Each appraisal district shall make copies of the affidavit form available to property owners without charge.

(*l*) A property owner is not required to use the affidavit form prescribed by the comptroller when offering an affidavit under Subsection (b).

(m) If the protest relates to a taxable leasehold or other possessory interest in real property that is owned by this state or a political subdivision of this state, the attorney general or a representative of the state agency that owns the land, if the real property is owned by this state, or a person designated by the political subdivision that owns the real property, as applicable, is entitled to appear at the hearing and offer evidence and argument.

(n) A property owner does not waive the right to appear in person at a protest hearing by submitting an affidavit to the appraisal review board or by electing to appear by telephone conference call. The board may consider an affidavit submitted under this section only if the property owner does not appear in person at the hearing. For purposes of scheduling the hearing, the property owner must state in the affidavit that the property owner does not intend to appear at the hearing or that the property owner intends to appear at the hearing in person or by telephone conference call and that the affidavit may be used only if the property owner does not appear at the hearing in person. If the property owner does not state in the affidavit whether the owner intends to appear at the hearing and has not elected to appear by telephone conference call, the board shall consider the submission of the affidavit as an indication that the property owner does not intend to appear at the hearing. If the property owner states in the affidavit that the owner does not intend to appear at the hearing or does not state in the affidavit whether the owner intends to appear at the hearing and has not elected to appear by telephone conference call, the board is not required to consider the affidavit at the scheduled hearing and may consider the affidavit at a hearing designated for the specific purpose of processing affidavits.

(o) If the chief appraiser uses audiovisual equipment at a hearing on a protest, the appraisal office shall provide audiovisual equipment of the same general type, kind, and character, as prescribed by comptroller rule, for use during the hearing by the property owner or the property owner's agent.

(p) The comptroller by rule shall prescribe:

(1) the manner and form, including security requirements, in which a person must provide a copy of material under Subsection (h), which must allow the appraisal review board to retain the material as part of the board's hearing record; and

(2) specifications for the audiovisual equipment provided by an appraisal district for use by a property owner or the property owner's agent under Subsection (o).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 138, effective August 14, 1981; am. Acts 1987, 70th Leg., ch. 794 (H.B. 1614), § 1, effective June 18, 1987; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 37, effective June 15, 1989; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 3.1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 828 (H.B. 2610), § 2, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 38, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 416 (S.B. 1097), § 3, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 463 (S.B. 1359), § 2, effective September 1, 2000; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 21.001(99), effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 626 (H.B. 538), § 2, effective January 1, 2008; am. Acts 2009, 81st Leg., ch. 1267 (H.B. 1030), § 4, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 11, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 924 (S.B. 1546), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 21, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 1201 (S.B. 1394), § 1, effective January 1, 2016; am. Acts 2017, 85th Leg., ch. 80 (H.B. 455), § 1, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 744 (S.B. 1286), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 62, effective September 1, 2020.

NOTES TO DECISIONS

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ADMINISTRATIVE LAW
Judicial Review
Reviewability

Exhaustion of Remedies. — Trial court's judgment dismissing the company's suit for want of jurisdiction was affirmed where (1) the company presented no evidence of the date that the 1999 tax appraisal records were approved as required by Tex. Tax Code Ann. § 41.12(a)(4); (2) even if Tex. Tax. Code Ann. § 11.439 was procedural and controlled pending litigation, the company failed to establish its entitlement to relief; and (3) under Tex. Tax. Code Ann. §§ 41.41(a)(9), 41.44, 41.45, 42.01(1)(A), 42.21(a), 42.09, the company did not exhaust its administrative remedies and was not entitled to judicial review; the company did not assert that the cover letter attached to its late application for a freeport exemption under Tex. Tax Code Ann. § 11.43(d), (e) was a request for extension of time and that the letter stated good cause for the tardy filing. Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

A taxpayer seeking a de novo review in state district court of an appraisal district's valuation of real property, must first exhaust his or her administrative remedies by appearing, either personally, by representative, or by affidavit, at the protest hearing pursuant Tex. Code Tax Ann. § 41.45. Webb County Appraisal Dist. v. New Laredo Hotel, Inc., 792 S.W.2d 952, 1990 Tex. LEXIS 103 (Tex. 1990).

CIVIL PROCEDURE
Remedies
Costs & Attorney Fees

General Overview. — Grant of summary judgment in favor of the county in the corporation's action to compel the county appraisal review board to hold a hearing on the corporation's motion was improper where an unadjudicated protest did not bar a hearing under Tex. Tax Code Ann. § 25.25(d); further, the corporation was not entitled to recover its reasonable attorney's fees and costs under Tex. Tax Code Ann. § 41.45(f) where the board afforded the corporation a hearing under Chapter 41. Koger Equity, Inc. v. Bexar County Appraisal Review Bd., 123 S.W.3d 502, 2003 Tex. App. LEXIS 8602 (Tex. App. San Antonio Oct. 8, 2003, no pet.).

Where the property owner is entitled to a hearing, the court shall order the hearing to be held and may award court costs and reasonable attorney fees to the property owner for the purposes of Tex. Tax Code Ann. § 41.45(f), which is permissive and not mandatory. Tarrant Appraisal Review Bd. v. Martinez Bros. Invs., 946 S.W.2d 914, 1997 Tex. App. LEXIS 3036 (Tex. App. Fort Worth June 12, 1997, no writ).

CONSTITUTIONAL LAW
Bill of Rights
Fundamental Rights
Procedural Due Process

Scope of Protection. — Appraisal district's inaction on an untimely application for an open-space agricultural appraisal did not violate an energy company's due process rights; the energy company should have notified the appraisal district that it was no longer using the land at issue for a public purpose beginning in 1999. It could have filed at that time for the open-space agricultural appraisal, and then used the procedures set forth for protests. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

GOVERNMENTS
Courts

Judicial Immunity. — Where a property tax consultant sued panel members of the county appraisal review board, seeking to hold them personally liable for property valuations, the panel members were entitled to summary judgment; panel members sitting in on property appraisal protests had duties similar to judges such that their actions were protected by the doctrine of judicial immunity. Sledd v. Garrett, 123 S.W.3d 592, 2003 Tex. App. LEXIS 9597 (Tex. App. Houston 14th Dist. Nov. 13, 2003, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — In a tax case involving a challenge to an appraisal district, there was insufficient evidence that two identical challenges were made, even though one was filed by a lessee and a lessor, because a transcript showed that the lessor limited its challenge to property on which it actually paid taxes. Matagorda County Appraisal Dist. v. Coastal Liquids Partners, L.P., 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

Although the housing development corporation was entitled to protest the county taxing authority's denial of the housing development authority's request for a tax exemption for a particular tax year, and also had the right after filing a notice of protest to appear and present evidence or argument to the appraisal review board before filing an adverse decision of the appraisal review board to the trial court, exact compliance with those procedures was mandatory before it could maintain a challenge in the trial court; the failure to file its notice of protest within 30 days after receiving notice of the county taxing authority's decision regarding the adverse decision meant the trial court lacked jurisdiction to grant summary judgment to the county taxing authority regarding its denial of the tax exemption request, and the appellate court only had the authority to set aside the judgment and dismiss the housing development corporation's appeal of that denial. Found. of Hope, Inc. v. San Patricio County Appraisal Dist., No. 13-02-083-CV, 2003 Tex. App. LEXIS 7922 (Tex. App. Corpus Christi Sept. 11, 2003).

Property owner is entitled to protest before the appraisal review board any action by the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner under Tex. Tax Code Ann. § 41.41(a)(9), and after filing the required notice of protest, the property owner is entitled to an opportunity to appear and present evidence or argument to the appraisal review board pursuant to Tex. Tax Code Ann. § 41.44 and Tex. Tax Code Ann. § 41.45; if the property owner is aggrieved by the determination of the appraisal review board following the protest hearing, the property owner is then entitled to appeal the decision to the district court under Tex. Tax Code Ann. § 42.01(1)(A) and Tex. Tax Code Ann. § 42.21(a). Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

ASSESSMENTS. — Executor failed to follow all necessary administrative procedures to appeal the 2003 and 2004 tax year valuations to the district court because the original petition failed to complain about the Board's 2003 order, instead focusing on tax year 2002. The executor only sought relief from the 2003 order when he filed an amended petition on August 20, 2004; however, that date was more than a year after the July 9, 2003, issuance of the Board's order pertaining to the 2003 valuation. Canales v. Kleberg County Appraisal Dist., No. 13-07-666-CV, 2008 Tex. App. LEXIS 6165 (Tex. App. Corpus Christi Aug. 14, 2008).

JUDICIAL REVIEW. — Agreement between a property owner's agent and an appraisal district representative-as opposed to the chief appraiser-qualifies as a Tex. Tax Code Ann. § 1.111(e) agreement that precludes a suit for judicial review, and this issue may permissibly be determined via a plea to the jurisdiction. Section 1.111(e) does not require that a chief appraiser delegate to the representative of the appraisal district in each case the specific authority to enter into an agreement with the property owner before a court may determine that a § 1.111(e) agreement has been reached, and § 1.111(e) also does not require the parties to act on an agreement or announce the agreement to the court. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Because a county appraisal district's chief appraiser could delegate authority to appraisal district employees to appear at protest hearings and present a valuation opinion, by stating the same opinion regarding the value of the property, a taxpayer's agent and the district's representative had reached an agreement pursuant to Tex. Tax Code Ann. § 1.111(e), thereby precluding the taxpayer from seeking judicial review of a subsequent order of the county's appraisal review board. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Taxpayers' claims were barred because they, through their agent, reached a final and enforceable agreement with a representative of the Harris County Appraisal District (HCAD), Tex. Tax Code Ann. §§ 6.05(e), 41.45(c), as to the value of the subject property, Tex. Tax Code Ann. § 1.111(e), which was not subject to protest or judicial review; the taxpayers' due process rights were not violated because they were given an opportunity to be heard through the Appraisal Review Board of Harris County and they reached an agreement with HCAD during their protest review. Kelly v. Harris County Appraisal Dist., No. 01-09-00996-CV, 2011 Tex. App. LEXIS 966 (Tex. App. Houston 1st Dist. Feb. 10, 2011).

Trial court properly granted appellees' plea to the jurisdiction in a taxpayer's action alleging that a county appraisal review board's mistreatment and failure to permit the taxpayer an opportunity to present evidence was a denial of due process because it was undisputed that the taxpayer was entitled to de novo review of the board's determination in the district court; the taxpayer filed that action, and was entitled to present evidence at a trial de novo in the underlying action. Lambertz v. Robinson, No. 14-09-00650-CV, 2010 Tex. App. LEXIS 2086 (Tex. App. Houston 14th Dist. Mar. 25, 2010).

Summary judgment was properly granted to a county appraisal review board in a dispute over the appraised value of commercial property because a trial court lacked jurisdiction under Tex. Tax Code Ann. § 41.45(f) to review the board's order and the procedures employed during a hearing; moreover, a timely petition for review was not filed under Tex. Tax Code Ann. § 42.21(a). Betz Louetta 25 Ltd. v. Appraisal Review Bd., No. 14-07-00587-CV, 2009 Tex. App. LEXIS 282 (Tex. App. Houston 14th Dist. Jan. 15, 2009).

Court of Appeals of Texas, Fifth District, Dallas, adopts the reasoning and conclusion of the Houston Fourteenth Court of Appeals in Texas in the case of Appraisal Review Bd. of Harris County Appraisal Dist. v. Spencer Square Ltd., 252 S.W.3d 842 (Tex. App.—Houston [14th Dist.] 2008, no pet.), which has held that Tex. Tax Code Ann. § 41.45(f) does not provide an additional avenue to attack an appraisal review board's order. Interpreting Tex. Tax Code Ann. § 41.45(f) as creating another avenue of appeal to a district court would essentially render the appeal provisions in Tex. Tax Code Ann. ch. 42 meaningless. Appraisal Review Bd. v. O'Connor & Assocs., 275 S.W.3d 643, 2009 Tex. App. LEXIS 276 (Tex. App. Dallas Jan. 15, 2009, no pet.).

Plea to the jurisdiction should have been granted in a case where several property owners filed a petition for a writ of mandamus seeking to compel an appraisal board to conduct a proper hearing because Tex. Tax Code Ann. § 41.45(f) did not provide an additional avenue to attack the board's order. The owners were given the opportunity to appear at a hearing and to testify and present evidence; however, instead of seeking review of the board's actions, the property owners sought a writ of mandamus. Appraisal Review Bd. v. O'Connor & Assocs., 275 S.W.3d 643, 2009 Tex. App. LEXIS 276 (Tex. App. Dallas Jan. 15, 2009, no pet.).

Interpreting Tex. Tax Code Ann. § 41.45(f) as creating another avenue of appeal to the district court would essentially render the appeal provisions in Tex. Tax Code Ann. ch. 42 meaningless. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

Plea to the jurisdiction should have been granted in a tax dispute because there was a failure to exhaust administrative remedies; mandamus was not permitted due to an adequate remedy at law, Tex. Tax Code Ann. § 41.45(f) did not allow taxpayers to bypass administrative procedures, and an ultra vires exception to exhaustion did not apply. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

Tex. Tax Code Ann. § 41.45(f) grants the district courts authority to compel appraisal review boards to conduct a protest hearing if the appraisal review board denied the property owner a hearing

to which he was entitled, however, Tex. Tax Code Ann. § 41.45(f) does not grant the district courts authority to compel appraisal review boards to conduct additional protest hearings; therefore, a plea to the jurisdiction should have been granted when two taxpayers failed to request a trial de novo after a first protest hearing was held; the taxpayers were not allowed to circumvent the procedures set forth in the Texas Tax Code. Appraisal Review Bd. v. Spencer Square Ltd., 252 S.W.3d 842, 2008 Tex. App. LEXIS 3045 (Tex. App. Houston 14th Dist. Apr. 29, 2008, no pet.).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected by the county appraisal review board; the claim was not only discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

SETTLEMENTS. — Agreement between a property owner's agent and an appraisal district representative-as opposed to the chief appraiser-qualifies as a Tex. Tax Code Ann. § 1.111(e) agreement that precludes a suit for judicial review, and this issue may permissibly be determined via a plea to the jurisdiction. Section 1.111(e) does not require that a chief appraiser delegate to the representative of the appraisal district in each case the specific authority to enter into an agreement with the property owner before a court may determine that a § 1.111(e) agreement has been reached, and § 1.111(e) also does not require the parties to act on an agreement or announce the agreement to the court. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Because a county appraisal district's chief appraiser could delegate authority to appraisal district employees to appear at protest hearings and present a valuation opinion, by stating the same opinion regarding the value of the property, a taxpayer's agent and the district's representative had reached an agreement pursuant to Tex. Tax Code Ann. § 1.111(e), thereby precluding the taxpayer from seeking judicial review of a subsequent order of the county's appraisal review board. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

TAXPAYER PROTESTS. — Trial court lacked jurisdiction to impose sanctions against an appraisal district pursuant its order relating to a taxpayer's pollution-control exemption in one tax year because the sanctions were for later years as to which the taxpayer failed to utilize the exclusive remedies in the tax code for protesting the assessments. Travis Cent. Appraisal Dist. v. Wells Fargo Bank Minn., N.A., 382 S.W.3d 636, 2012 Tex. App. LEXIS 8636 (Tex. App. Austin Oct. 12, 2012, no pet.).

Taxpayers' claims were barred because they, through their agent, reached a final and enforceable agreement with a representative of the Harris County Appraisal District (HCAD), Tex. Tax Code Ann. §§ 6.05(e), 41.45(c), as to the value of the subject property, Tex. Tax Code Ann. § 1.111(e), which was not subject to protest or judicial review; the taxpayers' due process rights were not violated because they were given an opportunity to be heard through the Appraisal Review Board of Harris County and they reached an agreement with HCAD during their protest review. Kelly v. Harris County Appraisal Dist., No. 01-09-00996-CV, 2011 Tex. App. LEXIS 966 (Tex. App. Houston 1st Dist. Feb. 10, 2011).

Taxpayer was not entitled to a hearing under Tex. Tax Code Ann. § 41.411 because it did not receive notice until after the taxes had become delinquent, and therefore the taxpayer could not timely file a protest under that section, and the taxpayer's protest made pursuant to Tex. Tax Code Ann. § 41.41 was untimely because it was made after the taxes had been assessed and had become delinquent; the Tax Code, as it existed prior to 2008, contained no procedural mechanisms to provide the taxpayer a hearing on its protest, and thus the trial court properly denied the taxpayer's motion for summary judgment on its claim for a judgment compelling a hearing pursuant to Tex. Tax Code Ann. § 41.45(f). Indus. Communs., Inc. v. Ward County Appraisal Dist., 296 S.W.3d 707, 2009 Tex. App. LEXIS 4047 (Tex. App. El Paso June 3, 2009), reh'g denied, No. 08-07-00083-CV, 2009 Tex. App. LEXIS 9177 (Tex. App. El Paso July 15, 2009).

Summary judgment was properly granted to a county appraisal review board in a dispute over the appraised value of commercial property because a trial court lacked jurisdiction under Tex. Tax Code Ann. § 41.45(f) to review the board's order and the procedures employed during a hearing; moreover, a timely petition for review was not filed under Tex. Tax Code Ann. § 42.21(a). Betz Louetta 25 Ltd. v. Appraisal Review Bd., No. 14-07-00587-CV, 2009 Tex. App. LEXIS 282 (Tex. App. Houston 14th Dist. Jan. 15, 2009).

Court of Appeals of Texas, Fifth District, Dallas, adopts the reasoning and conclusion of the Houston Fourteenth Court of Appeals in Texas in the case of Appraisal Review Bd. of Harris County Appraisal Dist. v. Spencer Square Ltd., 252 S.W.3d 842 (Tex. App.—Houston [14th Dist.] 2008, no pet.), which has held that Tex. Tax Code Ann. § 41.45(f) does not provide an additional avenue to attack an appraisal review board's order. Interpreting Tex. Tax Code Ann. § 41.45(f) as creating another avenue of appeal to a district court would essentially render the appeal provisions in Tex. Tax Code Ann. ch. 42 meaningless. Appraisal Review Bd. v. O'Connor & Assocs., 275 S.W.3d 643, 2009 Tex. App. LEXIS 276 (Tex. App. Dallas Jan. 15, 2009, no pet.).

Plea to the jurisdiction should have been granted in a case where several property owners filed a petition for a writ of mandamus seeking to compel an appraisal board to conduct a proper hearing because Tex. Tax Code Ann. § 41.45(f) did not provide an additional avenue to attack the board's order. The owners were given the opportunity to appear at a hearing and to testify and present evidence; however, instead of seeking review of the board's actions, the property owners sought a writ of mandamus. Appraisal Review Bd. v. O'Connor & Assocs., 275 S.W.3d 643, 2009 Tex. App. LEXIS 276 (Tex. App. Dallas Jan. 15, 2009, no pet.).

Tex. Tax Code Ann. § 41.45(f) grants the district courts authority to compel appraisal review boards to conduct a protest hearing if the appraisal review board denied the property owner a hearing to which he was entitled, however, Tex. Tax Code Ann. § 41.45(f) does not grant the district courts authority to compel appraisal review boards to conduct additional protest hearings; therefore, a plea to the jurisdiction should have been granted when two taxpayers failed to request a trial de novo after a first protest hearing was held; the taxpayers were not allowed to circumvent the procedures set forth in the Texas Tax Code. Appraisal Review Bd. v. Spencer Square Ltd., 252 S.W.3d 842, 2008 Tex. App. LEXIS 3045 (Tex. App. Houston 14th Dist. Apr. 29, 2008, no pet.).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected by the county appraisal review board; the claim was not only discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P.,

202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

REAL PROPERTY TAX

General Overview. — Interpreting Tex. Tax Code Ann. § 41.45(f) as creating another avenue of appeal to the district court would essentially render the appeal provisions in Tex. Tax Code Ann. ch. 42 meaningless. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

Plea to the jurisdiction should have been granted in a tax dispute because there was a failure to exhaust administrative remedies; mandamus was not permitted due to an adequate remedy at law, Tex. Tax Code Ann. § 41.45(f) did not allow taxpayers to bypass administrative procedures, and an ultra vires exception to exhaustion did not apply. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

A letter sent by a corporate taxpayer to a county appraisal district stating the taxpayer's disagreement with the appraisal constituted a "notice of protest" under Tex. Tax. Code Ann. § 41.44, rather than a mere "rendition" of value, and thereby entitled the taxpayer to a hearing before the county appraisal review board pursuant to § 41.45, even though the letter was filed with the district rather than with the board; not only did the letter satisfy the statutory criteria for a "notice of protest," because it identified the property owner and the property that was the subject of the protest, and indicated dissatisfaction with the appraisal office's determination, but also the notice sent to the district was effective notice to the board, as they shared the same address and staff. Burnet County Appraisal Dist. v. J. M. Huber Corp., Calcium Carbonate Div., 808 S.W.2d 613, 1991 Tex. App. LEXIS 980 (Tex. App. Austin Apr. 17, 1991, writ denied).

Under Tex. Tax Code Ann. § 41.45, dismissal of the taxpayer's suit protesting a tax valuation was improper because the statute did not require the taxpayer to appear in person at a hearing or present evidence by way of affidavit before filing suit challenging a valuation. New Laredo Hotel, Inc. v. Webb County Appraisal Dist., 777 S.W.2d 165, 1989 Tex. App. LEXIS 2572 (Tex. App. San Antonio Aug. 23, 1989), writ granted No. C-9308 (Tex. 1990), rev'd, 792 S.W.2d 952, 1990 Tex. LEXIS 103 (Tex. 1990).

ASSESSMENT & VALUATION

General Overview. — Trial court properly granted appellees' plea to the jurisdiction in a taxpayer's action alleging that a county appraisal review board's mistreatment and failure to permit the taxpayer an opportunity to present evidence was a denial of due process because it was undisputed that the taxpayer was entitled to de novo review of the board's determination in the district court; the taxpayer filed that action, and was entitled to present evidence at a trial de novo in the underlying action. Lambertz v. Robinson, No. 14-09-00650-CV, 2010 Tex. App. LEXIS 2086 (Tex. App. Houston 14th Dist. Mar. 25, 2010).

Executor failed to follow all necessary administrative procedures to appeal the 2003 and 2004 tax year valuations to the district court because the original petition failed to complain about the Board's 2003 order, instead focusing on tax year 2002. The executor only sought relief from the 2003 order when he filed an amended petition on August 20, 2004; however, that date was more than a year after the July 9, 2003, issuance of the Board's order pertaining to the 2003 valuation. Canales v. Kleberg County Appraisal Dist., No. 13-07-666-CV, 2008 Tex. App. LEXIS 6165 (Tex. App. Corpus Christi Aug. 14, 2008).

VALUATION. — Appraisal district's inaction on an untimely application for an open-space agricultural appraisal did not violate an energy company's due process rights; the energy company should have notified the appraisal district that it was no longer using the land at issue for a public purpose beginning in 1999. It could have filed at that time for the open-space agricultural appraisal, and then used the procedures set forth for protests. City of San Antonio v. Bastrop Cent. Appraisal Dist., 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

Sec. 41.455. Pooled or Unitized Mineral Interests.

(a) If a property owner files protests relating to a pooled or unitized mineral interest that is being produced at one or more production sites located in a single county with the appraisal review boards of more than one appraisal district, the appraisal review board for the appraisal district established for the county in which the production site or sites are located must determine the protest filed with that board and make its decision before another appraisal review board may hold a hearing to determine the protest filed with that other board.

(b) If a property owner files protests relating to a pooled or unitized mineral interest that is being produced at two or more production sites located in more than one county with the appraisal review boards of more than one appraisal district and at least two-thirds of the surface area of the mineral interest is located in the county for which one of the appraisal districts is established, the appraisal review board for that appraisal district must determine the protest filed with that board and make its decision before another appraisal review board may hold a hearing to determine the protest filed with that other board.

(c) A protest determined by an appraisal review board in violation of this section is void.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 810 (H.B. 1552), § 1, effective January 1, 2000.

Sec. 41.46. Notice of Protest Hearing.

(a) **[Effective until January 1, 2020]** The appraisal review board before which a protest hearing is scheduled shall deliver written notice to the property owner initiating a protest of the date, time, and place fixed for the hearing on the protest and of the property owner's entitlement to a postponement of the hearing as provided by Section 41.45 unless the property owner waives in writing notice of the hearing. The board shall deliver the notice not later than the 15th day before the date of the hearing.

(a) **[Effective January 1, 2020]** The appraisal review board before which a protest hearing is scheduled shall deliver written notice to the property owner initiating a protest not later than the 15th day before the date of the hearing. The notice must include:

(1) the date, time, and place of the hearing;

(2) a description of the subject matter of the hearing that is sufficient to identify the specific action being protested, such as:

(A) the determination of the appraised value of the property owner's property;

(B) the denial to the property owner in whole or in part of a partial exemption; or

(C) the determination that the property owner's land does not qualify for appraisal as provided by Subchapter C, D, E, or H, Chapter 23; and

(3) a statement that the property owner is entitled to a postponement of the hearing as provided by Section 41.45 unless the property owner waives in writing notice of the hearing.

(b) The board shall give the chief appraiser advance notice of the date, time, place, and subject matter of each protest hearing.

(c) If the protest relates to a taxable leasehold or other possessory interest in real property that is owned by this state or a political subdivision of this state, the board shall deliver notice of the hearing as provided by Subsection (a) to:

(1) the attorney general and the state agency that owns the real property, in the case of real property owned by this state; or

(2) the governing body of the political subdivision, in the case of real property owned by a political subdivision.

(d) The appraisal review board shall deliver notice of the hearing by certified mail if, in the notice of protest under Section 41.44, the property owner requests delivery by certified mail. The board may require the property owner to pay the cost of postage under this subsection.

(e) Notwithstanding Section 1.085, the appraisal review board shall deliver notice of the hearing by electronic mail if, in the notice of protest under Section 41.44, the property owner requests delivery by electronic mail and provides a valid electronic mail address.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 139, effective August 14, 1981; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 39, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 416 (S.B. 1097), § 4, effective September 1, 1999; am. Acts 2007, 80th Leg., ch. 626 (H.B. 538), § 3, effective January 1, 2008; am. Acts 2019, 86th Leg., ch. 753 (H.B. 1060), § 2, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 63, effective January 1, 2020.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Although property owner may have failed to protest in a timely manner, this fact did not excuse the appraisal review board from its obligation to fulfill its statutory duty to conduct a protest hearing. Harris County Appraisal Review Bd. v. General Electric Corp., 819 S.W.2d 915, 1991 Tex. App. LEXIS 2706 (Tex. App. Houston 14th Dist. Nov. 7, 1991, writ denied).

Sec. 41.461. Notice of Certain Matters Before Hearing. [Effective until January 1, 2020] Notice of Certain Matters Before Hearing; Delivery of Requested Information. [Effective January 1, 2020]

(a) **[Effective until January 1, 2020]** At least 14 days before a hearing on a protest, the chief appraiser shall:

(1) deliver a copy of the pamphlet prepared by the comptroller under Section 5.06(a) to the property owner initiating the protest if the owner is representing himself, or to an agent representing the owner if requested by the agent;

(2) inform the property owner that the owner or the agent of the owner may inspect and may obtain a copy of the data, schedules, formulas, and all other information the chief appraiser plans to introduce at the hearing to establish any matter at issue; and

(3) deliver a copy of the hearing procedures established by the appraisal review board under Section 41.66 to the property owner.

(a) **[Effective January 1, 2020]** At least 14 days before a hearing on a protest, the chief appraiser shall:

(1) deliver a copy of the pamphlet prepared by the comptroller under Section 5.06 to the property owner initiating the protest, or to an agent representing the owner if requested by the agent;

(2) inform the property owner that the owner or the agent of the owner is entitled on request to a copy of the data, schedules, formulas, and all other information the chief appraiser will introduce at the hearing to establish any matter at issue; and

(3) deliver a copy of the hearing procedures established by the appraisal review board under Section 41.66 to the property owner.

(b) **[Effective until January 1, 2020]** The charge for copies provided to an owner or agent under this section may not exceed the charge for copies of public information as provided under Subchapter F, Chapter 552, Government Code, except:

(1) the total charge for copies provided in connection with a protest of the appraisal of residential property may not exceed $15 for each residence; and

(2) the total charge for copies provided in connection with a protest of the appraisal of a single unit of property subject to appraisal, other than residential property, may not exceed $25.

(b) **[Effective January 1, 2020]** The chief appraiser may not charge a property owner or the designated agent of the

owner for copies provided to the owner or designated agent under this section, regardless of the manner in which the copies are prepared or delivered.

(c) **[Effective January 1, 2020]** A chief appraiser shall deliver information requested by a property owner or the agent of the owner under Subsection (a)(2):

(1) by regular first-class mail, deposited in the United States mail, postage prepaid, and addressed to the property owner or agent at the address provided in the request for the information;

(2) in an electronic format as provided by an agreement under Section 1.085; or

(3) subject to Subsection (d), by referring the property owner or the agent of the owner to a secure Internet website with user registration and authentication or to the exact Internet location or uniform resource locator (URL) address on an Internet website maintained by the appraisal district on which the requested information is identifiable and readily available.

(d) **[Effective January 1, 2020]** If a chief appraiser provides a property owner or the designated agent of the owner information under Subsection (c)(3), the notice must contain a statement in a conspicuous font that clearly indicates that the property owner or the agent of the owner may on request receive the information by regular first-class mail or in person at the appraisal office. On request by a property owner or the agent of the owner, the chief appraiser must provide the information by regular first-class mail or in person at the appraisal office.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 364 (H.B. 201), § 1, effective January 1, 1992; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 17, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(100), effective September 1, 1995; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 64, effective January 1, 2020.

Sec. 41.47. Determination of Protest.

(a) The appraisal review board hearing a protest shall determine the protest and make its decision by written order.

(b) If on determining a protest the board finds that the appraisal records are incorrect in some respect raised by the protest, the board by its order shall correct the appraisal records by changing the appraised value placed on the protesting property owner's property or by making the other changes in the appraisal records that are necessary to conform the records to the requirements of law. If the appraised value of a taxable property interest, other than an interest owned by a public utility or by a cooperative corporation organized to provide utility service, is changed as the result of a protest or challenge, the board shall change the appraised value of all other interests, other than an interest owned by a public utility or by a cooperative corporation organized to provide utility service, in the same property, including a mineral in place, in proportion to the ownership interests.

(c) If the protest is of the determination of the appraised value of the owner's property, the appraisal review board must state in the order the appraised value of the property:

(1) as shown in the appraisal records submitted to the board by the chief appraiser under Section 25.22 or 25.23; and

(2) as finally determined by the board.

(c-1) If, in the case of a determination of eligibility for a refund requested under Section 23.1243, the appraisal review board determines that the dealer is entitled to a refund in excess of the amount, if any, to which the chief appraiser determined the dealer to be entitled, the board shall order the chief appraiser to deliver written notice of the board's determination to the collector and the dealer in the manner provided by Section 23.1243(c).

(c-2) **[Effective January 1, 2020]** The board may not determine the appraised value of the property that is the subject of a protest to be an amount greater than the appraised value of the property as shown in the appraisal records submitted to the board by the chief appraiser under Section 25.22 or 25.23, except as requested and agreed to by the property owner. This subsection does not apply if the action being protested is the cancellation, modification, or denial of an exemption or the determination that the property does not qualify for appraisal as provided by Subchapter C, D, E, or H, Chapter 23.

(d) **[Effective until January 1, 2020]** The board shall deliver by certified mail a notice of issuance of the order and a copy of the order to the property owner and the chief appraiser.

(d) **[Effective January 1, 2020]** The board shall deliver by certified mail:

(1) a notice of issuance of the order and a copy of the order to the property owner and the chief appraiser; and

(2) a copy of the appraisal review board survey prepared under Section 5.104 and instructions for completing and submitting the survey to the property owner.

(e) **[Effective until January 1, 2020]** The notice of the issuance of the order must contain a prominently printed statement in upper-case bold lettering informing the property owner in clear and concise language of the property owner's right to appeal the board's decision to district court. The statement must describe the deadline prescribed by Section 42.06(a) of this code for filing a written notice of appeal, and the deadline prescribed by Section 42.21(a) of this code for filing the petition for review with the district court.

(e) **[Effective January 1, 2020]** The notice of the issuance of the order must contain a prominently printed statement in upper-case bold lettering informing the property owner in clear and concise language of the property owner's right to appeal the order of the board to district court. The statement must describe the deadline prescribed by Section 42.06(a) for filing a written notice of appeal and the deadline prescribed by Section 42.21(a) for filing the petition for review with the district court.

(f) **[2 Versions: As added by Acts 2019, 86th Leg., ch. 699 (S.B. 2531); Effective January 1, 2020]** The chief appraiser and the property owner or the designated agent of the owner may file a joint motion with the appraisal review board notifying the board that the chief appraiser and the property owner or the designated agent of the owner have agreed to a disposition of the protest and requesting the board to issue an agreed order. The joint motion must contain the terms of the disposition of the protest. The chairman of the board shall issue the agreed order not later than the fifth day after the date on which the joint motion is filed with the board. If the chairman is unable to issue the agreed order within the five-day period, the board shall issue the agreed order not later than the 30th day after the date on which the joint motion is filed with the board. The chief appraiser and the property owner or the designated agent of the owner may provide in the joint motion that the agreed order is appealable in the same manner as any other order issued by the board under this section.

(f) **[2 Versions: As added by Acts 2019, 86th Leg., ch. 944 (S.B. 2); Effective January 1, 2020]** The appraisal review board shall take the actions required by Subsections (a) and (d) not later than:

(1) Athe 30th day after the date the hearing on the protest is concluded, if the board is established for an appraisal district located in a county with a population of less than four million; or

(2) the 45th day after the date the hearing on the protest is concluded, if the board is established for an appraisal district located in a county with a population of four million or more.

(g) **[Effective January 1, 2020]** The chief appraiser and the property owner or the designated agent of the owner may file a joint motion with the appraisal review board notifying the board that the chief appraiser and the property owner or the designated agent of the owner have agreed to a disposition of the protest and requesting the board to issue an agreed order. The joint motion must contain the terms of the disposition of the protest. The board shall issue the agreed order not later than the fifth day after the date on which the joint motion is filed with the board. The chief appraiser and the property owner or the designated agent of the owner may provide in the joint motion that the agreed order is appealable in the same manner as any other order issued by the board under this section.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 140, effective August 14, 1981; am. Acts 1985, 69th Leg., ch. 504 (S.B. 760), § 3, effective June 12, 1985; am. Acts 1987, 70th Leg., ch. 145 (S.B. 751), § 1, effective January 1, 1988; am. Acts 1987, 70th Leg., ch. 773 (H.B. 1440), § 2, effective January 1, 1988; am. Acts 1987, 70th Leg., ch. 794 (H.B. 1614), § 2, effective June 18, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.03, effective August 28, 1989; am. Acts 2011, 82nd Leg., ch. 322 (H.B. 2476), § 6, effective January 1, 2012; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 12, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 22.001(42), effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 699 (S.B. 2531), § 1, effective January 1, 2020; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 65, effective January 1, 2020.

NOTES TO DECISIONS

Analysis

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CIVIL PROCEDURE
Jurisdiction
Subject Matter Jurisdiction
Jurisdiction Over Actions

General Overview. — District court did not lack jurisdiction to hear and determine the school district's action for delinquent taxes, even if the review board failed to deliver the requisite notice and copy under Tex. Tax Code Ann. § 41.47(d); that omission only deprived the district court of jurisdiction to determine the taxpayer's appeal from the board's order deciding the tax protest. Valero Transmission Co. v. San Marcos Consol. Independent School Dist., 770 S.W.2d 648, 1989 Tex. App. LEXIS 1575 (Tex. App. Austin May 24, 1989, writ denied).

SUMMARY JUDGMENT
Burdens of Production & Proof

General Overview. — Although a tax appraisal review board was required by Tex. Tax Code Ann. § 41.47(d) to send a statutory notice to taxpayers of its decision on their administrative protest, the tax assessors' affidavits in support of the taxing authority's motion for summary judgment only raised an inference that notice was sent pursuant to § 41.47(d), so that the authority's summary judgment proof was insufficient, as a matter of law, to prove that they were entitled to summary judgment based on the taxpayers' failure to comply with Tex. Tax Code Ann. § 42.06(a), the provision governing the time frame within which a notice of appeal needed to be filed by a taxpayer after receiving notice under § 41.47. Herndon Marine Products, Inc. v. San Patricio County Appraisal Review Bd., 695 S.W.2d 29, 1985 Tex. App. LEXIS 6573 (Tex. App. Corpus Christi Apr. 25, 1985, writ ref'd n.r.e.).

APPEALS
Reviewability

Notice of Appeal. — Absent request that notices could be delivered to a fiduciary, property owner was entitled to notice under Tex. Tax Code Ann. § 41.47 of determining protest of taxes issued by appraisal district and appraisal review board, and without notice to the property owner, the time limitations of Tex. Tax Code Ann. §§ 42.06(a), and 42.21(a) did not apply. First Union Real Estate Inv. v. Taylor County Appraisal Dist., 758 S.W.2d 380, 1988 Tex. App. LEXIS 2378 (Tex. App. Eastland Sept. 22, 1988, writ denied).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Failure to properly identify property or its corporate taxpayer rendered a notice and order by the appraisal review board insufficient to meet the requirements of Tex. Tax Code Ann. § 41.47; therefore, it was improper for trial court to summarily dismiss as untimely under Tex. Tax. Code Ann. § 42.21 the taxpayer's petition challenging the valuation of its gas gathering system. Valero South Texas Gathering Co. v. Starr County Appraisal Dist., No. 04-96-00526-CV, 1997 Tex. App. LEXIS 5095 (Tex. App. San Antonio Sept. 24, 1997).

Where a corporation had timely filed a protest with the trial court, and the trial court had dismissed the protest, the court had jurisdiction over the corporation's appeal; the court granted the protest because the notice did not reference the property by legal description or a taxpayer account number, as was required under Tex. Tax Code Ann. § 41.47(d). Valero South Tex. Processing Co. v. Starr County Appraisal Dist., 954 S.W.2d 863, 1997 Tex. App. LEXIS 5078 (Tex. App. San Antonio Sept. 24, 1997, no pet.).

Appraisal Review Board shall determine all protests before approval of the appraisal records or as soon thereafter as practicable; in other words, Tex. Tax Code Ann. § 41.47(c) is directory rather than mandatory. Valero Transmission Co. v. Hays Consol. Independent School Dist., 704 S.W.2d 857, 1985 Tex. App. LEXIS 12908 (Tex. App. Austin Dec. 18, 1985, writ ref'd n.r.e.).

ASSESSMENTS. — Because a taxpayer who filed a petition naming the appraisal review board as the only party failed to request leave to amend to name the appraisal district pursuant to Tex. Tax Code Ann. § 42.21(b), his suit was properly dismissed for want of jurisdiction. The board's final order contained the information required by Tex. Tax Code Ann. § 41.47(e), which does not include information on how service of the petition is perfected. Townsend v. Appraisal Review Bd., No. 09-11-00089-CV, 2011 Tex. App. LEXIS 7056 (Tex. App. Beaumont Aug. 31, 2011).

JUDICIAL REVIEW. — Because a taxpayer who filed a petition naming the appraisal review board as the only party failed to request leave to amend to name the appraisal district pursuant to Tex. Tax Code Ann. § 42.21(b), his suit was properly dismissed for want of jurisdiction. The board's final order contained the information required by Tex. Tax Code Ann. § 41.47(e), which does not include information on how service of the petition is perfected. Townsend v. Appraisal Review Bd., No. 09-11-00089-CV, 2011 Tex. App. LEXIS 7056 (Tex. App. Beaumont Aug. 31, 2011).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected by the county appraisal review board; the claim was not only discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

TAXPAYER PROTESTS. — Taxpayer failed to exhaust its administrative remedies as to its complaint that its natural gas was exempt from taxation under the interstate commerce clause; thus, trial court lacked jurisdiction to address that complaint, Tex. Tax Code Ann. §§ 41.41, 41.47, and Tex. Tax Code Ann. § 25.25(c)(3) was not the appropriate vehicle for seeking the requested relief. Harris County Appraisal Dist. v. ETC Mktg., 399 S.W.3d 364, 2013 Tex. App. LEXIS 4177 (Tex. App. Houston 14th Dist. Apr. 2, 2013, no pet.).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected by the county appraisal review board; the claim was not only discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

PERSONAL PROPERTY TAX
Tangible Property

General Overview. — Taxpayer failed to exhaust its administrative remedies as to its complaint that its natural gas was

exempt from taxation under the interstate commerce clause; thus, trial court lacked jurisdiction to address that complaint, Tex. Tax Code Ann. §§ 41.41, 41.47, and Tex. Tax Code Ann. § 25.25(c)(3) was not the appropriate vehicle for seeking the requested relief. Harris County Appraisal Dist. v. ETC Mktg., 399 S.W.3d 364, 2013 Tex. App. LEXIS 4177 (Tex. App. Houston 14th Dist. Apr. 2, 2013, no pet.).

REAL PROPERTY TAX

General Overview. — Summary judgment for appraisal district and appraisal review board was proper, because landowner received notice of the valuation of his property under Tex. Tax. Code Ann. § 41.47 but failed to file a timely notice of appeal with the appraisal review board under Tex. Tax. Code § 42.06. Underhill v. Jefferson County Appraisal Dist., 725 S.W.2d 301, 1986 Tex. App. LEXIS 9453 (Tex. App. Beaumont Dec. 18, 1986, no writ).

Secs. 41.48 to 41.60. [Reserved for expansion].

Subchapter D

Administrative Provisions

Sec. 41.61. Issuance of Subpoena.

(a) If reasonably necessary in the course of a protest provided by this chapter, the appraisal review board on its own motion or at the written request of a party to the protest, may subpoena witnesses or books, records, or other documents of the property owner or appraisal district that relate to the protest.

(b) On the written request of a party to a protest provided by this chapter, the appraisal review board shall issue a subpoena if the requesting party:

(1) shows good cause for issuing the subpoena; and

(2) deposits with the board a sum the board determines is reasonably sufficient to insure payment of the costs estimated to accrue for issuance and service of the subpoena and for compensation of the individual to whom it is directed.

(c) An appraisal review board may not issue a subpoena under this section unless the board holds a hearing at which the board determines that good cause exists for the issuance of the subpoena. The appraisal review board before which a good cause hearing is scheduled shall deliver written notice to the party being subpoenaed and parties to the protest of the date, time, and place of the hearing. The board shall deliver the notice not later than the 5th day before the date of the good cause hearing. The party being subpoenaed must have an opportunity to be heard at the good cause hearing.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 141, effective August 14, 1981; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 38, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 828 (H.B. 2610), § 3, effective September 1, 1995.

Sec. 41.62. Service and Enforcement of Subpoena.

(a) A sheriff or constable shall serve a subpoena issued as provided by this subchapter.

(b) If the person to whom a subpoena is directed fails to comply, the issuing board or the party requesting the subpoena may bring suit in the district court to enforce the subpoena. If the district court determines that good cause exists for issuance of the subpoena, the court shall order compliance. The district court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to obey the order of the district court is punishable as contempt.

(c) The county attorney or, if there is no county attorney, the district attorney shall represent the board in a suit to enforce a subpoena.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 142, effective August 14, 1981.

Sec. 41.63. Compensation for Subpoenaed Witness.

(a) An individual who is not a party to the proceeding and who complies with a subpoena issued as provided by this subchapter is entitled to:

(1) the reasonable costs of producing the documents;

(2) mileage of 15 cents a mile for going to and returning from the place of the proceeding; and

(3) a fee of $10 a day for each whole or partial day that the individual is necessarily present at the proceedings.

(b) The appraisal review board by rule may prescribe greater mileage or fee, but an increase is not effective unless uniformly applicable to all individuals who are entitled to mileage or fee as provided by Subsection (a) of this section.

(c) Compensation authorized as provided by this section is paid by the appraisal office if the subpoena is issued on the motion of the appraisal review board or by the party requesting the subpoena.

(d) Compensation is not payable unless the amount claimed is approved by the appraisal review board that issued the subpoena.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 143, effective August 14, 1981.

Sec. 41.64. Inspection of Tax Records.

The appraisal review board may inspect the records or other materials of the appraisal office that are not made confidential under this code. On demand of the board, the chief appraiser shall produce the materials as soon as practicable.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 144, effective August 14, 1981.

Sec. 41.65. Request for State Assistance.

The appraisal review board may request the comptroller to assist in determining the accuracy of appraisals by the appraisal office or to provide other professional assistance. The appraisal office shall reimburse the costs of providing assistance if the comptroller requests reimbursement.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 144, effective August 14, 1981; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 51, effective September 1, 1991.

Sec. 41.66. Hearing Procedures.

(a) The appraisal review board shall establish by rule the procedures for hearings it conducts as provided by Subchapters A and C of this chapter. On request made by a property owner in the owner's notice of protest or in a separate writing delivered to the appraisal review board on or before the date the notice of protest is filed, the property owner is entitled to a copy of the hearing procedures. The copy of the hearing procedures shall be delivered to the property owner not later than the 10th day before the date the hearing on the protest begins and may be delivered with the notice of the protest hearing required under Section 41.46(a). The notice of protest form prescribed by the comptroller under Section 41.44(d) or any other notice of protest form made available to a property owner by the appraisal review board or the appraisal office shall provide the property owner an opportunity to make or decline to make a request under this subsection. The appraisal review board shall post a copy of the hearing procedures in a prominent place in the room in which the hearing is held.

(b) Hearing procedures to the greatest extent practicable shall be informal. Each party to a hearing is entitled to offer evidence, examine or cross-examine witnesses or other parties, and present argument on the matters subject to the hearing. A property owner who is a party to a protest is entitled to elect to present the owner's case at a hearing on the protest either before or after the appraisal district presents the district's case.

(c) A property owner who is entitled as provided by this chapter to appear at a hearing may appear by himself or by his agent. A taxing unit may appear by a designated agent.

(d) Except as provided by Subsection (d-1), hearings conducted as provided by this chapter are open to the public.

(d-1) Notwithstanding Chapter 551, Government Code, the appraisal review board shall conduct a hearing that is closed to the public if the property owner or the chief appraiser intends to disclose proprietary or confidential information at the hearing that will assist the review board in determining the protest. The review board may hold a closed hearing under this subsection only on a joint motion by the property owner and the chief appraiser.

(d-2) Information described by Subsection (d-1) is considered information obtained under Section 22.27.

(e) The appraisal review board may not consider any appraisal district information on a protest that was not presented to the appraisal review board during the protest hearing.

(f) A member of the appraisal review board may not communicate with another person concerning:

(1) the evidence, argument, facts, merits, or any other matters related to an owner's protest, except during the hearing on the protest; or

(2) a property that is the subject of the protest, except during a hearing on another protest or other proceeding before the board at which the property is compared to other property or used in a sample of properties.

(g) At the beginning of a hearing on a protest, each member of the appraisal review board hearing the protest must sign an affidavit stating that the board member has not communicated with another person in violation of Subsection (f). If a board member has communicated with another person in violation of Subsection (f), the member must be recused from the proceeding and may not hear, deliberate on, or vote on the determination of the protest. The board of directors of the appraisal district shall adopt and implement a policy concerning the temporary replacement of an appraisal review board member who has communicated with another person in violation of Subsection (f).

(h) **[Effective until January 1, 2020]** The appraisal review board shall postpone a hearing on a protest if the property owner requests additional time to prepare for the hearing and establishes to the board that the chief appraiser failed to comply with Section 41.461. The board is not required to postpone a hearing more than one time under this subsection.

(h) **[Effective January 1, 2020]** The appraisal review board shall postpone a hearing on a protest if the property owner or the designated agent of the owner requests additional time to prepare for the hearing and establishes to the board that the chief appraiser failed to comply with Section 41.461. The board is not required to postpone a hearing more than one time under this subsection.

(i) **[Effective until January 1, 2020]** A hearing on a protest filed by a property owner who is not represented by an agent designated under Section 1.111 shall be set for a time and date certain. If the hearing is not commenced within

two hours of the time set for the hearing, the appraisal review board shall postpone the hearing on the request of the property owner.

(i) **[Effective January 1, 2020]** A hearing on a protest filed by a property owner or the designated agent of the owner shall be set for a time and date certain. If the hearing is not commenced within two hours of the time set for the hearing, the appraisal review board shall postpone the hearing on the request of the property owner or the designated agent of the owner.

(j) **[Effective until January 1, 2020]** On the request of a property owner or a designated agent, an appraisal review board shall schedule hearings on protests concerning up to 20 designated properties on the same day. The designated properties must be identified in the same notice of protest, and the notice must contain in boldfaced type the statement "request for same-day protest hearings." A property owner or designated agent may not file more than one request under this subsection with the appraisal review board in the same tax year. The appraisal review board may schedule hearings on protests concerning more than 20 properties filed by the same property owner or designated agent and may use different panels to conduct the hearings based on the board's customary scheduling. The appraisal review board may follow the practices customarily used by the board in the scheduling of hearings under this subsection.

(j) **[Effective January 1, 2020]** On the request of a property owner or the designated agent of the owner, an appraisal review board shall schedule hearings on protests concerning up to 20 designated properties to be held consecutively on the same day. The designated properties must be identified in the same notice of protest, and the notice must contain in boldfaced type the statement "request for same-day protest hearings." A property owner or the designated agent of the owner may file more than one request under this subsection with the appraisal review board in the same tax year. The appraisal review board may schedule hearings on protests concerning more than 20 properties filed by the same property owner or the designated agent of the owner and may use different panels to conduct the hearings based on the board's customary scheduling. The appraisal review board may follow the practices customarily used by the board in the scheduling of hearings under this subsection.

(j-1) **[Effective January 1, 2020]** An appraisal review board may schedule the hearings on all protests filed by a property owner or the designated agent of the owner to be held consecutively. The notice of the hearings must state the date and time that the first hearing will begin, state the date the last hearing will end, and list the order in which the hearings will be held. The order of the hearings listed in the notice may not be changed without the agreement of the property owner or the designated agent of the owner, the chief appraiser, and the appraisal review board. The board may not reschedule a hearing for which notice is given under this subsection to a date earlier than the seventh day after the date the last hearing was scheduled to end unless agreed to by the property owner or the designated agent of the owner, the chief appraiser, and the appraisal review board. Unless agreed to by the parties, the board must provide written notice of the date and time of the rescheduled hearing to the property owner or the designated agent of the owner not later than the seventh day before the date of the hearing.

(j-2) **[Effective January 1, 2020, only if Acts 2019, 86th Leg., H.B. 3, becomes law, and the amendments by this bill apply only to a protest filed under tax Code Chapter 41 on or after Jan. 1, 2021]** An appraisal review board must schedule a hearing on a protest filed by a property owner who is 65 years of age or older, disabled, a military service member, a military veteran, or the spouse of a military service member or military veteran before scheduling a hearing on a protest filed by a designated agent of a property owner.

(k) **[Effective January 1, 2020, only if Acts 2019, 86th Leg., H.B. 3, becomes law, and the amendments by this bill apply only to a protest filed under Tax Code Chapter 41 on or after Jan. 1, 2021]** This subsection does not apply to a special panel established under Section 6.425. If an appraisal review board sits in panels to conduct protest hearings, protests shall be randomly assigned to panels, except that the board may consider the type of property subject to the protest or the ground of the protest for the purpose of using the expertise of a particular panel in hearing protests regarding particular types of property or based on particular grounds. If a protest is scheduled to be heard by a particular panel, the protest may not be reassigned to another panel without the consent of the property owner or designated agent. If the appraisal review board has cause to reassign a protest to another panel, a property owner or designated agent may agree to reassignment of the protest or may request that the hearing on the protest be postponed. The board shall postpone the hearing on that request. A change of members of a panel because of a conflict of interest, illness, or inability to continue participating in hearings for the remainder of the day does not constitute reassignment of a protest to another panel.

(k) **[Effective September 1, 2020]** This subsection does not apply to a special panel established under Section 6.425. If an appraisal review board sits in panels to conduct protest hearings, protests shall be randomly assigned to panels, except that the board may consider the type of property subject to the protest or the ground of the protest for the purpose of using the expertise of a particular panel in hearing protests regarding particular types of property or based on particular grounds. If a protest is scheduled to be heard by a particular panel, the protest may not be reassigned to another panel without the consent of the property owner or the designated agent of the owner. If the appraisal review board has cause to reassign a protest to another panel, a property owner or the designated agent of the owner may agree to reassignment of the protest or may request that the hearing on the protest be postponed. The board shall postpone the hearing on that request. A change of members of a panel because of a conflict of interest, illness, or inability to continue participating in hearings for the remainder of the day does not constitute reassignment of a protest to another panel.

(k-1) **[Effective September 1, 2020]** On the request of a property owner or the designated agent of the owner, an appraisal review board to which Section 6.425 applies shall assign a protest relating to property described by Section

6.425(b) to a special panel. In addition, the chairman of the appraisal review board may assign a protest relating to property not described by Section 6.425(b) to a special panel as authorized by Section 6.425(f), but only if the assignment is requested or consented to by the property owner or the designated agent of the owner. Protests assigned to special panels shall be randomly assigned to those panels. If a protest is scheduled to be heard by a particular special panel, the protest may not be reassigned to another special panel without the consent of the property owner or the designated agent of the owner. If the board has cause to reassign a protest to another special panel, a property owner or the designated agent of the owner may agree to reassignment of the protest or may request that the hearing on the protest be postponed. The board shall postpone the hearing on that request. A change of members of a special panel because of a conflict of interest, illness, or inability to continue participating in hearings for the remainder of the day does not constitute reassignment of a protest to another special panel.

(*l*) A property owner, attorney, or agent offering evidence or argument in support of a protest brought under Section 41.41(a)(1) or (2) of this code is not subject to Chapter 1103, Occupations Code, unless the person offering the evidence or argument states that the person is offering evidence or argument as a person holding a license or certificate under Chapter 1103, Occupations Code. A person holding a license or certificate under Chapter 1103, Occupations Code, shall state the capacity in which the person is appearing before the appraisal review board.

(m) An appraisal district or appraisal review board may not make decisions with regard to membership on a panel or chairmanship of a panel based on a member's voting record in previous protests.

(n) A request for postponement of a hearing must contain the mailing address and e-mail address of the person requesting the postponement. An appraisal review board shall respond in writing or by e-mail to a request for postponement of a hearing not later than the seventh day after the date of receipt of the request.

(*o*) The chairman of an appraisal review board or a member designated by the chairman may make decisions with regard to the scheduling or postponement of a hearing. The chief appraiser or a person designated by the chief appraiser may agree to a postponement of an appraisal review board hearing.

(p) **[Effective January 1, 2020]** At the end of a hearing on a protest, the appraisal review board shall provide the property owner or the designated agent of the owner one or more documents indicating that the members of the board hearing the protest signed the affidavit required by Subsection (g).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 145, effective August 14, 1981; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 39, effective September 1, 1989; am. Acts 1991, 72nd Leg., 1st C.S., ch. 14 (H.B. 169), § 8.01(23), effective November 12, 1991; am. Acts 1991, 72nd Leg., ch. 364 (H.B. 201), § 2, effective January 1, 1992; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 3.2, effective September 1, 1991; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 19.001, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 1035 (H.B. 2792), § 1, effective June 14, 2013; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 22, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 939 (S.B. 1767), § 2, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 66, effective September 1, 2020.

ATTORNEY GENERAL OPINIONS

Use of District's In-House Counsel.

A district may not use its in-house counsel to also advise the tax appraisal review board on tax protest matters. However, if such communications take place, section 6.411(c) of the Tax Code exempts communications between the review board and its legal counsel from criminal penalties for ex parte communications. 2007 Tex. Op. Att'y Gen. GA-0556.

Sec. 41.67. Evidence.

(a) A member of the appraisal review board may swear witnesses who testify in proceedings under this chapter. All testimony must be given under oath.

(b) Documentary evidence may be admitted in the form of a copy if the appraisal review board conducting the proceeding determines that the original document is not readily available. A party is entitled to an opportunity to compare a copy with the original document on request.

(c) Official notice may be taken of any fact judicially cognizable. A party is entitled to an opportunity to contest facts officially noticed.

(d) **[Effective until January 1, 2020]** Information that was previously requested under Section 41.461 by the protesting party that was not made available to the protesting party at least 14 days before the scheduled or postponed hearing may not be used as evidence in the hearing.

(d) **[Effective January 1, 2020]** Information that was previously requested under Section 41.461 by the protesting party that was not delivered to the protesting party at least 14 days before the scheduled or postponed hearing may not be used or offered in any form as evidence in the hearing, including as a document or through argument or testimony. This subsection does not apply to information offered to rebut evidence or argument presented at the hearing by the protesting party or that party's designated agent.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 146, effective August 14, 1981; am. Acts 1991, 72nd Leg., ch. 364 (H.B. 201), § 3, effective January 1, 1992; am. Acts 1999, 76th Leg., ch. 463 (S.B. 1359), § 3, effective September 1, 1999; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 67, effective January 1, 2020.

Sec. 41.68. Record of Proceeding.

The appraisal review board shall keep a record of its proceedings in the form and manner prescribed by the comptroller.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 147, effective August 14, 1981; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 51, effective September 1, 1991.

Sec. 41.69. Conflict of Interest.

A member of the appraisal review board may not participate in the determination of a taxpayer protest in which he is interested or in which he is related to a party by affinity within the second degree or by consanguinity within the third degree, as determined under Chapter 573, Government Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 147, effective August 14, 1981; am. Acts 1991, 72nd Leg., ch. 561 (H.B. 1345), § 46, effective August 26, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(27), effective September 1, 1995.

Sec. 41.70. Public Notice of Protest and Appeal Procedures.

(a) On or after May 1 but not later than May 15, the chief appraiser shall publish notice of the manner in which a protest under this chapter may be brought by a property owner. The notice must describe how to initiate a protest and must describe the deadlines for filing a protest. The notice must also describe the manner in which an order of the appraisal review board may be appealed. The comptroller by rule shall adopt minimum standards for the form and content of the notice required by this section.

(b) The chief appraiser shall publish the notice in a newspaper having general circulation in the county for which the appraisal district is established. The notice may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and may not be published in the part of the paper in which legal notices and classified advertisements appear.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 40, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 52, effective September 1, 1991.

Sec. 41.71. Evening and Weekend Hearings.

[Effective until January 1, 2020] An appraisal review board by rule shall provide for hearings on protests in the evening or on a Saturday or Sunday.

(a) **[Effective January 1, 2020]** An appraisal review board by rule shall provide for hearings on protests on a Saturday or after 5 p.m. on a weekday.

(b) **[Effective January 1, 2020]** The board may not schedule:

(1) the first hearing on a protest held on a weekday evening to begin after 7 p.m.; or

(2) a hearing on a protest on a Sunday.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 40, effective January 1, 1998; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 68, effective January 1, 2020.

CHAPTER 41A

Appeal Through Binding Arbitration

Section	
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41A.031.	Expedited Arbitration [Repealed].
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41A.06.	Registry and Qualification of Arbitrators.
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Sec. 41A.01. Right of Appeal by Property Owner.

As an alternative to filing an appeal under Section 42.01, a property owner is entitled to appeal through binding arbitration under this chapter an appraisal review board order determining a protest filed under Section 41.41(a)(1) or (2) concerning the appraised or market value of property if:

(1) the property qualifies as the owner's residence homestead under Section 11.13; or

(2) the appraised or market value, as applicable, of the property as determined by the order is $5 million or less.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351), § 1, effective September 1, 2005; enacted by Acts 2005, 79th Leg.,

ch. 912 (H.B. 182), § 1, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 4, effective January 1, 2010; am. Acts 2013, 83rd Leg., ch. 610 (S.B. 1255), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 474 (S.B. 849), § 1, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 570 (S.B. 731), § 1, effective September 1, 2017.

Sec. 41A.02. Notice of Right to Arbitration.

An appraisal review board that delivers notice of issuance of an order described by Section 41A.01 and a copy of the order to a property owner as required by Section 41.47 shall include with the notice and copy:

(1) a notice of the property owner's rights under this chapter; and

(2) **[2 Versions: As added by Acts 2005, 79th Leg., ch. 372]** a copy of the form prescribed under Section 41A.03(a)(1).

(2) **[2 Versions: As added by Acts 2005, 79th Leg., ch. 912]** a copy of the form prescribed under Section 41A.04.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351), § 1, effective September 1, 2005; Enacted by Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005.

Sec. 41A.03. Request for Arbitration.

(a) To appeal an appraisal review board order under this chapter, a property owner must file with the appraisal district not later than the 60th day after the date the property owner receives notice of the order:

(1) a completed request for binding arbitration under this chapter in the form prescribed by Section 41A.04; and

(2) an arbitration deposit made payable to the comptroller in the amount of:

(A) $450, if the property qualifies as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is $500,000 or less, as determined by the order;

(B) $500, if the property qualifies as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $500,000, as determined by the order;

(C) $500, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is $1 million or less, as determined by the order;

(D) $800, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $1 million but not more than $2 million, as determined by the order;

(E) $1,050, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $2 million but not more than $3 million, as determined by the order; or

(F) $1,550, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $3 million but not more than $5 million, as determined by the order.

(a-1) If a property owner requests binding arbitration under this chapter to appeal appraisal review board orders involving two or more contiguous tracts of land that are owned by the property owner, a single arbitration deposit in the amount provided by Subsection (a)(2) is sufficient to satisfy the requirement of Subsection (a)(2). For purposes of this subsection, "contiguous tracts of land" means improved or unimproved tracts of land that are touching or that share a common boundary, as determined using appraisal district records or legal descriptions of the tracts.

(b) A property owner who fails to strictly comply with this section waives the property owner's right to request arbitration under this chapter. A property owner who appeals an appraisal review board order determining a protest concerning the appraised or market value, as applicable, of the owner's property under Chapter 42 waives the owner's right to request binding arbitration under this chapter regarding the value of that property. An arbitrator shall dismiss any pending arbitration proceeding if the property owner's rights are waived under this subsection.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351), § 1, effective September 1, 2005; enacted by Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 1034 (H.B. 4412), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 5, effective January 1, 2010; am. Acts 2013, 83rd Leg., ch. 488 (S.B. 1662), § 1, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 23, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 474 (S.B. 849), § 2, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 570 (S.B. 731), § 2, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 47 (H.B. 1802), § 1, effective May 17, 2019; am. Acts 2019, 86th Leg., ch. 659 (S.B. 1876), § 1, effective June 10, 2019; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 69, effective January 1, 2020.

Sec. 41A.031. Expedited Arbitration [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 488 (S.B. 1662), § 2, effective January 1, 2014 and by Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 28, effective June 14, 2013.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 6, effective January 1, 2010.

Sec. 41A.04. Contents of Request Form.

The comptroller by rule shall prescribe the form of a request for binding arbitration under this chapter. The form must require the property owner to provide only:

(1) a brief statement that explains the basis for the property owner's appeal of the appraisal review board order;

(2) a statement of the property owner's opinion of the appraised or market value, as applicable, of the property that is the subject of the appeal; and

(3) any other information reasonably necessary for the appraisal district to request appointment of an arbitrator.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351), § 1, effective September 1, 2005; Enacted by Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005.

Sec. 41A.05. Processing of Registration Request.

(a) Not later than the 10th day after the date an appraisal district receives from a property owner a completed request for binding arbitration under this chapter and an arbitration deposit as required by Section 41A.03, the appraisal district shall:

(1) submit the request and deposit to the comptroller; and

(2) request the comptroller to appoint a qualified arbitrator to conduct the arbitration.

(b) The comptroller may retain $50 of the deposit to cover the comptroller's administrative costs.

(c) The comptroller may not reject an application submitted to the comptroller under this section unless:

(1) the comptroller delivers written notice to the applicant of the defect in the application that would be the cause of the rejection; and

(2) the applicant fails to cure the defect on or before the 15th day after the date the comptroller delivers the notice.

(d) An applicant may cure a defect in accordance with Subsection (c) at any time before the expiration of the period provided by that subsection, without regard to the deadline for filing the request for binding arbitration under Section 41A.03(a).

(e) For purposes of this section, a reference to the applicant includes the applicant's representative if the applicant has retained a representative as provided by Section 41A.08 for purposes of representing the applicant in an arbitration proceeding under this chapter.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351), § 1, effective September 1, 2005; Enacted by Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005; am. Acts 2019, 86th Leg., ch. 47 (H.B. 1802), § 2(a), effective May 17, 2019.

Sec. 41A.06. Registry and Qualification of Arbitrators.

(a) The comptroller shall maintain a registry listing the qualified persons who have agreed to serve as arbitrators under this chapter.

(b) **[Effective until January 1, 2020]** To initially qualify to serve as an arbitrator under this chapter, a person must:

(1) meet the following requirements, as applicable:

(A) be licensed as an attorney in this state; or

(B) have:

(i) completed at least 30 hours of training in arbitration and alternative dispute resolution procedures from a university, college, or legal or real estate trade association; and

(ii) been licensed or certified continuously during the five years preceding the date the person agrees to serve as an arbitrator as:

(a) a real estate broker or sales agent under Chapter 1101, Occupations Code;

(b) a real estate appraiser under Chapter 1103, Occupations Code; or

(c) a certified public accountant under Chapter 901, Occupations Code; and

(2) agree to conduct an arbitration for a fee that is not more than:

(A) $400, if the property qualifies as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is $500,000 or less, as determined by the order;

(B) $450, if the property qualifies as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $500,000, as determined by the order;

(C) $450, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is $1 million or less, as determined by the order;

(D) $750, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $1 million but not more than $2 million, as determined by the order;

(E) $1,000, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $2 million but not more than $3 million, as determined by the order; or

(F) $1,500, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $3 million but not more than $5 million, as determined by the order.

(b) **[Effective January 1, 2020]** To initially qualify to serve as an arbitrator under this chapter, a person must:

(1) meet the following requirements, as applicable:

(A) be licensed as an attorney in this state; or

(B) have:

(i) completed at least 30 hours of training in arbitration and alternative dispute resolution procedures from a university, college, or legal or real estate trade association; and

(ii) been licensed or certified continuously during the five years preceding the date the person agrees to serve as an arbitrator as:

(a) a real estate broker or sales agent under Chapter 1101, Occupations Code;

(b) a real estate appraiser under Chapter 1103, Occupations Code; or

(c) a certified public accountant under Chapter 901, Occupations Code;

(2) complete the courses for training and education of appraisal review board members established under Sections 5.041(a) and (e-1) and be issued a certificate for each course indicating course completion;

(3) complete the training program on property tax law for the training and education of arbitrators established under Section 5.043; and

(4) agree to conduct an arbitration for a fee that is not more than:

(A) $400, if the property qualifies as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is $500,000 or less, as determined by the order;

(B) $450, if the property qualifies as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $500,000, as determined by the order;

(C) $450, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is $1 million or less, as determined by the order;

(D) $750, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $1 million but not more than $2 million, as determined by the order;

(E) $1,000, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $2 million but not more than $3 million, as determined by the order; or

(F) $1,500, if the property does not qualify as the owner's residence homestead under Section 11.13 and the appraised or market value, as applicable, of the property is more than $3 million but not more than $5 million, as determined by the order.

(c) **[Effective until January 1, 2020]** An arbitrator must complete a training program on property tax law before conducting a hearing on an arbitration relating to the appeal of an appraisal review board order determining a protest filed under Section 41.41(a)(2). The training program must:

(1) emphasize the requirements regarding the equal and uniform appraisal of property;

(2) be at least four hours in length; and

(3) be approved by the comptroller.

(c) **[Effective January 1, 2020]** [Repealed.]

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351),§ 1, effective September 1, 2005; Enacted by Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 1211 (S.B. 771), §§ 7, 8, effective January 1, 2010; am. Acts 2013, 83rd Leg., ch. 610 (S.B. 1255), §§ 2, 3, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 474 (S.B. 849), § 4, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 570 (S.B. 731), § 3, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), §§ 70, 91(4), effective January 1, 2020.

Sec. 41A.061. Continued Qualification of Arbitrator; Renewal of Agreement.

(a) The comptroller shall include a qualified arbitrator in the registry until the second anniversary of the date the person was added to the registry. To continue to be included in the registry after the second anniversary of the date the person was added to the registry, the person must renew the person's agreement with the comptroller to serve as an arbitrator on or as near as possible to the date on which the person's license or certification issued under Chapter 901, 1101, or 1103, Occupations Code, is renewed.

(b) **[Effective until January 1, 2020]** To renew the person's agreement to serve as an arbitrator, the person must:

(1) file a renewal application with the comptroller at the time and in the manner prescribed by the comptroller;

(2) continue to meet the requirements provided by Section 41A.06(b); and

(3) during the preceding two years have completed at least eight hours of continuing education in arbitration and alternative dispute resolution procedures offered by a university, college, real estate trade association, or legal association.

(b) **[Effective January 1, 2020]** To renew the person's agreement to serve as an arbitrator, the person must:

(1) file a renewal application with the comptroller at the time and in the manner prescribed by the comptroller;

(2) continue to meet the requirements provided by Sections 41A.06(b)(1) and (4);

(3) during the preceding two years have completed at least eight hours of continuing education in arbitration and alternative dispute resolution procedures offered by a university, college, real estate trade association, or legal association; and

(4) complete a revised training program on property tax law for the training and education of arbitrators established under Section 5.043 not later than the 120th day after the date the program is available to be taken if the comptroller:

(A) revises the program after the person is included in the registry; and

(B) determines that the program is substantially revised.

(c) **[Effective until January 1, 2020]** The comptroller shall remove a person from the registry if:

(1) the person fails or declines to renew the person's agreement to serve as an arbitrator in the manner required by this section; or

(2) the comptroller determines by clear and convincing evidence that there is good cause to remove the person from the registry, including evidence of repeated bias or misconduct by the person while acting as an arbitrator.

(c) **[Effective January 1, 2020]** The comptroller shall remove a person from the registry if:

(1) the person fails or declines to renew the person's agreement to serve as an arbitrator in the manner required by this section;

(2) the comptroller determines by clear and convincing evidence that there is good cause to remove the person from the registry, including evidence of repeated bias or misconduct by the person while acting as an arbitrator; or

(3) the person fails to complete a revised training program on property tax law for the training and education of arbitrators established under Section 5.043 not later than the 120th day after the date the program is available to be taken if the comptroller:

(A) revises the program after the person is included in the registry; and

(B) determines that the program is substantially revised.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 9, effective January 1, 2010; am. Acts 2017, 85th Leg., ch. 744 (S.B. 1286), § 2, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 71, effective January 1, 2020.

Sec. 41A.07. Appointment of Arbitrator.

(a) On receipt of the request and deposit under Section 41A.05, the comptroller shall:

(1) appoint an eligible arbitrator who is listed in the comptroller's registry; and

(2) send notice to the appointed arbitrator requesting the individual to conduct the hearing on the arbitration.

(b) [Repealed.]

(c) [Repealed.]

(d) If the arbitrator appointed is unable or unwilling to conduct the arbitration for any reason, the arbitrator shall promptly notify the comptroller that the arbitrator does not accept the appointment and state the reason. The comptroller shall appoint a substitute arbitrator promptly after receipt of the notice.

(e) **[Effective until January 1, 2020]** To be eligible for appointment as an arbitrator under Subsection (a), the arbitrator must reside:

(1) in the county in which the property that is the subject of the appeal is located; or

(2) in this state if no available arbitrator on the registry resides in that county.

(e) **[Effective January 1, 2020]** To be eligible for appointment as an arbitrator under this section, the arbitrator must reside in this state.

(f) **[Effective until January 1, 2020]** A person is not eligible for appointment as an arbitrator under Subsection (a) if at any time during the preceding five years, the person has:

(1) represented a person for compensation in a proceeding under this title in the appraisal district in which the property that is the subject of the appeal is located;

(2) served as an officer or employee of that appraisal district; or

(3) served as a member of the appraisal review board for that appraisal district.

(f) **[Effective January 1, 2020]** A person is not eligible for appointment as an arbitrator under this section if at any time during the preceding two years, the person has:

(1) represented a person for compensation in a proceeding under this title in the appraisal district in which the property that is the subject of the appeal is located;

(2) served as an officer or employee of that appraisal district; or

(3) served as a member of the appraisal review board for that appraisal district.

(g) **[Effective until January 1, 2020]** The comptroller may not appoint an arbitrator under Subsection (a) if the comptroller determines that there is good cause not to appoint the arbitrator, including information or evidence indicating repeated bias or misconduct by the person while acting as an arbitrator.

(g) **[Effective January 1, 2020]** The comptroller may not appoint an arbitrator under this section if the comptroller determines that there is good cause not to appoint the arbitrator, including information or evidence indicating repeated bias or misconduct by the person while acting as an arbitrator.

(h) **[Effective January 1, 2020]** A property owner may request that, in appointing an initial arbitrator under this section, the comptroller appoint an arbitrator who resides in the county in which the property that is the subject of the appeal is located or an arbitrator who resides outside that county. In appointing an initial arbitrator under Subsection (a), the comptroller shall comply with the request of the property owner unless the property owner requests that the comptroller appoint an arbitrator who resides in the county in which the property that is the subject of the appeal is located and there is not an available arbitrator who resides in that county. In appointing a substitute arbitrator under Subsection (d), the comptroller shall consider but is not required to comply with the request of the property owner. This subsection does not authorize a property owner to request the appointment of a specific individual as an arbitrator.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351), § 1, effective September 1, 2005; Enacted by Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005; am. Acts 2017, 85th Leg., ch. 744 (S.B. 1286), §§ 3, 4, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 72, effective January 1, 2020.

Sec. 41A.08. Notice and Hearing; Representation of Parties.

(a) On acceptance of an appointment to conduct an arbitration under this chapter, the arbitrator shall set the date, time, and place of a hearing on the arbitration. The arbitrator shall give notice of and conduct the hearing in the manner provided by Subchapter C, Chapter 171, Civil Practice and Remedies Code. The arbitrator:

(1) shall continue a hearing if both parties agree to the continuance; and

(2) may continue a hearing for reasonable cause.

(b) The parties to an arbitration proceeding under this chapter may represent themselves or, at their own cost, may be represented by:

(1) an employee of the appraisal district;

(2) an attorney who is licensed in this state;

(3) a person who is licensed as a real estate broker or salesperson under Chapter 1101, Occupations Code, or is licensed or certified as a real estate appraiser under Chapter 1103, Occupations Code;

(4) a property tax consultant registered under Chapter 1152, Occupations Code; or

(5) an individual who is licensed as a certified public accountant under Chapter 901, Occupations Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351),§ 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 10, effective January 1, 2010.

Sec. 41A.09. Award; Payment of Arbitrator's Fee.

(a) Not later than the 20th day after the date the hearing under Section 41A.08 is concluded, the arbitrator shall make an arbitration award and deliver a copy of the award to the property owner, appraisal district, and comptroller.

(b) **[Effective until January 1, 2020]** An award under this section:

(1) must include a determination of the appraised or market value, as applicable, of the property that is the subject of the appeal;

(2) may include any remedy or relief a court may order under Chapter 42 in an appeal relating to the appraised or market value of property;

(3) shall specify the arbitrator's fee, which may not exceed the amount provided by Section 41A.06(b)(2);

(4) is final and may not be appealed except as permitted under Section 171.088, Civil Practice and Remedies Code, for an award subject to that section; and

(5) may be enforced in the manner provided by Subchapter D, Chapter 171, Civil Practice and Remedies Code.

(b) **[Effective January 1, 2020]** An award under this section:

(1) must include a determination of the appraised or market value, as applicable, of the property that is the subject of the appeal;

(2) may include any remedy or relief a court may order under Chapter 42 in an appeal relating to the appraised or market value of property;

(3) shall specify the arbitrator's fee, which may not exceed the amount provided by Section 41A.06(b)(4);

(4) is final and may not be appealed except as permitted under Section 171.088, Civil Practice and Remedies Code, for an award subject to that section; and

(5) may be enforced in the manner provided by Subchapter D, Chapter 171, Civil Practice and Remedies Code.

(c) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is nearer to the property owner's opinion of the appraised or market value, as applicable, of the property as stated in the request for binding arbitration submitted under Section 41A.03 than the value determined by the appraisal review board:

(1) the comptroller, on receipt of a copy of the award, shall refund the property owner's arbitration deposit, less the amount retained by the comptroller under Section 41A.05(b);

(2) the appraisal district, on receipt of a copy of the award, shall pay the arbitrator's fee; and

(3) the chief appraiser shall correct the appraised or market value, as applicable, of the property as shown in the appraisal roll to reflect the arbitrator's determination.

(d) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is not nearer to the property owner's opinion of the appraised or market value, as applicable, of the property as stated in the request for binding arbitration submitted under Section 41A.03 than the value determined by the appraisal review board:

(1) the comptroller, on receipt of a copy of the award, shall:

(A) pay the arbitrator's fee out of the owner's arbitration deposit; and

(B) refund to the owner the owner's arbitration deposit, less the arbitrator's fee and the amount retained by the comptroller under Section 41A.05(b); and

(2) the chief appraiser shall correct the appraised or market value, as applicable, of the property as shown in the appraisal roll to reflect the arbitrator's determination if the value as determined by the arbitrator is less than the value as determined by the appraisal review board.

(e) The comptroller by rule may prescribe a standard form for an award and may require arbitrators to use the award form when making awards under this chapter.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351),§ 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 1211 (S.B. 771), § 11, effective January 1, 2010; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 73, effective January 1, 2020.

Sec. 41A.10. Payment of Taxes Pending Appeal.

(a) The pendency of an appeal under this chapter does not affect the delinquency date for the taxes on the property subject to the appeal. A property owner who appeals an appraisal review board order under this chapter shall pay taxes on the property subject to the appeal in an amount equal to the amount of taxes due on the portion of the taxable value of the property that is not in dispute. If the final determination of an appeal under this chapter decreases the property owner's tax liability to less than the amount of taxes paid, the taxing unit shall refund to the property owner the difference between the amount of taxes paid and the amount of taxes for which the property owner is liable.

(b) A property owner may not file an appeal under this chapter if the taxes on the property subject to the appeal are delinquent. An arbitrator who determines that the taxes on the property subject to an appeal are delinquent shall dismiss the pending appeal with prejudice. If an appeal is dismissed under this subsection, the comptroller shall refund the property owner's arbitration deposit, less the amount retained by the comptroller under Section 41A.05(b).

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351), § 1, effective September 1, 2005; Enacted by Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005.

Sec. 41A.11. Postappeal Administrative Procedures.

An arbitration award under this chapter is considered to be a final determination of an appeal for purposes of Subchapter C, Chapter 42.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351), § 1, effective September 1, 2005; Enacted by Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005.

Sec. 41A.12. Use of Properties As Samples.

An arbitrator's determination of market value under this chapter is the market value of the property subject to the appeal for the purposes of the study conducted under Section 403.302, Government Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351), § 1, effective September 1, 2005; Enacted by Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 288 (H.B. 8), § 10, effective January 1, 2010.

Sec. 41A.13. Rules.

The comptroller may adopt rules necessary to implement and administer this chapter.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 372 (S.B. 1351), § 1, effective September 1, 2005; Enacted by Acts 2005, 79th Leg., ch. 912 (H.B. 182), § 1, effective September 1, 2005.

CHAPTER 42

Judicial Review

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Subchapter C. Postappeal Administrative Procedures

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Subchapter A

In General

Sec. 42.01. Right of Appeal by Property Owner.

(a) A property owner is entitled to appeal:

(1) an order of the appraisal review board determining:

(A) a protest by the property owner as provided by Subchapter C of Chapter 41;

(B) a motion filed under Section 25.25;

(C) that the property owner has forfeited the right to a final determination of a motion filed under Section 25.25 or of a protest under Section 41.411 for failing to comply with the prepayment requirements of Section 25.26 or 41.4115, as applicable;

(D) eligibility for a refund requested under Section 23.1243; or

(E) that the appraisal review board lacks jurisdiction to finally determine a protest by the property owner under Subchapter C, Chapter 41, or a motion filed by the property owner under Section 25.25 because the property owner failed to comply with a requirement of Subchapter C, Chapter 41, or Section 25.25, as applicable; or

(2) an order of the comptroller issued as provided by Subchapter B, Chapter 24, apportioning among the counties the appraised value of railroad rolling stock owned by the property owner.

(b) A property owner who establishes that the owner did not forfeit the right to a final determination of a motion or of a protest in an appeal under Subsection (a)(1)(C) is entitled to a final determination of the court, as applicable:

(1) of the motion filed under Section 25.25; or

(2) of the protest under Section 41.411 of the failure of the chief appraiser or appraisal review board to provide or deliver a notice to which the property owner is entitled, and, if failure to provide or deliver the notice is established, of a protest made by the property owner on any other grounds of protest authorized by this title relating to the property to which the notice applies.

(c) A property owner who establishes that the appraisal review board had jurisdiction to issue a final determination of the protest by the property owner under Subchapter C, Chapter 41, or of the motion filed by the property owner under Section 25.25 in an appeal under Subsection (a)(1)(E) of this section is entitled to a final determination by the court of the protest under Subchapter C, Chapter 41, or of the motion filed under Section 25.25. A final determination of a protest under Subchapter C, Chapter 41, by the court under this subsection may be on any ground of protest authorized by this title applicable to the property that is the subject of the protest, regardless of whether the property owner included the ground in the property owner's notice of protest.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 148, effective August 14, 1981; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 53, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 41, effective January 1, 1998; am. Acts 2011, 82nd Leg., ch. 322 (H.B. 2476), § 7, effective January 1, 2012; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 13, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 793 (H.B. 2220), § 5, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 19.005, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 157 (H.B. 380), § 1, effective September 1, 2019.

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ADMINISTRATIVE LAW
Judicial Review
Reviewability

Exhaustion of Remedies. — Trial court's judgment dismissing the company's suit for want of jurisdiction was affirmed where (1) the company presented no evidence of the date that the 1999 tax appraisal records were approved as required by Tex. Tax Code Ann. § 41.12(a)(4); (2) even if Tex. Tax. Code Ann. § 11.439 was procedural and controlled pending litigation, the company failed to establish its entitlement to relief; and (3) under Tex. Tax. Code Ann. §§ 41.41(a)(9), 41.44, 41.45, 42.01(1)(A), 42.21(a), 42.09, the company did not exhaust its administrative remedies and was not entitled to judicial review; the company did not assert that the cover letter attached to its late application for a freeport exemption under Tex. Tax Code Ann. § 11.43(d), (e) was a request for extension of time and that the letter stated good cause for the tardy filing. Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

PRESERVATION FOR REVIEW. — Taxpayers were properly granted an agricultural-use valuation where they met the jurisdictional requirements for judicial review and timely filed their petition for review after denial. Cooke County Tax Appraisal v. Teel, No. 2-03-115-CV, 2003 Tex. App. LEXIS 10017 (Tex. App. Fort Worth Nov. 26, 2003), op. withdrawn, sub. op., reh'g denied, 129 S.W.3d 724, 2004 Tex. App. LEXIS 1153 (Tex. App. Fort Worth Feb. 5, 2004).

CIVIL PROCEDURE
Justiciability
Standing

General Overview. — Plea to the jurisdiction was properly granted to an appraisal district because a corporation, which was the sole member of a limited liability company (LLC), lacked standing to appeal a decision relating to an exemption because it was not the owner, as required by Tex. Tax Code Ann. § 42.01. However, the LLC had standing to sue as the owner; whether the LLC was a community housing development organization went to the merits of the case. CHC Honey Creek LLC v. Bexar Appraisal Dist., No. 04-11-00354-CV, 2012 Tex. App. LEXIS 3838 (Tex. App. San Antonio May 16, 2012).

Second partnership was the only entity that could protest a property tax assessment under Tex. Tax Code Ann. § 42.21(a) as it was the record owner of the property; amendment of the petition was not permitted under § 42.21(e)(1) because the first partnership, which was not a proper party, did not timely appeal to the lower court. Reddy Partnership/5900 N. Freeway LP v. Harris County Appraisal Dist., 370 S.W.3d 401, 2011 Tex. App. LEXIS 203 (Tex. App. Houston 14th Dist. Jan. 13, 2011), rev'd, 370 S.W.3d 373, 2012 Tex. LEXIS 566 (Tex. 2012).

Where neither a property's seller nor its buyer fulfilled the jurisdictional prerequisites to seeking judicial review of a county appraisal review board's adverse determination of a property-valuation protest, both entities lacked standing to appeal the board's order to the district court because although the seller timely filed a petition for review, it did not own the property on the date at issue and was not a designated agent or lessee of the buyer, the actual record owner of the property. The buyer did not complete the administrative protest process before the board and could not take advantage of Tex. Tax Code Ann. § 42.21(e) to change the named plaintiff from one party who did not have standing to seek judicial review—the seller—to another party who did not have standing—the buyer. GSL Welcome BP 32 LLC v. Harris County Appraisal Dist., No. 01-10-00189-CV, 2010 Tex. App. LEXIS 8950 (Tex. App. Houston 1st Dist. Nov. 10, 2010).

Trial court lacked subject matter jurisdiction over two lawsuits filed to challenge a decision from an appraisal review board regarding real property taxes because a limited partner was not a record owner of the property, a lessee, or an authorized agent; strict compliance with Tex. Tax Code Ann. §§ 1.111, 41.413(b), 42.01, 42.21(b) was required. Therefore, a plea to the jurisdiction was properly granted. Ray v. Bexar Appraisal Dist., No. 04-08-00210-CV, No. 04-08-00212-CV, 2009 Tex. App. LEXIS 1812 (Tex. App. San Antonio Mar. 18, 2009).

In response to a plea to the jurisdiction by a county appraisal district, a trial court did not err in dismissing without prejudice a suit brought by a property seller and its buyer for judicial review of resolution of an ad valorem tax-valuation protest for the 2005 tax year where neither the seller nor the buyer had standing in the district court because: (1) the seller did not own the property on January 1, 2005, and thus had no legal right to appeal under Tex. Tax Code Ann. § 42.01(1)(A), and its lack of standing as owner thus precluded its "party" status under Tex. Tax Code Ann. § 42.21(a); (2) the buyer had neither a legal right to enforce, nor any real controversy for the trial court to determine, as the buyer did not pursue its Tex. Tax Code Ann. ch. 41 right to protest the valuation before the district's appraisal review board, and thus the board never determined a protest by the buyer as the property owner pursuant to Tex. Tax Code Ann. § 42.01(a); and (3) no proper party having appealed to the district court within the 45-day time limit of Tex. Tax Code Ann. § 42.21(a), it never acquired subject-matter jurisdiction, and the board's valuation became final when those 45 days expired. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

Grantor of transferred property had standing to proceed under Tex. Tax. Code Ann. § 42.01(1) with an appeal to the district court for a de novo review of the appraisal value of the property which it owned as of the first day of the year in which the property taxes were imposed, despite the fact that the property was transferred to a new owner before the appeal was filed, because the property taxes were the personal obligation of the grantor at the time the tax obligation accrued pursuant to Tex. Tax. Code Ann. § 32.07(a) and the grantor was not relieved of the obligation due to the transfer of ownership. Department of Hous. & Urban Dev. v. Nueces County Appraisal Dist., 875 S.W.2d 377, 1994 Tex. App. LEXIS 646 (Tex. App. Corpus Christi Mar. 24, 1994, no writ).

PARTIES

Fictitious Names. — In an action in which a property seller sought judicial review of a county appraisal district's resolution of an ad valorem tax protest, the trial court erred in denying the district's plea to the jurisdiction, which claimed that the seller was not the property owner for the tax year at issue, where the seller and the buyer of the property lacked standing to bring suit because the seller did not claim rights to protest under the Texas Tax Code as either a lessee or an agent, and because the record did not reflect that the buyer pursued its right of protest as the actual property owner. Because neither the seller nor the buyer was a proper party entitled to judicial review under the Texas Tax Code, Tex. Tax Code Ann. § 42.21(e)(1) did not apply to change the name of the plaintiff, and, likewise, because there was no evidence in the record that the buyer was doing business as the seller or that the entities used the name the seller as a common name for the buyer, Tex. R. Civ. P. 28 could not be used to substitute the buyer for the seller. Harris County Appraisal Dist. v. KMI Yorktown LP, No. 01-09-00661-CV, 2010 Tex. App. LEXIS 3201 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

From a challenge to the valuation of real property, as neither the prior owner or the new owner was a proper party entitled to judicial review as contemplated by Tex. Tax. Code Ann. § 42.21(e)(1), and Tex. R. Civ. P. 28 did not apply to change the name of the new owner in the pleadings, the prior owner and the new owner lacked standing to bring suit, and the trial court lacked subject-matter jurisdiction to hear the dispute. Therefore, the trial court did not err in granting the Appraisal District's plea to the jurisdiction. BACM 2002 PB2 Westpark Dr. LP v. Harris County Appraisal Dist., No. 14-08-00493-CV, 2009 Tex. App. LEXIS 5528 (Tex. App. Houston 14th Dist. June 21, 2009).

DECLARATORY JUDGMENT ACTIONS

General Overview. — Because the taxpayer's declaratory judgment action sought reversal of an appraisal district's determination that the taxpayer had property that was omitted from the appraisal roll and did not challenge the constitutionality of an administrative rule or tax protest statute, or that the district was exercising enforcement powers that were reserved to another

agency, the requested declaratory relief was redundant to that sought in the taxpayer's tax protest, with the exception of its request for attorney fees. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

SUMMARY JUDGMENT
Opposition

Supporting Materials. — Taxpayer's response to the appraisal district's motion for summary judgment in the taxpayer's appeal from an appraisal was insufficient to raise an issue of fact. The response itself was not evidence, and an affidavit from an expert contained no opinion regarding the value of the property or whether the appraised value was excessive or unequal. Wol+med Wol+Med Southwest Dallas L.P. v. Dallas Cent. Appraisal Dist., No. 05-12-00011-CV, 2013 Tex. App. LEXIS 1969 (Tex. App. Dallas Feb. 27, 2013).

JUDGMENTS
Preclusion & Effect of Judgments
Estoppel

Judicial Estoppel. — Judicial estoppel did not preclude property owners from asserting on appeal in the district court that the tax appraisal value of the property should be less than the value they asserted at the appraisal review board, because judicial estoppel only applied in subsequent actions, and the appeal constituted the same proceeding. Curry v. Harris County Appraisal Dist., 434 S.W.3d 815, 2014 Tex. App. LEXIS 6151 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

REMEDIES
Costs & Attorney Fees

General Overview. — Because the taxpayer's declaratory judgment action sought reversal of an appraisal district's determination that the taxpayer had property that was omitted from the appraisal roll and did not challenge the constitutionality of an administrative rule or tax protest statute, or that the district was exercising enforcement powers that were reserved to another agency, the requested declaratory relief was redundant to that sought in the taxpayer's tax protest, with the exception of its request for attorney fees. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

APPEALS

Costs & Attorney Fees. — In an appeal relating to the appraised value of property, a district court erred in ordering an appraisal district court pay two taxpayers a large amount of attorneys' fees because they were limited under Tex. Tax Code Ann. § 42.29 to an award of no more than $ 225.51, which was the total amount of their tax savings. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

STANDARDS OF REVIEW

De Novo Review. — Substantial evidence de novo was the standard of review that applied in an action brought under Tex. Tax Code Ann. § 25.25(g) to compel an appraisal review board to correct the appraisal role where the taxes at issue were imposed prior to the effective date of Tex. Tax Code Ann. § 42.01. G.E. Am. Commun. v. Galveston Cent. Appraisal Dist., 979 S.W.2d 761, 1998 Tex. App. LEXIS 6451 (Tex. App. Houston 14th Dist. Oct. 15, 1998, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

Because a taxpayer's claim of lack of due process was satisfied if the taxpayer was given an opportunity to be heard before an assessment board at some stage of the proceedings and taxpayer had a right to a de novo review of the district court under Tex. Tax. Code § 42.01 (2008), the trial court lacked jurisdiction over the taxpayer's claim. Bexar Appraisal Dist. v. John William Fine Furniture & Interiors, Inc., No. 04-08-00873-CV, 2009 Tex. App. LEXIS 5193 (Tex. App. San Antonio July 8, 2009).

Because the taxpayer's declaratory judgment action sought reversal of an appraisal district's determination that the taxpayer had property that was omitted from the appraisal roll and did not challenge the constitutionality of an administrative rule or tax protest statute, or that the district was exercising enforcement powers that were reserved to another agency, the requested declaratory relief was redundant to that sought in the taxpayer's tax protest, with the exception of its request for attorney fees. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

Contrary to the contentions of the county tax appraisal district and the county appraisal review board, the taxpayers met the jurisdictional requirement of Tex. Tax Code Ann. § 42.01 as the order established the taxpayers' right to institute proceedings in the trial court and the board's order contained specific findings that it had jurisdiction over this case. Thus, the taxpayers exhausted their administrative remedies and established a right to appeal. Cooke County Tax Appraisal Dist. v. Teel, 129 S.W.3d 724, 2004 Tex. App. LEXIS 1153 (Tex. App. Fort Worth Feb. 5, 2004, no pet.).

Although the housing development corporation was entitled to protest the county taxing authority's denial of the housing development authority's request for a tax exemption for a particular tax year, and also had the right after filing a notice of protest to appear and present evidence or argument to the appraisal review board before filing an adverse decision of the appraisal review board to the trial court, exact compliance with those procedures was mandatory before it could maintain a challenge in the trial court; the failure to file its notice of protest within 30 days after receiving notice of the county taxing authority's decision regarding the adverse decision meant the trial court lacked jurisdiction to grant summary judgment to the county taxing authority regarding its denial of the tax exemption request, and the appellate court only had the authority to set aside the judgment and dismiss the housing development corporation's appeal of that denial. Found. of Hope, Inc. v. San Patricio County Appraisal Dist., No. 13-02-083-CV, 2003 Tex. App. LEXIS 7922 (Tex. App. Corpus Christi Sept. 11, 2003).

Property owner is entitled to protest before the appraisal review board any action by the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner under Tex. Tax Code Ann. § 41.41(a)(9), and after filing the required notice of protest, the property owner is entitled to an opportunity to appear and present evidence or argument to the appraisal review board pursuant to Tex. Tax Code Ann. § 41.44 and Tex. Tax Code Ann. § 41.45; if the property owner is aggrieved by the determination of the appraisal review board following the protest hearing, the property owner is then entitled to appeal the decision to the district court under Tex. Tax Code Ann. § 42.01(1)(A) and Tex. Tax Code Ann. § 42.21(a). Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

Water district had standing under Tex. Tax Code Ann. § 42.01 to protest tax appraisals of leasehold interests in lakeside lots where the appraisal methodology improperly included the value of the district's right to reversion, and where the appraisal district sent tax notices to the water district and attempted to place a tax lien on the water district. Panola County Fresh Water Supply Dist. No. One v. Panola County Appraisal Dist., 69 S.W.3d

278, 2002 Tex. App. LEXIS 821 (Tex. App. Texarkana Jan. 31, 2002, no pet.).

A taxpayer that appealed the appraisal of his real estate by the county review board under Tex. Tax Code Ann. § 25.25, a provision that permitted only correction motions, was foreclosed from also pursuing arbitration under Tex. Tax Code Ann. § 41.41, which authorized arbitration as an avenue of appeal; the provisions were mutually exclusive and distinct, and the unambiguous language of § 42.01 foreclosed arbitration under Chapter 42 as an avenue of appeal from the corrective measure listed in § 25.25. Harris County Appraisal Dist. v. World Houston, 905 S.W.2d 594, 1995 Tex. App. LEXIS 2128 (Tex. App. Houston 14th Dist. Aug. 24, 1995, no writ).

District court lacked jurisdiction over a taxpayer's appeal of two orders of the appraisal review board, where the orders from the appraisal review board were not offered into evidence, and where there was no testimony concerning the dates on which the orders were entered or the terms of the orders that denied tax exempt status to the taxpayer. El Paso Cent. Appraisal Dist. v. Ev. Lutheran Good Samaritan Soc., 762 S.W.2d 207, 1988 Tex. App. LEXIS 2668 (Tex. App. El Paso Oct. 26, 1988, no writ).

ASSESSMENTS. — Statute should be read and construed in conjunction with Tex. Tax Code Ann. chs. 41 and 42. Cameron Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 443 S.W.3d 212, 2013 Tex. App. LEXIS 9967 (Tex. App. Corpus Christi Aug. 8, 2013, no pet.).

JUDICIAL REVIEW. — If a suit appealing an appraisal review board's decision meets the property identification and filing requirements, the trial court has subject matter jurisdiction, even if the petition misidentifies the property owner and must be corrected through amendment. Accordingly, jurisdiction was proper in a suit where the property's identity was undisputed and an amended petition was filed to correct a misidentification of the owner. Town & Country Suites, L.C. v. Harris County Appraisal Dist., No. 01-13-00869-CV, 2014 Tex. App. LEXIS 7125 (Tex. App. Houston 1st Dist. July 1, 2014), op. withdrawn, sub. op., reh'g denied, 461 S.W.3d 208, 2015 Tex. App. LEXIS 694 (Tex. App. Houston 1st Dist. Jan. 27, 2015).

Appellants were property owners who timely filed a petition for review in the district court seeking appellate review by trial de novo of the Appraisal Review Board's final order determining their protest; under the unambiguous language of Tex. Tax Code Ann. § 42.01, they were entitled to prosecute such an appeal. On the record before it, the court could not conclude that they were completely successful in their protest before the Board that the Property's appraised value was greater than the market value and that the appraised value was unequal compared with other properties. Patel v. Harris Cnty. Appraisal Dist., 434 S.W.3d 803, 2014 Tex. App. LEXIS 6148 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

Property owners who timely filed a petition for review in the district court seeking appellate review by trial de novo of an appraisal review board's final order determining their protest were permitted to appeal based on the unambiguous wording of Tex. Tax Code Ann. § 42.01, even though the review board lowered the market value and appraised value to the amount stated by the owners' expert Curry v. Harris County Appraisal Dist., 434 S.W.3d 815, 2014 Tex. App. LEXIS 6151 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

Statute should be read and construed in conjunction with Tex. Tax Code Ann. chs. 41 and 42. Cameron Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 443 S.W.3d 212, 2013 Tex. App. LEXIS 9967 (Tex. App. Corpus Christi Aug. 8, 2013, no pet.).

Plea to the jurisdiction was properly granted to an appraisal district because a corporation, which was the sole member of a limited liability company (LLC), lacked standing to appeal a decision relating to an exemption because it was not the owner, as required by Tex. Tax Code Ann. § 42.01. However, the LLC had standing to sue as the owner; whether the LLC was a community housing development organization went to the merits of the case. CHC Honey Creek LLC v. Bexar Appraisal Dist., No. 04-11-00354-CV, 2012 Tex. App. LEXIS 3838 (Tex. App. San Antonio May 16, 2012).

Agreement between a property owner's agent and an appraisal district representative-as opposed to the chief appraiser-qualifies as a Tex. Tax Code Ann. § 1.111(e) agreement that precludes a suit for judicial review, and this issue may permissibly be determined via a plea to the jurisdiction. Section 1.111(e) does not require that a chief appraiser delegate to the representative of the appraisal district in each case the specific authority to enter into an agreement with the property owner before a court may determine that a § 1.111(e) agreement has been reached, and § 1.111(e) also does not require the parties to act on an agreement or announce the agreement to the court. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Because a county appraisal district's chief appraiser could delegate authority to appraisal district employees to appear at protest hearings and present a valuation opinion, by stating the same opinion regarding the value of the property, a taxpayer's agent and the district's representative had reached an agreement pursuant to Tex. Tax Code Ann. § 1.111(e), thereby precluding the taxpayer from seeking judicial review of a subsequent order of the county's appraisal review board. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Second partnership was the only entity that could protest a property tax assessment under Tex. Tax Code Ann. § 42.21(a) as it was the record owner of the property; amendment of the petition was not permitted under § 42.21(e)(1) because the first partnership, which was not a proper party, did not timely appeal to the lower court. Reddy Partnership/5900 N. Freeway LP v. Harris County Appraisal Dist., 370 S.W.3d 401, 2011 Tex. App. LEXIS 203 (Tex. App. Houston 14th Dist. Jan. 13, 2011), rev'd, 370 S.W.3d 373, 2012 Tex. LEXIS 566 (Tex. 2012).

Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003. Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

It was not shown that the current owner pursued its right of protest as the actual property owner, and the current owner was not named as a party until when the prior owner filed an amended petition; the review board had not determined a protest by the actual owner upon which the current owner could premise a right to appeal as the property owner, for purposes of Tex. Tax Code Ann. §§ 42.01(1)(A), 42.21(a). Hartman Reit Operating P'ship III, L.P. v. Harris County Appraisal Dist., No. 14-10-00242-CV, 2010 Tex. App. LEXIS 9181 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

Record did not show that a current owner pursued its right of protest as the actual owner, and the current owner was not named as a party until when the prior owner filed an amended petition; the review board had not determined a protest by the actual owner, the current owner, upon which the current owner could premise a right to appeal as the property owner, for purposes of Tex. Tax Code Ann. §§ 42.01(1)(A), 42.21(a). Braniff CB Ltd. v. Harris County Appraisal Dist., No. 14-10-00089-CV, 2010 Tex. App. LEXIS 9192 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

Where neither a property's seller nor its buyer fulfilled the jurisdictional prerequisites to seeking judicial review of a county appraisal review board's adverse determination of a property-valuation protest, both entities lacked standing to appeal the board's order to the district court because although the seller timely filed a petition for review, it did not own the property on the date at issue and was not a designated agent or lessee of the buyer, the actual record owner of the property. The buyer did not complete the administrative protest process before the board and could not take advantage of Tex. Tax Code Ann. § 42.21(e) to change the named plaintiff from one party who did not have standing to seek judicial review—the seller—to another party

who did not have standing—the buyer. GSL Welcome BP 32 LLC v. Harris County Appraisal Dist., No. 01-10-00189-CV, 2010 Tex. App. LEXIS 8950 (Tex. App. Houston 1st Dist. Nov. 10, 2010).

In an action in which a property seller sought judicial review of a county appraisal district's resolution of an ad valorem tax protest, the trial court erred in denying the district's plea to the jurisdiction, which claimed that the seller was not the property owner for the tax year at issue, where the seller and the buyer of the property lacked standing to bring suit because the seller did not claim rights to protest under the Texas Tax Code as either a lessee or an agent, and because the record did not reflect that the buyer pursued its right of protest as the actual property owner. Because neither the seller nor the buyer was a proper party entitled to judicial review under the Texas Tax Code, Tex. Tax Code Ann. § 42.21(e)(1) did not apply to change the name of the plaintiff, and, likewise, because there was no evidence in the record that the buyer was doing business as the seller or that the entities used the name the seller as a common name for the buyer, Tex. R. Civ. P. 28 could not be used to substitute the buyer for the seller. Harris County Appraisal Dist. v. KMI Yorktown LP, No. 01-09-00661-CV, 2010 Tex. App. LEXIS 3201 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Plea to the jurisdiction filed by the county appraisal district was proper, because the partnership, which filed the tax assessment protest, did not own the property as of January 1, 2007 and did not claim rights to protest as either a lessee or an agent, the record did not reflect that the company pursued its right of protest as the actual property owner and was not named as a party until February 2009, and when no proper party timely appealed, the trial court did not acquire subject matter jurisdiction and the appraisal review board's determination became final. Woodway Drive LLC v. Harris County Appraisal Dist., 311 S.W.3d 649, 2010 Tex. App. LEXIS 2494 (Tex. App. Houston 14th Dist. Apr. 8, 2010, no pet.).

Trial court properly granted a county appraisal district's plea to the jurisdiction on a property seller's petition that challenged a 2008 tax assessment for the property because the seller did not own the property as of January 1, 2008; the appraisal review board had not determined a protest by the actual property owner, the buyer, upon which the buyer could premise a right to appeal as the property owner under Tex. Tax Code Ann. § 42.01(1)(A). Woodway Drive LLC v. Harris County Appraisal Dist., No. 14-09-00524-CV, 2010 Tex. App. LEXIS 1527 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a property seller's action that challenged a 2007 tax assessment of the property because the seller did not own the property as of January 1, 2007; the county appraisal review board had not determined a protest by the actual property owner, the buyer, upon which the buyer could premise a right to appeal as the property owner under Tex. Tax Code Ann. § 42.01(1)(A). Scott Plaza Assocs. v. Harris County Appraisal Dist., No. 14-09-00707-CV, 2010 Tex. App. LEXIS 1532 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a plea to the jurisdiction filed by a county appraisal district and a county appraisal review board in a taxpayer's action challenging a property tax appraisal because although the Texas Tax Code provided de novo review as a remedy for the statutory claim of valuation, it did not expressly grant the trial court with authority to order relief of the constitutional claims. Parra Furniture & Appliance Ctr., Inc. v. Cameron Appraisal Dist., No. 13-09-00211-CV, 2010 Tex. App. LEXIS 1321 (Tex. App. Corpus Christi Feb. 25, 2010).

Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Because real property had been sold prior to a disputed valuation, the seller could not appeal the valuation under Tex. Tax Code Ann. § 42.01, and jurisdiction was not obtained by amending the petition to include the buyer as a plaintiff pursuant to Tex. Tax Code Ann. § 42.21(e)(1) after the 45-day period for appeal under § 42.21(a) had run. Mei Hsu Acquisition Corp. v. Harris County Appraisal Dist., No. 01-08-00690 -CV, 2009 Tex. App. LEXIS 7727 (Tex. App. Houston 1st Dist. Oct. 1, 2009).

Where the evidence showed that another entity owned property and a trustee was not liable for taxes on this property, he had no standing to bring an action challenging the denial of an exemption under Tex. Tax Code Ann. § 11.20. Therefore, a dismissal for lack of subject matter jurisdiction was warranted. Bernard Dolenz Life Estate v. Dallas Cent. Appraisal Dist. & Appraisal Review Bd., 293 S.W.3d 920, 2009 Tex. App. LEXIS 6313 (Tex. App. Dallas Aug. 13, 2009, no pet.).

From a challenge to the valuation of real property, as neither the prior owner or the new owner was a proper party entitled to judicial review as contemplated by Tex. Tax. Code Ann. § 42.21(e)(1), and Tex. R. Civ. P. 28 did not apply to change the name of the new owner in the pleadings, the prior owner and the new owner lacked standing to bring suit, and the trial court lacked subject-matter jurisdiction to hear the dispute. Therefore, the trial court did not err in granting the Appraisal District's plea to the jurisdiction. BACM 2002 PB2 Westpark Dr. LP v. Harris County Appraisal Dist., No. 14-08-00493-CV, 2009 Tex. App. LEXIS 5528 (Tex. App. Houston 14th Dist. June 21, 2009).

In an appeal relating to the appraised value of property, a district court erred in ordering an appraisal district court pay two taxpayers a large amount of attorneys' fees because they were limited under Tex. Tax Code Ann. § 42.29 to an award of no more than $ 225.51, which was the total amount of their tax savings. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

Trial court lacked subject matter jurisdiction over two lawsuits filed to challenge a decision from an appraisal review board regarding real property taxes because a limited partner was not a record owner of the property, a lessee, or an authorized agent; strict compliance with Tex. Tax Code Ann. §§ 1.111, 41.413(b), 42.01, 42.21(b) was required. Therefore, a plea to the jurisdiction was properly granted. Ray v. Bexar Appraisal Dist., No. 04-08-00210-CV, No. 04-08-00212-CV, 2009 Tex. App. LEXIS 1812 (Tex. App. San Antonio Mar. 18, 2009).

Court of Appeals of Texas, Fifth District, Dallas, adopts the reasoning and conclusion of the Houston Fourteenth Court of Appeals in Texas in the case of Appraisal Review Bd. of Harris County Appraisal Dist. v. Spencer Square Ltd., 252 S.W.3d 842 (Tex. App.—Houston [14th Dist.] 2008, no pet.), which has held that Tex. Tax Code Ann. § 41.45(f) does not provide an additional avenue to attack an appraisal review board's order. Interpreting Tex. Tax Code Ann. § 41.45(f) as creating another avenue of appeal to a district court would essentially render the appeal provisions in Tex. Tax Code Ann. ch. 42 meaningless. Appraisal Review Bd. v. O'Connor & Assocs., 275 S.W.3d 643, 2009 Tex. App. LEXIS 276 (Tex. App. Dallas Jan. 15, 2009, no pet.).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris

County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Plea to the jurisdiction should have been granted in a tax dispute because there was a failure to exhaust administrative remedies; mandamus was not permitted due to an adequate remedy at law, Tex. Tax Code Ann. § 41.45(f) did not allow taxpayers to bypass administrative procedures, and an ultra vires exception to exhaustion did not apply. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

Tex. Tax Code Ann. § 41.45(f) grants the district courts authority to compel appraisal review boards to conduct a protest hearing if the appraisal review board denied the property owner a hearing to which he was entitled, however, Tex. Tax Code Ann. § 41.45(f) does not grant the district courts authority to compel appraisal review boards to conduct additional protest hearings; therefore, a plea to the jurisdiction should have been granted when two taxpayers failed to request a trial de novo after a first protest hearing was held; the taxpayers were not allowed to circumvent the procedures set forth in the Texas Tax Code. Appraisal Review Bd. v. Spencer Square Ltd., 252 S.W.3d 842, 2008 Tex. App. LEXIS 3045 (Tex. App. Houston 14th Dist. Apr. 29, 2008, no pet.).

In response to a plea to the jurisdiction by a county appraisal district, a trial court did not err in dismissing without prejudice a suit brought by a property seller and its buyer for judicial review of resolution of an ad valorem tax-valuation protest for the 2005 tax year where neither the seller nor the buyer had standing in the district court because: (1) the seller did not own the property on January 1, 2005, and thus had no legal right to appeal under Tex. Tax Code Ann. § 42.01(1)(A), and its lack of standing as owner thus precluded its "party" status under Tex. Tax Code Ann. § 42.21(a); (2) the buyer had neither a legal right to enforce, nor any real controversy for the trial court to determine, as the buyer did not pursue its Tex. Tax Code Ann. ch. 41 right to protest the valuation before the district's appraisal review board, and thus the board never determined a protest by the buyer as the property owner pursuant to Tex. Tax Code Ann. § 42.01(a); and (3) no proper party having appealed to the district court within the 45-day time limit of Tex. Tax Code Ann. § 42.21(a), it never acquired subject-matter jurisdiction, and the board's valuation became final when those 45 days expired. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected by the county appraisal review board; the claim was not only discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

SETTLEMENTS. — Agreement between a property owner's agent and an appraisal district representative-as opposed to the chief appraiser-qualifies as a Tex. Tax Code Ann. § 1.111(e) agreement that precludes a suit for judicial review, and this issue may permissibly be determined via a plea to the jurisdiction. Section 1.111(e) does not require that a chief appraiser delegate to the representative of the appraisal district in each case the specific authority to enter into an agreement with the property owner before a court may determine that a § 1.111(e) agreement has been reached, and § 1.111(e) also does not require the parties to act on an agreement or announce the agreement to the court. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

Because a county appraisal district's chief appraiser could delegate authority to appraisal district employees to appear at protest hearings and present a valuation opinion, by stating the same opinion regarding the value of the property, a taxpayer's agent and the district's representative had reached an agreement pursuant to Tex. Tax Code Ann. § 1.111(e), thereby precluding the taxpayer from seeking judicial review of a subsequent order of the county's appraisal review board. Bullseye PS III LP v. Harris County Appraisal Dist., 365 S.W.3d 427, 2011 Tex. App. LEXIS 4555 (Tex. App. Houston 1st Dist. June 16, 2011), reh'g denied, No. 01-09-01139-CV, 2011 Tex. App. LEXIS 10387 (Tex. App. Houston 1st Dist. Aug. 3, 2011).

TAXPAYER PROTESTS. — Company did not own the property as of January 1, 2009 and it did not claim rights to protest as an lessee or agent under Tex. Tax Code Ann. § 41.413, such that the company lacked standing to pursue judicial review as a party who appealed under Tex. Tax Code Ann. § 42.21(a); the company had conveyed the property to a business, the record did not show that the business pursued its right of protest, and the board had not determined a protest by the business, for purposes of Tex. Tax Code Ann. §§ 42.01(1)(A), 42.21(a). Grocers Supply Co. v. Harris County Appraisal Dist., No. 14-10-00243-CV, 2011 Tex. App. LEXIS 1356 (Tex. App. Houston 14th Dist. Feb. 24, 2011).

Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003. Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in real property sellers' action challenging a 2008 tax assessment for the properties because the buyers were the legal owners of the properties on January 1, 2008; the sellers were not the "property owners" under Tex. Tax Code Ann. § 42.01(1)(A). Milbank 521 Sam Houston I, LLC v. Harris Cnty. Appraisal Dist., No. 01-09-00541-CV, 2010 Tex. App. LEXIS 3154 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court erred in denying an appraisal district's plea to the jurisdiction in a property seller's petition for judicial review of a 2007 tax assessment for the property because the seller lacked standing under Tex. Tax Code Ann. § 42.01(1)(A) to prosecute the buyer's tax protest; the seller did not own the property as of January 1, 2007. Harris County Appraisal Dist. v. Shen, No. 01-09-00652-CV, 2010 Tex. App. LEXIS 3202 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a real property seller's action challenging a 2008 tax assessment for the property because the seller lacked standing to pursue judicial review under Tex. Tax Code Ann. § 42.01(1)(A); the seller did not own the property as of January 1, 2008. RRB Land Invs., Ltd. v. County Appraisal Dist., No. 01-09-00519-CV, 2010 Tex. App. LEXIS 3191 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Plea to the jurisdiction filed by the county appraisal district was proper, because the partnership, which filed the tax assessment protest, did not own the property as of January 1, 2007 and did not claim rights to protest as either a lessee or an agent, the record did not reflect that the company pursued its right of

protest as the actual property owner and was not named as a party until February 2009, and when no proper party timely appealed, the trial court did not acquire subject matter jurisdiction and the appraisal review board's determination became final. Woodway Drive LLC v. Harris County Appraisal Dist., 311 S.W.3d 649, 2010 Tex. App. LEXIS 2494 (Tex. App. Houston 14th Dist. Apr. 8, 2010, no pet.).

Trial court properly granted a county appraisal district's plea to the jurisdiction on a property seller's petition that challenged a 2008 tax assessment for the property because the seller did not own the property as of January 1, 2008; the appraisal review board had not determined a protest by the actual property owner, the buyer, upon which the buyer could premise a right to appeal as the property owner under Tex. Tax Code Ann. § 42.01(1)(A). Woodway Drive LLC v. Harris County Appraisal Dist., No. 14-09-00524-CV, 2010 Tex. App. LEXIS 1527 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a property seller's action that challenged a 2007 tax assessment of the property because the seller did not own the property as of January 1, 2007; the county appraisal review board had not determined a protest by the actual property owner, the buyer, upon which the buyer could premise a right to appeal as the property owner under Tex. Tax Code Ann. § 42.01(1)(A). Scott Plaza Assocs. v. Harris County Appraisal Dist., No. 14-09-00707-CV, 2010 Tex. App. LEXIS 1532 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a plea to the jurisdiction filed by a county appraisal district and a county appraisal review board in a taxpayer's action challenging a property tax appraisal because although the Texas Tax Code provided de novo review as a remedy for the statutory claim of valuation, it did not expressly grant the trial court with authority to order relief of the constitutional claims. Parra Furniture & Appliance Ctr., Inc. v. Cameron Appraisal Dist., No. 13-09-00211-CV, 2010 Tex. App. LEXIS 1321 (Tex. App. Corpus Christi Feb. 25, 2010).

Neither the owner nor the third-party had standing to petition for judicial review of the 2007 property valuation, because the third-party sued to challenge the appraisal review board's order determining protest, the owner was the proper party to pursue a protest, and the owner did not complete the administrative protest process before the appraisal review board. KM-Timbercreek, LLC v. Harris County Appraisal Dist., 312 S.W.3d 722, 2009 Tex. App. LEXIS 8065 (Tex. App. Houston 1st Dist. Oct. 15, 2009, no pet.).

Where the evidence showed that another entity owned property and a trustee was not liable for taxes on this property, he had no standing to bring an action challenging the denial of an exemption under Tex. Tax Code Ann. § 11.20. Therefore, a dismissal for lack of subject matter jurisdiction was warranted. Bernard Dolenz Life Estate v. Dallas Cent. Appraisal Dist. & Appraisal Review Bd., 293 S.W.3d 920, 2009 Tex. App. LEXIS 6313 (Tex. App. Dallas Aug. 13, 2009, no pet.).

Court of Appeals of Texas, Fifth District, Dallas, adopts the reasoning and conclusion of the Houston Fourteenth Court of Appeals in Texas in the case of Appraisal Review Bd. of Harris County Appraisal Dist. v. Spencer Square Ltd., 252 S.W.3d 842 (Tex. App.—Houston [14th Dist.] 2008, no pet.), which has held that Tex. Tax Code Ann. § 41.45(f) does not provide an additional avenue to attack an appraisal review board's order. Interpreting Tex. Tax Code Ann. § 41.45(f) as creating another avenue of appeal to a district court would essentially render the appeal provisions in Tex. Tax Code Ann. ch. 42 meaningless. Appraisal Review Bd. v. O'Connor & Assocs., 275 S.W.3d 643, 2009 Tex. App. LEXIS 276 (Tex. App. Dallas Jan. 15, 2009, no pet.).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Tex. Tax Code Ann. § 41.45(f) grants the district courts authority to compel appraisal review boards to conduct a protest hearing if the appraisal review board denied the property owner a hearing to which he was entitled, however, Tex. Tax Code Ann. § 41.45(f) does not grant the district courts authority to compel appraisal review boards to conduct additional protest hearings; therefore, a plea to the jurisdiction should have been granted when two taxpayers failed to request a trial de novo after a first protest hearing was held; the taxpayers were not allowed to circumvent the procedures set forth in the Texas Tax Code. Appraisal Review Bd. v. Spencer Square Ltd., 252 S.W.3d 842, 2008 Tex. App. LEXIS 3045 (Tex. App. Houston 14th Dist. Apr. 29, 2008, no pet.).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected by the county appraisal review board; the claim was not only discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

PERSONAL PROPERTY TAX

Intangible Property

Imposition of Tax. — Court correctly rendered summary judgment in favor of the county, because the taxpayer's motion to correct the appraisal rolls was untimely, when a Tex. Tax Code Ann. § 25.25(c)(3) motion was not the appropriate vehicle to pursue challenges to the inclusion of property not located in Texas and of intangible property as personal property on the appraisal records, and the appropriate vehicle was a Tex. Tax Code Ann. ch. 41 protest, which the taxpayer admittedly did not pursue. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., 443 S.W.3d 304, 2014 Tex. App. LEXIS 8637 (Tex. App. Houston 1st Dist. Aug. 7, 2014, no pet.).

TANGIBLE PROPERTY

General Overview. — Taxpayer was not entitled to a temporary injunction against the county appraisal district and the county appraisal review board because Tex. Tax Code Ann. §§ 41.41, 42.01, and 42.21 provided an adequate legal remedy for the taxpayer. Further, the proper district court could redress any harm that the taxpayer suffered as a result of administrative actions. Brazoria County Appraisal Dist. v. Notlef, Inc., 721 S.W.2d 391, 1986 Tex. App. LEXIS 8835 (Tex. App. Corpus Christi Oct. 16, 1986, no writ).

Lessee's action that appealed the levy of a property tax against an airplane it merely leased, but did not own, was properly dismissed because Tex. Tax Code Ann. § 42.01 required that only one who held legal title, could appeal the property tax. Bennett-

Barnes Inv. Co. v. Brown County Appraisal Dist., 696 S.W.2d 208, 1985 Tex. App. LEXIS 6849 (Tex. App. Eastland July 25, 1985, writ ref'd n.r.e.).

REAL PROPERTY TAX

General Overview. — Plea to the jurisdiction should have been granted in a tax dispute because there was a failure to exhaust administrative remedies; mandamus was not permitted due to an adequate remedy at law, Tex. Tax Code Ann. § 41.45(f) did not allow taxpayers to bypass administrative procedures, and an ultra vires exception to exhaustion did not apply. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

Water district had standing under Tex. Tax Code Ann. § 42.01 to protest tax appraisals of leasehold interests in lakeside lots where the appraisal methodology improperly included the value of the district's right to reversion, and where the appraisal district sent tax notices to the water district and attempted to place a tax lien on the water district. Panola County Fresh Water Supply Dist. No. One v. Panola County Appraisal Dist., 69 S.W.3d 278, 2002 Tex. App. LEXIS 821 (Tex. App. Texarkana Jan. 31, 2002, no pet.).

ASSESSMENT & VALUATION

General Overview. — Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Because real property had been sold prior to a disputed valuation, the seller could not appeal the valuation under Tex. Tax Code Ann. § 42.01, and jurisdiction was not obtained by amending the petition to include the buyer as a plaintiff pursuant to Tex. Tax Code Ann. § 42.21(e)(1) after the 45-day period for appeal under § 42.21(a) had run. Mei Hsu Acquisition Corp. v. Harris County Appraisal Dist., No. 01-08-00690 -CV, 2009 Tex. App. LEXIS 7727 (Tex. App. Houston 1st Dist. Oct. 1, 2009).

Tex. Tax Code Ann. § 42.01 require that the plaintiff be the property owner in order to sue or obtain relief in a tax appeal. Tourneau Houston, Inc. v. Harris County Appraisal Dist., 24 S.W.3d 907, 2000 Tex. App. LEXIS 5254 (Tex. App. Houston 1st Dist. July 27, 2000, no pet.).

VALUATION. — If a suit appealing an appraisal review board's decision meets the property identification and filing requirements, the trial court has subject matter jurisdiction, even if the petition misidentifies the property owner and must be corrected through amendment. Accordingly, jurisdiction was proper in a suit where the property's identity was undisputed and an amended petition was filed to correct a misidentification of the owner. Town & Country Suites, L.C. v. Harris County Appraisal Dist., No. 01-13-00869-CV, 2014 Tex. App. LEXIS 7125 (Tex. App. Houston 1st Dist. July 1, 2014), op. withdrawn, sub. op., reh'g denied, 461 S.W.3d 208, 2015 Tex. App. LEXIS 694 (Tex. App. Houston 1st Dist. Jan. 27, 2015).

Appellants were property owners who timely filed a petition for review in the district court seeking appellate review by trial de novo of the Appraisal Review Board's final order determining their protest; under the unambiguous language of Tex. Tax Code Ann. § 42.01, they were entitled to prosecute such an appeal. On the record before it, the court could not conclude that they were completely successful in their protest before the Board that the Property's appraised value was greater than the market value and that the appraised value was unequal compared with other properties. Patel v. Harris Cnty. Appraisal Dist., 434 S.W.3d 803, 2014 Tex. App. LEXIS 6148 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

Property owners who timely filed a petition for review in the district court seeking appellate review by trial de novo of an appraisal review board's final order determining their protest were permitted to appeal based on the unambiguous wording of Tex. Tax Code Ann. § 42.01, even though the review board lowered the market value and appraised value to the amount stated by the owners' expert Curry v. Harris County Appraisal Dist., 434 S.W.3d 815, 2014 Tex. App. LEXIS 6151 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

Judicial estoppel did not preclude property owners from asserting on appeal in the district court that the tax appraisal value of the property should be less than the value they asserted at the appraisal review board, because judicial estoppel only applied in subsequent actions, and the appeal constituted the same proceeding. Curry v. Harris County Appraisal Dist., 434 S.W.3d 815, 2014 Tex. App. LEXIS 6151 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

Taxpayer's response to the appraisal district's motion for summary judgment in the taxpayer's appeal from an appraisal was insufficient to raise an issue of fact. The response itself was not evidence, and an affidavit from an expert contained no opinion regarding the value of the property or whether the appraised value was excessive or unequal. Wol+med Wol+Med Southwest Dallas L.P. v. Dallas Cent. Appraisal Dist., No. 05-12-00011-CV, 2013 Tex. App. LEXIS 1969 (Tex. App. Dallas Feb. 27, 2013).

Trial court properly granted a county appraisal district's plea to the jurisdiction in real property sellers' action challenging a 2008 tax assessment for the properties because the buyers were the legal owners of the properties on January 1, 2008; the sellers were not the "property owners" under Tex. Tax Code Ann. § 42.01(1)(A). Milbank 521 Sam Houston I, LLC v. Harris Cnty. Appraisal Dist., No. 01-09-00541-CV, 2010 Tex. App. LEXIS 3154 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court erred in denying an appraisal district's plea to the jurisdiction in a property seller's petition for judicial review of a 2007 tax assessment for the property because the seller lacked standing under Tex. Tax Code Ann. § 42.01(1)(A) to prosecute the buyer's tax protest; the seller did not own the property as of January 1, 2007. Harris County Appraisal Dist. v. Shen, No. 01-09-00652-CV, 2010 Tex. App. LEXIS 3202 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a real property seller's action challenging a 2008 tax assessment for the property because the seller lacked standing to pursue judicial review under Tex. Tax Code Ann. § 42.01(1)(A); the seller did not own the property as of January 1, 2008. RRB Land Invs., Ltd. v. County Appraisal Dist., No. 01-09-00519-CV, 2010 Tex. App. LEXIS 3191 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Neither the owner nor the third-party had standing to petition for judicial review of the 2007 property valuation, because the third-party sued to challenge the appraisal review board's order determining protest, the owner was the proper party to pursue a protest, and the owner did not complete the administrative protest process before the appraisal review board. KM-Timbercreek, LLC v. Harris County Appraisal Dist., 312 S.W.3d 722, 2009 Tex. App. LEXIS 8065 (Tex. App. Houston 1st Dist. Oct. 15, 2009, no pet.).

Sec. 42.015. Appeal by Person Leasing Property.

(a) A person leasing property who is contractually obligated to reimburse the property owner for taxes imposed on

the property is entitled to appeal an order of the appraisal review board determining a protest brought by the person under Section 41.413.

(b) A person appealing an order of the appraisal review board under this section is considered the owner of the property for purposes of the appeal. The chief appraiser shall deliver a copy of any notice relating to the appeal to the owner of the property and to the person bringing the appeal.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 581 (S.B. 783), § 2, effective August 28, 1995.

NOTES TO DECISIONS

Analysis

Tax Law
•State & Local Taxes
••Administration & Proceedings
•••Judicial Review
•••Taxpayer Protests

TAX LAW
State & Local Taxes
Administration & Proceedings

Judicial Review. — Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003. Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

Where the evidence showed that another entity owned property and a trustee was not liable for taxes on this property, he had no standing to bring an action challenging the denial of an exemption under Tex. Tax Code Ann. § 11.20. Therefore, a dismissal for lack of subject matter jurisdiction was warranted. Bernard Dolenz Life Estate v. Dallas Cent. Appraisal Dist. & Appraisal Review Bd., 293 S.W.3d 920, 2009 Tex. App. LEXIS 6313 (Tex. App. Dallas Aug. 13, 2009, no pet.).

TAXPAYER PROTESTS. — Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003. Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

Where the evidence showed that another entity owned property and a trustee was not liable for taxes on this property, he had no standing to bring an action challenging the denial of an exemption under Tex. Tax Code Ann. § 11.20. Therefore, a dismissal for lack of subject matter jurisdiction was warranted. Bernard Dolenz Life Estate v. Dallas Cent. Appraisal Dist. & Appraisal Review Bd., 293 S.W.3d 920, 2009 Tex. App. LEXIS 6313 (Tex. App. Dallas Aug. 13, 2009, no pet.).

Sec. 42.016. Intervention in Appeal by Certain Persons.

A person is entitled to intervene in an appeal brought under this chapter and the person has standing and the court has jurisdiction in the appeal if the property that is the subject of the appeal was also the subject of a protest hearing and the person:

(1) owned the property at any time during the tax year at issue;

(2) leased the property at any time during the tax year at issue and the person filed the protest that resulted in the issuance of the order under appeal; or

(3) is shown on the appraisal roll as the owner of the property or as a lessee authorized to file a protest and the person filed the protest that resulted in the issuance of the order under appeal.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 14, effective September 1, 2011.

NOTES TO DECISIONS

Analysis

Tax Law
•State & Local Taxes
••Administration & Proceedings
•••Judicial Review
•••Taxpayer Protests

TAX LAW
State & Local Taxes
Administration & Proceedings

Judicial Review. — Pursuant to Tex. Tax Code Ann. § 42.21(e), the partnerships' misnomer in its petition for judicial review did not defeat a trial court's jurisdiction where the partnership amended the petition and corrected the name; the property owner exhausted its administrative remedies and timely filed a petition for judicial review. Reddy P'ship/5900 North Freeway, LP v. Harris County Appraisal Dist., 370 S.W.3d 373, 2012 Tex. LEXIS 566 (Tex. 2012).

TAXPAYER PROTESTS. — Pursuant to Tex. Tax Code Ann. § 42.21(e), the partnerships' misnomer in its petition for judicial review did not defeat a trial court's jurisdiction where the partnership amended the petition and corrected the name; the property owner exhausted its administrative remedies and timely filed a petition for judicial review. Reddy P'ship/5900 North Freeway, LP v. Harris County Appraisal Dist., 370 S.W.3d 373, 2012 Tex. LEXIS 566 (Tex. 2012).

Sec. 42.02. Right of Appeal by Chief Appraiser.

(a) On written approval of the board of directors of the appraisal district, the chief appraiser is entitled to appeal an order of the appraisal review board determining:

(1) a taxpayer protest as provided by Subchapter C, Chapter 41, subject to Subsection (b); or

(2) a taxpayer's motion to change the appraisal roll filed under Section 25.25.

(b) Except as provided by Subsection (c), the chief appraiser may not appeal an order of the appraisal review board determining a taxpayer protest under Subsection (a)(1) if:

(1) the protest involved a determination of the appraised or market value of the taxpayer's property and that value according to the order that is the subject of the appeal is less than $1 million; or

(2) for any other taxpayer protest, the property to which the protest applies has an appraised value according to the appraisal roll for the current year of less than $1 million.

(c) On written approval of the board of directors of the appraisal district, the chief appraiser may appeal an order of the appraisal review board determining a taxpayer protest otherwise prohibited by Subsection (b), if the chief appraiser alleges that the taxpayer or a person acting on behalf of the taxpayer committed fraud, made a material misrepresentation, or presented fraudulent evidence in the hearing before the board. In an appeal under this subsection, the court shall first consider whether the taxpayer or a person acting on behalf of the taxpayer committed fraud, made a material misrepresentation, or presented fraudulent evidence to the appraisal review board. If the court does not find by a preponderance of the evidence that the taxpayer or a person acting on behalf of the taxpayer committed fraud, made a material misrepresentation, or presented fraudulent evidence to the appraisal review board, the court shall:

(1) dismiss the appeal; and

(2) award court costs and reasonable attorney's fees to the taxpayer.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 32, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 1033 (H.B. 1680), § 1, effective June 15, 2007.

NOTES TO DECISIONS

Analysis

Tax Law
•State & Local Taxes
••Administration & Proceedings
•••Judicial Review
••Real Property Tax
•••Assessment & Valuation
••••Valuation

TAX LAW
State & Local Taxes
Administration & Proceedings

Judicial Review. — Court declined to address and argument for which there was no evidence, but the argument could have been raised and developed in a timely petition for review. Cameron Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 443 S.W.3d 212, 2013 Tex. App. LEXIS 9967 (Tex. App. Corpus Christi Aug. 8, 2013, no pet.).

Chief appraiser obtained written approval from the board of directors to appeal the appraisal review board (ARB) order determining the property owner's protest, and six days later, the appraisal district filed a notice of appeal and sent a copy to the property owner; the appraisal district thus satisfied the statutory prerequisites to appeal the ARB order. Harris County Appraisal Dist. v. Houston 8th Wonder Prop., L.P., No. 01-10-00154-CV, 2012 Tex. App. LEXIS 3889 (Tex. App. Houston 1st Dist. May 17, 2012).

Because a chief appraiser did not appeal under Tex. Tax Code Ann. § 42.02 from an appraisal review board's orders in favor of taxpayers, which were final appealable orders under Tex. Tax. Code Ann. § 42.21(a), the exclusive remedy provision in Tex. Tax. Code Ann. § 42.09 barred the issuance of supplemental appraisal notices for the same property. Travis Cent. Appraisal Dist. v. Marshall Ford Marina, Inc., No. 03-05-00784-CV, 2009 Tex. App. LEXIS 7156 (Tex. App. Austin Sept. 9, 2009).

REAL PROPERTY TAX
Assessment & Valuation

Valuation. — Chief appraiser obtained written approval from the board of directors to appeal the appraisal review board (ARB) order determining the property owner's protest, and six days later, the appraisal district filed a notice of appeal and sent a copy to the property owner; the appraisal district thus satisfied the statutory prerequisites to appeal the ARB order. Harris County Appraisal Dist. v. Houston 8th Wonder Prop., L.P., No. 01-10-00154-CV, 2012 Tex. App. LEXIS 3889 (Tex. App. Houston 1st Dist. May 17, 2012).

Sec. 42.03. Right of Appeal by County.

A county may appeal the order of the comptroller issued as provided by Subchapter B, Chapter 24 of this code apportioning among the counties the appraised value of railroad rolling stock.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 53, effective September 1, 1991.

Sec. 42.031. Right of Appeal by Taxing Unit.

(a) A taxing unit is entitled to appeal an order of the appraisal review board determining a challenge by the taxing unit.

(b) A taxing unit may not intervene in or in any other manner be made a party, whether as defendant or otherwise, to an appeal of an order of the appraisal review board determining a taxpayer protest under Subchapter C, Chapter 41, if the appeal was brought by the property owner.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 149, effective August 14, 1981; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 41, effective September 1, 1989; am. Acts 1999, 76th Leg., ch. 1481 (H.B. 3549), § 34, effective January 1, 2000.

NOTES TO DECISIONS

Analysis

Tax Law
•State & Local Taxes
••Administration & Proceedings
•••Assessments
•••Taxpayer Protests

TAX LAW
State & Local Taxes
Administration & Proceedings

Assessments. — Taxpayer could not obtain review under Tex. Tax Code Ann. § 42.031 of a real property valuation protest because she did not substantially comply with the requirement of Tex. Tax Code Ann. § 42.08(b) to make a payment before the delinquency date; although the property had been erroneously listed in her husband's name, she did not show that the error prevented her from paying. Eggert v. Comanche Cent. Appraisal Dist., No. 11-05-00416-CV, 2007 Tex. App. LEXIS 8250 (Tex. App. Eastland Oct. 18, 2007).

TAXPAYER PROTESTS. — In a tax dispute that arose after a county appraisal district denied a property owner a foreign-trade zone (FTZ) exemption from county ad valorem taxes for inventory located in the owner's foreign-trade subzone, a district court did not err in refusing to join the county as a party; because the owner appealed the appraisal review board's order determining its protest action and denying the requested FTZ exemption, the county could not have been joined as a party in the appeal to the district court under Tex. Tax Code Ann. § 42.031(b). Harris County Appraisal Dist. v. Shell Oil Co., No. 14-07-00106-CV, 2008 Tex. App. LEXIS 3671 (Tex. App. Houston 14th Dist. May 22, 2008).

Sec. 42.04. Intervention by State or Political Subdivision Owning Property Subject to Taxable Leasehold.

If the challenge or protest relates to a taxable leasehold or other possessory interest in real property that is owned by this state or a political subdivision of this state, the attorney general or a representative of the state agency that owns the real property, if the real property is owned by this state, or a person designated by the political subdivision that owns the real property, as applicable, may intervene in an appeal of an order of an appraisal review board determining a challenge by a taxing unit or a taxpayer protest.

HISTORY: Enacted Acts 1999, 76th Leg., ch. 416 (S.B. 1097), § 5, effective September 1, 1999.

Sec. 42.05. Comptroller As Party.

The comptroller is an opposing party in an appeal by:

(1) a property owner of an order of the comptroller determining a protest of the appraisal, interstate allocation, or intrastate apportionment of transportation business intangibles; or

(2) a county or a property owner of an order of the comptroller apportioning among the counties the appraised value of railroad rolling stock.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 53, effective September 1, 1991.

Sec. 42.06. Notice of Appeal.

(a) To exercise the party's right to appeal an order of an appraisal review board, a party other than a property owner must file written notice of appeal within 15 days after the date the party receives the notice required by Section 41.47 or, in the case of a taxing unit, by Section 41.07 that the order appealed has been issued. To exercise the right to appeal an order of the comptroller, a party other than a property owner must file written notice of appeal within 15 days after the date the party receives the comptroller's order. A property owner is not required to file a notice of appeal under this section.

(b) A party required to file a notice of appeal under this section other than a chief appraiser who appeals an order of an appraisal review board shall file the notice with the chief appraiser of the appraisal district for which the appraisal review board is established. A chief appraiser who appeals an order of an appraisal review board shall file the notice with the appraisal review board. A party who appeals an order of the comptroller shall file the notice with the comptroller.

(c) If the chief appraiser, a taxing unit, or a county appeals, the chief appraiser, if the appeal is of an order of the appraisal review board, or the comptroller, if the appeal is of an order of the comptroller, shall deliver a copy of the notice to the property owner whose property is involved in the appeal within 10 days after the date the notice is filed.

(d) On the filing of a notice of appeal, the chief appraiser shall indicate where appropriate those entries on the appraisal records that are subject to the appeal.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 150, effective August 14, 1981; am. Acts 1987, 70th Leg., ch. 898 (H.B. 1714), § 1, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 42, effective June 15, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 53, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 41, effective January 1, 1998.

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ADMINISTRATIVE LAW
Judicial Review
Reviewability
General Overview. — District court had jurisdiction over the appeal because the incorrect identification of the party intending to appeal did not render the appeal ineffective; the court held that the notice fulfilled the statute's requirement where the notice was filed with the proper body within the proscribed time. Plaza Equity Partners v. Dallas Cent. Appraisal Dist., 765 S.W.2d 520, 1989 Tex. App. LEXIS 473 (Tex. App. Dallas Jan. 25, 1989, no writ).

CIVIL PROCEDURE
Pleading & Practice
Defenses, Demurrers & Objections
Affirmative Defenses
General Overview. — Tex. Tax Code Ann. § 42.06 and Tex. Tax Code Ann. § 42.21 are in the nature of statutes of limitations for the benefit of the appraisal districts; the failure to comply with these limitations statutes is an affirmative defense which must be pleaded pursuant to Tex. R. Civ. P. 94. Morris County Tax Appraisal Dist. v. Nail, 708 S.W.2d 473, 1986 Tex. App. LEXIS 11914 (Tex. App. Texarkana Jan. 14, 1986, writ ref'd n.r.e.).

APPEALS
Reviewability
Time Limitations. — Absent request that notices could be delivered to a fiduciary, property owner was entitled to notice under Tex. Tax Code Ann. § 41.47 of determining protest of taxes issued by appraisal district and appraisal review board, and without notice to the property owner, the time limitations of Tex. Tax Code Ann. §§ 42.06(a), and 42.21(a) did not apply. First Union Real Estate Inv. v. Taylor County Appraisal Dist., 758 S.W.2d 380, 1988 Tex. App. LEXIS 2378 (Tex. App. Eastland Sept. 22, 1988, writ denied).

TAX LAW
State & Local Taxes
Administration & Proceedings
General Overview. — Bank's notice of appeal of a tax assessed on its shares pursuant to Tex. Tax. Code Ann. § 11.02(b) was timely served under Tex. Tax Code Ann. § 42.06(b) when it was addressed to the appraisal district and forwarded to the appraisal review board, which shared the same office and used the same set of case files. Harris County Appraisal Dist. v. Texas Nat'l Bank, 775 S.W.2d 66, 1989 Tex. App. LEXIS 1931 (Tex. App. Houston 1st Dist. July 27, 1989, no writ).

The failure to file a notice of appeal under Tex. Tax Code Ann. § 42.06 within 15 days is jurisdictional. Rockdale Ind. Sch. v. Thorndale Ind. Sch., 681 S.W.2d 225, 227 (Tex.App. — Austin 1984, no writ).Program Centers of Grace Union Presbytery, Inc. v. Earle, 726 S.W.2d 628, 1987 Tex. App. LEXIS 6994 (Tex. App. Fort Worth Mar. 18, 1987, no writ).

Because property owners failed to giver notice to the proper body, their notice of appeal was insufficient; the court held that notice was jurisdictional and that the grant of summary judgment in county's favor dismissing property owner's appraisal challenge was proper. Towne Square Associates v. Angelina County Appraisal Dist., 709 S.W.2d 776, 1986 Tex. App. LEXIS 7593 (Tex. App. Beaumont May 1, 1986, no writ).

In two ad valorem tax actions, the lower court did not commit error when it determined that it lacked jurisdiction because property owners who appealed tax appraisals needed to file suit against the appraisal district and the review board and serve the appraisal district's chief appraiser and the chairman of the review board as required by Tex. tax Code Ann. § 42.06. Corchine Partnership v. Dallas County Appraisal Dist., 695 S.W.2d 734, 1985 Tex. App. LEXIS 12082 (Tex. App. Dallas July 18, 1985, writ ref'd n.r.e.).

District lost its right to challenge a decision of the county appraisal review board because it did not comply with the requirements of Tex. Tax. Code Ann. § 42.06 and have its written notice of appeal filed 15 days after receiving notice of the board's decision. Rockdale Independent School Dist. v. Thorndale Independent School Dist., 681 S.W.2d 225, 1984 Tex. App. LEXIS 6781 (Tex. App. Austin Oct. 24, 1984, writ ref'd n.r.e.).

JUDICIAL REVIEW. — Chief appraiser obtained written approval from the board of directors to appeal the appraisal review board (ARB) order determining the property owner's protest, and six days later, the appraisal district filed a notice of appeal and sent a copy to the property owner; the appraisal district thus satisfied the statutory prerequisites to appeal the ARB order. Harris County Appraisal Dist. v. Houston 8th Wonder Prop., L.P., No. 01-10-00154-CV, 2012 Tex. App. LEXIS 3889 (Tex. App. Houston 1st Dist. May 17, 2012).

PERSONAL PROPERTY TAX
Exempt Property
General Overview. — Requirements of Tex. Tax Code Ann. § 42.06 were met where a religious organization filed its notice of appeal with the appraisal district, but it was actually filed with the appraisal review board within the specified 15-day time period. The organization's protest was denied in a letter written on the stationery of the appraisal district that referenced the case number of the review board. Texas Conference Asso. of Seventh-Day Adventists v. Central Appraisal Review Bd., 719 S.W.2d 255, 1986 Tex. App. LEXIS 8807 (Tex. App. Waco Oct. 16, 1986, writ ref'd n.r.e.).

REAL PROPERTY TAX
General Overview. — Summary judgment for appraisal district and appraisal review board was proper, because landowner received notice of the valuation of his property under Tex. Tax. Code Ann. § 41.47 but failed to file a timely notice of appeal with the appraisal review board under Tex. Tax. Code § 42.06. Underhill v. Jefferson County Appraisal Dist., 725 S.W.2d 301, 1986 Tex. App. LEXIS 9453 (Tex. App. Beaumont Dec. 18, 1986, no writ).

ASSESSMENT & VALUATION
General Overview. — Tex. Tax Code Ann. Chapters 41, 42, which contained the exclusive remedies under which plaintiff property owners could challenge defendant appraiser's appraisal of their properties, met the requirements of due process. Brooks v. Bachus, 661 S.W.2d 288, 1983 Tex. App. LEXIS 5721 (Tex. App. Eastland Nov. 3, 1983, no writ).

VALUATION. — Chief appraiser obtained written approval from the board of directors to appeal the appraisal review board (ARB)

order determining the property owner's protest, and six days later, the appraisal district filed a notice of appeal and sent a copy to the property owner; the appraisal district thus satisfied the statutory prerequisites to appeal the ARB order. Harris County Appraisal Dist. v. Houston 8th Wonder Prop., L.P., No. 01-10-00154-CV, 2012 Tex. App. LEXIS 3889 (Tex. App. Houston 1st Dist. May 17, 2012).

Sec. 42.07. Costs of Appeal.

The reviewing court in its discretion may charge all or part of the costs of an appeal taken as provided by this chapter against any of the parties.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 42.08. Forfeiture of Remedy for Nonpayment of Taxes.

(a) The pendency of an appeal as provided by this chapter does not affect the delinquency date for the taxes on the property subject to the appeal. However, that delinquency date applies only to the amount of taxes required to be paid under Subsection (b). If the property owner complies with Subsection (b), the delinquency date for any additional amount of taxes due on the property is determined by Section 42.42(c), and that additional amount is not delinquent before that date.

(b) Except as provided in Subsection (d), a property owner who appeals as provided by this chapter must pay taxes on the property subject to the appeal in the amount required by this subsection before the delinquency date or the property owner forfeits the right to proceed to a final determination of the appeal. The amount of taxes the property owner must pay on the property before the delinquency date to comply with this subsection is the lesser of:

(1) the amount of taxes due on the portion of the taxable value of the property that is not in dispute;

(2) the amount of taxes due on the property under the order from which the appeal is taken; or

(3) the amount of taxes imposed on the property in the preceding tax year.

(b-1) This subsection applies only to an appeal in which the property owner elects to pay the amount of taxes described by Subsection (b)(1). The appeal filed by the property owner must be accompanied by a statement in writing of the amount of taxes the property owner proposes to pay. The failure to provide the statement required by this subsection is not a jurisdictional error.

(c) A property owner that pays an amount of taxes greater than that required by Subsection (b) does not forfeit the property owner's right to a final determination of the appeal by making the payment. The property owner may pay an additional amount of taxes at any time. If the property owner files a timely appeal under this chapter, taxes paid on the property are considered paid under protest, even if paid before the appeal is filed. If the taxes are subject to the split-payment option provided by Section 31.03, the property owner may comply with Subsection (b) of this section by paying one-half of the amount otherwise required to be paid under that subsection before December 1 and paying the remaining one-half of that amount before July 1 of the following year.

(d) After filing an oath of inability to pay the taxes at issue, a party may be excused from the requirement of prepayment of tax as a prerequisite to appeal if the court, after notice and hearing, finds that such prepayment would constitute an unreasonable restraint on the party's right of access to the courts. On the motion of a party and after the movant's compliance with Subsection (e), the court shall hold a hearing to review and determine compliance with this section, and the reviewing court may set such terms and conditions on any grant of relief as may be reasonably required by the circumstances. If the court determines that the property owner has not substantially complied with this section, the court shall dismiss the pending action. If the court determines that the property owner has substantially but not fully complied with this section, the court shall dismiss the pending action unless the property owner fully complies with the court's determination within 30 days of the determination.

(e) Not later than the 45th day before the date of a hearing to review and determine compliance with this section, the movant must mail notice of the hearing by certified mail, return receipt requested, to the collector for each taxing unit that imposes taxes on the property.

(f) Regardless of whether the collector for the taxing unit receives a notice under Subsection (e), a taxing unit that imposes taxes on the property may intervene in an appeal under this chapter and participate in the proceedings for the limited purpose of determining whether the property owner has complied with this section. The taxing unit is entitled to process for witnesses and evidence and to be heard by the court.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 910 (H.B. 1603), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 195 (H.B. 1188), § 1, effective May 24, 1985; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 43, effective June 15, 1989; am. Acts 1995, 74th Leg., ch. 579 (S.B. 642), § 12, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 203 (H.B. 2201), § 1, effective May 21, 1997; am. Acts 2007, 80th Leg., ch. 1033 (H.B. 1680), § 2, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 530 (S.B. 1359), § 1, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 24, effective June 14, 2013.

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BANKRUPTCY LAW
Taxation

Disputes. — Although Tex. Tax Code Ann. § 42.08(b) required payment of real property taxes in order to challenge appraisals of the property, a bankruptcy debtor's failure to pay the taxes assessed did not preclude challenges to the appraisals since 11 U.S.C.S. § 505 authorized the determination of the debtor's tax liability regardless of whether the taxes were paid, the debtor was not authorized to pay pre-petition claims prior to confirmation of the debtor's plan, and thus the requirement for payment of the taxes was preempted by the Bankruptcy Code. In re Breakwater Shores Partners, L.P., No. 10-61254, 2012 Bankr. LEXIS 1454 (Bankr. E.D. Tex. Apr. 5, 2012).

CIVIL PROCEDURE
Pleading & Practice
Defenses, Demurrers & Objections

Exhaustion of Remedies. — In an ad valorem tax dispute, an argument that there was no jurisdiction over the action due to a failure to exhaust the administrative remedies under Tex. Tas Code Ann. § 42.08(b) was not addressed on appeal because an appraisal district did not file a notice of appeal; the appraisal district had to file a notice of appeal because it was seeking an alteration of the trial court's judgment. Alaska Flight Servs., LLC v. Dallas Cent. Appraisal Dist., 261 S.W.3d 884, 2008 Tex. App. LEXIS 6504 (Tex. App. Dallas Aug. 26, 2008, no pet.).

MOTIONS TO DISMISS. — Trial court did not err in granting the plea to the jurisdiction because the property owner failed to demonstrate an inability to pay its taxes and the prepayment requirement did not constitute an unreasonable restraint on its access to the courts were supported by the evidence. The owner had a positive account balance as of the delinquency date and a general partner admitted that the owner made no attempt to contact the county tax assessor/collector regarding its inability to pay prior to the delinquency date. KMR Minden, L.P. v. Harris County Appraisal Dist., No. 01-13-00152-CV, 2014 Tex. App. LEXIS 6745 (Tex. App. Houston 1st Dist. June 24, 2014).

DISMISSALS
Involuntary Dismissals

General Overview. — Where automotive credit corporation disputed a taxing authority's appraisal of the market value of vehicles on grounds that it was not the owner of the vehicles but merely possessed the vehicles after having seized them from an automobile dealership in default, the automotive credit corporation's appeal of the judgment upholding the appraisal was properly dismissed because the automotive credit corporation failed to pay either the undisputed portion of the taxes or the tax imposed in the preceding year. General Motors Acceptance Corp v. Harris County Mun. Util. Dist. #130, 899 S.W.2d 821, 1995 Tex. App. LEXIS 1214 (Tex. App. Houston 14th Dist. June 1, 1995, no writ).

APPEALS
Reviewability

Notice of Appeal. — In an ad valorem tax dispute, an argument that there was no jurisdiction over the action due to a failure to exhaust the administrative remedies under Tex. Tas Code Ann. § 42.08(b) was not addressed on appeal because an appraisal district did not file a notice of appeal; the appraisal district had to file a notice of appeal because it was seeking an alteration of the trial court's judgment. Alaska Flight Servs., LLC v. Dallas Cent. Appraisal Dist., 261 S.W.3d 884, 2008 Tex. App. LEXIS 6504 (Tex. App. Dallas Aug. 26, 2008, no pet.).

GOVERNMENTS
Legislation
Effect & Operation

Prospective Operation. — Tex. Tax Code Ann. § 42.08, is procedural in nature; when a procedural statute is amended during pending litigation, all steps occurring after the amendment is effective are governed by the amended statute. Resolution Trust Corp. v. Williamson County Appraisal Dist., 816 S.W.2d 452, 1991 Tex. App. LEXIS 1702 (Tex. App. Texarkana July 9, 1991, writ denied).

A railroad was entitled, pursuant to Tex. Tax Code Ann. § 42.08(c), to have judicially reviewed a tax authority's valuation of the railroad's right-of-way property for ad valorem tax purposes, because this procedural statute, which previously precluded judicial review, was amended to allow judicial review and became effective while the case was pending. Missouri Pac. R.R. Co. v. Dallas County Appraisal Dist., 732 S.W.2d 717, 1987 Tex. App. LEXIS 7836 (Tex. App. Dallas 1987, no writ).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Statutory scheme does not force taxpayers to pay all of the taxes assessed, but rather requires only that taxpayers pay the portion of the assessed taxes with which they have no disagreement, pursuant to Tex. Tax Code Ann. §§ 41.411(c), 42.08(a); therefore, paying the taxes the taxpayers agreed were due would not have caused them harm, and the taxpayers could have paid the disputed portions and been entitled to a refund under Tex. Tax Code Ann. § 42.43(a) if they prevailed in their protest. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

Tex. Tax Code Ann. § 42.08 violated a taxpayer's right to open courts only when applied to the prong of § 42.08 that required a taxpayer to pay the amount of taxes imposed in the preceding year before the delinquency date or risk forfeiture of the right to judicial review of an ad valorem tax assessment. Harris County Appraisal Dist. v. Herrin, 924 S.W.2d 154, 1996 Tex. LEXIS 73 (Tex. 1996).

Where a property owner asserts that the district lacks jurisdiction to tax certain property, and no tax was imposed during the previous year, then the property owner does not lose its right to proceed to a final determination on appeal based upon its failure to timely pay the taxes assessed by the District. Pratt & Whitney

Canada v. McLennan County Appraisal Dist., 927 S.W.2d 641, 1996 Tex. App. LEXIS 1127 (Tex. App. Waco 1996, no writ).

Where a property owner asserts that the district lacks jurisdiction to tax certain property, and no tax was imposed during the previous year, then the property owner does not lose its right to proceed to a final determination on appeal based upon its failure to timely pay the taxes assessed by the District under Tex. Tax Code Ann. §§ 11.01, 42.08(b) Pratt & Whitney Canada v. McLennan County Appraisal Dist., 927 S.W.2d 641, 1996 Tex. App. LEXIS 1127 (Tex. App. Waco 1996, no writ).

Forfeiture of rights provision found at Tex. Tax. Code Ann. § 42.08(b) related to judicial review of property valuations facially violates the open access provision of Tex. Const. art. I, § 13, and is thereby unconstitutional because it creates an unreasonable financial barrier on a taxpayer's access to the courts. Lall v. Central Appraisal Dist., No. 05-94-01326-CV, 1995 Tex. App. LEXIS 3062 (Tex. App. Dallas Apr. 21, 1995), writ granted No. 95-0710 (Tex. Nov. 22, 1995), modified, 924 S.W.2d 686, 1996 Tex. LEXIS 69 (Tex. 1996).

Provision of Tex. Tax Code Ann. § 42.08(b), requiring forfeiture of the right to appeal a tax assessment for failure to prepay the tax, facially violates the open courts provision of the Tex. Const. art I, § 13. W.V. Grant Evangelistic Ass'n v. Dallas Cent. Appraisal Dist., 900 S.W.2d 789, 1995 Tex. App. LEXIS 1462 (Tex. App. Dallas Mar. 31, 1995), writ granted No. 95-0717 (Tex. 1995), modified, 924 S.W.2d 686, 1996 Tex. LEXIS 69 (Tex. 1996).

Whether taxpayer had substantially complied with the requirement that it pay all undisputed taxes or forfeit its right to appeal was a factual matter to be determined by the trial court; evidence showed that taxpayer was delinquent in paying undisputed taxes. Harris County Appraisal Dist. v. Bradford Realty, 919 S.W.2d 131, 1994 Tex. App. LEXIS 3065 (Tex. App. Houston 14th Dist. Dec. 15, 1994, no writ).

Tex. Tax Code Ann. § 42.08 is not unconstitutional under the open courts provision of Tex. Const. art. I, § 13, to the extent that § 42.08 requires a forfeiture of a property owner's right to pursue his legal remedy of appeal without an opportunity to cure his delinquency prior to final hearing. Filmstrips & Slides v. Dallas Cent. Appraisal Dist., 806 S.W.2d 289, 1991 Tex. App. LEXIS 937 (Tex. App. Dallas Feb. 28, 1991, no writ).

Property owner's action to appeal the determination of the appraised value of its property was properly dismissed on the grounds that the owner had failed to pay its taxes on the property pursuant to Tex. Tax Code Ann. § 42.08, without being given the opportunity to cure its delinquency before dismissal. Filmstrips & Slides v. Dallas Cent. Appraisal Dist., 806 S.W.2d 289, 1991 Tex. App. LEXIS 937 (Tex. App. Dallas Feb. 28, 1991, no writ).

Taxpayers did not comply with the mandate of Tex. Tax Code Ann. § 42.08(b) for payment of taxes before the delinquency date because they did not pay any taxes for the tax years 1985 and 1986 before they became delinquent; indeed, they did not attempt to tender payment until more than 26 months after the 1985 taxes became delinquent and more than 14 months after the 1986 taxes became delinquent; the appellate court held that the substantial compliance provision of Tex. Tax Code Ann. § 42.08(d) related to the amount of payment and not to the date of payment and that paying tax after the respective delinquency date could not be substantial compliance. Ferguson v. Chillicothe Independent School Dist., 798 S.W.2d 395, 1990 Tex. App. LEXIS 2614 (Tex. App. Amarillo Oct. 29, 1990, writ denied).

Taxpayers substantially complied with the requirement to tender taxes under Tex. Tax. Code Ann. § 42.08(b) by tendering the tax payment into the registry of the court. Wildwood Dev. v. Gregg County Appraisal Dist., 780 S.W.2d 434, 1989 Tex. App. LEXIS 2576 (Tex. App. Texarkana Oct. 17, 1989, writ denied).

Tex. Tax Code Ann. § 42.08 requires the taxpayer to pay the tax due on the amount of value not in dispute, or the amount of tax paid on the property the preceding year, whichever is greater; the tax roles had not been prepared or the tax rates set at the time suit was filed. The tax tendered by property owners was an estimated amount based on the previous year's rate as applied to property owners' properties as they had been redescribed on the appraisal notices; thus, there was some evidence to support the jury finding that the proper amount of tax had been tendered. Morris County Tax Appraisal Dist. v. Nail, 708 S.W.2d 473, 1986 Tex. App. LEXIS 11914 (Tex. App. Texarkana Jan. 14, 1986, writ ref'd n.r.e.).

New tax code requires payment of the undisputed amount of the tax or the tax paid last year, but does not speak to whether the tender should be into the court's registry or to the tax collector. In view of the prior judicial rulings and the fact that the legislature did not provide another mode of tender when it adopted the new tax code, payment of the taxes into the registry of the court when there is a petition for review on file constitutes substantial compliance with Tex. Tax Code Ann. § 42.08. Morris County Tax Appraisal Dist. v. Nail, 708 S.W.2d 473, 1986 Tex. App. LEXIS 11914 (Tex. App. Texarkana Jan. 14, 1986, writ ref'd n.r.e.).

Tex. Tax Code Ann. § 42.08 requires the taxpayer to pay the taxes due on the amount of value not in dispute, or the amount of tax paid on the property in the preceding year, whichever is greater, before the delinquency date; failure to do so forfeits the taxpayer's right to proceed to a final determination in the district court. Morris County Tax Appraisal Dist. v. Nail, 708 S.W.2d 473, 1986 Tex. App. LEXIS 11914 (Tex. App. Texarkana Jan. 14, 1986, writ ref'd n.r.e.).

ASSESSMENTS. — Taxpayer could not obtain review under Tex. Tax Code Ann. § 42.031 of a real property valuation protest because she did not substantially comply with the requirement of Tex. Tax Code Ann. § 42.08(b) to make a payment before the delinquency date; although the property had been erroneously listed in her husband's name, she did not show that the error prevented her from paying. Eggert v. Comanche Cent. Appraisal Dist., No. 11-05-00416-CV, 2007 Tex. App. LEXIS 8250 (Tex. App. Eastland Oct. 18, 2007).

JUDICIAL REVIEW. — Taxpayer's suit for judicial review was properly dismissed for lack of subject-matter jurisdiction because the taxpayer did not pay any portion of the property taxes before the delinquency dates and did not substantially comply by paying an undisputed amount of taxes or stating an amount he would pay; compliance is jurisdictional, and no additional findings were necessary because the trial court implicitly determined the jurisdictional facts regarding the taxpayer's noncompliance. Sonne v. Harris County Appraisal Dist., No. 01-12-00749-CV, 2014 Tex. App. LEXIS 6859 (Tex. App. Houston 1st Dist. June 26, 2014).

Trial court's finding did not "muddle the distinction" between the property owner and the members of its general partner, the finding instead merely identified the members as a source of income for the owner and found that the owner presented no credible evidence for why it could not have obtained a loan from the three members, all of whom were willing to loan money to the entity, before the tax delinquency date. KMR Minden, L.P. v. Harris County Appraisal Dist., No. 01-13-00152-CV, 2014 Tex. App. LEXIS 6745 (Tex. App. Houston 1st Dist. June 24, 2014).

Record supported the trial court's finding that the evidence reflected that the owner had available funds that it used to pay other expenses and that it did not set aside to satisfy its tax liability. The bank records presented demonstrated a positive balance at the end of each month. KMR Minden, L.P. v. Harris County Appraisal Dist., No. 01-13-00152-CV, 2014 Tex. App. LEXIS 6745 (Tex. App. Houston 1st Dist. June 24, 2014).

Trial court's finding that the property owner never elected to pay taxes only on the undisputed portion of the appraised value, and it never made a statement regarding the amount of taxes that it proposed to pay was supported by the record. The owner made only a general, blanket statement in its original petition that it would either pay all of the assessed taxes, pay the taxes on the undisputed portion of the property's value, or seek relief from the trial court if it could not pay the lesser amount. KMR Minden, L.P. v. Harris County Appraisal Dist., No. 01-13-00152-CV, 2014 Tex. App. LEXIS 6745 (Tex. App. Houston 1st Dist. June 24, 2014).

Company did not provide for 45 days' notice of a hearing on its motion for substantial compliance and did not satisfy all conditions precedent entitling it to a hearing. Metro Hospitality Mgmt., LLC v. Harris County Appraisal Dist., No. 01-13-00571-CV, 2014 Tex. App. LEXIS 1368 (Tex. App. Houston 1st Dist. Feb. 6, 2014).

Property owners' challenge to the appraised value of two commercial properties was properly dismissed where they failed

to substantially comply with the statutory prepayment requirement because no portion of the assessed tax was paid on either property in dispute prior to the delinquency deadline. The owners were not excused from the prepayment requirement because they failed to demonstrate an inability to pay, and because the prepayment requirement would not constitute an unreasonable restraint on their right of access to the courts. Welling v. Harris County Appraisal Dist., 429 S.W.3d 28, 2014 Tex. App. LEXIS 1228 (Tex. App. Houston 1st Dist. Feb. 4, 2014, no pet.).

Taxpayer who sought judicial review of an appraisal board's decision met the requirements of Tex. Tax Code Ann. § 42.08(d) to be excused from the payment requirement of § 42.08(b) by filing an oath of inability to pay and presenting bank records showing that he lacked adequate funds to pay his property taxes by the date they were due under Tex. Tax Code Ann. § 31.02(a). An oath of inability to pay does not have to be filed before the due date; and because the taxpayer did not elect to pay a smaller undisputed amount before the due date, he owed the full amount of the taxes and was not required under § 42.08(b-1) to specify the amount he would pay. Carter v. Harris County Appraisal Dist., 409 S.W.3d 26, 2013 Tex. App. LEXIS 7123 (Tex. App. Houston 1st Dist. June 11, 2013, no pet.).

Only issue before the trial court was whether the trial court lacked subject-matter jurisdiction because taxpayers did not substantially comply with the payment requirements of Tex. Tax Code Ann. § 42.08; because the jurisdictional facts were undisputed, there were no factual issues to be resolved, and findings of fact and conclusions of law under Tex. R. Civ. P. 296 would not serve any purpose on appeal, plus any error was harmless because the taxpayers were able to present issues on appeal, and the court was able to address and decide those issues. U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

Under Tex. Tax Code Ann. § 25.25(e), taxpayers did not file an oath of inability to pay until 2009, more than a month after the board denied the taxpayers' correction motion for the 2003 tax year and dismissed motions regarding 2004 and 2005; because of this, the taxpayers forfeited the right to a final determination on the motions, and the trial court correctly found that the taxpayers did not substantially comply with Tex. Tax Code Ann. § 42.08, which was a prerequisite to the board determining the taxpayers' correction motions. U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

Because taxpayers did not pay any portion of the assessed taxes before the delinquency dates, they did not substantially comply with Tex. Tax Code Ann. § 42.08(b). U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

It was undisputed that taxpayers never paid any portion of the assessed taxes for tax years 2003-2005 at any time, and the taxpayers admitted that they owned taxable business personal property within the jurisdiction of the taxing authorities, albeit at a different location; because the taxpayers admitted that they owned the taxable property, moved the business without notifying the authorities, and maintained that property, albeit at an address not named in the records, the taxpayers were not excused from the prepayment requirement of Tex. Tax Code Ann. § 42.08(b). U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

As the party seeking dismissal for lack of subject-matter jurisdiction, a county appraisal district had the burden to establish that taxpayers failed to substantially comply with the prepayment requirements of Tex. Tax Code Ann. § 42.08. U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

TAXPAYER PROTESTS. — Property owners' challenge to the appraised value of two commercial properties was properly dismissed where they failed to substantially comply with the statutory prepayment requirement because no portion of the assessed tax was paid on either property in dispute prior to the delinquency deadline. The owners were not excused from the prepayment requirement because they failed to demonstrate an inability to pay, and because the prepayment requirement would not constitute an unreasonable restraint on their right of access to the courts. Welling v. Harris County Appraisal Dist., 429 S.W.3d 28, 2014 Tex. App. LEXIS 1228 (Tex. App. Houston 1st Dist. Feb. 4, 2014, no pet.).

Trial court lacked jurisdiction to consider a taxpayer's claims regarding the valuation of two saltwater disposal wells for the 2007 tax year because the taxpayer failed to comply with the statute, and failed to exhaust administrative remedies. Key Energy Servs., LLC v. Shelby County Appraisal Dist., 428 S.W.3d 133, 2014 Tex. App. LEXIS 439 (Tex. App. Tyler Jan. 15, 2014, no pet.).

Only issue before the trial court was whether the trial court lacked subject-matter jurisdiction because taxpayers did not substantially comply with the payment requirements of Tex. Tax Code Ann. § 42.08; because the jurisdictional facts were undisputed, there were no factual issues to be resolved, and findings of fact and conclusions of law under Tex. R. Civ. P. 296 would not serve any purpose on appeal, plus any error was harmless because the taxpayers were able to present issues on appeal, and the court was able to address and decide those issues. U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

Under Tex. Tax Code Ann. § 25.25(e), taxpayers did not file an oath of inability to pay until 2009, more than a month after the board denied the taxpayers' correction motion for the 2003 tax year and dismissed motions regarding 2004 and 2005; because of this, the taxpayers forfeited the right to a final determination on the motions, and the trial court correctly found that the taxpayers did not substantially comply with Tex. Tax Code Ann. § 42.08, which was a prerequisite to the board determining the taxpayers' correction motions. U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

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It was undisputed that taxpayers never paid any portion of the assessed taxes for tax years 2003-2005 at any time, and the taxpayers admitted that they owned taxable business personal property within the jurisdiction of the taxing authorities, albeit at a different location; because the taxpayers admitted that they owned the taxable property, moved the business without notifying the authorities, and maintained that property, albeit at an address not named in the records, the taxpayers were not excused from the prepayment requirement of Tex. Tax Code Ann. § 42.08(b). U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

As the party seeking dismissal for lack of subject-matter jurisdiction, a county appraisal district had the burden to establish that taxpayers failed to substantially comply with the prepayment requirements of Tex. Tax Code Ann. § 42.08. U. Lawrence Boze' & Assocs., P.C. v. Harris County Appraisal Dist., 368 S.W.3d 17, 2011 Tex. App. LEXIS 6246 (Tex. App. Houston 1st Dist. Aug. 11, 2011, no pet.).

Courts are required to construe the statute strictly against a taxing authority. The statute does not provide a deadline for filing an oath of inability to pay and courts are not inclined to create one by judicial mandate. Dallas Cent. Appraisal Dist. v. 717 S. Good Latimer, Ltd., No. 05-09-00779-CV, 2010 Tex. App. LEXIS 3170 (Tex. App. Dallas Apr. 29, 2010).

Trial court properly denied an appraisal district's plea to the jurisdiction in a taxpayer's action challenging an appraisal of commercial property because the taxpayer substantially complied with Tex. Tax Code Ann. § 42.08(d) and did not forfeit its right to proceed to a final determination of its appeal; the statute did not provide a deadline for filing an oath of inability to pay. Dallas Cent. Appraisal Dist. v. 717 S. Good Latimer, Ltd., No. 05-09-

00779-CV, 2010 Tex. App. LEXIS 3170 (Tex. App. Dallas Apr. 29, 2010).

Trial court erred in granting an appraisal district's plea to the jurisdiction in a taxpayer's action to correct a property tax roll where the taxpayer's failure to prepay the taxes did not constitute a statutory violation; given the allegations in the taxpayer's petition, the amount of taxes "not in dispute" was zero. C.I.T. Leasing Corp. v. Dallas Cent. Appraisal Dist., No. 05-06-01546-CV, 2007 Tex. App. LEXIS 9701 (Tex. App. Dallas Dec. 13, 2007).

PERSONAL PROPERTY TAX

General Overview. — The portion of Tex. Tax Code Ann. § 42.08 which stated that a taxpayer forfeited his right to judicial review of an ad valorem tax assessment if the taxpayer did not pay, before the delinquency date, the amount of taxes imposed on the property the proceeding year violated the right to open courts provision found in Tex. Const. art. I, § 13. Central Appraisal Dist. v. Lall, 924 S.W.2d 686, 1996 Tex. LEXIS 69 (Tex. 1996).

In a case brought by the delinquent tax payer against the county appraisal district and the county appraisal district appraisal review board, the trial court erred by overruling the motion to dismiss of the county appraisal district and the county appraisal district appraisal review board for noncompliance with Tex. Tax Code Ann. § 42.08 because the parties stipulated the delinquent tax payer had not paid the tax amount before the delinquency date, and a mandatory time requirement was not reasonably susceptible to substantial compliance review; paying after the tax delinquency deadline was not substantial compliance. Harris County Appraisal Dist. v. Consolidated Capital Properties IV, 795 S.W.2d 39, 1990 Tex. App. LEXIS 2099 (Tex. App. Amarillo Aug. 16, 1990, writ denied).

Taxpayer who has properly and timely appealed his or her adverse rulings from the Appraisal Review Board up to a state district court will nevertheless be precluded from having the district court adjudicate his or her appeal if he or she had failed to tender any payment of taxes as provided by Tex. Tax Code Ann. § 42.08, and the taxpayer's appeal will be dismissed pursuant to Tex. Tax Code Ann. § 42.08(c) unless the taxpayer can show substantial compliance. Shenandoah v. Jimmy Swaggart Evangelistic Ass'n, 785 S.W.2d 899, 1990 Tex. App. LEXIS 777 (Tex. App. Beaumont Feb. 22, 1990, writ denied).

REAL PROPERTY TAX. — Even though facts established that appellant did not pay its taxes by the due date, appellant's conduct, including notification of assessor of its inability to pay and entering an installment agreement to pay, was strong evidence of substantial compliance with Tex. Tax Code Ann. §§ 42.08 (b) and (d). J. C. Evans Constr. Co. v. Travis Cent. Appraisal Dist., 4 S.W.3d 447, 1999 Tex. App. LEXIS 7997 (Tex. App. Austin Oct. 28, 1999, no pet.).

REAL PROPERTY TAX

General Overview. — Under Tex. Tax Code Ann. § 42.08(b), the landowner was not barred from challenging the unfavorable property appraisal by the county on the basis that he had failed to pay assessed taxes before the delinquency date expired; substantially complying with the requirements of preserving appeal was sufficient to retain the right to challenge the appraisal. Jackson Hotel Corp. v. Wichita County Appraisal Dist., 980 S.W.2d 879, 1998 Tex. App. LEXIS 6563 (Tex. App. Fort Worth Oct. 22, 1998, no pet.).

Tex. Tax Code Ann. § 42.08 created a financial barrier to access to the courts by requiring that a taxpayer pay disputed amounts of the taxes owing under § 42.08(b)(1) or (2) before the delinquency date or forfeit the right to obtain a final determination from the reviewing court, which was unconstitutional. Harris County Appraisal Dist. v. Herrin, 917 S.W.2d 345, 1996 Tex. App. LEXIS 313 (Tex. App. Houston 14th Dist. Jan. 25, 1996), modified, 924 S.W.2d 154, 1996 Tex. LEXIS 73 (Tex. 1996).

Failure to receive notice of a new property appraisal, pursuant to Tex. Tax Code Ann. § 23.54(e), does not in anyway excuse a taxpayer from complying with Tex. Tax Code Ann. § 42.08. Lawler v. Tarrant Appraisal Dist., 855 S.W.2d 269, 1993 Tex. App. LEXIS 1638 (Tex. App. Fort Worth June 8, 1993, no writ).

Dismissal of a pending action is mandatory under Tex. Tax Code Ann. § 42.08 where the court determines that the property owner has not substantially complied with the statute. Lawler v. Tarrant Appraisal Dist., 855 S.W.2d 269, 1993 Tex. App. LEXIS 1638 (Tex. App. Fort Worth June 8, 1993, no writ).

District court lacked jurisdiction over a property owner's lawsuit against the county appraisal district for denying his application for special agricultural land use because he failed to pay anything toward his property taxes, or even tender such amount, before the date of delinquency as required by Tex. Tax Code Ann. § 42.08; compliance with the statute was a jurisdictional prerequisite to the district court's subject matter jurisdiction to determine the property owner's rights in his suit, and he was in total noncompliance with the statute. Lawler v. Tarrant Appraisal Dist., 855 S.W.2d 269, 1993 Tex. App. LEXIS 1638 (Tex. App. Fort Worth June 8, 1993, no writ).

On an ad valorem tax case in which a taxpayer sought judicial review of the orders of a county appraisal review board (board) which had determined the market value of real properties owned by the taxpayer, the trial court erroneously entered judgment for the taxpayer pursuant to Tex. Tax. Code Ann. § 42.08, because although the taxpayer paid the full amount of the taxes it owed, this payment was made after the delinquency date; because no portion was paid before that date; because in this situation, there was no substantial compliance, and the trial court should have dismissed the taxpayer's petition pursuant to § 42.08(d); because it was irrelevant that its failure to pay the taxes in a timely fashion was accidental and not in bad faith; and because rather than pay all of its taxes except a single payment in a timely fashion, the taxpayer paid no amount of the taxes it owed on time. Harris County Appraisal Dist. v. Dipaola Realty Assoc., L.P., 841 S.W.2d 487, 1992 Tex. App. LEXIS 2724 (Tex. App. Houston 1st Dist. Oct. 22, 1992, writ denied).

Taxpayers substantially complied with the requirement to tender taxes under Tex. Tax. Code Ann. § 42.08(b) by tendering the tax payment into the registry of the court. Wildwood Dev. v. Gregg County Appraisal Dist., 780 S.W.2d 434, 1989 Tex. App. LEXIS 2576 (Tex. App. Texarkana Oct. 17, 1989, writ denied).

Tex. Tax Code Ann. § 42.08 requires the taxpayer to pay the tax due on the amount of value not in dispute, or the amount of tax paid on the property the preceding year, whichever is greater; the tax roles had not been prepared or the tax rates set at the time suit was filed. The tax tendered by property owners was an estimated amount based on the previous year's rate as applied to property owners' properties as they had been redescribed on the appraisal notices; thus, there was some evidence to support the jury finding that the proper amount of tax had been tendered. Morris County Tax Appraisal Dist. v. Nail, 708 S.W.2d 473, 1986 Tex. App. LEXIS 11914 (Tex. App. Texarkana Jan. 14, 1986, writ ref'd n.r.e.).

ASSESSMENT & VALUATION

General Overview. — Evidence was legally sufficient to support the trial court's finding that the property owner had not paid the undisputed amount of ad valorem taxes due prior to the delinquency given the owner's testimony and bank records showing that he had more cash on hand than the amount of taxes owed. Palaniappan v. Harris County Appraisal Dist., No. 01-11-00344-CV, 2013 Tex. App. LEXIS 15460 (Tex. App. Houston 1st Dist. Dec. 31, 2013).

Trial court did not err in granting the county appraisal district's plea to jurisdiction given case law holding that compliance with Tex. Tax Code Ann. § 42.08 was jurisdictional. Palaniappan v. Harris County Appraisal Dist., No. 01-11-00344-CV, 2013 Tex. App. LEXIS 15460 (Tex. App. Houston 1st Dist. Dec. 31, 2013).

Property owner failed to establish his inability to pay his property taxes before the due date where his bank records showed he had more cash on hand than the amount of taxes owed. Palaniappan v. Harris County Appraisal Dist., No. 01-11-00344-CV, 2013 Tex. App. LEXIS 15460 (Tex. App. Houston 1st Dist. Dec. 31, 2013).

Property owner's oath of inability to pay his property tax was timely even though it was filed two years after the delinquency date where Tex. Tax Code Ann. § 42.08(d) did not require that the oath of inability to pay be filed before the delinquency date. Palaniappan v. Harris County Appraisal Dist., No. 01-11-00344-CV, 2013 Tex. App. LEXIS 15460 (Tex. App. Houston 1st Dist. Dec. 31, 2013).

Defendant company's partial tender of assessed taxes prior to delinquency date was sufficient to preclude imposition of penalty and interest on the unpaid balance and to avoid any effort by taxing entities to collect balance due pending resolution of the property valuation suit. Jefferson County v. Clark Ref. & Mktg., 7 S.W.3d 324, 1999 Tex. App. LEXIS 9622 (Tex. App. Beaumont Dec. 30, 1999, no pet.).

Where landowners brought an action challenging an appraisal review board's (board) denial of their request for an open-space valuation of their real property, a trial court order that granted the board's motion to dismiss the landowners' action pursuant to Tex. Tax. Code Ann. § 42.08(c) on grounds that the landowners paid the full amount of the assessment before the delinquency date was reversed because § 42.08(c) had been amended so that the payment of taxes did not forfeit a property owner's right to a final determination of an appeal. Harston v. Kendall County Appraisal Dist., 773 S.W.2d 815, 1989 Tex. App. LEXIS 1971 (Tex. App. San Antonio July 19, 1989, no writ).

VALUATION. — Company did not provide for 45 days' notice of a hearing on its motion for substantial compliance and did not satisfy all conditions precedent entitling it to a hearing. Metro Hospitality Mgmt., LLC v. Harris County Appraisal Dist., No. 01-13-00571-CV, 2014 Tex. App. LEXIS 1368 (Tex. App. Houston 1st Dist. Feb. 6, 2014).

Trial court lacked jurisdiction to consider a taxpayer's claims regarding the valuation of two saltwater disposal wells for the 2007 tax year because the taxpayer failed to comply with the statute, and failed to exhaust administrative remedies. Key Energy Servs., LLC v. Shelby County Appraisal Dist., 428 S.W.3d 133, 2014 Tex. App. LEXIS 439 (Tex. App. Tyler Jan. 15, 2014, no pet.).

Although Tex. Tax Code Ann. § 42.08(b) required payment of real property taxes in order to challenge appraisals of the property, a bankruptcy debtor's failure to pay the taxes assessed did not preclude challenges to the appraisals since 11 U.S.C.S. § 505 authorized the determination of the debtor's tax liability regardless of whether the taxes were paid, the debtor was not authorized to pay pre-petition claims prior to confirmation of the debtor's plan, and thus the requirement for payment of the taxes was preempted by the Bankruptcy Code. In re Breakwater Shores Partners, L.P., No. 10-61254, 2012 Bankr. LEXIS 1454 (Bankr. E.D. Tex. Apr. 5, 2012).

Courts are required to construe the statute strictly against a taxing authority. The statute does not provide a deadline for filing an oath of inability to pay and courts are not inclined to create one by judicial mandate. Dallas Cent. Appraisal Dist. v. 717 S. Good Latimer, Ltd., No. 05-09-00779-CV, 2010 Tex. App. LEXIS 3170 (Tex. App. Dallas Apr. 29, 2010).

Trial court properly denied an appraisal district's plea to the jurisdiction in a taxpayer's action challenging an appraisal of commercial property because the taxpayer substantially complied with Tex. Tax Code Ann. § 42.08(d) and did not forfeit its right to proceed to a final determination of its appeal; the statute did not provide a deadline for filing an oath of inability to pay. Dallas Cent. Appraisal Dist. v. 717 S. Good Latimer, Ltd., No. 05-09-00779-CV, 2010 Tex. App. LEXIS 3170 (Tex. App. Dallas Apr. 29, 2010).

COLLECTION

General Overview. — Trial court erred in granting an appraisal district's plea to the jurisdiction in a taxpayer's action to correct a property tax roll where the taxpayer's failure to prepay the taxes did not constitute a statutory violation; given the allegations in the taxpayer's petition, the amount of taxes "not in dispute" was zero. C.I.T. Leasing Corp. v. Dallas Cent. Appraisal Dist., No. 05-06-01546-CV, 2007 Tex. App. LEXIS 9701 (Tex. App. Dallas Dec. 13, 2007).

METHODS & TIMING. — Taxpayer's suit for judicial review was properly dismissed for lack of subject-matter jurisdiction because the taxpayer did not pay any portion of the property taxes before the delinquency dates and did not substantially comply by paying an undisputed amount of taxes or stating an amount he would pay; compliance is jurisdictional, and no additional findings were necessary because the trial court implicitly determined the jurisdictional facts regarding the taxpayer's noncompliance. Sonne v. Harris County Appraisal Dist., No. 01-12-00749-CV, 2014 Tex. App. LEXIS 6859 (Tex. App. Houston 1st Dist. June 26, 2014).

Trial court's finding did not "muddle the distinction" between the property owner and the members of its general partner, the finding instead merely identified the members as a source of income for the owner and found that the owner presented no credible evidence for why it could not have obtained a loan from the three members, all of whom were willing to loan money to the entity, before the tax delinquency date. KMR Minden, L.P. v. Harris County Appraisal Dist., No. 01-13-00152-CV, 2014 Tex. App. LEXIS 6745 (Tex. App. Houston 1st Dist. June 24, 2014).

Record supported the trial court's finding that the evidence reflected that the owner had available funds that it used to pay other expenses and that it did not set aside to satisfy its tax liability. The bank records presented demonstrated a positive balance at the end of each month. KMR Minden, L.P. v. Harris County Appraisal Dist., No. 01-13-00152-CV, 2014 Tex. App. LEXIS 6745 (Tex. App. Houston 1st Dist. June 24, 2014).

Trial court's finding that the property owner never elected to pay taxes only on the undisputed portion of the appraised value, and it never made a statement regarding the amount of taxes that it proposed to pay was supported by the record. The owner made only a general, blanket statement in its original petition that it would either pay all of the assessed taxes, pay the taxes on the undisputed portion of the property's value, or seek relief from the trial court if it could not pay the lesser amount. KMR Minden, L.P. v. Harris County Appraisal Dist., No. 01-13-00152-CV, 2014 Tex. App. LEXIS 6745 (Tex. App. Houston 1st Dist. June 24, 2014).

Trial court did not err in granting the plea to the jurisdiction because the property owner failed to demonstrate an inability to pay its taxes and the prepayment requirement did not constitute an unreasonable restraint on its access to the courts were supported by the evidence. The owner had a positive account balance as of the delinquency date and a general partner admitted that the owner made no attempt to contact the county tax assessor/collector regarding its inability to pay prior to the delinquency date. KMR Minden, L.P. v. Harris County Appraisal Dist., No. 01-13-00152-CV, 2014 Tex. App. LEXIS 6745 (Tex. App. Houston 1st Dist. June 24, 2014).

Sec. 42.081. Deferral of Delinquent Tax Suit During Appeal. [Effective January 1, 2020]

A taxing unit that imposes taxes on property that is the subject of an appeal under this chapter may not file a suit to collect a delinquent tax on the property during the pendency of the appeal unless it is determined by the court that the property owner failed to comply with Section 42.08.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 74, effective January 1, 2020.

Sec. 42.09. Remedies Exclusive.

(a) Except as provided by Subsection (b) of this section, procedures prescribed by this title for adjudication of the grounds of protest authorized by this title are exclusive, and a property owner may not raise any of those grounds:

(1) in defense to a suit to enforce collection of delinquent taxes; or

(2) as a basis of a claim for relief in a suit by the property owner to arrest or prevent the tax collection process or to obtain a refund of taxes paid.

(b) A person against whom a suit to collect a delinquent property tax is filed may plead as an affirmative defense:

(1) if the suit is to enforce personal liability for the tax, that the defendant did not own the property on which the tax was imposed on January 1 of the year for which the tax was imposed; or

(2) if the suit is to foreclose a lien securing the payment of a tax on real property, that the property was not located within the boundaries of the taxing unit seeking to foreclose the lien on January 1 of the year for which the tax was imposed.

(c) For purposes of this section, "suit" includes a counterclaim, cross-claim, or other claim filed in the course of a lawsuit.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 53 (S.B. 266), § 1, effective May 6, 1987.

NOTES TO DECISIONS

Analysis

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ADMINISTRATIVE LAW

Judicial Review

Reviewability

Exhaustion of Remedies. — When appellant homeowners received notices pursuant to Tex. Tax Code Ann. § 25.21 that their properties had been omitted from the appraisal rolls and they owed back taxes for the past five years, appellants pleaded claims for declaratory judgment, injunctive relief, and mandamus against appellees, the city, the county appraisal district, the appraisal review board members, and the county tax assessor. Appellants' claims were not barred for failure to exhaust their administrative remedies as set forth in Tex. Tax Code Ann. §§ 42.09, 41.01 — 40.71; because actions taken by the government officials were outside the scope of their authority, appellants' failure to pursue any type of protest procedure fell within an exception to the exhaustion of administrative remedies doctrine. Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

Tex. Tax Code Ann. §§ 42.09, 42.21(a) require exhaustion of remedies when taxpayers seek to have their individual assessments set aside, and class actions do not avoid these statutory requirements. Cameron Appraisal Dist. v. Rourk, 194 S.W.3d 501, 2006 Tex. LEXIS 504 (Tex. 2006).

Property owners were not required to exhaust their administrative remedies because the allegations relevant to the property owners' cause of action against an appraisal district for violation of the Texas Constitution involved substantial constitutional questions of law. Rourk v. Cameron Appraisal Dist., 131 S.W.3d

285, 2004 Tex. App. LEXIS 2100 (Tex. App. Corpus Christi Mar. 4, 2004), rev'd, 194 S.W.3d 501, 2006 Tex. LEXIS 504 (Tex. 2006).

Where the owner of an aircraft failed to file a timely protest asserting that appraisal authorities failed to provide the owner with the requisite notice of the tax appraisal of the aircraft, the protest procedure was the owner's exclusive remedy and judicial review was thus precluded by the owner's failure to exhaust administrative remedies. Denton Cent. Appraisal Dist. v. CIT Leasing Corp., 115 S.W.3d 261, 2003 Tex. App. LEXIS 7592 (Tex. App. Fort Worth Aug. 25, 2003), cert. denied, 543 U.S. 869, 125 S. Ct. 106, 160 L. Ed. 2d 115, 2004 U.S. LEXIS 6555 (U.S. 2004).

Trial court's judgment dismissing the company's suit for want of jurisdiction was affirmed where (1) the company presented no evidence of the date that the 1999 tax appraisal records were approved as required by Tex. Tax Code Ann. § 41.12(a)(4); (2) even if Tex. Tax. Code Ann. § 11.439 was procedural and controlled pending litigation, the company failed to establish its entitlement to relief; and (3) under Tex. Tax. Code Ann. §§ 41.41(a)(9), 41.44, 41.45, 42.01(1)(A), 42.21(a), 42.09, the company did not exhaust its administrative remedies and was not entitled to judicial review; the company did not assert that the cover letter attached to its late application for a freeport exemption under Tex. Tax Code Ann. § 11.43(d), (e) was a request for extension of time and that the letter stated good cause for the tardy filing. Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

Property owners' failure to challenge the constitutionality of Tex. Tax Code Ann. § 42.09 resulted in the conclusion that the tax code remedies were exclusive when the complained of review board action could have been protested by a property owner following the proper procedures in the code; because the property owners failed to comply with the provisions of the tax code, the trial court was without jurisdiction to entertain their cause of action. Adams v. Kendall County Appraisal Dist., 724 S.W.2d 871, 1986 Tex. App. LEXIS 9451 (Tex. App. San Antonio Dec. 31, 1986, no writ).

SEPARATION OF POWERS
Legislative Controls

Explicit Delegation of Authority. — Tex. Tax Code Ann. §§ 42.09, 42.21(a) require exhaustion of remedies when taxpayers seek to have their individual assessments set aside, and class actions do not avoid these statutory requirements. Cameron Appraisal Dist. v. Rourk, 194 S.W.3d 501, 2006 Tex. LEXIS 504 (Tex. 2006).

BUSINESS & CORPORATE LAW
General Partnerships
Management Duties & Liabilities
Causes of Action

Partnership Liabilities. — Appellees were entitled to rely upon the recitations contained in the deed filed of record, indicating that the property owner's brother was a partner in the company, when attempting to determine ownership of the property for purposes of effecting service of process; as citation served on one member of a partnership authorized a judgment against the partnership, Tex. Civ. Prac. & Rem. Code Ann. § 17.022, service upon the brother was effective to authorize a judgment against the company. Reed v. County of Tarrant, No. 02-11-00285-CV, 2012 Tex. App. LEXIS 4197 (Tex. App. Fort Worth May 24, 2012).

CIVIL PROCEDURE
Justiciability
Exhaustion of Remedies

General Overview. — Where county had properly provided taxpayer with notice of reappraisal of property, and taxpayer failed to protest the reappraisal within 30 days after receipt of notification, taxpayer had failed to exhaust exclusive, administrative remedies which precluded judicial review of the appraisal under Tex. Tax Code Ann. § 42.09. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

EXCEPTIONS. — Taxpayers did not have to exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a) in challenging the validity of notices for omitted city tax bills, which purported to be under the authority of Tex. Tax Code Ann. § 25.21, because an exception applied for governmental actions taken without statutory authority. Section 25.21 provides no remedy for omitted taxing units, which have a separate definition from property in Tex. Tax Code Ann. § 1.04; the county's supplemental appraisal records did not specify the omitted years under Tex. Tax Code Ann. § 25.23(a)(10); and Tex. Tax Code Ann. § 11.43(i) was inapplicable because no exemption was involved. Brennan v. City of Willow Park, No. 02-11-00265-CV, 2012 Tex. App. LEXIS 4943 (Tex. App. Fort Worth June 21, 2012), op. withdrawn, sub. op., 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012).

STANDING

General Overview. — Where neither a property's seller nor its buyer fulfilled the jurisdictional prerequisites to seeking judicial review of a county appraisal review board's adverse determination of a property-valuation protest, both entities lacked standing to appeal the board's order to the district court because although the seller timely filed a petition for review, it did not own the property on the date at issue and was not a designated agent or lessee of the buyer, the actual record owner of the property. The buyer did not complete the administrative protest process before the board and could not take advantage of Tex. Tax Code Ann. § 42.21(e) to change the named plaintiff from one party who did not have standing to seek judicial review—the seller—to another party who did not have standing—the buyer. GSL Welcome BP 32 LLC v. Harris County Appraisal Dist., No. 01-10-00189-CV, 2010 Tex. App. LEXIS 8950 (Tex. App. Houston 1st Dist. Nov. 10, 2010).

Given the state supreme court's having unequivocally enforced Tex. Tax Code Ann. § 42.09 as mandatory and jurisdictional, and the buyer's failure to exhaust its remedies by filing a protest to the board, though authorized to do so by Tex. Tax Code Ann. § 41.412, the buyer's failure to pursue its remedies also barred the trial court's subject-matter jurisdiction to review determination of the protest filed by the seller. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

PLEADING & PRACTICE
Defenses, Demurrers & Objections
Affirmative Defenses

General Overview. — Although it is possible for certain theories to form the basis of both claims for affirmative relief and affirmative defenses, Tex. Tax Code Ann. § 42.09(b) is only applicable to an affirmative defense. Therefore, the bar in § 42.09(a) that prohibits proceedings in court when administrative remedies have not been exhausted applies. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

When taxing units nonsuited their claims against taxpayers for delinquent taxes, the taxpayers' non-ownership affirmative defense became moot, and the Tex. Tax Code Ann. § 42.09(b) exception was no longer applicable according to the express terms of the Texas Tax Code. The taxpayers' affirmative claim for a refund did not comport with the requirements of the Tax Code, which was required for the district court's jurisdiction, and the district court thus lacked jurisdiction, as no party was asserting an affirmative defense of non-ownership. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

In a tax collection suit, no genuine fact issue existed as to whether the taxpayer was the owner of the property described in the tax records because the taxpayer did not plead the affirmative defense of non-ownership in accordance with Tex. R. Civ. P. 94, and the county established a prima facie case by attaching certified copies of the delinquent tax roll entries showing the property and the amount of the tax and penalties imposed and interest accrued. Marrs v. San Jacinto County, No. 09-07-382 CV, 2008 Tex. App. LEXIS 6207 (Tex. App. Beaumont Aug. 14, 2008).

In a suit to collect delinquent ad valorem taxes, because the taxpayer did not plead or otherwise raise non-ownership of the property at trial, which was an affirmative defense as stated in Tex. Tax Code Ann. § 42.09(b), that issue was waived under Tex. R. Civ. P. 94. Williams v. County of Dallas, No. 05-05-00376-CV, 2006 Tex. App. LEXIS 2367 (Tex. App. Dallas Mar. 29, 2006), vacated, op. withdrawn, reh'g denied, 194 S.W.3d 29, 2006 Tex. App. LEXIS 3712 (Tex. App. Dallas May 3, 2006).

DISCOVERY
Methods

Requests for Production & Inspection. — Trial court did not abuse its discretion by denying a taxpayer's motion to compel because the information the taxpayer sought in discovery was public records accessible to both the taxpayer and the taxing authorities; additionally, the information was in the possession of a nonparty, the appraisal district, and the taxpayer offered no evidence that it complied with the procedure provided by Tex. R. Civ. P. 205. Barnett v. County of Dallas, 175 S.W.3d 919, 2005 Tex. App. LEXIS 9305 (Tex. App. Dallas Nov. 9, 2005, no pet.).

MOTIONS TO COMPEL. — Trial court did not abuse its discretion by denying a taxpayer's motion to compel because the information the taxpayer sought in discovery was public records accessible to both the taxpayer and the taxing authorities; additionally, the information was in the possession of a nonparty, the appraisal district, and the taxpayer offered no evidence that it complied with the procedure provided by Tex. R. Civ. P. 205. Barnett v. County of Dallas, 175 S.W.3d 919, 2005 Tex. App. LEXIS 9305 (Tex. App. Dallas Nov. 9, 2005, no pet.).

SUMMARY JUDGMENT
Burdens of Production & Proof

Movants. — Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

Trial court did not have subject-matter jurisdiction over a taxpayer's affirmative defense that the appraisals on which local taxing entities' delinquent tax suit was based were defective where the taxpayer did not exhaust its administrative remedies, nor was it excused from having to do so; because the trial court was deprived of subject-matter jurisdiction to determine whether the taxpayer was double-taxed, or whether it was partially exempted from the tax, the taxpayer did not carry its summary-judgment burden, and the trial court thus erred by granting the taxpayer's motion for summary judgment against the taxing entities. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

STANDARDS

General Overview. — Exhaustion of administrative remedies was a threshold requirement which a property owner had to meet to entitle him to demonstrate the existence of fact issues in opposition to summary judgment in a tax liability case. Ivan Dement, Inc. v. Stratford Independent School Dist., 742 S.W.2d 820, 1987 Tex. App. LEXIS 9143 (Tex. App. Amarillo Dec. 10, 1987, no writ).

APPEALS
Appellate Jurisdiction

Final Judgment Rule. — Where taxpayer was entitled to protest the appraised value of property before the county appraisal review board under Tex. Tax Code Ann. § 41.41, and taxpayer did not file the notice of protest within thirty days after receiving the notice of the change in appraisal as required by Tex. Tax Code Ann. § 41.44(a), those remedies were exclusive, and failure to pursue them precluded judicial review of the appraisal under Tex. Tax Code Ann. § 42.09. Escamilla v. City of Laredo, 9 S.W.3d 416, 1999 Tex. App. LEXIS 9255 (Tex. App. San Antonio Dec. 15, 1999, no pet.).

REVIEWABILITY

Preservation for Review. — In a suit to collect delinquent ad valorem taxes, because the taxpayer did not plead or otherwise raise non-ownership of the property at trial, which was an affirmative defense as stated in Tex. Tax Code Ann. § 42.09(b), that issue was waived under Tex. R. Civ. P. 94. Williams v. County of Dallas, No. 05-05-00376-CV, 2006 Tex. App. LEXIS 2367 (Tex. App. Dallas Mar. 29, 2006), vacated, op. withdrawn, reh'g denied, 194 S.W.3d 29, 2006 Tex. App. LEXIS 3712 (Tex. App. Dallas May 3, 2006).

Where a taxpayer did not protest the determination of the appraised value of the property or any other action of an appraisal review board, the taxpayer was not entitled, pursuant to Tex. Tax Code Ann. §§ 41.41 and 42.09, to do so in litigation brought by a county and a city to collect delinquent taxes, and thus, the only issue before the court was whether the trial court abused its discretion in ordering that the taxpayer's tort claims against the city be tried in a previously filed lawsuit; because the taxpayer's claims were already asserted in the previously filed lawsuit, and they did not involve the same proof as the city's claim for delinquent taxes, the taxpayer's tort claims were properly dismissed. Qualls v. Angelina County, 98 S.W.3d 369, 2003 Tex. App. LEXIS 973 (Tex. App. Beaumont Jan. 30, 2003, no pet.).

Plaintiffs school district, county, and city successfully brought suit against defendant church to recover delinquent ad valorem taxes owed on property that the church operated as a private school; the church ceded its constitutional complaint that the procedure for claiming tax exempt status, i.e., the filing of an application for exemption, violated its religious tenets and restricted its free exercise of religion under the federal constitution and Tex. Con. art VIII, § 2, because the church had substantially complied with the challenged administrative procedure by timely submitting an altered tax exemption application form, thus waiving its right to judicial review under Tex Tax Code Ann. § 42.09. Birdville Independent School Dist. v. First Baptist Church, 788 S.W.2d 26, 1988 Tex. App. LEXIS 3445 (Tex. App. Fort Worth Oct. 6, 1988, writ denied).

COMMERCIAL LAW (UCC)
General Provisions (Article 1)
Definitions & Interpretation

General Overview. — In a suit for delinquent ad valorem taxes, the taxpayer's affirmative defense of nonownership under Tex. Tax Code Ann. § 42.09(b)(1), based on its claim that its motor vehicle leases with its customers were security interests, failed as a matter of law because the taxpayer's leases did not comply with the two-part test set forth in Tex. Bus. & Com. Code Ann. § 1.203 for the existence of a security interest rather than a lease. The taxpayer's lease agreements did not contain "hell or high water" clauses, but instead contained provisions that specifically stated that the entire lease could be terminated at any time at the will of the lessee, and additionally, the agreements' early termination provision did not prevent the lessee from terminating the agreed-upon consideration to the taxpayer. Excel Auto & Truck Leasing v. Alief Indep. Sch. Dist., 249 S.W.3d 46, 63 U.C.C. Rep. Serv. 2d (CBC) 846, 2007 Tex. App. LEXIS 7359 (Tex. App. Houston 1st Dist.), reh'g denied, No. 01-04-01185-CV, 2007 Tex. App. LEXIS 10147 (Tex. App. Houston 1st Dist. Aug. 31, 2007).

SECURED TRANSACTIONS (ARTICLE 9)
Application & Construction

Leases. — Summary judgment in favor of the taxing units was proper in a suit for delinquent ad valorem taxes against an automobile leasing company as the company's affirmative defense of nonownership based on its claim that its leases with its customers were security agreements failed as a matter of law under Tex. Bus. & Com. Code Ann. § 1.203(b); the company's leases expressly provided that they were subject to termination by the lessee, and no party claimed ambiguity in the subject lease agreements. Excel Auto & Truck Leasing, LLP v. Alief Indep. Sch. Dist., No. 01-04-01185-CV, 2007 Tex. App. LEXIS 3032 (Tex. App. Houston 1st Dist. Apr. 19, 2007), op. withdrawn, sub. op., reh'g denied, 249 S.W.3d 46, 63 U.C.C. Rep. Serv. 2d (CBC) 846, 2007 Tex. App. LEXIS 7359 (Tex. App. Houston 1st Dist. Aug. 31, 2007).

CONSTITUTIONAL LAW
Bill of Rights
Fundamental Rights
Procedural Due Process

Scope of Protection. — Statutory procedures prescribed for adjudication of the grounds of a property tax protest, including the right of protest, a determination of the protest, and right of appeal, meet the requirements for due process, so that taxpayers who do not avail themselves of these procedures will be precluded from collaterally attacking property tax assessments. Ivan Dement, Inc. v. Stratford Independent School Dist., 742 S.W.2d 820, 1987 Tex. App. LEXIS 9143 (Tex. App. Amarillo Dec. 10, 1987, no writ).

EVIDENCE
Inferences & Presumptions
Presumptions

Presumption of Regularity. — Incorrect name on certified delinquent tax statements did not defeat the presumption created by Tex. Tax Code Ann. § 33.47(a) that the statements were accurate; the taxpayers did not dispute their ownership of the property under Tex. Tax Code Ann. § 42.09, and the validity of the tax roll was unaffected by a clerical mistake as provided in Tex. Tax Code Ann. § 25.02(b). Seiflein v. City of Houston, No. 01-09-00361-CV, 2010 Tex. App. LEXIS 778 (Tex. App. Houston 1st Dist. Feb. 4, 2010).

PROCEDURAL CONSIDERATIONS
Burdens of Proof

General Overview. — In a taxpayer protest, because the taxpayers offered no evidence that they did not own the property during the years for which the taxes were assessed, the presumption of ownership was not rebutted. The taxing entities were under no obligation to offer further evidence to prove ownership. Estates of Elkins v. County of Dallas, 146 S.W.3d 826, 2004 Tex. App. LEXIS 9417 (Tex. App. Dallas Oct. 26, 2004, no pet.).

RULINGS ON EVIDENCE. — Evidence was legally sufficient to support a judgment in favor of taxing units where the taxpayer did not object to the admission of a tax statement based on non-ownership and did not plead non-ownership as an affirmative defense. Williams v. County of Dallas, 194 S.W.3d 29, 2006 Tex. App. LEXIS 3712 (Tex. App. Dallas May 3, 2006, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Since the basis of taxpayer's complaint in the trial court was not a ground of protest contained under Tex. Tax Code Ann. § 41.41 seeking to recover a refund of penalties, fees, and interest allegedly imposed on its property without proper notice and in violation of due process of law, the exclusivity provision of Tex.Tax Code Ann. § 42.09 was not applicable and did not preclude the trial court from exercising subject matter jurisdiction over the taxpayer's lawsuit. Dallas Cent. Appraisal Dist. v. 1420 Viceroy Ltd., 180 S.W.3d 267, 2005 Tex. App. LEXIS 9699 (Tex. App. Dallas Nov. 18, 2005, no pet.).

Trial court did not abuse its discretion by denying a taxpayer's motion to compel because the information the taxpayer sought in discovery was public records accessible to both the taxpayer and the taxing authorities; additionally, the information was in the possession of a nonparty, the appraisal district, and the taxpayer offered no evidence that it complied with the procedure provided by Tex. R. Civ. P. 205. Barnett v. County of Dallas, 175 S.W.3d 919, 2005 Tex. App. LEXIS 9305 (Tex. App. Dallas Nov. 9, 2005, no pet.).

Although taxing authorities conceded that Tex. Tax Code Ann. § 42.09 allowed a taxpayer to raise non-ownership of property as an affirmative defense, even though taxpayer did not protest ownership at the administrative level, the trial court's interpretation of Tex. Tax Code Ann. § 42.09 did not require reversal because the taxpayer did not rebut the presumption of ownership by introducing evidence that property was not appraised; thus, the taxing authorities were under no obligation to offer further evidence to prove ownership after they introduced a certified tax statement showing the delinquent ad valorem taxes. Barnett v. County of Dallas, 175 S.W.3d 919, 2005 Tex. App. LEXIS 9305 (Tex. App. Dallas Nov. 9, 2005, no pet.).

Where a taxpayer neglected to file a timely written protest of assessed property taxes pursuant to Tex. Tax Code Ann. § 41.44(a)(1) or timely request a hearing pursuant to Tex. Tax Code Ann. § 41.411(a) regarding an alleged failure to provide or timely deliver notice under Tex. Tax Code Ann. § 25.19 of cancellation of ad valorem property tax exemptions, the failure to pursue and exhaust administrative remedies as required by Tex. Tax Code Ann. § 42.09(a) precluded recovery, and the alleged failure of notice did not violate due process; hence, the taxing authorities were entitled to summary judgment. ABT Galveston L.P. v. Galveston Cent. Appraisal Dist., 137 S.W.3d 146, 2004 Tex. App. LEXIS 2940 (Tex. App. Houston 1st Dist. Mar. 30, 2004, no pet.).

Although the housing development corporation was entitled to protest the county taxing authority's denial of the housing development authority's request for a tax exemption for a particular tax year, and also had the right after filing a notice of protest to appear and present evidence or argument to the appraisal review board before filing an adverse decision of the appraisal review board to the trial court, exact compliance with those procedures was mandatory before it could maintain a challenge in the trial court; the failure to file its notice of protest within 30 days after receiving notice of the county taxing authority's decision regarding the adverse decision meant the trial court lacked jurisdiction to grant summary judgment to the county taxing authority regarding its denial of the tax exemption request, and the appellate court only had the authority to set aside the judgment and dismiss the housing development corporation's appeal of that denial. Found. of Hope, Inc. v. San Patricio County Appraisal Dist., No. 13-02-083-CV, 2003 Tex. App. LEXIS 7922 (Tex. App. Corpus Christi Sept. 11, 2003).

In a tax matter, the administrative procedures prescribed for resolution and appeal of such a protest are exclusive under Tex. Tax Code Ann. § 42.09; thus, to preserve an issue for appeal to the district court, the property owner must first raise the issue before the appraisal review board. Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

Taxpayers' cause of action regarding the refunding of surplus funds raised with an ad valorem tax was dismissed when the trial court lacked subject matter jurisdiction since the taxpayers failed to exhaust their administrative remedies. Donna Indep. Sch. Dist. v. Rogers, No. 13-01-277-CV, 2002 Tex. App. LEXIS 5845 (Tex. App. Corpus Christi Aug. 8, 2002).

Tex. Tax Code Ann § 42.09 provides that the procedures outlined by the title for adjudication of tax protest are exclusive, therefore a taxpayer had to exhaust its administrative remedies by filing and pursuing a protest as a prerequisite to judicial review under Tex. Const. art. XI, § 9. Wackenhut Corr. Corp. v. Bexar Appraisal Dist., 100 S.W.3d 289, 2002 Tex. App. LEXIS 5563 (Tex. App. San Antonio July 31, 2002, no pet.).

Where the city and county brought an action against a taxpayer prior to the amendment to Tex. Tax Code Ann. § 42.09, the taxpayer was able to use non-ownership as a defense and the trial court was authorized to dispose of the issues involved in that defense. Section 42.09 makes it clear that the legislature desires that the taxpayer have available the defense that he did not own the property. City of Pharr v. Boarder to Boarder Trucking Svc.,

Inc., 76 S.W.3d 803, 2002 Tex. App. LEXIS 3511 (Tex. App. Corpus Christi May 16, 2002, pet. filed).

Property owner, who failed to comply with the administrative procedures of protest, was precluded from raising non-ownership as a defense to a suit for collection of delinquent taxes under Tex. Tax Code Ann. § 42.09 only for the years after the effective date of that statute. Robstown Independent School Dist. v. Anderson, 706 S.W.2d 952, 1986 Tex. LEXIS 944 (Tex. 1986).

ASSESSMENTS. — Because a parent corporation that conveyed its interest in real property to its subsidiary did not own the property when it challenged the appraised value and the subsidiary did not exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a), both lacked standing under Tex. Tax Code Ann. §§ 42.21(a), 42.01(1)(A) to challenge an appraisal review board order determining the parent's protest of ad valorem property taxes. Storguard Invs., LLC v. Harris County Appraisal Dist., No. 01-10-00439-CV, 2011 Tex. App. LEXIS 5544 (Tex. App. Houston 1st Dist. July 21, 2011).

Tex. Tax Code Ann. §§ 42.09, 42.21(a) require exhaustion of remedies when taxpayers seek to have their individual assessments set aside, and class actions do not avoid these statutory requirements. Cameron Appraisal Dist. v. Rourk, 194 S.W.3d 501, 2006 Tex. LEXIS 504 (Tex. 2006).

COLLECTION. — Incorrect name on certified delinquent tax statements did not defeat the presumption created by Tex. Tax Code Ann. § 33.47(a) that the statements were accurate; the taxpayers did not dispute their ownership of the property under Tex. Tax Code Ann. § 42.09, and the validity of the tax roll was unaffected by a clerical mistake as provided in Tex. Tax Code Ann. § 25.02(b). Seiflein v. City of Houston, No. 01-09-00361-CV, 2010 Tex. App. LEXIS 778 (Tex. App. Houston 1st Dist. Feb. 4, 2010).

In a tax collection suit, no genuine fact issue existed as to whether the taxpayer was the owner of the property described in the tax records because the taxpayer did not plead the affirmative defense of non-ownership in accordance with Tex. R. Civ. P. 94, and the county established a prima facie case by attaching certified copies of the delinquent tax roll entries showing the property and the amount of the tax and penalties imposed and interest accrued. Marrs v. San Jacinto County, No. 09-07-382 CV, 2008 Tex. App. LEXIS 6207 (Tex. App. Beaumont Aug. 14, 2008).

CREDITS, OVERASSESSMENTS & REFUNDS. — Trial court erred in denying a plea to the jurisdiction by taxing authorities in a property tax refund action; the equitable relief sought by the taxpayers was not part of the procedures prescribed by the Texas Property Tax Code, and the exclusive remedies provision in Tex. Tax Code Ann. § 42.09 therefore deprived the trial court of jurisdiction. Houston Indep. Sch. Dist. v. 1615 Corp., 217 S.W.3d 631, 2006 Tex. App. LEXIS 10239 (Tex. App. Houston 14th Dist. Oct. 27, 2006, no pet.).

JUDICIAL REVIEW. — Taxpayer's notice of protest was untimely and no appeal could be taken because written notice of taxes was provided when the taxpayer was served with citation in a delinquent tax suit, not when the taxpayer subsequently received a tax bill; moreover, the taxpayer could not assert a counterclaim in the delinquent tax suit based on its grounds of protest. Rio Valley, LLC v. City of El Paso, 441 S.W.3d 482, 2014 Tex. App. LEXIS 3031 (Tex. App. El Paso Mar. 19, 2014, no pet.).

Owner's request to be removed from the Cameron County appraisal rolls fell outside the exclusive remedies available under Tex. Tax Code Ann. § 42.09(a), and the trial court was within its discretion not to grant this request. Groves v. Cameron Appraisal Dist., No. 13-12-00149-CV, 2012 Tex. App. LEXIS 7461 (Tex. App. Corpus Christi Aug. 31, 2012).

When appellant homeowners received notices pursuant to Tex. Tax Code Ann. § 25.21 that their properties had been omitted from the appraisal rolls and they owed back taxes for the past five years, appellants pleaded claims for declaratory judgment, injunctive relief, and mandamus against appellees, the city, the county appraisal district, the appraisal review board members, and the county tax assessor. Appellants' claims were not barred for failure to exhaust their administrative remedies as set forth in Tex. Tax Code Ann. §§ 42.09, 41.01 — 40.71; because actions taken by the government officials were outside the scope of their authority, appellants' failure to pursue any type of protest procedure fell within an exception to the exhaustion of administrative remedies doctrine. Brennan v. City of Willow Park, 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012, no pet.).

Taxpayers did not have to exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a) in challenging the validity of notices for omitted city tax bills, which purported to be under the authority of Tex. Tax Code Ann. § 25.21, because an exception applied for governmental actions taken without statutory authority. Section 25.21 provides no remedy for omitted taxing units, which have a separate definition from property in Tex. Tax Code Ann. § 1.04; the county's supplemental appraisal records did not specify the omitted years under Tex. Tax Code Ann. § 25.23(a)(10); and Tex. Tax Code Ann. § 11.43(i) was inapplicable because no exemption was involved. Brennan v. City of Willow Park, No. 02-11-00265-CV, 2012 Tex. App. LEXIS 4943 (Tex. App. Fort Worth June 21, 2012), op. withdrawn, sub. op., 376 S.W.3d 910, 2012 Tex. App. LEXIS 6830 (Tex. App. Fort Worth Aug. 16, 2012).

Court had jurisdiction of the trustee's suit on tax year 2006, because although the trustee did not refer to the 2006 tax year in his original petition, the record supported a conclusion that the 2005 tax year reference was a mistake, and that the appeal to the court was for the 2006 tax year on which the trustee had filed a notice of protest; the court had jurisdiction to declare the effect of any ownership ruling on the 2008 and 2009 tax years, however, with respect to all other issues involved in the 2008 and 2009 tax years for the relevant accounts for which no protest or appeal was filed, the trial court lacked jurisdiction. Jefferson County Appraisal Dist. v. Morgan, No. 09-11-00517-CV, 2012 Tex. App. LEXIS 1037 (Tex. App. Beaumont Feb. 9, 2012), app. dismissed, No. 09-15-00479-CV, No. 09-16-00034-CV, 2016 Tex. App. LEXIS 12997 (Tex. App. Beaumont Dec. 8, 2016).

Situs of the property was an issue on which a property owner had to first exhaust its administrative remedies before asserting the issue in a lawsuit. Thames Shipyard & Repair Co. v. Galveston Cent. Appraisal Dist., No. 14-10-01142-CV, 2011 Tex. App. LEXIS 8463 (Tex. App. Houston 14th Dist. Oct. 25, 2011).

Because the taxpayer's complaints for negligent hiring, breach of fiduciary duty, theft of property, and fraud all sought to attack the Appraisal District's final appraisal orders, the District had exclusive jurisdiction to address these claims, subject to the taxpayer's right to obtain review through an appeal of the District's final orders, Tex. Tax Code Ann. § 42.09; the taxpayer's failure to exercise his right to appeal deprived the trial court of jurisdiction over the taxpayer's claims for negligent hiring, breach of fiduciary duty, theft of property, and fraud. Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

Taxpayer failed to appeal the appraisal review board's final orders he now wished to attack, comprising the final orders the Appraisal District issued during 2005, 2006, 2008 and 2009, and the taxpayer did not timely file petitions for review with respect to the District's final orders, and therefore, he was foreclosed from obtaining judicial review of the District's property appraisal determinations, Tex. Tax Code Ann. § 42.21(a); because the taxpayer did not appeal from the final appraisal orders in issue, they became final, Tex. Tax Code Ann. § 42.21(a). Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

Because a parent corporation that conveyed its interest in real property to its subsidiary did not own the property when it challenged the appraised value and the subsidiary did not exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a), both lacked standing under Tex. Tax Code Ann. §§ 42.21(a), 42.01(1)(A) to challenge an appraisal review board order determining the parent's protest of ad valorem property taxes. Storguard Invs., LLC v. Harris County Appraisal Dist., No. 01-10-00439-CV, 2011 Tex. App. LEXIS 5544 (Tex. App. Houston 1st Dist. July 21, 2011).

Trial court erred by denying the taxing units' plea to the jurisdiction because the taxpayers were "property owners" under Tex. Tax Code Ann. § 41.41(a)(7), as they were listed as the owner in the tax appraisal rolls, entitled to administrative challenge,

and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), the trial court did not have jurisdiction over their case seeking a refund. The exception of § 42.09(b) did not apply because when the taxing units nonsuited their claims for delinquent taxes, the taxpayers' affirmative defense became moot. Houston Indep. Sch. Dist. v. Morris, 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011), reh'g denied, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 10297 (Tex. App. Houston 1st Dist. July 13, 2011), rev'd, 388 S.W.3d 310, 2012 Tex. LEXIS 898 (Tex. 2012).

Although it is possible for certain theories to form the basis of both claims for affirmative relief and affirmative defenses, Tex. Tax Code Ann. § 42.09(b) is only applicable to an affirmative defense. Therefore, the bar in § 42.09(a) that prohibits proceedings in court when administrative remedies have not been exhausted applies. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

When taxing units nonsuited their claims against taxpayers for delinquent taxes, the taxpayers' non-ownership affirmative defense became moot, and the Tex. Tax Code Ann. § 42.09(b) exception was no longer applicable according to the express terms of the Texas Tax Code. The taxpayers' affirmative claim for a refund did not comport with the requirements of the Tax Code, which was required for the district court's jurisdiction, and the district court thus lacked jurisdiction, as no party was asserting an affirmative defense of non-ownership. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

At least as it is used in Tex. Tax Code Ann. § 41.41(a)(7), the term "property owner" includes one listed as the owner in the tax appraisal rolls who is challenging the determination that he is the owner of property. Accordingly, taxpayers-regardless of whether they were in fact the true owners of the property at issue-were entitled to protest an appraisal review board's determination that they were the owners of the property, and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), a district court did not obtain jurisdiction over their case by an appeal under that portion of the statute. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

Because the ground for taxpayers' protest was provided for in Tex. Tax Code Ann. § 41.41, the Texas Tax Code exclusively controlled the disposition of the case. Because the taxpayers' affirmative claims for refund on the grounds of non-ownership was controlled by the Tax Code, and because those claims failed to meet the requirements of the code, a district court lacked jurisdiction over the taxpayers' claims. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

Where neither a property's seller nor its buyer fulfilled the jurisdictional prerequisites to seeking judicial review of a county appraisal review board's adverse determination of a property-valuation protest, both entities lacked standing to appeal the board's order to the district court because although the seller timely filed a petition for review, it did not own the property on the date at issue and was not a designated agent or lessee of the buyer, the actual record owner of the property. The buyer did not complete the administrative protest process before the board and could not take advantage of Tex. Tax Code Ann. § 42.21(e) to change the named plaintiff from one party who did not have standing to seek judicial review—the seller—to another party who did not have standing—the buyer. GSL Welcome BP 32 LLC v. Harris County Appraisal Dist., No. 01-10-00189-CV, 2010 Tex. App. LEXIS 8950 (Tex. App. Houston 1st Dist. Nov. 10, 2010).

In a case involving a claim by taxpayers seeking a refund of taxes without first resolving the claim administratively, the trial court erred by denying the taxing units' plea to the jurisdiction. An exception to the exhaustion requirement under Tex. Tax Code Ann. § 42.09(b) when a taxpayer is asserting an affirmative defense was inapplicable because the taxing units had dropped their lawsuit against the taxpayers. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2010 Tex. App. LEXIS 5841 (Tex. App. Houston 1st Dist. July 22, 2010), reh'g denied, op. withdrawn, sub. op., No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011).

Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Taxing authorities are subject to the exclusive remedy provision in Tex. Tax. Code Ann. § 42.09. Travis Cent. Appraisal Dist. v. Marshall Ford Marina, Inc., No. 03-05-00784-CV, 2009 Tex. App. LEXIS 7156 (Tex. App. Austin Sept. 9, 2009).

Because a chief appraiser did not appeal under Tex. Tax Code Ann. § 42.02 from an appraisal review board's orders in favor of taxpayers, which were final appealable orders under Tex. Tax. Code Ann. § 42.21(a), the exclusive remedy provision in Tex. Tax. Code Ann. § 42.09 barred the issuance of supplemental appraisal notices for the same property. Travis Cent. Appraisal Dist. v. Marshall Ford Marina, Inc., No. 03-05-00784-CV, 2009 Tex. App. LEXIS 7156 (Tex. App. Austin Sept. 9, 2009).

District court had jurisdiction over a taxpayer's action challenging the denial of its tax protest because the taxpayer had exhausted its administrative remedies as required by Tex. Tax Code Ann. § 42.09, as it filed its protest in accordance with the Tax Code by protesting that the county was not the taxable situs for its airplane, sending the county's appraisal district a letter, disputing the appraised value of the airplane, attended the appraisal review board, and received an order from the board denying its protest. The county appraisal review board considered the substantive matters ultimately appealed to the district court. Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741, 2009 Tex. App. LEXIS 2097 (Tex. App. Houston 1st Dist. Mar. 26, 2009, no pet.).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

In a tax dispute that arose after a county appraisal district denied a property owner a foreign-trade zone (FTZ) exemption from county ad valorem taxes for inventory located in the owner's foreign-trade subzone, the district, the appraisal review board, and the trial court had jurisdiction to review the owner's protest where the owner properly pursued its tax protest action under the

prescribed procedures of the Texas Property Tax Code because the owner had claimed entitlement to the FTZ exemption pursuant to Tex. Tax Code Ann. § 11.12 and would have been precluded from claiming the FTZ exemption had it not timely followed the exclusive procedures set out in the Tax Code; the district had miscast the case as a contract dispute improperly brought under the Tax Code, and filing a common law contract action against the county to review an agreement between the county and the owner and determine the obligations under that agreement would have neither brought relief to the owner nor settled the present dispute, as the county had no authority to grant the owner the requested FTZ exemption, even if it agreed that the owner was entitled to the exemption based on the agreement. Harris County Appraisal Dist. v. Shell Oil Co., No. 14-07-00106-CV, 2008 Tex. App. LEXIS 3671 (Tex. App. Houston 14th Dist. May 22, 2008).

Given the state supreme court's having unequivocally enforced Tex. Tax Code Ann. § 42.09 as mandatory and jurisdictional, and the buyer's failure to exhaust its remedies by filing a protest to the board, though authorized to do so by Tex. Tax Code Ann. § 41.412, the buyer's failure to pursue its remedies also barred the trial court's subject-matter jurisdiction to review determination of the protest filed by the seller. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

Taxpayer's failure to comply with the administrative review procedures of the Texas Property Tax Code deprived a trial court of jurisdiction over the taxpayer's claims against a county appraisal district and a county review board because the claims fell within the administrative body's exclusive jurisdiction under Tex. Tax Code Ann. § 42.09(a); none of the exceptions that the taxpayer asserted on appeal to the exhaustion-of-remedies doctrine applied to except it from pursuing its administrative remedies because: (1) the taxpayer did not avail itself of either of the remedies under Tex. Tax Code Ann. § 25.25, and Tex. Tax Code Ann. § 41.41; and (2) the district and the board acted within their statutory authority under Tex. Tax Code Ann. § 25.23(a)(1) when they assessed the taxpayer's additional tax reflecting allegedly omitted property, and the taxpayer did not protest the failure of the board to give it proper notice under Tex. Tax Code Ann. § 41.411; and (3) the constitutional-claims exception did not excuse the taxpayer from exhausting its administrative remedies before seeking judicial review, as the taxpayer received the process that it was due when it was afforded an opportunity to protest defective notice and to be heard on the merits of its tax dispute during the administrative process but failed to avail itself of the administrative remedies. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

Trial court did not have subject-matter jurisdiction over a taxpayer's affirmative defense that the appraisals on which local taxing entities' delinquent tax suit was based were defective where the taxpayer did not exhaust its administrative remedies, nor was it excused from having to do so; because the trial court was deprived of subject-matter jurisdiction to determine whether the taxpayer was double-taxed, or whether it was partially exempted from the tax, the taxpayer did not carry its summary-judgment burden, and the trial court thus erred by granting the taxpayer's motion for summary judgment against the taxing entities. Harris County Appraisal Dist. v. Blue Flash Express, L.L.C., No. 01-06-00783-CV, 2007 Tex. App. LEXIS 3707 (Tex. App. Houston 1st Dist. May 10, 2007).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected by the county appraisal review board; the claim was not only discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

To the extent that a property owner alleged that a county appraisal district was negligent in its assessment or collection of property taxes, Tex. Civ. Prac. & Rem. Code Ann. § 101.055(1) left intact the district's sovereign immunity. To the extent that the property owner's complaints against the district centered, instead, on the collection of a certain amount of property taxes to be allocated to the sheriff's office, or the amount of taxes assessed against his property, his failure to exhaust his administrative remedies under Tex. Tax Code Ann. §§ 42.09(a)(2), 42.21(a) deprived the trial court of jurisdiction over his claims. Reed v. Prince, 194 S.W.3d 101, 2006 Tex. App. LEXIS 4787 (Tex. App. Texarkana June 2, 2006), cert. denied, 549 U.S. 1308, 127 S. Ct. 1882, 167 L. Ed. 2d 370, 2007 U.S. LEXIS 3641 (U.S. 2007).

TAXPAYER PROTESTS. — Under Tex. Tax Code Ann. § 42.09(b)(1), the taxpayers did not lose their entitlement to contest tax liability on the basis of non-ownership when the taxing units nonsuited and the taxpayers were realigned as plaintiffs; the taxing authorities could not accept taxes paid under protest and then non-suit the case. Morris v. Houston Indep. Sch. Dist., 388 S.W.3d 310, 2012 Tex. LEXIS 898 (Tex. 2012), reh'g denied, No. 11-0650, 2012 Tex. LEXIS 1065 (Tex. Dec. 14, 2012).

For purposes of Tex. Tax Code Ann. § 33.47(a), the county's tax records were prima facie evidence of the amount owed, such that the burden shifted to the taxpayer to raise a defense, presumably under Tex. Tax Code Ann. § 42.09; however, the defenses asserted were not among those available to a taxpayer who failed to timely protest, and the trial court properly granted the county summary judgment. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Taxpayer failed to pay taxes by the deadlines under Tex. Tax Code Ann. § 31.02 and the exclusive remedies provision, Tex. Tax Code Ann. § 42.09, deprived the taxpayer of equitable defenses it raised to avoid summary judgment; the trial court properly found that the taxpayer owed penalties and interest on the tax years in question, for purposes of Tex. Tax Code Ann. § 33.41. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

By not protesting, for purposes of Tex. Tax Code Ann. §§ 41.41, 41.44, 42.01, the taxpayer's defenses were limited to showing it did not own the property in question or that the property was not in the taxing district's boundaries, and having failed to file and perfect appeals, the taxpayer was limited to those defenses, for purposes of Tex. Tax Code Ann. § 42.09, but did not assert them. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Taxpayer's argument that the county calculated taxes based on the wrong footage, which it raised as constitutional claims under Tex. Const. art. I, §§ 3, 17, 19 and Tex. Const. VIII, §§ 1, 2, were foreclosed by the failure of the taxpayer to exhaust administrative remedies, for purposes of Tex. Tax Code Ann. § 42.09(a)(1), and because the taxpayer failed to file a protest, the trial court committed no error in rejecting the constitutional claims. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

For purposes of Tex. Tax Code Ann. § 33.47(a), the county's tax records were prima facie evidence of the amount owed, such that the burden shifted to the taxpayer to raise a defense, presumably under Tex. Tax Code Ann. § 42.09; however, the defenses asserted were not among those available to a taxpayer who failed to timely protest, and the trial court properly granted the county summary judgment. Atl. Shippers of Tex., Inc. v. Jefferson County, 363 S.W.3d 276, 2012 Tex. App. LEXIS 1821 (Tex. App. Beaumont Mar. 8, 2012, no pet.).

Court had jurisdiction of the trustee's suit on tax year 2006, because although the trustee did not refer to the 2006 tax year in his original petition, the record supported a conclusion that the 2005 tax year reference was a mistake, and that the appeal to the court was for the 2006 tax year on which the trustee had filed a notice of protest; the court had jurisdiction to declare the effect of any ownership ruling on the 2008 and 2009 tax years, however, with respect to all other issues involved in the 2008 and 2009 tax years for the relevant accounts for which no protest or appeal was filed, the trial court lacked jurisdiction. Jefferson County Appraisal Dist. v. Morgan, No. 09-11-00517-CV, 2012 Tex. App. LEXIS 1037 (Tex. App. Beaumont Feb. 9, 2012), app. dismissed, No. 09-15-00479-CV, No. 09-16-00034-CV, 2016 Tex. App. LEXIS 12997 (Tex. App. Beaumont Dec. 8, 2016).

Trial court erred by denying the taxing units' plea to the jurisdiction because the taxpayers were "property owners" under Tex. Tax Code Ann. § 41.41(a)(7), as they were listed as the owner in the tax appraisal rolls, entitled to administrative challenge, and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), the trial court did not have jurisdiction over their case seeking a refund. The exception of § 42.09(b) did not apply because when the taxing units nonsuited their claims for delinquent taxes, the taxpayers' affirmative defense became moot. Houston Indep. Sch. Dist. v. Morris, 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011), reh'g denied, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 10297 (Tex. App. Houston 1st Dist. July 13, 2011), rev'd, 388 S.W.3d 310, 2012 Tex. LEXIS 898 (Tex. 2012).

At least as it is used in Tex. Tax Code Ann. § 41.41(a)(7), the term "property owner" includes one listed as the owner in the tax appraisal rolls who is challenging the determination that he is the owner of property. Accordingly, taxpayers-regardless of whether they were in fact the true owners of the property at issue-were entitled to protest an appraisal review board's determination that they were the owners of the property, and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), a district court did not obtain jurisdiction over their case by an appeal under that portion of the statute. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Neither the owner nor the third-party had standing to petition for judicial review of the 2007 property valuation, because the third-party sued to challenge the appraisal review board's order determining protest, the owner was the proper party to pursue a protest, and the owner did not complete the administrative protest process before the appraisal review board. KM-Timbercreek, LLC v. Harris County Appraisal Dist., 312 S.W.3d 722, 2009 Tex. App. LEXIS 8065 (Tex. App. Houston 1st Dist. Oct. 15, 2009, no pet.).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Taxpayer could not assert inadequate notice under Tex. Tax Code Ann. § 11.43(c) of the removal of its Tex. Tax Code Ann. § 11.18(a)(1)-(2) charitable property tax exemption because it did not file a protest under Tex. Tax Code Ann. §§ 41.41(a)(9), 41.411(a) after being advised it could do so; Tex. Tax Code Ann. § 42.09(a)(1) makes the administrative protest procedures exclusive. Public, Inc. v. County of Galveston, 264 S.W.3d 338, 2008 Tex. App. LEXIS 9235 (Tex. App. Houston 14th Dist. July 10, 2008, no pet.).

In a tax dispute that arose after a county appraisal district denied a property owner a foreign-trade zone (FTZ) exemption from county ad valorem taxes for inventory located in the owner's foreign-trade subzone, the district, the appraisal review board, and the trial court had jurisdiction to review the owner's protest where the owner properly pursued its tax protest action under the prescribed procedures of the Texas Property Tax Code because the owner had claimed entitlement to the FTZ exemption pursuant to Tex. Tax Code Ann. § 11.12 and would have been precluded from claiming the FTZ exemption had it not timely followed the exclusive procedures set out in the Tax Code; the district had miscast the case as a contract dispute improperly brought under the Tax Code, and filing a common law contract action against the county to review an agreement between the county and the owner and determine the obligations under that agreement would have neither brought relief to the owner nor settled the present dispute, as the county had no authority to grant the owner the requested FTZ exemption, even if it agreed that the owner was entitled to the exemption based on the agreement. Harris County Appraisal Dist. v. Shell Oil Co., No. 14-07-00106-CV, 2008 Tex. App. LEXIS 3671 (Tex. App. Houston 14th Dist. May 22, 2008).

Taxpayer had exhausted its administrative remedies, and a trial court had subject-matter jurisdiction over the taxpayer's appeal of an assessment of taxes on crude oil inventory accounts, where the taxpayer's exemption claim was presented and rejected by the county appraisal review board; the claim was not only discussed at length but also debated and determined, and was, in fact, the only issue of significance discussed or decided by the board, and while the taxpayer could have done a much better job documenting the claim prior to the hearing, and its notices highlighted the risk of overdependence on forms, that did not alter the fact that the exemption claim was presented and determined. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

When a property owner alleges that its property is exempt from taxation or has been overly appraised, the legislature intended for the appraisal review board to make the initial factual determination, and, consequently, a property owner must exhaust its administrative remedies before seeking judicial review of an exemption claim or property appraisal; the failure to do so is jurisdictional. Midland Cent. Appraisal Dist. v. Plains Mktg., L.P., 202 S.W.3d 469, 169 Oil & Gas Rep. 220, 2006 Tex. App. LEXIS 8251 (Tex. App. Eastland Sept. 21, 2006, no pet.).

PERSONAL PROPERTY TAX

General Overview. — Pursuant to Tex. Tax. Code Ann. § 42.09, a taxpayer is absolutely precluded from raising any ground of protest in a suit against the taxpayer for delinquent taxes, except for the two defenses listed in Tex. Tax Code Ann. § 42.09(b). Shenandoah v. Jimmy Swaggart Evangelistic Ass'n, 785 S.W.2d 899, 1990 Tex. App. LEXIS 777 (Tex. App. Beaumont Feb. 22, 1990, writ denied).

EXEMPT PROPERTY

General Overview. — Because property owned by counties was devoted to public use and benefit, it was exempt from taxation,

pursuant to Tex. Const. art. XI, § 9; the counties' failure to challenge the tax during appraisal process, as provided for in Tex. Tax Code Ann. § 42.09, did not bar exempt status. Sweetwater Indep. Sch. Dist. v. ReCor, Inc., 955 S.W.2d 703, 1997 Tex. App. LEXIS 6085 (Tex. App. Eastland Nov. 20, 1997, no pet.).

In a city's lawsuit against a religious organization for delinquent taxes, the religious organization was precluded by Tex. Tax Code § 42.09 from raising the defense that the property was entitled to a religious exemption for all tax years at issue except for the two tax years between the repeal of the prior statutes governing religious exemptions and the new tax code governing such exemptions, where the organization had no way of obtaining a religious exemption for those years. Shenandoah v. Jimmy Swaggart Evangelistic Ass'n, 785 S.W.2d 899, 1990 Tex. App. LEXIS 777 (Tex. App. Beaumont Feb. 22, 1990, writ denied).

TANGIBLE PROPERTY

General Overview. — Although taxing authorities conceded that Tex. Tax Code Ann. § 42.09 allowed a taxpayer to raise non-ownership of property as an affirmative defense, even though taxpayer did not protest ownership at the administrative level, the trial court's interpretation of Tex. Tax Code Ann. § 42.09 did not require reversal because the taxpayer did not rebut the presumption of ownership by introducing evidence that property was not appraised; thus, the taxing authorities were under no obligation to offer further evidence to prove ownership after they introduced a certified tax statement showing the delinquent ad valorem taxes. Barnett v. County of Dallas, 175 S.W.3d 919, 2005 Tex. App. LEXIS 9305 (Tex. App. Dallas Nov. 9, 2005, no pet.).

Under Tex. Tax Code Ann. §§ 41.41, 42.09, for those accounts of a taxpayer containing a single, grand total assessment upon multiple units, a taxpayer is not required to prove that it does not own each and every unit in the account in order to show it is not responsible for the tax assessed on that account. General Elec. Capital Corp. v. Corpus Christi, 850 S.W.2d 596, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 468 (Tex. App. Corpus Christi Feb. 11, 1993, writ denied), modified in part, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 790 (Tex. App. Corpus Christi 1993).

Where the taxing authorities introduced delinquent tax rolls under Tex. Tax Code Ann. §§ 33.47(a), 41.41, 42.09(b)(1), (2), the taxpayer waived any complaint about the manner in which the taxing authorities determined that the taxpayer was the party responsible for the taxes because the taxpayer's failure to pursue administrative remedies precluded any protest in a subsequent suit for delinquent taxes, except for the affirmative defenses of non-ownership and the taxing authority's lack of jurisdiction over the property. General Elec. Capital Corp. v. Corpus Christi, 850 S.W.2d 596, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 468 (Tex. App. Corpus Christi Feb. 11, 1993, writ denied), modified in part, 20 U.C.C. Rep. Serv. 2d (CBC) 616, 1993 Tex. App. LEXIS 790 (Tex. App. Corpus Christi 1993).

FAILURE TO PAY TAX. — Summary judgment in favor of the taxing units was proper in a suit for delinquent ad valorem taxes against an automobile leasing company as the company's affirmative defense of nonownership based on its claim that its leases with its customers were security agreements failed as a matter of law under Tex. Bus. & Com. Code Ann. § 1.203(b); the company's leases expressly provided that they were subject to termination by the lessee, and no party claimed ambiguity in the subject lease agreements. Excel Auto & Truck Leasing v. Alief Indep. Sch. Dist., 249 S.W.3d 46, 63 U.C.C. Rep. Serv. 2d (CBC) 846, 2007 Tex. App. LEXIS 7359 (Tex. App. Houston 1st Dist.), reh'g denied, No. 01-04-01185-CV, 2007 Tex. App. LEXIS 10147 (Tex. App. Houston 1st Dist. Aug. 31, 2007).

In a suit for delinquent ad valorem taxes, the taxpayer's affirmative defense of nonownership under Tex. Tax Code Ann. § 42.09(b)(1), based on its claim that its motor vehicle leases with its customers were security interests, failed as a matter of law because the taxpayer's leases did not comply with the two-part test set forth in Tex. Bus. & Com. Code Ann. § 1.203 for the existence of a security interest rather than a lease. The taxpayer's lease agreements did not contain "hell or high water" clauses, but instead contained provisions that specifically stated that the entire lease could be terminated at any time at the will of the lessee, and additionally, the agreements' early termination provision did not prevent the lessee from terminating the agreed-upon consideration to the taxpayer. Excel Auto & Truck Leasing v. Alief Indep. Sch. Dist., 249 S.W.3d 46, 63 U.C.C. Rep. Serv. 2d (CBC) 846, 2007 Tex. App. LEXIS 7359 (Tex. App. Houston 1st Dist.), reh'g denied, No. 01-04-01185-CV, 2007 Tex. App. LEXIS 10147 (Tex. App. Houston 1st Dist. Aug. 31, 2007).

REAL PROPERTY TAX

General Overview. — Under Tex. Tax Code Ann. § 42.09(b)(1), the taxpayers did not lose their entitlement to contest tax liability on the basis of non-ownership when the taxing units nonsuited and the taxpayers were realigned as plaintiffs; the taxing authorities could not accept taxes paid under protest and then non-suit the case. Morris v. Houston Indep. Sch. Dist., 388 S.W.3d 310, 2012 Tex. LEXIS 898 (Tex. 2012), reh'g denied, No. 11-0650, 2012 Tex. LEXIS 1065 (Tex. Dec. 14, 2012).

In a suit to collect delinquent ad valorem taxes, because the taxpayer did not plead or otherwise raise non-ownership of the property at trial, which was an affirmative defense as stated in Tex. Tax Code Ann. § 42.09(b), that issue was waived under Tex. R. Civ. P. 94. Williams v. County of Dallas, No. 05-05-00376-CV, 2006 Tex. App. LEXIS 2367 (Tex. App. Dallas Mar. 29, 2006), vacated, op. withdrawn, reh'g denied, 194 S.W.3d 29, 2006 Tex. App. LEXIS 3712 (Tex. App. Dallas May 3, 2006).

Where the taxpayer, a religious organization, failed to pursue the appropriate administrative remedies to protest its property's inclusion on appraisal records for property tax, the trial court lacked jurisdiction to consider the taxpayer's defense to a delinquency suit brought by the taxing authority; compliance with administrative remedies was jurisdictional pursuant to Tex. Tax. Code Ann. § 42.09. Northwest Texas Conference of United Methodist Church v. Happy Independent School Dist., 839 S.W.2d 140, 1992 Tex. App. LEXIS 2597 (Tex. App. Amarillo Oct. 6, 1992, no writ).

ASSESSMENT & VALUATION

General Overview. — Situs of the property was an issue on which a property owner had to first exhaust its administrative remedies before asserting the issue in a lawsuit. Thames Shipyard & Repair Co. v. Galveston Cent. Appraisal Dist., No. 14-10-01142-CV, 2011 Tex. App. LEXIS 8463 (Tex. App. Houston 14th Dist. Oct. 25, 2011).

Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Since the basis of taxpayer's complaint in the trial court was not a ground of protest contained under Tex. Tax Code Ann. § 41.41 seeking to recover a refund of penalties, fees, and interest allegedly imposed on its property without proper notice and in violation of due process of law, the exclusivity provision of Tex.Tax Code Ann. § 42.09 was not applicable and did not preclude the trial court from exercising subject matter jurisdiction over the taxpayer's lawsuit. Dallas Cent. Appraisal Dist. v. 1420 Viceroy Ltd., 180 S.W.3d 267, 2005 Tex. App. LEXIS 9699 (Tex. App. Dallas Nov. 18, 2005, no pet.).

Where a taxpayer neglected to file a timely written protest of assessed property taxes pursuant to Tex. Tax Code Ann. § 41.44(a)(1) or timely request a hearing pursuant to Tex. Tax Code Ann. § 41.411(a) regarding an alleged failure to provide or timely deliver notice under Tex. Tax Code Ann. § 25.19 of cancellation of ad valorem property tax exemptions, the failure to pursue and exhaust administrative remedies as required by Tex. Tax Code Ann. § 42.09(a) precluded recovery, and the alleged failure of notice did not violate due process; hence, the taxing authorities were entitled to summary judgment. ABT Galveston L.P. v. Galveston Cent. Appraisal Dist., 137 S.W.3d 146, 2004 Tex. App. LEXIS 2940 (Tex. App. Houston 1st Dist. Mar. 30, 2004, no pet.).

Appellants' federal and state due process rights were not violated by Tex. Tax Code Ann. § 42.09 because they were given the opportunity to be heard on the assessment before the valuation was finally determined and had availed themselves of all available administrative remedies and procedures. Graham v. Hutchinson County Appraisal Review Bd., 776 S.W.2d 592, 1988 Tex. App. LEXIS 3431 (Tex. App. Amarillo June 6, 1988, writ denied).

ASSESSMENT METHODS & TIMING. — Owner's request to be removed from the Cameron County appraisal rolls fell outside the exclusive remedies available under Tex. Tax Code Ann. § 42.09(a), and the trial court was within its discretion not to grant this request. Groves v. Cameron Appraisal Dist., No. 13-12-00149-CV, 2012 Tex. App. LEXIS 7461 (Tex. App. Corpus Christi Aug. 31, 2012).

VALUATION. — Because the taxpayer's complaints for negligent hiring, breach of fiduciary duty, theft of property, and fraud all sought to attack the Appraisal District's final appraisal orders, the District had exclusive jurisdiction to address these claims, subject to the taxpayer's right to obtain review through an appeal of the District's final orders, Tex. Tax Code Ann. § 42.09; the taxpayer's failure to exercise his right to appeal deprived the trial court of jurisdiction over the taxpayer's claims for negligent hiring, breach of fiduciary duty, theft of property, and fraud. Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

Taxpayer failed to appeal the appraisal review board's final orders he now wished to attack, comprising the final orders the Appraisal District issued during 2005, 2006, 2008 and 2009, and the taxpayer did not timely file petitions for review with respect to the District's final orders, and therefore, he was foreclosed from obtaining judicial review of the District's property appraisal determinations, Tex. Tax Code Ann. § 42.21(a); because the taxpayer did not appeal from the final appraisal orders in issue, they became final, Tex. Tax Code Ann. § 42.21(a). Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

Neither the owner nor the third-party had standing to petition for judicial review of the 2007 property valuation, because the third-party sued to challenge the appraisal review board's order determining protest, the owner was the proper party to pursue a protest, and the owner did not complete the administrative protest process before the appraisal review board. KM-Timbercreek, LLC v. Harris County Appraisal Dist., 312 S.W.3d 722, 2009 Tex. App. LEXIS 8065 (Tex. App. Houston 1st Dist. Oct. 15, 2009, no pet.).

Since "unfair" valuation of property was not a defense to a tax delinquency suit, an appellate court lacked jurisdiction to consider an heir's challenge to the valuation of property that had been ordered sold to satisfy the delinquency. The remedy set forth for valuation challenges was exclusive, pursuant to Tex. Tax Code Ann. § 42.09(a)(1). Gilbert v. Houston Indep. Sch. Dist., No. 01-06-00159-CV, 2009 Tex. App. LEXIS 7496 (Tex. App. Houston 1st Dist. Sept. 24, 2009).

COLLECTION

Tax Deeds & Tax Sales. — Since "unfair" valuation of property was not a defense to a tax delinquency suit, an appellate court lacked jurisdiction to consider an heir's challenge to the valuation of property that had been ordered sold to satisfy the delinquency. The remedy set forth for valuation challenges was exclusive, pursuant to Tex. Tax Code Ann. § 42.09(a)(1). Gilbert v. Houston Indep. Sch. Dist., No. 01-06-00159-CV, 2009 Tex. App. LEXIS 7496 (Tex. App. Houston 1st Dist. Sept. 24, 2009).

TAX LIENS. — Appellees were entitled to rely upon the recitations contained in the deed filed of record, indicating that the property owner's brother was a partner in the company, when attempting to determine ownership of the property for purposes of effecting service of process; as citation served on one member of a partnership authorized a judgment against the partnership, Tex. Civ. Prac. & Rem. Code Ann. § 17.022, service upon the brother was effective to authorize a judgment against the company. Reed v. County of Tarrant, No. 02-11-00285-CV, 2012 Tex. App. LEXIS 4197 (Tex. App. Fort Worth May 24, 2012).

EXEMPTIONS. — Taxpayer could not assert inadequate notice under Tex. Tax Code Ann. § 11.43(c) of the removal of its Tex. Tax Code Ann. § 11.18(a)(1)-(2) charitable property tax exemption because it did not file a protest under Tex. Tax Code Ann. §§ 41.41(a)(9), 41.411(a) after being advised it could do so; Tex. Tax Code Ann. § 42.09(a)(1) makes the administrative protest procedures exclusive. Public, Inc. v. County of Galveston, 264 S.W.3d 338, 2008 Tex. App. LEXIS 9235 (Tex. App. Houston 14th Dist. July 10, 2008, no pet.).

TORTS

Public Entity Liability

Immunity

Sovereign Immunity. — To the extent that a property owner alleged that a county appraisal district was negligent in its assessment or collection of property taxes, Tex. Civ. Prac. & Rem. Code Ann. § 101.055(1) left intact the district's sovereign immunity. To the extent that the property owner's complaints against the district centered, instead, on the collection of a certain amount of property taxes to be allocated to the sheriff's office, or the amount of taxes assessed against his property, his failure to exhaust his administrative remedies under Tex. Tax Code Ann. §§ 42.09(a)(2), 42.21(a) deprived the trial court of jurisdiction over his claims. Reed v. Prince, 194 S.W.3d 101, 2006 Tex. App. LEXIS 4787 (Tex. App. Texarkana June 2, 2006), cert. denied, 549 U.S. 1308, 127 S. Ct. 1882, 167 L. Ed. 2d 370, 2007 U.S. LEXIS 3641 (U.S. 2007).

Secs. 42.10 to 42.20. [Reserved for expansion].

Subchapter B

Review by District Court

Sec. 42.21. Petition for Review.

(a) A party who appeals as provided by this chapter must file a petition for review with the district court within 60 days after the party received notice that a final order has been entered from which an appeal may be had or at any time after the hearing but before the 60-day deadline. Failure to timely file a petition bars any appeal under this chapter.

(b) A petition for review brought under Section 42.02 must be brought against the owner of the property involved in the appeal. A petition for review brought under Section 42.031 must be brought against the appraisal district and against the owner of the property involved in the appeal. A petition for review brought under Section 42.01(a)(2) or 42.03

must be brought against the comptroller. Any other petition for review under this chapter must be brought against the appraisal district. A petition for review may not be brought against the appraisal review board. An appraisal district may hire an attorney that represents the district to represent the appraisal review board established for the district to file an answer and obtain a dismissal of a suit filed against the appraisal review board in violation of this subsection.

(c) If an appeal under this chapter is pending when the appraisal review board issues an order in a subsequent year under a protest by the same property owner and that protest relates to the same property that is involved in the pending appeal, the property owner may appeal the subsequent appraisal review board order by amending the original petition for the pending appeal to include the grounds for appealing the subsequent order. The amended petition must be filed with the court in the period provided by Subsection (a) for filing a petition for review of the subsequent order. A property owner may appeal the subsequent appraisal review board order under this subsection or may appeal the order independently of the pending appeal as otherwise provided by this section, but may not do both. A property owner may change the election of remedies provided by this subsection at any time before the end of the period provided by Subsection (a) for filing a petition for review.

(d) An appraisal district is served by service on the chief appraiser at any time or by service on any other officer or employee of the appraisal district present at the appraisal office at a time when the appraisal office is open for business with the public. An appraisal review board is served by service on the chairman of the appraisal review board. Citation of a party is issued and served in the manner provided by law for civil suits generally.

(e) A petition that is timely filed under Subsection (a) or amended under Subsection (c) may be subsequently amended to:

(1) correct or change the name of a party; or

(2) not later than the 120th day before the date of trial, identify or describe the property originally involved in the appeal.

(f) A petition filed by an owner or lessee of property may include multiple properties that are owned or leased by the same person and are of a similar type or are part of the same economic unit and would typically sell as a single property. If a petition is filed by multiple plaintiffs or includes multiple properties that are not of a similar type, are not part of the same economic unit, or are part of the same economic unit but would not typically sell as a single property, the court may on motion and a showing of good cause sever the plaintiffs or the properties.

(g) A petition filed by an owner or lessee of property may be amended to include additional properties in the same county that are owned or leased by the same person, are of a similar type as the property originally involved in the appeal or are part of the same economic unit as the property originally involved in the appeal and would typically sell as a single property, and are the subject of an appraisal review board order issued in the same year as the order that is the subject of the original appeal. The amendment must be filed within the period during which a petition for review of the appraisal review board order pertaining to the additional properties would be required to be filed under Subsection (a).

(h) The court has jurisdiction over an appeal under this chapter brought on behalf of a property owner or lessee and the owner or lessee is considered to have exhausted the owner's or lessee's administrative remedies regardless of whether the petition correctly identifies the plaintiff as the owner or lessee of the property or correctly describes the property so long as the property was the subject of an appraisal review board order, the petition was filed within the period required by Subsection (a), and the petition provides sufficient information to identify the property that is the subject of the petition. Whether the plaintiff is the proper party to bring the petition or whether the property needs to be further identified or described must be addressed by means of a special exception and correction of the petition by amendment as authorized by Subsection (e) and may not be the subject of a plea to the jurisdiction or a claim that the plaintiff has failed to exhaust the plaintiff's administrative remedies. If the petition is amended to add a plaintiff, the court on motion shall enter a docket control order to provide proper deadlines in response to the addition of the plaintiff.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 981 (H.B. 2032), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 760 (H.B. 2298), § 1, effective August 26, 1985; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 44, effective June 15, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 54, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1113 (H.B. 3616), § 1, effective June 18, 1999; am. Acts 2009, 81st Leg., ch. 905 (H.B. 986), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 15, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 19.006, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 25, effective June 14, 2013.

NOTES TO DECISIONS

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Administrative Law
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ADMINISTRATIVE LAW
Judicial Review
Reviewability

Exhaustion of Remedies. — Tex. Tax Code Ann. §§ 42.09, 42.21(a) require exhaustion of remedies when taxpayers seek to have their individual assessments set aside, and class actions do not avoid these statutory requirements. Cameron Appraisal Dist. v. Rourk, 194 S.W.3d 501, 2006 Tex. LEXIS 504 (Tex. 2006).

Trial court's judgment dismissing the company's suit for want of jurisdiction was affirmed where (1) the company presented no evidence of the date that the 1999 tax appraisal records were approved as required by Tex. Tax Code Ann. § 41.12(a)(4); (2) even if Tex. Tax. Code Ann. § 11.439 was procedural and controlled pending litigation, the company failed to establish its entitlement to relief; and (3) under Tex. Tax. Code Ann. §§ 41.41(a)(9), 41.44, 41.45, 42.01(1)(A), 42.21(a), 42.09, the company did not exhaust its administrative remedies and was not entitled to judicial review; the company did not assert that the cover letter attached to its late application for a freeport exemption under Tex. Tax Code Ann. § 11.43(d), (e) was a request for extension of time and that the letter stated good cause for the tardy filing. Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

JURISDICTION & VENUE. — In an action to protest the appraisal of its real property where petitioner filed suit against the appraisal district within 45 days of notice of the final order but failed to name the appraisal review board as a party the court lacked jurisdiction and the action was properly dismissed under Tex. Tax. Code Ann. § 42.21(a). Poly-America, Inc. v. Dallas County Appraisal Dist., 704 S.W.2d 936, 1986 Tex. App. LEXIS 12099 (Tex. App. Waco Feb. 6, 1986, no writ).

PRESERVATION FOR REVIEW. — Taxpayers were properly granted an agricultural-use valuation where they met the jurisdictional requirements for judicial review and timely filed their petition for review after denial. Cooke County Tax Appraisal v. Teel, No. 2-03-115-CV, 2003 Tex. App. LEXIS 10017 (Tex. App. Fort Worth Nov. 26, 2003), op. withdrawn, sub. op., reh'g denied, 129 S.W.3d 724, 2004 Tex. App. LEXIS 1153 (Tex. App. Fort Worth Feb. 5, 2004).

SEPARATION OF POWERS
Legislative Controls

Explicit Delegation of Authority. — Tex. Tax Code Ann. §§ 42.09, 42.21(a) require exhaustion of remedies when taxpayers seek to have their individual assessments set aside, and class actions do not avoid these statutory requirements. Cameron Appraisal Dist. v. Rourk, 194 S.W.3d 501, 2006 Tex. LEXIS 504 (Tex. 2006).

BANKRUPTCY LAW
Taxation

Disputes. — Where Chapter 11 debtors asserted that they were entitled pursuant to 11 U.S.C.S. § 505 to a credit or offset for taxes paid on a certain property, even if a credit could be obtained under state law through the normal appellate procedure, the debtors' request was untimely as it would have had to have been brought within the 45-day time limit of Tex. Tax Code Ann. § 42.21. In re Davidson, No. 98-42080-BJH-11, 2002 Bankr. LEXIS 1984 (Bankr. N.D. Tex. Oct. 21, 2002).

CIVIL PROCEDURE
Justiciability
Standing

General Overview. — Second partnership was the only entity that could protest a property tax assessment under Tex. Tax Code Ann. § 42.21(a) as it was the record owner of the property; amendment of the petition was not permitted under § 42.21(e)(1) because the first partnership, which was not a proper party, did not timely appeal to the lower court. Reddy Partnership/5900 N. Freeway LP v. Harris County Appraisal Dist., 370 S.W.3d 401, 2011 Tex. App. LEXIS 203 (Tex. App. Houston 14th Dist. Jan. 13, 2011), rev'd, 370 S.W.3d 373, 2012 Tex. LEXIS 566 (Tex. 2012).

Where neither a property's seller nor its buyer fulfilled the jurisdictional prerequisites to seeking judicial review of a county appraisal review board's adverse determination of a property-valuation protest, both entities lacked standing to appeal the board's order to the district court because although the seller timely filed a petition for review, it did not own the property on the date at issue and was not a designated agent or lessee of the buyer, the actual record owner of the property. The buyer did not complete the administrative protest process before the board and could not take advantage of Tex. Tax Code Ann. § 42.21(e) to change the named plaintiff from one party who did not have standing to seek judicial review—the seller—to another party who did not have standing—the buyer. GSL Welcome BP 32 LLC v. Harris County Appraisal Dist., No. 01-10-00189-CV, 2010 Tex. App. LEXIS 8950 (Tex. App. Houston 1st Dist. Nov. 10, 2010).

Trial court lacked subject matter jurisdiction over two lawsuits filed to challenge a decision from an appraisal review board regarding real property taxes because a limited partner was not a record owner of the property, a lessee, or an authorized agent; strict compliance with Tex. Tax Code Ann. §§ 1.111, 41.413(b), 42.01, 42.21(b) was required. Therefore, a plea to the jurisdiction was properly granted. Ray v. Bexar Appraisal Dist., No. 04-08-00210-CV, No. 04-08-00212-CV, 2009 Tex. App. LEXIS 1812 (Tex. App. San Antonio Mar. 18, 2009).

In response to a plea to the jurisdiction by a county appraisal district, a trial court did not err in dismissing without prejudice a suit brought by a property seller and its buyer for judicial review of resolution of an ad valorem tax-valuation protest for the 2005 tax year where neither the seller nor the buyer had standing in the district court because: (1) the seller did not own the property on January 1, 2005, and thus had no legal right to appeal under Tex. Tax Code Ann. § 42.01(1)(A), and its lack of standing as owner thus precluded its "party" status under Tex. Tax Code Ann. § 42.21(a); (2) the buyer had neither a legal right to enforce, nor any real controversy for the trial court to determine, as the buyer did not pursue its Tex. Tax Code Ann. ch. 41 right to protest the valuation before the district's appraisal review board, and thus

the board never determined a protest by the buyer as the property owner pursuant to Tex. Tax Code Ann. § 42.01(a); and (3) no proper party having appealed to the district court within the 45-day time limit of Tex. Tax Code Ann. § 42.21(a), it never acquired subject-matter jurisdiction, and the board's valuation became final when those 45 days expired. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

PLEADING & PRACTICE
Defenses, Demurrers & Objections
Affirmative Defenses

General Overview. — Tex. Tax Code Ann. § 42.06 and Tex. Tax Code Ann. § 42.21 are in the nature of statutes of limitations for the benefit of the appraisal districts; the failure to comply with these limitations statutes is an affirmative defense which must be pleaded pursuant to Tex. R. Civ. P. 94. Morris County Tax Appraisal Dist. v. Nail, 708 S.W.2d 473, 1986 Tex. App. LEXIS 11914 (Tex. App. Texarkana Jan. 14, 1986, writ ref'd n.r.e.).

MOTIONS TO DISMISS. — Plea to the jurisdiction was granted in a case involving a failed tax exemption based on a transfer of real property to a church trust because a taxpayer did not comply with Tex. Tax Code Ann. § 42.21 since his suit was filed outside of the 45-day deadline, and subject-matter jurisdiction could not have been conferred by answers to requests for admissions. Dolenz v. Dallas Cent. Appraisal Dist., 259 S.W.3d 331, 2008 Tex. App. LEXIS 4850 (Tex. App. Dallas June 30, 2008), cert. dismissed, 556 U.S. 1151, 129 S. Ct. 1685, 173 L. Ed. 2d 1035, 2009 U.S. LEXIS 2344 (U.S. 2009).

PLEADINGS
Amended Pleadings

General Overview. — Where on appeal of a corporate taxpayer's challenge to Tex. Tax. Code Ann. § 23.56(3) the statute was held unconstitutional in a separate case, the taxpayer was required by Tex. Tax. Code Ann. § 42.21 to exhaust its administrative remedies for each year at issue on appeal, and the trial court on remand had jurisdiction to consider only those years in which the taxpayer applied for open-space land designation pursuant to Tex. Tax. Code Ann. § 23.54 and protested the denial of that application pursuant to Tex. Tax. Code Ann. § 41.41. Henderson County Appraisal Dist. v. HL Farm Corp., 956 S.W.2d 672, 1997 Tex. App. LEXIS 5563 (Tex. App. Eastland Oct. 23, 1997, no pet.).

Pursuant to Tex. Tax. Code Ann. § 42.21(c), a taxpayer in litigation concerning a property tax issue for a particular year was required to exhaust its administrative remedies for each subsequent year before amending its pleadings to include those later tax years; therefore, the trial court did not have jurisdiction to consider the issue of the taxpayer's entitlement to relief for those years in which it failed to exhaust its administrative remedies. Henderson County Appraisal Dist. v. HL Farm Corp., 956 S.W.2d 672, 1997 Tex. App. LEXIS 5563 (Tex. App. Eastland Oct. 23, 1997, no pet.).

LEAVE OF COURT. — Because a taxpayer who filed a petition naming the appraisal review board as the only party failed to request leave to amend to name the appraisal district pursuant to Tex. Tax Code Ann. § 42.21(b), his suit was properly dismissed for want of jurisdiction. The board's final order contained the information required by Tex. Tax Code Ann. § 41.47(e), which does not include information on how service of the petition is perfected. Townsend v. Appraisal Review Bd., No. 09-11-00089-CV, 2011 Tex. App. LEXIS 7056 (Tex. App. Beaumont Aug. 31, 2011).

TIME LIMITATIONS

Computation. — Pleas to the jurisdiction should not have been granted because petitions filed against an appraisal district were timely filed under Tex. Tax Code Ann. § 42.21(a) and Tex. R. Civ. P. 5 since the petitions were mailed to an address where a district clerk received documents for filing via private courier and from persons entering the building. This was the proper physical address of the clerk, but mail was received at another address, and the clerk received the petitions within the 10-day period following the timely mailed petitions. Pratap v. Chambers County Appraisal Dist., 376 S.W.3d 295, 2012 Tex. App. LEXIS 6468 (Tex. App. Houston 14th Dist. 2012, no pet.).

PARTIES

Fictitious Names. — In an action in which a property seller sought judicial review of a county appraisal district's resolution of an ad valorem tax protest, the trial court erred in denying the district's plea to the jurisdiction, which claimed that the seller was not the property owner for the tax year at issue, where the seller and the buyer of the property lacked standing to bring suit because the seller did not claim rights to protest under the Texas Tax Code as either a lessee or an agent, and because the record did not reflect that the buyer pursued its right of protest as the actual property owner. Because neither the seller nor the buyer was a proper party entitled to judicial review under the Texas Tax Code, Tex. Tax Code Ann. § 42.21(e)(1) did not apply to change the name of the plaintiff, and, likewise, because there was no evidence in the record that the buyer was doing business as the seller or that the entities used the name the seller as a common name for the buyer, Tex. R. Civ. P. 28 could not be used to substitute the buyer for the seller. Harris County Appraisal Dist. v. KMI Yorktown LP, No. 01-09-00661-CV, 2010 Tex. App. LEXIS 3201 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

From a challenge to the valuation of real property, as neither the prior owner or the new owner was a proper party entitled to judicial review as contemplated by Tex. Tax. Code Ann. § 42.21(e)(1), and Tex. R. Civ. P. 28 did not apply to change the name of the new owner in the pleadings, the prior owner and the new owner lacked standing to bring suit, and the trial court lacked subject-matter jurisdiction to hear the dispute. Therefore, the trial court did not err in granting the Appraisal District's plea to the jurisdiction. BACM 2002 PB2 Westpark Dr. LP v. Harris County Appraisal Dist., No. 14-08-00493-CV, 2009 Tex. App. LEXIS 5528 (Tex. App. Houston 14th Dist. June 21, 2009).

APPEALS
Reviewability

Notice of Appeal. — Trial court judgment reducing appellee landowner's land valuations for two tax years was reversed in a dispute between appellee and appellant appraisal district over land valuation for tax purposes because neither the landowner nor his designated agent filed a timely notice of appeal of the appraisal. Gregg County Appraisal Dist. v. Laidlaw Waste Sys., 907 S.W.2d 12, 1995 Tex. App. LEXIS 1244 (Tex. App. Tyler May 31, 1995, writ denied).

TIME LIMITATIONS. — Absent request that notices could be delivered to a fiduciary, property owner was entitled to notice under Tex. Tax Code Ann. § 41.47 of determining protest of taxes issued by appraisal district and appraisal review board, and without notice to the property owner, the time limitations of Tex. Tax Code Ann. §§ 42.06(a), and 42.21(a) did not apply. First Union Real Estate Inv. v. Taylor County Appraisal Dist., 758 S.W.2d 380, 1988 Tex. App. LEXIS 2378 (Tex. App. Eastland Sept. 22, 1988, writ denied).

GOVERNMENTS
Legislation
Statutes of Limitations

Tolling. — Statutory requirement that a petition for review of an order of an appraisal review board be filed with a district court within 45 days as set forth in Tex. Tax. Code Ann. § 42.21 is a jurisdictional requirement; the abatement of a limitation period as provided for in Tex. Civ. Prac. & Rem. Code Ann. § 16.064 has no application. El Paso Cent. Appraisal Dist. v. Ev. Lutheran Good Samaritan Soc., 762 S.W.2d 207, 1988 Tex. App. LEXIS 2668 (Tex. App. El Paso Oct. 26, 1988, no writ).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Trial court properly denied appraisal district's motion to dismiss taxpayers' petition for review where the taxpayers filed their petition within the 45-day deadline of Tex. Tax Code Ann. § 42.21(a), and under the plain language of § 42.21(e), the taxpayers were permitted to change or correct the

name of the party being sued from the chief appraiser to the district. Hamilton County Appraisal Dist. v. Stuard, No. 10-02-00329-CV, 2004 Tex. App. LEXIS 6089 (Tex. App. Waco July 7, 2004).

In the county tax appraisal district and the county appraisal review board's challenge to the trial court's grant of an agricultural-use valuation to the taxpayers, certified letter receipts, testimony at trial, and briefs from both parties all indicating that the taxpayers' counsel received the board's notice was sufficient to overcome the presumption of delivery under Tex. Tax Code Ann. § 1.07(c). Cooke County Tax Appraisal Dist. v. Teel, 129 S.W.3d 724, 2004 Tex. App. LEXIS 1153 (Tex. App. Fort Worth Feb. 5, 2004, no pet.).

Although the housing development corporation was entitled to protest the county taxing authority's denial of the housing development authority's request for a tax exemption for a particular tax year, and also had the right after filing a notice of protest to appear and present evidence or argument to the appraisal review board before filing an adverse decision of the appraisal review board to the trial court, exact compliance with those procedures was mandatory before it could maintain a challenge in the trial court; the failure to file its notice of protest within 30 days after receiving notice of the county taxing authority's decision regarding the adverse decision meant the trial court lacked jurisdiction to grant summary judgment to the county taxing authority regarding its denial of the tax exemption request, and the appellate court only had the authority to set aside the judgment and dismiss the housing development corporation's appeal of that denial. Found. of Hope, Inc. v. San Patricio County Appraisal Dist., No. 13-02-083-CV, 2003 Tex. App. LEXIS 7922 (Tex. App. Corpus Christi Sept. 11, 2003).

Property owner is entitled to protest before the appraisal review board any action by the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner under Tex. Tax Code Ann. § 41.41(a)(9), and after filing the required notice of protest, the property owner is entitled to an opportunity to appear and present evidence or argument to the appraisal review board pursuant to Tex. Tax Code Ann. § 41.44 and Tex. Tax Code Ann. § 41.45; if the property owner is aggrieved by the determination of the appraisal review board following the protest hearing, the property owner is then entitled to appeal the decision to the district court under Tex. Tax Code Ann. § 42.01(1)(A) and Tex. Tax Code Ann. § 42.21(a). Quorum Int'l v. Tarrant Appraisal Dist., 114 S.W.3d 568, 2003 Tex. App. LEXIS 5465 (Tex. App. Fort Worth June 26, 2003, no pet.).

Under Tex. Tax Code Ann. § 42.21, an owner may appeal the appraisal district's determination of the protest within 45 days after receiving the final order. Harris County Appraisal Dist. v. Tex. E. Transmission Corp., 99 S.W.3d 849, 2003 Tex. App. LEXIS 1699 (Tex. App. Houston 14th Dist. Feb. 27, 2003, no pet.).

Taxpayer, who failed to timely file an administrative protest to an appraisal, waived its right to relief, and the taxpayer was not permitted to seek relief in the trial court to correct the appraisal. A & S Air Serv. v. Denton Cent. Appraisal Dist., 99 S.W.3d 340, 2003 Tex. App. LEXIS 1397 (Tex. App. Fort Worth Feb. 13, 2003, no pet.).

Failure to properly identify the property or the corporate taxpayer rendered a notice and order by the appraisal review board, which was insufficient to meet the requirements of Tex. Tax Code Ann. § 41.47; therefore, it was improper for trial court to summarily dismiss as untimely under Tex. Tax. Code Ann. § 42.21 the taxpayer's petition challenging the valuation of its gas gathering system. Valero South Texas Gathering Co. v. Starr County Appraisal Dist., No. 04-96-00526-CV, 1997 Tex. App. LEXIS 5095 (Tex. App. San Antonio Sept. 24, 1997).

Where a corporation had timely filed a protest with the trial court pursuant to Tex. Tax Code Ann. § 42.21, and the trial court had dismissed the protest, the court had jurisdiction over the corporation's appeal; the court granted the protest on the grounds that the appraisal district had failed to provide proper notice to the corporation and that the potential for confusion was great because the notice did not reference the property by legal description or a taxpayer account number. Valero South Tex. Processing Co. v. Starr County Appraisal Dist., 954 S.W.2d 863, 1997 Tex. App. LEXIS 5078 (Tex. App. San Antonio Sept. 24, 1997, no pet.).

Pursuant to Tex. Tax Code Ann. §§ 42.25, 42.21, once a taxpayer has properly preserved his right of appeal of any individual final taxing order, he has likewise preserved his right to attorney's fees in the same appeal, and should not be deprived of his right to attorney's fees simply because the separately appealed final orders have been consolidated for judicial economy. Atascosa County Appraisal Dist. v. Tymrak, 815 S.W.2d 364, 1991 Tex. App. LEXIS 2422 (Tex. App. San Antonio Aug. 30, 1991), writ granted No. D-1804 (Tex. 1992), aff'd, 858 S.W.2d 335, 1993 Tex. LEXIS 14 (Tex. 1993).

School district was not entitled to summary judgment where the judgment was premature; the code provisions necessarily implied that judgment could not be recovered in an action to collect delinquent taxes under Tex. Tax Code Ann. §§ 33.41—33.54 until the property owner's pending appeal had been finally determined. Valero Transmission Co. v. San Marcos Consol. Independent School Dist., 770 S.W.2d 648, 1989 Tex. App. LEXIS 1575 (Tex. App. Austin May 24, 1989, writ denied).

School district was not entitled to summary judgment where the judgment was premature; the code provisions necessarily implied that judgment could not be recovered in an action to collect delinquent taxes until the property owner's pending appeal under Tex. Tax Code Ann. § 42.21 had been finally determined. Valero Transmission Co. v. San Marcos Consol. Independent School Dist., 770 S.W.2d 648, 1989 Tex. App. LEXIS 1575 (Tex. App. Austin May 24, 1989, writ denied).

Compliance with Tex. Tax Code Ann. § 42.21 was jurisdictional, and thus failure to include a party within 45 days after receiving notice that a final order had been entered required dismissal of the cause. Appraisal Review Bd. v. International Church of Foursquare Gospel, 719 S.W.2d 160, 1986 Tex. LEXIS 585 (Tex. 1986).

ASSESSMENTS. — Because both a parent corporation and a subsidiary to which it had conveyed its interest in real property lacked standing to challenge an appraisal review board order determining a protest of ad valorem property taxes, amendment under Tex. Tax Code Ann. § 42.21(e) to substitute the subsidiary as plaintiff was impermissible. Storguard Invs., LLC v. Harris County Appraisal Dist., No. 01-10-00439-CV, 2011 Tex. App. LEXIS 5544 (Tex. App. Houston 1st Dist. July 21, 2011).

Because a parent corporation that conveyed its interest in real property to its subsidiary did not own the property when it challenged the appraised value and the subsidiary did not exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a), both lacked standing under Tex. Tax Code Ann. §§ 42.21(a), 42.01(1)(A) to challenge an appraisal review board order determining the parent's protest of ad valorem property taxes. Storguard Invs., LLC v. Harris County Appraisal Dist., No. 01-10-00439-CV, 2011 Tex. App. LEXIS 5544 (Tex. App. Houston 1st Dist. July 21, 2011).

Tex. Tax Code Ann. §§ 42.09, 42.21(a) require exhaustion of remedies when taxpayers seek to have their individual assessments set aside, and class actions do not avoid these statutory requirements. Cameron Appraisal Dist. v. Rourk, 194 S.W.3d 501, 2006 Tex. LEXIS 504 (Tex. 2006).

JUDICIAL REVIEW. — If a suit appealing an appraisal review board's decision meets the property identification and filing requirements, the trial court has subject matter jurisdiction, even if the petition misidentifies the property owner and must be corrected through amendment. Accordingly, jurisdiction was proper where the property's identity was undisputed and an amended petition was filed to correct the owner's misidentification; a constitutional challenge based on the possibility of an advisory opinion failed. Town & Country Suites, L.C. v. Harris County Appraisal Dist., No. 01-13-00869-CV, 2014 Tex. App. LEXIS 7125 (Tex. App. Houston 1st Dist. July 1, 2014), op. withdrawn, sub. op., reh'g denied, 461 S.W.3d 208, 2015 Tex. App. LEXIS 694 (Tex. App. Houston 1st Dist. Jan. 27, 2015).

Taxpayer's claim against an appraisal review board was properly dismissed for lack of jurisdiction. Rio Valley, LLC v. City of El Paso, 441 S.W.3d 482, 2014 Tex. App. LEXIS 3031 (Tex. App. El Paso Mar. 19, 2014, no pet.).

Taxpayer's notice of protest was untimely and no appeal could be taken because written notice of taxes was provided when the

taxpayer was served with citation in a delinquent tax suit, not when the taxpayer subsequently received a tax bill; moreover, the taxpayer could not assert a counterclaim in the delinquent tax suit based on its grounds of protest. Rio Valley, LLC v. City of El Paso, 441 S.W.3d 482, 2014 Tex. App. LEXIS 3031 (Tex. App. El Paso Mar. 19, 2014, no pet.).

Based on the presumption in Tex. Tax Code Ann. § 1.07(c) that an appraisal review board's decision was received at the time it was mailed on August 29, a taxpayer's petition filed on October 16 was untimely under former Tex. Tax Code Ann. § 42.21(a), requiring dismissal under Tex. R. App. P. 42.3. Palaniappan v. Harris County Appraisal Dist., No. 01-11-00344-CV, 2012 Tex. App. LEXIS 10335 (Tex. App. Houston 1st Dist. Dec. 13, 2012), op. withdrawn, sub. op., No. 01-11-00344-CV, 2013 Tex. App. LEXIS 15460 (Tex. App. Houston 1st Dist. Dec. 31, 2013).

Pursuant to Tex. Tax Code Ann. § 42.21(e), the partnerships' misnomer in its petition for judicial review did not defeat a trial court's jurisdiction where the partnership amended the petition and corrected the name; the property owner exhausted its administrative remedies and timely filed a petition for judicial review. Reddy P'ship/5900 North Freeway, LP v. Harris County Appraisal Dist., 370 S.W.3d 373, 2012 Tex. LEXIS 566 (Tex. 2012).

Court had jurisdiction of the trustee's suit on tax year 2006, because although the trustee did not refer to the 2006 tax year in his original petition, the record supported a conclusion that the 2005 tax year reference was a mistake, and that the appeal to the court was for the 2006 tax year on which the trustee had filed a notice of protest; the court had jurisdiction to declare the effect of any ownership ruling on the 2008 and 2009 tax years, however, with respect to all other issues involved in the 2008 and 2009 tax years for the relevant accounts for which no protest or appeal was filed, the trial court lacked jurisdiction. Jefferson County Appraisal Dist. v. Morgan, No. 09-11-00517-CV, 2012 Tex. App. LEXIS 1037 (Tex. App. Beaumont Feb. 9, 2012), app. dismissed, No. 09-15-00479-CV, No. 09-16-00034-CV, 2016 Tex. App. LEXIS 12997 (Tex. App. Beaumont Dec. 8, 2016).

Pleas to the jurisdiction should not have been granted because petitions filed against an appraisal district were timely filed under Tex. Tax Code Ann. § 42.21(a) and Tex. R. Civ. P. 5 since the petitions were mailed to an address where a district clerk received documents for filing via private courier and from persons entering the building. This was the proper physical address of the clerk, but mail was received at another address, and the clerk received the petitions within the 10-day period following the timely mailed petitions. Pratap v. Chambers County Appraisal Dist., 376 S.W.3d 295, 2012 Tex. App. LEXIS 6468 (Tex. App. Houston 14th Dist. 2012, no pet.).

Because a taxpayer who filed a petition naming the appraisal review board as the only party failed to request leave to amend to name the appraisal district pursuant to Tex. Tax Code Ann. § 42.21(b), his suit was properly dismissed for want of jurisdiction. The board's final order contained the information required by Tex. Tax Code Ann. § 41.47(e), which does not include information on how service of the petition is perfected. Townsend v. Appraisal Review Bd., No. 09-11-00089-CV, 2011 Tex. App. LEXIS 7056 (Tex. App. Beaumont Aug. 31, 2011).

Taxpayer failed to appeal the appraisal review board's final orders he now wished to attack, comprising the final orders the Appraisal District issued during 2005, 2006, 2008 and 2009, and the taxpayer did not timely file petitions for review with respect to the District's final orders, and therefore, he was foreclosed from obtaining judicial review of the District's property appraisal determinations, Tex. Tax Code Ann. § 42.21(a); because the taxpayer did not appeal from the final appraisal orders in issue, they became final, Tex. Tax Code Ann. § 42.21(a). Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

Because both a parent corporation and a subsidiary to which it had conveyed its interest in real property lacked standing to challenge an appraisal review board order determining a protest of ad valorem property taxes, amendment under Tex. Tax Code Ann. § 42.21(e) to substitute the subsidiary as plaintiff was impermissible. Storguard Invs., LLC v. Harris County Appraisal Dist., No. 01-10-00439-CV, 2011 Tex. App. LEXIS 5544 (Tex. App. Houston 1st Dist. July 21, 2011).

Because a parent corporation that conveyed its interest in real property to its subsidiary did not own the property when it challenged the appraised value and the subsidiary did not exhaust administrative remedies under Tex. Tax Code Ann. § 42.09(a), both lacked standing under Tex. Tax Code Ann. §§ 42.21(a), 42.01(1)(A) to challenge an appraisal review board order determining the parent's protest of ad valorem property taxes. Storguard Invs., LLC v. Harris County Appraisal Dist., No. 01-10-00439-CV, 2011 Tex. App. LEXIS 5544 (Tex. App. Houston 1st Dist. July 21, 2011).

At least as it is used in Tex. Tax Code Ann. § 41.41(a)(7), the term "property owner" includes one listed as the owner in the tax appraisal rolls who is challenging the determination that he is the owner of property. Accordingly, taxpayers-regardless of whether they were in fact the true owners of the property at issue-were entitled to protest an appraisal review board's determination that they were the owners of the property, and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), a district court did not obtain jurisdiction over their case by an appeal under that portion of the statute. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

Second partnership was the only entity that could protest a property tax assessment under Tex. Tax Code Ann. § 42.21(a) as it was the record owner of the property; amendment of the petition was not permitted under § 42.21(e)(1) because the first partnership, which was not a proper party, did not timely appeal to the lower court. Reddy Partnership/5900 N. Freeway LP v. Harris County Appraisal Dist., 370 S.W.3d 401, 2011 Tex. App. LEXIS 203 (Tex. App. Houston 14th Dist. Jan. 13, 2011), rev'd, 370 S.W.3d 373, 2012 Tex. LEXIS 566 (Tex. 2012).

Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003. Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

Prior owner timely filed a petition for review, but did not own the property on January 1, 2008 and lacked standing to seek judicial review; the current owner's argument that Tex. Tax Code Ann. § 42.21(e)(1) operated to allow the prior owner to correct the party's name presupposed that the current owner was a proper party entitled to seek review, but it did not pursue the right of protest; as there was no proper party timely appealing, the trial court did not acquire subject-matter jurisdiction, and the determination of the review board was final. Hartman Reit Operating P'ship III, L.P. v. Harris County Appraisal Dist., No. 14-10-00242-CV, 2010 Tex. App. LEXIS 9181 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

It was not shown that the current owner pursued its right of protest as the actual property owner, and the current owner was not named as a party until when the prior owner filed an amended petition; the review board had not determined a protest by the actual owner upon which the current owner could premise a right to appeal as the property owner, for purposes of Tex. Tax Code Ann. §§ 42.01(1)(A), 42.21(a). Hartman Reit Operating P'ship III, L.P. v. Harris County Appraisal Dist., No. 14-10-00242-CV, 2010 Tex. App. LEXIS 9181 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

Prior owner did not own the property as of January 1, 2008 and did not claim rights to protest as either a lessee or an agent under Tex. Tax Code Ann. § 41.413; therefore, the prior owner lacked standing to pursue judicial review as a party who appealed under Tex. Tax Code Ann. § 42.21(a). Hartman Reit Operating P'ship III, L.P. v. Harris County Appraisal Dist., No. 14-10-00242-CV, 2010 Tex. App. LEXIS 9181 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

To qualify as a party who appealed by seeking judicial review of a tax determination under Tex. Tax Code Ann. § 42.21(a), a prior owner had to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property under the

circumstances stated in Tex. Tax Code Ann. § 41.413. Hartman Reit Operating P'ship III, L.P. v. Harris County Appraisal Dist., No. 14-10-00242-CV, 2010 Tex. App. LEXIS 9181 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

Prior owner timely filed a petition for review, but it did not own the property on January 1, 2008, and thus lacked standing to seek judicial review; the current owner's argument that Tex. Tax Code Ann. § 42.21(e)(1) operated to permit the prior owner to correct or change the party's name presupposed that the current owner was a proper party entitled to seek review, but it did not pursue its right of protest, and where there was no proper party timely appealing, the trial court did not acquire subject-matter jurisdiction, and the review board's determination became final. Braniff CB Ltd. v. Harris County Appraisal Dist., No. 14-10-00089-CV, 2010 Tex. App. LEXIS 9192 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

Record did not show that a current owner pursued its right of protest as the actual owner, and the current owner was not named as a party until when the prior owner filed an amended petition; the review board had not determined a protest by the actual owner, the current owner, upon which the current owner could premise a right to appeal as the property owner, for purposes of Tex. Tax Code Ann. §§ 42.01(1)(A), 42.21(a). Braniff CB Ltd. v. Harris County Appraisal Dist., No. 14-10-00089-CV, 2010 Tex. App. LEXIS 9192 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

Prior owner did not own the property as of January 1, 2008, and the prior owner did not claim rights to protest as either a lessee or an agent under Tex. Tax Code Ann. § 41.413; thus, the prior owner lacked standing to pursue judicial review as a party who appealed under Tex. Tax Code Ann. § 42.21(a). Braniff CB Ltd. v. Harris County Appraisal Dist., No. 14-10-00089-CV, 2010 Tex. App. LEXIS 9192 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

To qualify as a party who appealed by seeking judicial review of an appraisal-review board's tax determination under Tex. Tax Code Ann. § 42.21(a), a prior owner had to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property under the circumstances stated in Tex. Tax Code Ann. § 41.413. Braniff CB Ltd. v. Harris County Appraisal Dist., No. 14-10-00089-CV, 2010 Tex. App. LEXIS 9192 (Tex. App. Houston 14th Dist. Nov. 18, 2010).

Where neither a property's seller nor its buyer fulfilled the jurisdictional prerequisites to seeking judicial review of a county appraisal review board's adverse determination of a property-valuation protest, both entities lacked standing to appeal the board's order to the district court because although the seller timely filed a petition for review, it did not own the property on the date at issue and was not a designated agent or lessee of the buyer, the actual record owner of the property. The buyer did not complete the administrative protest process before the board and could not take advantage of Tex. Tax Code Ann. § 42.21(e) to change the named plaintiff from one party who did not have standing to seek judicial review—the seller—to another party who did not have standing—the buyer. GSL Welcome BP 32 LLC v. Harris County Appraisal Dist., No. 01-10-00189-CV, 2010 Tex. App. LEXIS 8950 (Tex. App. Houston 1st Dist. Nov. 10, 2010).

In an action in which a property seller sought judicial review of a county appraisal district's resolution of an ad valorem tax protest, the trial court erred in denying the district's plea to the jurisdiction, which claimed that the seller was not the property owner for the tax year at issue, where the seller and the buyer of the property lacked standing to bring suit because the seller did not claim rights to protest under the Texas Tax Code as either a lessee or an agent, and because the record did not reflect that the buyer pursued its right of protest as the actual property owner. Because neither the seller nor the buyer was a proper party entitled to judicial review under the Texas Tax Code, Tex. Tax Code Ann. § 42.21(e)(1) did not apply to change the name of the plaintiff, and, likewise, because there was no evidence in the record that the buyer was doing business as the seller or that the entities used the name the seller as a common name for the buyer, Tex. R. Civ. P. 28 could not be used to substitute the buyer for the seller. Harris County Appraisal Dist. v. KMI Yorktown LP, No. 01-09-00661-CV, 2010 Tex. App. LEXIS 3201 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Plea to the jurisdiction filed by the county appraisal district was proper, because the partnership, which filed the tax assessment protest, did not own the property as of January 1, 2007 and did not claim rights to protest as either a lessee or an agent, the record did not reflect that the company pursued its right of protest as the actual property owner and was not named as a party until February 2009, and when no proper party timely appealed, the trial court did not acquire subject matter jurisdiction and the appraisal review board's determination became final. Woodway Drive LLC v. Harris County Appraisal Dist., 311 S.W.3d 649, 2010 Tex. App. LEXIS 2494 (Tex. App. Houston 14th Dist. Apr. 8, 2010, no pet.).

Trial court properly granted appellees' plea to the jurisdiction in a taxpayer's action alleging that a county appraisal review board's mistreatment and failure to permit the taxpayer an opportunity to present evidence was a denial of due process because it was undisputed that the taxpayer was entitled to de novo review of the board's determination in the district court; the taxpayer filed that action, and was entitled to present evidence at a trial de novo in the underlying action. Lambertz v. Robinson, No. 14-09-00650-CV, 2010 Tex. App. LEXIS 2086 (Tex. App. Houston 14th Dist. Mar. 25, 2010).

To qualify as a "party who appeals" by seeking judicial review of an appraisal-review board's tax determination under Tex. Tax Code Ann. § 42.21(a), a party has to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property. Woodway Drive LLC v. Harris County Appraisal Dist., No. 14-09-00524-CV, 2010 Tex. App. LEXIS 1527 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction on a property seller's petition that challenged a 2008 tax assessment for the property because the seller did not own the property as of January 1, 2008; hence, the seller lacked standing to pursue judicial review as a "party who appealed" under Tex. Tax Code Ann. § 42.21(a). Woodway Drive LLC v. Harris County Appraisal Dist., No. 14-09-00524-CV, 2010 Tex. App. LEXIS 1527 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

To qualify as a "party who appeals" by seeking judicial review of an appraisal-review board's tax determination under Tex. Tax Code Ann. § 42.21(a), a party has to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property. Scott Plaza Assocs. v. Harris County Appraisal Dist., No. 14-09-00707-CV, 2010 Tex. App. LEXIS 1532 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a property seller's action that challenged a 2007 tax assessment of the property because the seller did not own the property as of January 1, 2007; hence, the seller lacked standing to pursue judicial review as a "party who appealed" under Tex. Tax Code Ann. § 42.21(a). Scott Plaza Assocs. v. Harris County Appraisal Dist., No. 14-09-00707-CV, 2010 Tex. App. LEXIS 1532 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Taxpayer's appeal was not barred on jurisdictional grounds for failure to serve the appraisal district or review board within the 45 day deadline described in Tex. Tax Code Ann. § 42.21(a), because there was no indication that serving the parties within the time limit set forth in Tex. Tax Code Ann. § 42.21(a) was a jurisdictional prerequisite. Brooks v. Burnet Cent. Appraisal Dist., 306 S.W.3d 419, 2010 Tex. App. LEXIS 1355 (Tex. App. Austin Feb. 26, 2010, no pet.).

Seller lacked standing to pursue judicial review of the 2007 property tax assessment as a party who appealed under Tex. Tax Code Ann. § 42.21(a), because the seller did not own the property as of January 1, 2007, did not claim rights to protest as either a lessee or an agent, and the assertion that Tex. Tax Code Ann. § 42.21(e)(1) operated to allow the seller to correct or change the party's name presupposed that the buyer was a proper party entitled to seek judicial review and the record did not reflect that the buyer pursued its right of protest as the actual property owner. RRB Land Invs., Ltd. v. Harris County Appraisal Dist., No. 14-09-00317-CV, 2010 Tex. App. LEXIS 792 (Tex. App. Houston 14th Dist. Feb. 4, 2010).

Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it

had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Because real property had been sold prior to a disputed valuation, the seller could not appeal the valuation under Tex. Tax Code Ann. § 42.01, and jurisdiction was not obtained by amending the petition to include the buyer as a plaintiff pursuant to Tex. Tax Code Ann. § 42.21(e)(1) after the 45-day period for appeal under § 42.21(a) had run. Mei Hsu Acquisition Corp. v. Harris County Appraisal Dist., No. 01-08-00690 -CV, 2009 Tex. App. LEXIS 7727 (Tex. App. Houston 1st Dist. Oct. 1, 2009).

Because a chief appraiser did not appeal under Tex. Tax Code Ann. § 42.02 from an appraisal review board's orders in favor of taxpayers, which were final appealable orders under Tex. Tax. Code Ann. § 42.21(a), the exclusive remedy provision in Tex. Tax. Code Ann. § 42.09 barred the issuance of supplemental appraisal notices for the same property. Travis Cent. Appraisal Dist. v. Marshall Ford Marina, Inc., No. 03-05-00784-CV, 2009 Tex. App. LEXIS 7156 (Tex. App. Austin Sept. 9, 2009).

From a challenge to the valuation of real property, as neither the prior owner or the new owner was a proper party entitled to judicial review as contemplated by Tex. Tax. Code Ann. § 42.21(e)(1), and Tex. R. Civ. P. 28 did not apply to change the name of the new owner in the pleadings, the prior owner and the new owner lacked standing to bring suit, and the trial court lacked subject-matter jurisdiction to hear the dispute. Therefore, the trial court did not err in granting the Appraisal District's plea to the jurisdiction. BACM 2002 PB2 Westpark Dr. LP v. Harris County Appraisal Dist., No. 14-08-00493-CV, 2009 Tex. App. LEXIS 5528 (Tex. App. Houston 14th Dist. June 21, 2009).

Trial court lacked subject matter jurisdiction over two lawsuits filed to challenge a decision from an appraisal review board regarding real property taxes because a limited partner was not a record owner of the property, a lessee, or an authorized agent; strict compliance with Tex. Tax Code Ann. §§ 1.111, 41.413(b), 42.01, 42.21(b) was required. Therefore, a plea to the jurisdiction was properly granted. Ray v. Bexar Appraisal Dist., No. 04-08-00210-CV, No. 04-08-00212-CV, 2009 Tex. App. LEXIS 1812 (Tex. App. San Antonio Mar. 18, 2009).

Summary judgment was properly granted to a county appraisal review board in a dispute over the appraised value of commercial property because a trial court lacked jurisdiction under Tex. Tax Code Ann. § 41.45(f) to review the board's order and the procedures employed during a hearing; moreover, a timely petition for review was not filed under Tex. Tax Code Ann. § 42.21(a). Betz Louetta 25 Ltd. v. Appraisal Review Bd., No. 14-07-00587-CV, 2009 Tex. App. LEXIS 282 (Tex. App. Houston 14th Dist. Jan. 15, 2009).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Plea to the jurisdiction should have been granted in a tax dispute because there was a failure to exhaust administrative remedies; mandamus was not permitted due to an adequate remedy at law, Tex. Tax Code Ann. § 41.45(f) did not allow taxpayers to bypass administrative procedures, and an ultra vires exception to exhaustion did not apply. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

Plea to the jurisdiction was granted in a case involving a failed tax exemption based on a transfer of real property to a church trust because a taxpayer did not comply with Tex. Tax Code Ann. § 42.21 since his suit was filed outside of the 45-day deadline, and subject-matter jurisdiction could not have been conferred by answers to requests for admissions. Dolenz v. Dallas Cent. Appraisal Dist., 259 S.W.3d 331, 2008 Tex. App. LEXIS 4850 (Tex. App. Dallas June 30, 2008), cert. dismissed, 556 U.S. 1151, 129 S. Ct. 1685, 173 L. Ed. 2d 1035, 2009 U.S. LEXIS 2344 (U.S. 2009).

Tex. Tax Code Ann. § 41.45(f) grants the district courts authority to compel appraisal review boards to conduct a protest hearing if the appraisal review board denied the property owner a hearing to which he was entitled, however, Tex. Tax Code Ann. § 41.45(f) does not grant the district courts authority to compel appraisal review boards to conduct additional protest hearings; therefore, a plea to the jurisdiction should have been granted when two taxpayers failed to request a trial de novo after a first protest hearing was held; the taxpayers were not allowed to circumvent the procedures set forth in the Texas Tax Code. Appraisal Review Bd. v. Spencer Square Ltd., 252 S.W.3d 842, 2008 Tex. App. LEXIS 3045 (Tex. App. Houston 14th Dist. Apr. 29, 2008, no pet.).

In response to a plea to the jurisdiction by a county appraisal district, a trial court did not err in dismissing without prejudice a suit brought by a property seller and its buyer for judicial review of resolution of an ad valorem tax-valuation protest for the 2005 tax year where neither the seller nor the buyer had standing in the district court because: (1) the seller did not own the property on January 1, 2005, and thus had no legal right to appeal under Tex. Tax Code Ann. § 42.01(1)(A), and its lack of standing as owner thus precluded its "party" status under Tex. Tax Code Ann. § 42.21(a); (2) the buyer had neither a legal right to enforce, nor any real controversy for the trial court to determine, as the buyer did not pursue its Tex. Tax Code Ann. ch. 41 right to protest the valuation before the district's appraisal review board, and thus the board never determined a protest by the buyer as the property owner pursuant to Tex. Tax Code Ann. § 42.01(a); and (3) no proper party having appealed to the district court within the 45-day time limit of Tex. Tax Code Ann. § 42.21(a), it never acquired subject-matter jurisdiction, and the board's valuation became final when those 45 days expired. Koll Bren Fund VI, LP v. Harris County Appraisal Dist., No. 01-07-00321-CV, 2008 Tex. App. LEXIS 1521 (Tex. App. Houston 1st Dist. Feb. 28, 2008).

To the extent that a property owner alleged that a county appraisal district was negligent in its assessment or collection of property taxes, Tex. Civ. Prac. & Rem. Code Ann. § 101.055(1) left intact the district's sovereign immunity. To the extent that the property owner's complaints against the district centered, instead, on the collection of a certain amount of property taxes to be allocated to the sheriff's office, or the amount of taxes assessed against his property, his failure to exhaust his administrative remedies under Tex. Tax Code Ann. §§ 42.09(a)(2), 42.21(a) deprived the trial court of jurisdiction over his claims. Reed v. Prince, 194 S.W.3d 101, 2006 Tex. App. LEXIS 4787 (Tex. App. Texarkana June 2, 2006), cert. denied, 549 U.S. 1308, 127 S. Ct. 1882, 167 L. Ed. 2d 370, 2007 U.S. LEXIS 3641 (U.S. 2007).

SETTLEMENTS. — Because taxpayers' representative stated a property value at a review board hearing, and the taxing authority agreed to that value, the parties had a final agreement under Tex. Tax Code Ann. § 1.111(e), and the taxpayers had no right to appeal the review board's valuation under Tex. Tax Code Ann. § 42.21(a). Mann v. Harris County Appraisal Dist., No. 01-07-00436-CV, 2008 Tex. App. LEXIS 2790 (Tex. App. Houston 1st Dist. Apr. 17, 2008).

TAXPAYER PROTESTS. — Trial court lacked jurisdiction to impose sanctions against an appraisal district pursuant its order relating to a taxpayer's pollution-control exemption in one tax year because the sanctions were for later years as to which the taxpayer failed to utilize the exclusive remedies in the tax code for protesting the assessments. Travis Cent. Appraisal Dist. v. Wells Fargo Bank Minn., N.A., 382 S.W.3d 636, 2012 Tex. App. LEXIS 8636 (Tex. App. Austin Oct. 12, 2012, no pet.).

Pursuant to Tex. Tax Code Ann. § 42.21(e), the partnerships' misnomer in its petition for judicial review did not defeat a trial court's jurisdiction where the partnership amended the petition and corrected the name; the property owner exhausted its administrative remedies and timely filed a petition for judicial review. Reddy P'ship/5900 North Freeway, LP v. Harris County Appraisal Dist., 370 S.W.3d 373, 2012 Tex. LEXIS 566 (Tex. 2012).

Court had jurisdiction of the trustee's suit on tax year 2006, because although the trustee did not refer to the 2006 tax year in his original petition, the record supported a conclusion that the 2005 tax year reference was a mistake, and that the appeal to the court was for the 2006 tax year on which the trustee had filed a notice of protest; the court had jurisdiction to declare the effect of any ownership ruling on the 2008 and 2009 tax years, however, with respect to all other issues involved in the 2008 and 2009 tax years for the relevant accounts for which no protest or appeal was filed, the trial court lacked jurisdiction. Jefferson County Appraisal Dist. v. Morgan, No. 09-11-00517-CV, 2012 Tex. App. LEXIS 1037 (Tex. App. Beaumont Feb. 9, 2012), app. dismissed, No. 09-15-00479-CV, No. 09-16-00034-CV, 2016 Tex. App. LEXIS 12997 (Tex. App. Beaumont Dec. 8, 2016).

Presumed owner did not own the property as of January 1, 2007, and it did not claim rights to protest under the Property Tax Code as either a lessee or an agent; therefore, the presumed owner lacked standing to pursue judicial review as a party who appeals under Tex. Tax Code Ann. § 42.21(a), and the record did not reflect that the successor pursued its right of protest as the actual property owner. Sunblik, Inc. v. Harris County Appraisal Dist., No. 14-10-00198-CV, 2011 Tex. App. LEXIS 4182 (Tex. App. Houston 14th Dist. June 2, 2011).

At least as it is used in Tex. Tax Code Ann. § 41.41(a)(7), the term "property owner" includes one listed as the owner in the tax appraisal rolls who is challenging the determination that he is the owner of property. Accordingly, taxpayers-regardless of whether they were in fact the true owners of the property at issue-were entitled to protest an appraisal review board's determination that they were the owners of the property, and because the taxpayers failed to timely exercise their administrative challenge under Tex. Tax Code Ann. § 42.09(a), a district court did not obtain jurisdiction over their case by an appeal under that portion of the statute. Houston Indep. Sch. Dist. v. Morris, No. 01-10-00043-CV, 2011 Tex. App. LEXIS 1665 (Tex. App. Houston 1st Dist. Mar. 4, 2011), reh'g denied, op. withdrawn, sub. op., 355 S.W.3d 668, 2011 Tex. App. LEXIS 3819 (Tex. App. Houston 1st Dist. May 19, 2011).

Company's argument that Tex. Tax Code Ann. § 42.21(3)(1) operated to allow it to correct or change the party's name presupposed that a business was a proper party entitled to seek judicial review; however, the business did not pursue its right to protest as the property owner, and when no proper party appealed, the trial court did not acquire subject matter jurisdiction and the review board's determination became final, and thus the trial court did not err in granting the district's plea to the jurisdiction. Grocers Supply Co. v. Harris County Appraisal Dist., No. 14-10-00243-CV, 2011 Tex. App. LEXIS 1356 (Tex. App. Houston 14th Dist. Feb. 24, 2011).

Company did not own the property as of January 1, 2009 and it did not claim rights to protest as an lessee or agent under Tex. Tax Code Ann. § 41.413, such that the company lacked standing to pursue judicial review as a party who appealed under Tex. Tax Code Ann. § 42.21(a); the company had conveyed the property to a business, the record did not show that the business pursued its right of protest, and the board had not determined a protest by the business, for purposes of Tex. Tax Code Ann. §§ 42.01(1)(A), 42.21(a). Grocers Supply Co. v. Harris County Appraisal Dist., No. 14-10-00243-CV, 2011 Tex. App. LEXIS 1356 (Tex. App. Houston 14th Dist. Feb. 24, 2011).

To qualify as a party who appeals by seeking judicial review of an appraisal review board's tax determination under Tex. Tax Code Ann. § 42.21(a), a company had to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property under the circumstances stated in Tex. Tax Code Ann. § 41.413. Grocers Supply Co. v. Harris County Appraisal Dist., No. 14-10-00243-CV, 2011 Tex. App. LEXIS 1356 (Tex. App. Houston 14th Dist. Feb. 24, 2011).

Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003. Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

Summary judgment was properly awarded to a county appraisal district and a county appraisal review board in a taxpayer's action challenging the valuation of property because the taxpayer failed to diligently serve the district, a necessary party to the suit under Tex. Tax Code Ann. § 42.21(b); the taxpayer did not serve the district until 11 months after filing its petition for review. Bilinsco Inc. v. Harris County Appraisal Dist., 321 S.W.3d 648, 2010 Tex. App. LEXIS 5835 (Tex. App. Houston 1st Dist. July 22, 2010, no pet.).

Trial court properly granted a county appraisal district's plea to the jurisdiction in real property sellers' action challenging a 2008 tax assessment for the properties because the buyers were the legal owners of the properties on January 1, 2008; the sellers lacked standing to pursue judicial review as a "party who appeals" under Tex. Tax Code Ann. § 42.21(a). Milbank 521 Sam Houston I, LLC v. Harris Cnty. Appraisal Dist., No. 01-09-00541-CV, 2010 Tex. App. LEXIS 3154 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court erred in denying an appraisal district's plea to the jurisdiction in a property seller's petition for judicial review of a 2007 tax assessment for the property because the seller lacked standing under Tex. Tax Code Ann. § 42.21(a) to prosecute the buyer's tax protest; according to the record, the buyer was the legal owner of the property on January 1, 2007. Harris County Appraisal Dist. v. Shen, No. 01-09-00652-CV, 2010 Tex. App. LEXIS 3202 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a real property seller's action challenging a 2008 tax assessment for the property because the seller lacked standing to pursue judicial review under Tex. Tax Code Ann. § 42.21(a); the seller did not own the property as of January 1, 2008. RRB Land Invs., Ltd. v. County Appraisal Dist., No. 01-09-00519-CV, 2010 Tex. App. LEXIS 3191 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Plea to the jurisdiction filed by the county appraisal district was proper, because the partnership, which filed the tax assessment protest, did not own the property as of January 1, 2007 and did not claim rights to protest as either a lessee or an agent, the record did not reflect that the company pursued its right of protest as the actual property owner and was not named as a party until February 2009, and when no proper party timely appealed, the trial court did not acquire subject matter jurisdiction and the appraisal review board's determination became final. Woodway Drive LLC v. Harris County Appraisal Dist., 311 S.W.3d 649, 2010 Tex. App. LEXIS 2494 (Tex. App. Houston 14th Dist. Apr. 8, 2010, no pet.).

To qualify as a "party who appeals" by seeking judicial review of an appraisal-review board's tax determination under Tex. Tax Code Ann. § 42.21(a), a party has to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property. Woodway Drive LLC v. Harris County Appraisal Dist.,

No. 14-09-00524-CV, 2010 Tex. App. LEXIS 1527 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction on a property seller's petition that challenged a 2008 tax assessment for the property because the seller did not own the property as of January 1, 2008; hence, the seller lacked standing to pursue judicial review as a "party who appealed" under Tex. Tax Code Ann. § 42.21(a). Woodway Drive LLC v. Harris County Appraisal Dist., No. 14-09-00524-CV, 2010 Tex. App. LEXIS 1527 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

To qualify as a "party who appeals" by seeking judicial review of an appraisal-review board's tax determination under Tex. Tax Code Ann. § 42.21(a), a party has to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property. Scott Plaza Assocs. v. Harris County Appraisal Dist., No. 14-09-00707-CV, 2010 Tex. App. LEXIS 1532 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a property seller's action that challenged a 2007 tax assessment of the property because the seller did not own the property as of January 1, 2007; hence, the seller lacked standing to pursue judicial review as a "party who appealed" under Tex. Tax Code Ann. § 42.21(a). Scott Plaza Assocs. v. Harris County Appraisal Dist., No. 14-09-00707-CV, 2010 Tex. App. LEXIS 1532 (Tex. App. Houston 14th Dist. Mar. 4, 2010).

Taxpayer's appeal was not barred on jurisdictional grounds for failure to serve the appraisal district or review board within the 45 day deadline described in Tex. Tax Code Ann. § 42.21(a), because there was no indication that serving the parties within the time limit set forth in Tex. Tax Code Ann. § 42.21(a) was a jurisdictional prerequisite. Brooks v. Burnet Cent. Appraisal Dist., 306 S.W.3d 419, 2010 Tex. App. LEXIS 1355 (Tex. App. Austin Feb. 26, 2010, no pet.).

Neither the owner nor the third-party had standing to petition for judicial review of the 2007 property valuation, because the third-party sued to challenge the appraisal review board's order determining protest, the owner was the proper party to pursue a protest, and the owner did not complete the administrative protest process before the appraisal review board. KM-Timbercreek, LLC v. Harris County Appraisal Dist., 312 S.W.3d 722, 2009 Tex. App. LEXIS 8065 (Tex. App. Houston 1st Dist. Oct. 15, 2009, no pet.).

Summary judgment was properly granted to a county appraisal review board in a dispute over the appraised value of commercial property because a trial court lacked jurisdiction under Tex. Tax Code Ann. § 41.45(f) to review the board's order and the procedures employed during a hearing; moreover, a timely petition for review was not filed under Tex. Tax Code Ann. § 42.21(a). Betz Louetta 25 Ltd. v. Appraisal Review Bd., No. 14-07-00587-CV, 2009 Tex. App. LEXIS 282 (Tex. App. Houston 14th Dist. Jan. 15, 2009).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Tex. Tax Code Ann. § 41.45(f) grants the district courts authority to compel appraisal review boards to conduct a protest hearing if the appraisal review board denied the property owner a hearing to which he was entitled, however, Tex. Tax Code Ann. § 41.45(f) does not grant the district courts authority to compel appraisal review boards to conduct additional protest hearings; therefore, a plea to the jurisdiction should have been granted when two taxpayers failed to request a trial de novo after a first protest hearing was held; the taxpayers were not allowed to circumvent the procedures set forth in the Texas Tax Code. Appraisal Review Bd. v. Spencer Square Ltd., 252 S.W.3d 842, 2008 Tex. App. LEXIS 3045 (Tex. App. Houston 14th Dist. Apr. 29, 2008, no pet.).

PERSONAL PROPERTY TAX

Tangible Property

General Overview. — Taxpayer was not entitled to a temporary injunction against the county appraisal district and the county appraisal review board because Tex. Tax Code Ann. §§ 41.41, 42.01, and 42.21 provided an adequate legal remedy for the taxpayer. Further, the proper district court could redress any harm that the taxpayer suffered as a result of administrative actions. Brazoria County Appraisal Dist. v. Notlef, Inc., 721 S.W.2d 391, 1986 Tex. App. LEXIS 8835 (Tex. App. Corpus Christi Oct. 16, 1986, no writ).

REAL PROPERTY TAX

General Overview. — Seller lacked standing to pursue judicial review of the 2007 property tax assessment as a party who appealed under Tex. Tax Code Ann. § 42.21(a), because the seller did not own the property as of January 1, 2007, did not claim rights to protest as either a lessee or an agent, and the assertion that Tex. Tax Code Ann. § 42.21(e)(1) operated to allow the seller to correct or change the party's name presupposed that the buyer was a proper party entitled to seek judicial review and the record did not reflect that the buyer pursued its right of protest as the actual property owner. RRB Land Invs., Ltd. v. Harris County Appraisal Dist., No. 14-09-00317-CV, 2010 Tex. App. LEXIS 792 (Tex. App. Houston 14th Dist. Feb. 4, 2010).

Plea to the jurisdiction should have been granted in a tax dispute because there was a failure to exhaust administrative remedies; mandamus was not permitted due to an adequate remedy at law, Tex. Tax Code Ann. § 41.45(f) did not allow taxpayers to bypass administrative procedures, and an ultra vires exception to exhaustion did not apply. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

On an appeal of the judgment of the trial court determining the appraised value of taxpayer's property and reduced that value from that found by the county appraisal district and county appraisal review board (the county), the court found that the trial court had jurisdiction to review the county's determination under Tex. Tax Code Ann. §§ 1.07(b), 1.11(a), (b), 1.111(c), 1.111(b), 42.21(a) because the county failed to serve notice properly upon the taxpayer. Harris County Appraisal Dist. v. Drever Partners, 938 S.W.2d 196, 1997 Tex. App. LEXIS 271 (Tex. App. Houston 14th Dist. Jan. 23, 1997, no writ).

In an action brought by property owners against an appraisal district board of review (board) for declaratory and injunctive relief, an order that granted the board's motion to dismiss the property owners' action for want of jurisdiction on grounds the property owners failed to timely file their petition was affirmed where the property owners petition was filed beyond the 45 day limit prescribed by Tex. Tax Code. Ann. § 42.21. Flores v. Ft. Bend Cent. Appraisal Dist., 720 S.W.2d 243, 1986 Tex. App. LEXIS 8998 (Tex. App. Houston 14th Dist. Nov. 13, 1986, no writ).

ASSESSMENT & VALUATION

General Overview. — Presumed owner did not own the property as of January 1, 2007, and it did not claim rights to protest under the Property Tax Code as either a lessee or an agent; therefore, the presumed owner lacked standing to pursue judicial review as a party who appeals under Tex. Tax Code Ann. § 42.21(a), and the record did not reflect that the successor pursued its right of protest as the actual property owner. Sunblik, Inc. v. Harris County Appraisal Dist., No. 14-10-00198-CV, 2011 Tex. App. LEXIS 4182 (Tex. App. Houston 14th Dist. June 2, 2011).

Trial court properly granted appellees' plea to the jurisdiction in a taxpayer's action alleging that a county appraisal review board's mistreatment and failure to permit the taxpayer an opportunity to present evidence was a denial of due process because it was undisputed that the taxpayer was entitled to de novo review of the board's determination in the district court; the taxpayer filed that action, and was entitled to present evidence at a trial de novo in the underlying action. Lambertz v. Robinson, No. 14-09-00650-CV, 2010 Tex. App. LEXIS 2086 (Tex. App. Houston 14th Dist. Mar. 25, 2010).

Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Plea to the jurisdiction in favor of the county appraisal district was proper, because the company lacked standing to protest the ad valorem property-tax protest for tax year 2007 before the district or appeal its determination of the protest since the company did not own the property as of January 1, 2007, the group did not exercise any right to protest and the district did not determine any protest by these parties, and there was no evidence the group held themselves out as the company or requested that the district refer to them by that name in the appraisal records. Dl Louetta Vill. Square LP v. Harris County Appraisal Dist., No. 14-08-00549-CV, 2009 Tex. App. LEXIS 9685 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Because real property had been sold prior to a disputed valuation, the seller could not appeal the valuation under Tex. Tax Code Ann. § 42.01, and jurisdiction was not obtained by amending the petition to include the buyer as a plaintiff pursuant to Tex. Tax Code Ann. § 42.21(e)(1) after the 45-day period for appeal under § 42.21(a) had run. Mei Hsu Acquisition Corp. v. Harris County Appraisal Dist., No. 01-08-00690 -CV, 2009 Tex. App. LEXIS 7727 (Tex. App. Houston 1st Dist. Oct. 1, 2009).

Ad valorem tax case was properly dismissed for failure to timely join owner of taxed property as a necessary party pursuant to Tex. Tax. Code Ann. § 42.21. Taufiq v. Harris County Appraisal Dist., 6 S.W.3d 652, 1999 Tex. App. LEXIS 7462 (Tex. App. Houston 14th Dist. Oct. 7, 1999, no pet.).

Dismissal for lack of jurisdiction of petition for review of ad valorem appraisal values was proper where taxpayer failed to comply with Tex. Tax Code Ann. § 42.21 as to procedure after having availed himself of the statutory benefits. Hurst v. Guadalupe County Appraisal Dist., 752 S.W.2d 231, 1988 Tex. App. LEXIS 1612 (Tex. App. San Antonio June 22, 1988, no writ).

In an action brought by property owners against an appraisal district board of review (board) for declaratory and injunctive relief, an order that granted the board's motion to dismiss the property owners' action for want of jurisdiction on grounds the property owners failed to timely file their petition was affirmed where the property owners petition was filed beyond the 45 day limit prescribed by Tex. Tax Code. Ann. § 42.21. Flores v. Ft. Bend Cent. Appraisal Dist., 720 S.W.2d 243, 1986 Tex. App. LEXIS 8998 (Tex. App. Houston 14th Dist. Nov. 13, 1986, no writ).

ASSESSMENT METHODS & TIMING. — 11 U.S.C.S. § 108(a) did not give the debtor additional time beyond 60 days to file a challenge the state Appraisal Review Board's determination of a prior year's property taxes under 11 U.S.C.S. § 505, although the determination for that prior year arguably never became final under Tex. Tax Code Ann. § 42.21(a). In re Vill. at Oakwell Farms, Ltd., 428 B.R. 372, 53 Bankr. Ct. Dec. (LRP) 29, 2010 Bankr. LEXIS 1248 (Bankr. W.D. Tex. 2010), dismissed, No. 09-52932-C, 2010 Bankr. LEXIS 2655 (Bankr. W.D. Tex. Apr. 26, 2010).

VALUATION. — If a suit appealing an appraisal review board's decision meets the property identification and filing requirements, the trial court has subject matter jurisdiction, even if the petition misidentifies the property owner and must be corrected through amendment. Accordingly, jurisdiction was proper where the property's identity was undisputed and an amended petition was filed to correct the owner's misidentification; a constitutional challenge based on the possibility of an advisory opinion failed. Town & Country Suites, L.C. v. Harris County Appraisal Dist., No. 01-13-00869-CV, 2014 Tex. App. LEXIS 7125 (Tex. App. Houston 1st Dist. July 1, 2014), op. withdrawn, sub. op., reh'g denied, 461 S.W.3d 208, 2015 Tex. App. LEXIS 694 (Tex. App. Houston 1st Dist. Jan. 27, 2015).

Based on the presumption in Tex. Tax Code Ann. § 1.07(c) that an appraisal review board's decision was received at the time it was mailed on August 29, a taxpayer's petition filed on October 16 was untimely under former Tex. Tax Code Ann. § 42.21(a), requiring dismissal under Tex. R. App. P. 42.3. Palaniappan v. Harris County Appraisal Dist., No. 01-11-00344-CV, 2012 Tex. App. LEXIS 10335 (Tex. App. Houston 1st Dist. Dec. 13, 2012), op. withdrawn, sub. op., No. 01-11-00344-CV, 2013 Tex. App. LEXIS 15460 (Tex. App. Houston 1st Dist. Dec. 31, 2013).

Taxpayer failed to appeal the appraisal review board's final orders he now wished to attack, comprising the final orders the Appraisal District issued during 2005, 2006, 2008 and 2009, and the taxpayer did not timely file petitions for review with respect to the District's final orders, and therefore, he was foreclosed from obtaining judicial review of the District's property appraisal determinations, Tex. Tax Code Ann. § 42.21(a); because the taxpayer did not appeal from the final appraisal orders in issue, they became final, Tex. Tax Code Ann. § 42.21(a). Townsend v. Montgomery Cent. Appraisal Dist., No. 09-10-00394-CV, 2011 Tex. App. LEXIS 5782 (Tex. App. Beaumont July 28, 2011).

Summary judgment was properly awarded to a county appraisal district and a county appraisal review board in a taxpayer's action challenging the valuation of property because the taxpayer failed to diligently serve the district, a necessary party to the suit under Tex. Tax Code Ann. § 42.21(b); the taxpayer did not serve the district until 11 months after filing its petition for review. Bilinsco Inc. v. Harris County Appraisal Dist., 321 S.W.3d 648, 2010 Tex. App. LEXIS 5835 (Tex. App. Houston 1st Dist. July 22, 2010, no pet.).

Trial court properly granted a county appraisal district's plea to the jurisdiction in real property sellers' action challenging a 2008 tax assessment for the properties because the buyers were the legal owners of the properties on January 1, 2008; the sellers lacked standing to pursue judicial review as a "party who appeals" under Tex. Tax Code Ann. § 42.21(a). Milbank 521 Sam Houston I, LLC v. Harris Cnty. Appraisal Dist., No. 01-09-00541-CV, 2010 Tex. App. LEXIS 3154 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court erred in denying an appraisal district's plea to the jurisdiction in a property seller's petition for judicial review of a 2007 tax assessment for the property because the seller lacked standing under Tex. Tax Code Ann. § 42.21(a) to prosecute the buyer's tax protest; according to the record, the buyer was the legal owner of the property on January 1, 2007. Harris County Appraisal Dist. v. Shen, No. 01-09-00652-CV, 2010 Tex. App. LEXIS 3202 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Trial court properly granted a county appraisal district's plea to the jurisdiction in a real property seller's action challenging a 2008 tax assessment for the property because the seller lacked standing to pursue judicial review under Tex. Tax Code Ann. § 42.21(a); the seller did not own the property as of January 1, 2008. RRB Land Invs., Ltd. v. County Appraisal Dist., No. 01-09-00519-CV, 2010 Tex. App. LEXIS 3191 (Tex. App. Houston 1st Dist. Apr. 29, 2010).

Neither the owner nor the third-party had standing to petition for judicial review of the 2007 property valuation, because the third-party sued to challenge the appraisal review board's order determining protest, the owner was the proper party to pursue a protest, and the owner did not complete the administrative protest process before the appraisal review board. KM-Timbercreek, LLC v. Harris County Appraisal Dist., 312 S.W.3d 722, 2009 Tex. App. LEXIS 8065 (Tex. App. Houston 1st Dist. Oct. 15, 2009, no pet.).

Because taxpayers' representative stated a property value at a review board hearing, and the taxing authority agreed to that value, the parties had a final agreement under Tex. Tax Code

Ann. § 1.111(e), and the taxpayers had no right to appeal the review board's valuation under Tex. Tax Code Ann. § 42.21(a). Mann v. Harris County Appraisal Dist., No. 01-07-00436-CV, 2008 Tex. App. LEXIS 2790 (Tex. App. Houston 1st Dist. Apr. 17, 2008).

TORTS
Public Entity Liability
Immunity

Sovereign Immunity. — To the extent that a property owner alleged that a county appraisal district was negligent in its assessment or collection of property taxes, Tex. Civ. Prac. & Rem. Code Ann. § 101.055(1) left intact the district's sovereign immunity. To the extent that the property owner's complaints against the district centered, instead, on the collection of a certain amount of property taxes to be allocated to the sheriff's office, or the amount of taxes assessed against his property, his failure to exhaust his administrative remedies under Tex. Tax Code Ann. §§ 42.09(a)(2), 42.21(a) deprived the trial court of jurisdiction over his claims. Reed v. Prince, 194 S.W.3d 101, 2006 Tex. App. LEXIS 4787 (Tex. App. Texarkana June 2, 2006), cert. denied, 549 U.S. 1308, 127 S. Ct. 1882, 167 L. Ed. 2d 370, 2007 U.S. LEXIS 3641 (U.S. 2007).

Sec. 42.22. [2 Versions: As amended by Acts 1993, 73rd Leg., ch. 667] Venue.

Venue is in the county in which the appraisal review board that issued the order appealed is located, except as provided by Section 42.221. Venue is in Travis County if the order appealed was issued by the comptroller.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 151, effective August 14, 1981; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 55, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 667 (S.B. 548), § 1, effective September 1, 1993.

Sec. 42.22. [2 Versions: As amended by Acts 1993, 73rd Leg., ch. 1033] Venue.

(a) Except as provided by Subsections (b) and (c), and by Section 42.221, venue is in the county in which the appraisal review board that issued the order appealed is located.

(b) Venue of an action brought under Section 42.01(1) is in the county in which the property is located or in the county in which the appraisal review board that issued the order is located.

(c) Venue is in Travis County if the order appealed was issued by the comptroller.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 151, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 55, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 1033 (H.B. 301), § 1, effective September 1, 1993.

Sec. 42.221. Consolidated Appeals for Multicounty Property.

(a) The owner of property of a telecommunications provider, as defined by Section 51.002, Utilities Code, or the owner of property regulated by the Railroad Commission of Texas, the federal Surface Transportation Board, or the Federal Energy Regulatory Commission that runs through or operates in more than one county and is appraised by more than one appraisal district may appeal an order of an appraisal review board relating to the property running through or operating in more than one county to the district court of any county in which a portion of the property is located or operated if the order relating to that portion of the property is appealed.

(b) A petition for review of each appraisal review board order under this section must be filed with the court as provided by Section 42.21.

(c) If only one appeal by the owner of property subject to this section is pending before the court in an appeal from the decision of an appraisal review board of a district other than the appraisal district for that county, any party to the suit may, not earlier than the 30th day before and not later than the 10th day before the date set for the hearing, make a motion to transfer the suit to a district court of the county in which the appraisal review board from which the appeal is taken is located. In the absence of a showing that further appeals under this section will be filed, the court shall transfer the suit.

(d) When the owner files the first petition for review under this section for a tax year, the owner shall include with the petition a list of each appraisal district in which the property is appraised for taxation in that tax year.

(e) The court shall consolidate all the appeals for a tax year relating to a single property subject to this section for which a petition for review is filed with the court and may consolidate other appeals relating to other property subject to this section of the same owner if the property is located in one or more of the counties on the list required by Subsection (d). Except as provided by this subsection, on the motion of the owner of a property subject to this section the court shall grant a continuance to provide the owner with an opportunity to include in the proceeding appeals of appraisal review board orders from additional appraisal districts. The court may not grant a continuance to include an appeal of an appraisal review board order that relates to a property subject to this section in that tax year after the time for filing a petition for review of that order has expired.

(f) This section does not affect the property owner's right to file a petition for review of an individual appraisal district's order relating to a property subject to this section in the district court in the county in which the appraisal review board is located.

(g) On a joint motion or the separate motions of at least 60 percent of the appraisal districts that are defendants in a consolidated suit filed before the 45th day after the date on which the property owner's petitions for review of the appraisal review board orders relating to a property subject to this section for that tax year must be filed, the court shall transfer the suit to a district court of the county named in the motion or motions if that county is one in which one of the appraisal review boards from which an appeal was taken is located.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 667 (S.B. 548), § 2, effective September 1, 1993; enacted by Acts 1993, 73rd Leg., ch. 1033 (H.B. 301), § 2, effective September 1, 1993; am. Acts 2003, 78th Leg., ch. 1041 (H.B. 1082), § 3, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1141 (S.B. 287), § 3, effective June 19, 2015.

Sec. 42.225. Property Owner's Right to Appeal Through Arbitration.

(a) On motion by a property owner who appeals an appraisal review board order under this chapter, the court shall submit the appeal to nonbinding arbitration. The court shall order the nonbinding arbitration to be conducted in accordance with Chapter 154, Civil Practice and Remedies Code. If the appeal proceeds to trial following an arbitration award or finding under this subsection, either party may introduce the award or finding into evidence. In addition, the court shall award the property owner reasonable attorney fees if the trial was not requested by the property owner and the determination of the appeal results in an appraised value for the owner's property that is equal to or less than the appraised value under the arbitration award or finding. However, the amount of an award of attorney fees under this subsection is subject to the same limitations as those provided by Section 42.29.

(b) On motion by the property owner, the court shall order the parties to an appeal of an appraisal review board order under this chapter to submit to binding arbitration if the appraisal district joins in the motion or consents to the arbitration. A binding arbitration award under this subsection is binding and enforceable in the same manner as a contract obligation.

(c) The court shall appoint an impartial third party to conduct an arbitration under this section. The impartial third party is appointed by the court and serves as provided by Subchapter C, Chapter 154, Civil Practice and Remedies Code.

(d) Each party or counsel for the party may present the position of the party before the impartial third party, who must render a specific arbitration award.

(e) Prior to submission of a case to arbitration the court shall determine matters related to jurisdiction, venue, and interpretation of the law.

(f) Except as provided in this section, an arbitration award may include any remedy or relief that a court could order under this chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 412 (S.B. 783), § 1, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 1031 (S.B. 893), § 9, effective September 1, 1993.

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CIVIL PROCEDURE
Dismissals
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Failures to Prosecute. — In affirming dismissal of a tax protest, the court did not agree that the legislature intended Tex. Tax. Code Ann. § 42.225(a) to mean—as a taxpayer's argument implied—that a party could avoid an otherwise-supportable dismissal for want of prosecution by the bare act of invoking the statute at any moment before the trial court dismissed the case. Nat'l Golf Operating, P.S., L.P. v. Williamson County Appraisal Dist., 251 S.W.3d 149, 2008 Tex. App. LEXIS 1815 (Tex. App. Austin Mar. 13, 2008, no pet.).

ALTERNATIVE DISPUTE RESOLUTION

Validity of ADR Methods. — Arbitration statute that allowed property owner appealing appraisal order to unilaterally request binding arbitration was unconstitutional because it was an impermissible delegation of judicial power, pursuant to Tex. Const. art. V, § 1, and violated the separation-of-powers principle, pursuant to Tex. Const. art. I, § 13. Hays County Appraisal Dist. v. Mayo Kirby Springs, 903 S.W.2d 394, 1995 Tex. App. LEXIS 1248 (Tex. App. Austin June 7, 1995, no writ).

TAX LAW
State & Local Taxes
Administration & Proceedings

Taxpayer Protests. — In affirming dismissal of a tax protest, the court did not agree that the legislature intended Tex. Tax. Code Ann. § 42.225(a) to mean—as a taxpayer's argument implied—that a party could avoid an otherwise-supportable dismissal for want of prosecution by the bare act of invoking the statute at any moment before the trial court dismissed the case. Nat'l Golf Operating, P.S., L.P. v. Williamson County Appraisal Dist., 251 S.W.3d 149, 2008 Tex. App. LEXIS 1815 (Tex. App. Austin Mar. 13, 2008, no pet.).

Sec. 42.226. Mediation.

On motion by a party to an appeal under this chapter, the court shall enter an order requiring the parties to attend mediation. The court may enter an order requiring the parties to attend mediation on its own motion.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 16, effective September 1, 2011.

Sec. 42.227. Pretrial Settlement Discussions.

(a) A property owner or appraisal district that is a party to an appeal under this chapter may request that the parties engage in settlement discussions, including through an informal settlement conference or a form of alternative dispute resolution. The request must be in writing and delivered to the other party before the date of trial. The court on motion of either party shall enter orders necessary to implement this section, including an order:

(1) specifying the form that the settlement discussions must take; or

(2) changing a deadline to designate experts prescribed by Subsection (c).

(b) On or before the 120th day after the date the written request is delivered under Subsection (a), each party or the party's attorney of record shall attend the settlement discussions and make a good faith effort to resolve the matter under appeal.

(c) If the appraisal district is unable for any reason to attend the settlement discussions on or before the 120th day after the date the written request is delivered under Subsection (a), the deadline to designate experts for the appeal is, notwithstanding a deadline prescribed by the Texas Rules of Civil Procedure:

(1) with regard to all experts testifying for a party seeking affirmative relief, 60 days before the date of trial; and

(2) with regard to all other experts, 30 days before the date of trial.

(d) If a property owner is unable for any reason to attend the settlement discussions on or before the 120th day after the date the written request is delivered under Subsection (a), Section 42.23(d) does not apply to the parties to the appeal.

(e) An appraisal district may not request or require a property owner to waive a right under this title as a condition of attending a settlement discussion.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1270 (S.B. 593), § 1, effective June 20, 2015.

Sec. 42.23. Scope of Review.

(a) Review is by trial de novo. The district court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally.

(b) The court may not admit in evidence the fact of prior action by the appraisal review board or comptroller, except to the extent necessary to establish its jurisdiction.

(c) Any party is entitled to trial by jury on demand.

(d) Each party to an appeal is considered a party seeking affirmative relief for the purpose of discovery regarding expert witnesses under the Texas Rules of Civil Procedure if, on or before the 120th day after the date the appeal is filed, the property owner:

(1) makes a written offer of settlement;

(2) requests alternative dispute resolution; and

(3) designates, in response to an appropriate written discovery request, which cause of action under this chapter is the basis for the appeal.

(e) For purposes of Subsection (d), a property owner may designate a cause of action under Section 42.25 or 42.26 as the basis for an appeal, but may not designate a cause of action under both sections as the basis for the appeal. Discovery regarding a cause of action that is not specifically designated by the property owner under Subsection (d) shall be conducted as provided by the Texas Rules of Civil Procedure. The court may enter a protective order to modify the provisions of this subsection under Rule 192.6 of the Texas Rules of Civil Procedure.

(f) For purposes of a no-evidence motion for summary judgment filed by a party to an appeal under this chapter, the offer of evidence, including an affidavit or testimony, by any person, including the appraisal district, the property owner, or the owner's agent, that was presented at the hearing on the protest before the appraisal review board constitutes sufficient evidence to deny the motion.

(g) For the sole purpose of admitting expert testimony to determine the value of chemical processing property or utility property in an appeal brought under this chapter and for no other purpose under this title, including the rendition of property under Chapter 22, the property is considered to be personal property.

(h) Evidence, argument, or other testimony offered at an appraisal review board hearing by a property owner or agent is not admissible in an appeal under this chapter unless:

(1) the evidence, argument, or other testimony is offered to demonstrate that there is sufficient evidence to deny a no-evidence motion for summary judgment filed by a party to the appeal or is necessary for the determination of the merits of a motion for summary judgment filed on another ground;

(2) the property owner or agent is designated as a witness for purposes of trial and the testimony offered at the appraisal review board hearing is offered for impeachment purposes; or

(3) the evidence is the plaintiff's testimony at the appraisal review board hearing as to the value of the property.

(i) **[Effective until January 1, 2020]** If an appraisal district employee testifies as to the value of real property in an appeal under Section 42.25 or 42.26, the court may give preference to an employee who is a person authorized to perform an appraisal of real estate under Section 1103.201, Occupations Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 152, effective August 14, 1981; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 56, effective September 1, 1991; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 25, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 17, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 26, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 481 (S.B. 1760), § 9, effective January 1, 2020.

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ADMINISTRATIVE LAW
Judicial Review
Reviewability

Factual Determinations. — Where taxpayer asserted that the district court may reduce the appraised value found by the appraisal review board, but it may not increase it, the appellate court stressed that review by the district court was de novo, evidence or findings by the appraisal review board was not admissible under Tex. Tax Code Ann. § 42.23, and there was no restriction on the district court's power to raise as well as lower the appraisal review board's order if justified by the evidence. Cherokee Water Co. v. Gregg County Appraisal Dist., 773 S.W.2d 949, 1989 Tex. App. LEXIS 1746 (Tex. App. Tyler June 30, 1989), writ granted No. 9052 (Tex. 1990), aff'd, 801 S.W.2d 872, 1990 Tex. LEXIS 157 (Tex. 1990).

STANDARDS OF REVIEW
De Novo Review. — Plaintiff taxpayer was entitled to a trial de novo concerning plaintiff's property valuation under Tex. Tax. Code Ann. § 42.23, after plaintiff timely protested to defendant review board, appeared at the protest hearing, and timely filed notice of appeal with defendant as well as filed a timely petition in the district court. National Pipe & Tube Co. v. Liberty County Cent. Appraisal Dist., 805 S.W.2d 593, 1991 Tex. App. LEXIS 808 (Tex. App. Beaumont Feb. 28, 1991, writ denied).

Trial court had authority to determine the fair market value of the taxpayer's property pursuant to Tex. Tax Code Ann. §§ 42.23(a) and 42.24 because the appeal of the district's appraisal was by trial de novo. Cherokee Water Co. v. Gregg County Appraisal Dist., 801 S.W.2d 872, 1990 Tex. LEXIS 157 (Tex. 1990).

CIVIL PROCEDURE
Judgments
Preclusion & Effect of Judgments
Estoppel

Judicial Estoppel. — Judicial estoppel did not preclude property owners from asserting on appeal in the district court that the tax appraisal value of the property should be less than the value they asserted at the appraisal review board, because judicial estoppel only applied in subsequent actions, and the appeal constituted the same proceeding. Curry v. Harris County Appraisal Dist., 434 S.W.3d 815, 2014 Tex. App. LEXIS 6151 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

EVIDENCE
Inferences & Presumptions

General Overview. — Supreme Court of Texas disagrees with the proposition that cases asserting double taxation should be determined by presumption rather than proof; nothing in civil suits suggests that the court should ignore evidence about what property was or was not included in making its decision. Matagorda County Appraisal Dist. v. Coastal Liquids Partners, L.P., 165 S.W.3d 329, 160 Oil & Gas Rep. 977, 2005 Tex. LEXIS 423 (Tex. 2005).

TESTIMONY

Presentation of Evidence. — Part of the trial de novo mandated by Tex. Tax Code Ann. § 42.23(a) in a property tax appeal encompassed the use of applicable civil rules, including Tex. R. Civ. P. 270, which allowed supplemental evidence if it was decisive. Therefore, the trial court did not err in allowing the appraisal district to introduce the taxpayer's complete applications for exemptions after the taxpayer sought to broaden the scope of its claim for an exemption. Harvest Life Found. v. Harris County Appraisal Dist., No. 14-11-01038-CV, 2013 Tex. App. LEXIS 6906 (Tex. App. Houston 14th Dist. June 6, 2013).

TAX LAW
State & Local Taxes
Administration & Proceedings

Judicial Review. — Part of the trial de novo mandated by Tex. Tax Code Ann. § 42.23(a) in a property tax appeal encompassed the use of applicable civil rules, including Tex. R. Civ. P. 270, which allowed supplemental evidence if it was decisive. Therefore, the trial court did not err in allowing the appraisal district to introduce the taxpayer's complete applications for exemptions after the taxpayer sought to broaden the scope of its claim for an exemption. Harvest Life Found. v. Harris County Appraisal Dist., No. 14-11-01038-CV, 2013 Tex. App. LEXIS 6906 (Tex. App. Houston 14th Dist. June 6, 2013).

Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003. Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

Trial court properly granted a plea to the jurisdiction filed by a county appraisal district and a county appraisal review board in a taxpayer's action challenging a property tax appraisal because although Tex. Tax Code Ann. § 42.23(a) provided de novo review as a remedy for the statutory claim of valuation, it did not expressly grant the trial court with authority to order relief of the constitutional claims. Parra Furniture & Appliance Ctr., Inc. v. Cameron Appraisal Dist., No. 13-09-00211-CV, 2010 Tex. App. LEXIS 1321 (Tex. App. Corpus Christi Feb. 25, 2010).

Taxing authorities' summary judgment evidence showed that the homeowners, through their authorized agent, entered into an appraisal agreement with Harris County Appraisal District, under Tex. Tax Code Ann. § 1.111(e); hence, the agreement was not subject to a statutory suit for judicial review under Tex. Tax Code Ann. § 42.23, and the trial court did not err by granting summary judgment in favor of the taxing authorities. Amidei v. Harris County Appraisal Dist., No. 01-08-00833-CV, 2009 Tex. App. LEXIS 5559 (Tex. App. Houston 1st Dist. July 16, 2009).

Plea to the jurisdiction should have been granted in a tax dispute because there was a failure to exhaust administrative remedies; mandamus was not permitted due to an adequate remedy at law, Tex. Tax Code Ann. § 41.45(f) did not allow taxpayers to bypass administrative procedures, and an ultra vires exception to exhaustion did not apply. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

Tex. Tax Code Ann. § 41.45(f) grants the district courts authority to compel appraisal review boards to conduct a protest hearing if the appraisal review board denied the property owner a hearing to which he was entitled, however, Tex. Tax Code Ann. § 41.45(f)

does not grant the district courts authority to compel appraisal review boards to conduct additional protest hearings; therefore, a plea to the jurisdiction should have been granted when two taxpayers failed to request a trial de novo after a first protest hearing was held; the taxpayers were not allowed to circumvent the procedures set forth in the Texas Tax Code. Appraisal Review Bd. v. Spencer Square Ltd., 252 S.W.3d 842, 2008 Tex. App. LEXIS 3045 (Tex. App. Houston 14th Dist. Apr. 29, 2008, no pet.).

Appellate court overruled the taxpayer's challenge to the factual and legal sufficiency of the evidence, because the only evidence which was presented concerning the values of the property in question were those advanced by the county appraisal district, and since the burden of proof was on the taxpayer to show an excessive evaluation and he presented no proof of that proposition, it was also factually sufficient. Daily v. Bowie County Appraisal Dist., No. 06-07-00055-CV, 2007 Tex. App. LEXIS 9222 (Tex. App. Texarkana Nov. 28, 2007).

TAXPAYER PROTESTS. — Assignee of a limited partnership interest was not a property owner entitled to appeal a protest ruling under Tex. Tax Code Ann. §§ 1.111, 41.41(a)(9), 42.01(1)(A), 42.21, 42.23, 42.015 because the assignee was not an owner of the partnership's property under Tex. Bus. Orgs. Code Ann. §§ 152.101, 152.056, 153.003. Bexar Appraisal Dist. v. Am. Opportunity for Housing-Perrin Oaks, L.L.C., No. 04-10-00278-CV, 2010 Tex. App. LEXIS 9648 (Tex. App. San Antonio Dec. 8, 2010).

Tex. Tax Code Ann. § 41.45(f) grants the district courts authority to compel appraisal review boards to conduct a protest hearing if the appraisal review board denied the property owner a hearing to which he was entitled, however, Tex. Tax Code Ann. § 41.45(f) does not grant the district courts authority to compel appraisal review boards to conduct additional protest hearings; therefore, a plea to the jurisdiction should have been granted when two taxpayers failed to request a trial de novo after a first protest hearing was held; the taxpayers were not allowed to circumvent the procedures set forth in the Texas Tax Code. Appraisal Review Bd. v. Spencer Square Ltd., 252 S.W.3d 842, 2008 Tex. App. LEXIS 3045 (Tex. App. Houston 14th Dist. Apr. 29, 2008, no pet.).

REAL PROPERTY TAX

General Overview. — Plea to the jurisdiction should have been granted in a tax dispute because there was a failure to exhaust administrative remedies; mandamus was not permitted due to an adequate remedy at law, Tex. Tax Code Ann. § 41.45(f) did not allow taxpayers to bypass administrative procedures, and an ultra vires exception to exhaustion did not apply. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

ASSESSMENT & VALUATION

General Overview. — Taxing authorities' summary judgment evidence showed that the homeowners, through their authorized agent, entered into an appraisal agreement with Harris County Appraisal District, under Tex. Tax Code Ann. § 1.111(e); hence, the agreement was not subject to a statutory suit for judicial review under Tex. Tax Code Ann. § 42.23, and the trial court did not err by granting summary judgment in favor of the taxing authorities. Amidei v. Harris County Appraisal Dist., No. 01-08-00833-CV, 2009 Tex. App. LEXIS 5559 (Tex. App. Houston 1st Dist. July 16, 2009).

VALUATION. — Judicial estoppel did not preclude property owners from asserting on appeal in the district court that the tax appraisal value of the property should be less than the value they asserted at the appraisal review board, because judicial estoppel only applied in subsequent actions, and the appeal constituted the same proceeding. Curry v. Harris County Appraisal Dist., 434 S.W.3d 815, 2014 Tex. App. LEXIS 6151 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

Trial court properly granted a plea to the jurisdiction filed by a county appraisal district and a county appraisal review board in a taxpayer's action challenging a property tax appraisal because although Tex. Tax Code Ann. § 42.23(a) provided de novo review as a remedy for the statutory claim of valuation, it did not expressly grant the trial court with authority to order relief of the constitutional claims. Parra Furniture & Appliance Ctr., Inc. v. Cameron Appraisal Dist., No. 13-09-00211-CV, 2010 Tex. App. LEXIS 1321 (Tex. App. Corpus Christi Feb. 25, 2010).

Sec. 42.231. Jurisdiction of District Court; Remand of Certain Appeals.

(a) This section applies only to an appeal by a property owner of an order of the appraisal review board determining:

(1) a protest by the property owner as provided by Subchapter C, Chapter 41; or

(2) a motion filed by the property owner under Section 25.25.

(b) Subject to the provisions of this section and notwithstanding any other law, if a plea to the jurisdiction is filed in the appeal on the basis that the property owner failed to exhaust the property owner's administrative remedies, the court may, in lieu of dismissing the appeal for lack of jurisdiction, remand the action to the appraisal review board with instructions to allow the property owner an opportunity to cure the property owner's failure to exhaust administrative remedies.

(c) An action remanded to the appraisal review board under Subsection (b) is considered to be a timely filed protest under Subchapter C, Chapter 41, or motion under Section 25.25, as applicable. The appraisal review board shall schedule a hearing on the protest or motion and issue a written decision determining the protest or motion in the manner required by Subchapter C, Chapter 41, or Section 25.25, as applicable.

(d) A determination of the appraisal review board relating to the remanded action may be appealed to the court that remanded the action to the board. A determination appealed to the court under this subsection may not be the subject of a plea to the jurisdiction on the basis of the property owner's failure to exhaust administrative remedies.

(e) Notwithstanding Subsection (b), on agreement of each party to the appeal and with the approval of the court, the parties to the appeal may waive remand of the action to the appraisal review board and elect that the court determine the appeal on the merits. If the parties waive remand of the action under this subsection, each party is considered to have exhausted the party's administrative remedies.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 157 (H.B. 380), § 2, effective September 1, 2019.

Sec. 42.24. Action by Court.

In determining an appeal, the district court may:

(1) fix the appraised value of property in accordance with the requirements of law if the appraised value is at issue;

(2) enter the orders necessary to ensure equal treatment under the law for the appealing property owner if inequality in the appraisal of his property is at issue; or

(3) enter other orders necessary to preserve rights protected by and impose duties required by the law.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

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De Novo Review. — Trial court had authority to determine the fair market value of the taxpayer's property pursuant to Tex. Tax Code Ann. §§ 42.23(a) and 42.24 because the appeal of the district's appraisal was by trial de novo. Cherokee Water Co. v. Gregg County Appraisal Dist., 801 S.W.2d 872, 1990 Tex. LEXIS 157 (Tex. 1990).

CIVIL PROCEDURE
Judgments
Preclusion & Effect of Judgments
Estoppel

Judicial Estoppel. — Judicial estoppel did not preclude property owners from asserting on appeal in the district court that the tax appraisal value of the property should be less than the value they asserted at the appraisal review board, because judicial estoppel only applied in subsequent actions, and the appeal constituted the same proceeding. Curry v. Harris County Appraisal Dist., 434 S.W.3d 815, 2014 Tex. App. LEXIS 6151 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

Judicial Review. — Trial court, having previously found that the taxpayer was entitled to a full exemption under Tex. Tax Code Ann. § 11.31, was authorized under Tex. Tax Code Ann. § 42.24(3) to enter any orders necessary to carry out the earlier, unappealed judgment; because the record showed that the district did not comply with the earlier judgment by refunding the taxpayer under Tex. Tax Code Ann. § 42.43(a) the amount it paid under protest, the order directing the district to pay a sanction was not arbitrary or unreasonable. Travis Cent. Appraisal Dist. v. Wells Fargo Bank, No. 03-09-00013-CV, 2010 Tex. App. LEXIS 1921 (Tex. App. Austin Mar. 19, 2010).

Trial court properly granted a plea to the jurisdiction filed by a county appraisal district and a county appraisal review board in a taxpayer's action challenging a property tax appraisal because, as governmental units, the district and the board were entitled to the protections of sovereign immunity; Tex. Tax Code Ann. § 42.24(3) did not provide a limited waiver of immunity Parra Furniture & Appliance Ctr., Inc. v. Cameron Appraisal Dist., No. 13-09-00211-CV, 2010 Tex. App. LEXIS 1321 (Tex. App. Corpus Christi Feb. 25, 2010).

For purposes of Tex. Tax Code Ann. § 42.24(3), the trial court, having determined that the taxpayer was entitled to a full exemption for purposes of Tex. Const. art. VIII, § 1-l and Tex. Tax Code Ann. § 11.31 as urged, was authorized to enter any orders necessary to carry out the earlier, unappealed judgment; because the record established that the district did not comply with the earlier judgment by refunding, under Tex. Tax Code Ann. § 42.43(a), the taxpayer the amount it had paid under protest, the order directing the district to pay that amount as a sanction was neither arbitrary nor unreasonable. Although the district disagreed with the trial court's prior ruling, the district did not perfect an appeal from that ruling and the trial court was entitled to compel compliance with its prior order. Travis Cent. Appraisal Dist. v. Wells Fargo Bank Minn., N.A., No. 03-09-00013-CV, 2010 Tex. App. LEXIS 427 (Tex. App. Austin Jan. 26, 2010), op. withdrawn, sub. op., No. 03-09-00013-CV, 2010 Tex. App. LEXIS 1921 (Tex. App. Austin Mar. 19, 2010).

Plea to the jurisdiction should have been granted in a tax dispute because there was a failure to exhaust administrative remedies; mandamus was not permitted due to an adequate remedy at law, Tex. Tax Code Ann. § 41.45(f) did not allow taxpayers to bypass administrative procedures, and an ultra vires exception to exhaustion did not apply. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

TAXPAYER PROTESTS. — Neither the owner nor the third-party had standing to petition for judicial review of the 2007 property valuation, because the third-party sued to challenge the appraisal review board's order determining protest, the owner was the proper party to pursue a protest, and the owner did not complete the administrative protest process before the appraisal review board. KM-Timbercreek, LLC v. Harris County Appraisal Dist., 312 S.W.3d 722, 2009 Tex. App. LEXIS 8065 (Tex. App. Houston 1st Dist. Oct. 15, 2009, no pet.).

REAL PROPERTY TAX
General Overview. — Plea to the jurisdiction should have been granted in a tax dispute because there was a failure to exhaust administrative remedies; mandamus was not permitted due to an adequate remedy at law, Tex. Tax Code Ann. § 41.45(f) did not allow taxpayers to bypass administrative procedures, and an ultra vires exception to exhaustion did not apply. Appraisal Review Bd. v. O'Connor & Assocs., 267 S.W.3d 413, 2008 Tex. App. LEXIS 6299 (Tex. App. Houston 14th Dist. Aug. 19, 2008, no pet.).

ASSESSMENT & VALUATION
Valuation. — Judicial estoppel did not preclude property owners from asserting on appeal in the district court that the tax appraisal value of the property should be less than the value they asserted at the appraisal review board, because judicial estoppel only applied in subsequent actions, and the appeal constituted the same proceeding. Curry v. Harris County Appraisal Dist., 434 S.W.3d 815, 2014 Tex. App. LEXIS 6151 (Tex. App. Houston 14th Dist. June 5, 2014, no pet.).

Trial court properly granted a plea to the jurisdiction filed by a county appraisal district and a county appraisal review board in a taxpayer's action challenging a property tax appraisal because, as governmental units, the district and the board were entitled to the protections of sovereign immunity; Tex. Tax Code Ann. § 42.24(3) did not provide a limited waiver of immunity Parra Furniture & Appliance Ctr., Inc. v. Cameron Appraisal Dist., No. 13-09-00211-CV, 2010 Tex. App. LEXIS 1321 (Tex. App. Corpus Christi Feb. 25, 2010).

Neither the owner nor the third-party had standing to petition for judicial review of the 2007 property valuation, because the third-party sued to challenge the appraisal review board's order determining protest, the owner was the proper party to pursue a protest, and the owner did not complete the administrative protest process before the appraisal review board. KM-Timbercreek, LLC v. Harris County Appraisal Dist., 312 S.W.3d 722, 2009 Tex. App. LEXIS 8065 (Tex. App. Houston 1st Dist. Oct. 15, 2009, no pet.).

Sec. 42.25. Remedy for Excessive Appraisal.

If the court determines that the appraised value of property according to the appraisal roll exceeds the appraised value required by law, the property owner is entitled to a reduction of the appraised value on the appraisal roll to the appraised value determined by the court.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

NOTES TO DECISIONS

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Tax Law
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CIVIL PROCEDURE
Summary Judgment
Opposition

Supporting Materials. — Taxpayer's response to the appraisal district's motion for summary judgment in the taxpayer's appeal from an appraisal was insufficient to raise an issue of fact. The response itself was not evidence, and an affidavit from an expert contained no opinion regarding the value of the property or whether the appraised value was excessive or unequal. Wol+med Wol+Med Southwest Dallas L.P. v. Dallas Cent. Appraisal Dist., No. 05-12-00011-CV, 2013 Tex. App. LEXIS 1969 (Tex. App. Dallas Feb. 27, 2013).

REMEDIES
Costs & Attorney Fees

General Overview. — Plain language of Tex. Tax Code Ann. § 42.25 does not require an award of attorney fees. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

Because neither Tex. Tax Code Ann. § 42.25 nor Tex. Tax Code Ann. § 42.29 mandated an award of attorney fees, and because a corporate taxpayer did not offer any other basis for its contention that a trial court abused its discretion in denying its request for attorney fees in connection with its successful declaratory judgment action against an appraisal district, the trial court's denial of attorney fees was upheld. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

Where a marketing agent disputed the assessment of personal property taxes against him based on whether his passing of legal title from real seller of fire trucks to purchasers constituted a sale giving rise to any taxation, the appraised value of the fire trucks was not in issue; thus, the marketing agent was not entitled to recover attorney's fees after successfully challenging the assessment of taxes. Martin v. Harris County Appraisal Dist. & Harris County Appraisal Review Bd., 44 S.W.3d 190, 2001 Tex. App. LEXIS 1851 (Tex. App. Houston 14th Dist. Mar. 22, 2001, no pet.).

ATTORNEY EXPENSES & FEES

Statutory Awards. — There was evidence to support the trial court's denial of attorney fees for challenging the tax appraisal of the business because the evidence suggested that the property was overvalued because of a clerical error, rather than because it was excessively or unequally appraised. Because the business did not establish that it prevailed in an appeal to the court under the statutes, which was a prerequisite for an award of attorney's fees, the trial court did not abuse its discretion in denying the business's request for fees. Sam Griffin Family Investments-I, Inc. v. Dallas Cent. Appraisal Dist., No. 05-12-01470-CV, 2014 Tex. App. LEXIS 7890 (Tex. App. Dallas July 21, 2014).

Taxpayer could not recover attorney's fees because it did not prevail in challenging an appraisal district's use of supplemental appraisal records to add omitted personal property. Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 2014 Tex. App. LEXIS 3030 (Tex. App. El Paso Mar. 19, 2014, no pet.).

Taxpayers whose travel trailers and recreational vehicles were not improvements or real property but were tangible personal property exempt from taxation under Tex. Tax Code Ann. § 11.14, and who successfully protested the denial of the exemption under Tex. Tax. Code Ann. § 41.41(4), were entitled to mandatory attorney's fees under Tex. Tax. Code Ann. § 42.29. Rourk v. Cameron Appraisal Dist., No. 13-11-00751-CV, 2013 Tex. App. LEXIS 8947 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 443 S.W.3d 217, 2013 Tex. App. LEXIS 10348 (Tex. App. Corpus Christi Aug. 15, 2013).

Tex. Tax Code Ann. §§ 42.25 and 42.26 did not apply because the realtor association did not challenge the appraised value of its property; it challenged the Appraisal District's denial of a tax exemption, and consequently, since the association did not prevail on a claim "under Section 42.25 or 42.26," attorney's fees were not authorized by Tex. Tax Code Ann. § 42.29. Brazos County Appraisal Dist. v. Bryan-College Station Reg'l Ass'n of Realtors, 419 S.W.3d 462, 2013 Tex. App. LEXIS 4929 (Tex. App. Waco Apr. 18, 2013), reh'g denied, No. 10-11-00438-CV, 2013 Tex. App. LEXIS 15545 (Tex. App. Waco May 22, 2013).

Because a taxpayer successfully appealed an excessive appraisal under Tex. Tax Code Ann. § 42.25, he was entitled to recover mandatory attorney's fees pursuant to Tex. Tax Code Ann. § 42.29. Martinez v. Dallas Cent. Appraisal Dist., 339 S.W.3d 184, 2011 Tex. App. LEXIS 2031 (Tex. App. Dallas Mar. 22, 2011, no pet.).

Tex. Tax Code Ann. § 42.29 authorized attorney's fees for only two distinct types of protest: excessive value and unequal appraisal; therefore, because a protest to an appraisal district's ability to tax oil located in an interstate pipeline did not fall under Tex. Tax Code Ann. §§ 42.25, 42.26, several oil companies were not able to recover such fees. In addition, the appraisal district did not waive a complaint to an award of attorney's fees because repeated objections were made. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

Upon request by a prevailing party in an excessive appraisal action under Tex. Tax Code Ann. § 42.25, an award of reasonable

attorney's fees is mandatory, not discretionary, under Tex. Tax Code Ann. § 42.29; therefore, a taxpayer was entitled to attorney fees after the trial court ruled in its favor on an excessive appraisal issue. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006, no pet.).

APPEALS

Costs & Attorney Fees. — In an appeal relating to the appraised value of property, a district court erred in ordering an appraisal district court pay two taxpayers a large amount of attorneys' fees because they were limited under Tex. Tax Code Ann. § 42.29 to an award of no more than $ 225.51, which was the total amount of their tax savings. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

Where a county appraisal review board and a county appraisal district sought review of the trial court's judgment that parking lots owned by a church and leased to a realty company were exempt from property taxes, the court held that under Tex. Prop. Tax Code Ann. §§ 42.25, 42.26, and 42.29, and Tex. Civ. Prac. & Rem. Code Ann. § 37.009, attorney's fees were improperly awarded to the church because the trial court went too far when it found that the appraised value of the property, according to the appraisal roll, exceeded the appraised value required by law, and that the church was entitled to a reduction of the appraised value on the appraisal roll to zero for each of the tax years in question; because a litigant was not permitted to have sought a declaratory judgment in an existing suit simply to recover attorney's fees that were otherwise not authorized by statute; and because if the law were otherwise, litigants could routinely have created a right to attorney's fees by seeking a declaration that they were entitled to relief on claims for which attorney's fees are not recoverable. Bexar County Appraisal Review Bd. v. First Baptist Church, 846 S.W.2d 554, 1993 Tex. App. LEXIS 538 (Tex. App. San Antonio Jan. 20, 1993, writ denied), cert. denied, 510 U.S. 1178, 114 S. Ct. 1221, 127 L. Ed. 2d 567, 1994 U.S. LEXIS 2083 (U.S. 1994).

STANDARDS OF REVIEW

Substantial Evidence

Sufficiency of Evidence. — In a case arising from an appeal of the appraised value of real property, there was sufficient evidence to support a district court's valuation based on the testimony of one of the taxpayers, who testified about the amount paid to build a house, as well as the worth of improvements, a septic system, and a metal shed on the property; moreover, an appraisal district had itself valued the land itself at $ 25,000. The owner was allowed to give an opinion on the value of her property Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

TAX LAW

State & Local Taxes

Administration & Proceedings

General Overview. — Plain language of Tex. Tax Code Ann. § 42.25 does not require an award of attorney fees. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

Because neither Tex. Tax Code Ann. § 42.25 nor Tex. Tax Code Ann. § 42.29 mandated an award of attorney fees, and because a corporate taxpayer did not offer any other basis for its contention that a trial court abused its discretion in denying its request for attorney fees in connection with its successful declaratory judgment action against an appraisal district, the trial court's denial of attorney fees was upheld. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

Pursuant to Tex. Tax Code Ann. §§ 42.25, 42.21, once a taxpayer has properly preserved his right of appeal of any individual final taxing order, he has likewise preserved his right to attorney's fees in the same appeal, and should not be deprived of his right to attorney's fees simply because the separately appealed final orders have been consolidated for judicial economy. Atascosa County Appraisal Dist. v. Tymrak, 815 S.W.2d 364, 1991 Tex. App. LEXIS 2422 (Tex. App. San Antonio Aug. 30, 1991), writ granted No. D-1804 (Tex. 1992), aff'd, 858 S.W.2d 335, 1993 Tex. LEXIS 14 (Tex. 1993).

ASSESSMENTS. — There was evidence that the evaluation used by a county appraisal district was not arbitrary where the district explained the method used, the reasons for adoption of that method, and the way that it applied its methodology to the particular fact situation, and where there was also evidence provided to the appraisal district by the taxpayer regarding the amount that the taxpayer had paid for the property being evaluated. The appraisal district determined that under its method of calculation of value, no allowance for depreciation was warranted, and, from that, it determined its opinion of the fair market value of the taxpayer's inventory for the two years at issue. Lack's Stores, Inc. v. Gregg County Appraisal Dist., No. 06-10-00125-CV, 2011 Tex. App. LEXIS 7364 (Tex. App. Texarkana Sept. 9, 2011).

JUDICIAL REVIEW. — There was evidence to support the trial court's denial of attorney fees for challenging the tax appraisal of the business because the evidence suggested that the property was overvalued because of a clerical error, rather than because it was excessively or unequally appraised. Because the business did not establish that it prevailed in an appeal to the court under the statutes, which was a prerequisite for an award of attorney's fees, the trial court did not abuse its discretion in denying the business's request for fees. Sam Griffin Family Investments-I, Inc. v. Dallas Cent. Appraisal Dist., No. 05-12-01470-CV, 2014 Tex. App. LEXIS 7890 (Tex. App. Dallas July 21, 2014).

Taxpayer could not recover attorney's fees because it did not prevail in challenging an appraisal district's use of supplemental appraisal records to add omitted personal property. Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 2014 Tex. App. LEXIS 3030 (Tex. App. El Paso Mar. 19, 2014, no pet.).

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In an appeal relating to the appraised value of property, a district court erred in ordering an appraisal district court pay two taxpayers a large amount of attorneys' fees because they were limited under Tex. Tax Code Ann. § 42.29 to an award of no more than $ 225.51, which was the total amount of their tax savings. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

TAXPAYER PROTESTS. — Taxpayers whose travel trailers and recreational vehicles were not improvements or real property but were tangible personal property exempt from taxation under Tex. Tax Code Ann. § 11.14, and who successfully protested the denial of the exemption under Tex. Tax. Code Ann. § 41.41(4), were entitled to mandatory attorney's fees under Tex. Tax. Code Ann. § 42.29. Rourk v. Cameron Appraisal Dist., No. 13-11-00751-CV, 2013 Tex. App. LEXIS 8947 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 443 S.W.3d 217, 2013 Tex. App. LEXIS 10348 (Tex. App. Corpus Christi Aug. 15, 2013).

Tex. Tax Code Ann. §§ 42.25 and 42.26 did not apply because the realtor association did not challenge the appraised value of its property; it challenged the Appraisal District's denial of a tax exemption, and consequently, since the association did not prevail on a claim "under Section 42.25 or 42.26," attorney's fees were not authorized by Tex. Tax Code Ann. § 42.29. Brazos County Appraisal Dist. v. Bryan-College Station Reg'l Ass'n of Realtors, 419 S.W.3d 462, 2013 Tex. App. LEXIS 4929 (Tex. App. Waco Apr. 18, 2013), reh'g denied, No. 10-11-00438-CV, 2013 Tex. App. LEXIS 15545 (Tex. App. Waco May 22, 2013).

County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was

the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

Tex. Tax Code Ann. § 42.29 authorized attorney's fees for only two distinct types of protest: excessive value and unequal appraisal; therefore, because a protest to an appraisal district's ability to tax oil located in an interstate pipeline did not fall under Tex. Tax Code Ann. §§ 42.25, 42.26, several oil companies were not able to recover such fees. In addition, the appraisal district did not waive a complaint to an award of attorney's fees because repeated objections were made. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

In a case involving a tax reappraisal, a jurisdictional challenge should not have been granted because several property owners were permitted to seek relief under Tex. Tax Code Ann. § 42.25 without filing an administrative protest under Tex. Tax Code Ann. § 41.41(a); they filed a protest under Tex. Tax Code Ann. § 25.25 instead. Benson Chevrolet, Inc. v. Bexar Appraisal Dist., 242 S.W.3d 54, 2007 Tex. App. LEXIS 6452 (Tex. App. San Antonio Aug. 15, 2007), reh'g denied, No. 04-07-00204-CV, 2007 Tex. App. LEXIS 10109 (Tex. App. San Antonio Oct. 1, 2007).

No language within Tex. Tax Code Ann. § 42.25 limits its application to only Tex. Tax Code Ann. § 41.41(a) excessive appraisal challenges, and, because no such limitation exists within Tex. Tax Code Ann. § 42.25, there is no reason why property owners filing administrative challenges under Tex. Tax Code Ann. § 25.25(d) are precluded from seeking relief under Tex. Tax Code Ann. § 42.25 in a district court; an excessive appraisal challenge brought under Tex. Tax Code Ann. § 25.25(d) must allege the appraisal district over-valued a property by more than one-third; therefore, it logically follows that Tex. Tax Code Ann. § 42.25 applies on judicial review of such administrative challenge since Tex. Tax Code Ann. § 42.25 explicitly authorizes a court to remedy an excessive valuation by an appraisal district. Benson Chevrolet, Inc. v. Bexar Appraisal Dist., 242 S.W.3d 54, 2007 Tex. App. LEXIS 6452 (Tex. App. San Antonio Aug. 15, 2007), reh'g denied, No. 04-07-00204-CV, 2007 Tex. App. LEXIS 10109 (Tex. App. San Antonio Oct. 1, 2007).

PERSONAL PROPERTY TAX

Exempt Property

General Overview. — Where a county appraisal review board and a county appraisal district sought review of the trial court's judgment that parking lots owned by a church and leased to a realty company were exempt from property taxes, the court held that under Tex. Prop. Tax Code Ann. §§ 42.25, 42.26, and 42.29, and Tex. Civ. Prac. & Rem. Code Ann. § 37.009, attorney's fees were improperly awarded to the church because the trial court went too far when it found that the appraised value of the property, according to the appraisal roll, exceeded the appraised value required by law, and that the church was entitled to a reduction of the appraised value on the appraisal roll to zero for each of the tax years in question; because a litigant was not permitted to have sought a declaratory judgment in an existing suit simply to recover attorney's fees that were otherwise not authorized by statute; and because if the law were otherwise, litigants could routinely have created a right to attorney's fees by seeking a declaration that they were entitled to relief on claims for which attorney's fees are not recoverable. Bexar County Appraisal Review Bd. v. First Baptist Church, 846 S.W.2d 554, 1993 Tex. App. LEXIS 538 (Tex. App. San Antonio Jan. 20, 1993, writ denied), cert. denied, 510 U.S. 1178, 114 S. Ct. 1221, 127 L. Ed. 2d 567, 1994 U.S. LEXIS 2083 (U.S. 1994).

REAL PROPERTY TAX

General Overview. — Appellate court overruled the taxpayer's challenge to the factual and legal sufficiency of the evidence, because the only evidence which was presented concerning the values of the property in question were those advanced by the county appraisal district, and since the burden of proof was on the taxpayer to show an excessive evaluation and he presented no proof of that proposition, it was also factually sufficient; the taxpayer should have proven his allegation, then the available remedy would have been entitlement to a reduction of the appraised value on the appraisal roll to the appraised value determined by the trial court. Daily v. Bowie County Appraisal Dist., No. 06-07-00055-CV, 2007 Tex. App. LEXIS 9222 (Tex. App. Texarkana Nov. 28, 2007).

ASSESSMENT & VALUATION

Valuation. — Taxpayer's response to the appraisal district's motion for summary judgment in the taxpayer's appeal from an appraisal was insufficient to raise an issue of fact. The response itself was not evidence, and an affidavit from an expert contained no opinion regarding the value of the property or whether the appraised value was excessive or unequal. Wol+med Wol+Med Southwest Dallas L.P. v. Dallas Cent. Appraisal Dist., No. 05-12-00011-CV, 2013 Tex. App. LEXIS 1969 (Tex. App. Dallas Feb. 27, 2013).

County appraisal district's alleged failure to appropriately depreciate the taxpayers' inventory was not properly defined as a clerical error under Tex. Tax Code Ann. § 1.04(18), because the district's failure to account for depreciation of the inventory was the result of a deliberate determination by the district in which it assessed the property and gave it a value which it deemed appropriate; it was not a mistake in writing or copying, nor was it a simple, inadvertent omission made while reducing a judgment into writing. LFD Holdings, LLP v. Cameron County Appraisal Dist., No. 13-10-00672-CV, No. 13-10-00673-CV, 2012 Tex. App. LEXIS 99 (Tex. App. Corpus Christi Jan. 5, 2012).

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No language within Tex. Tax Code Ann. § 42.25 limits its application to only Tex. Tax Code Ann. § 41.41(a) excessive appraisal challenges, and, because no such limitation exists within Tex. Tax Code Ann. § 42.25, there is no reason why property owners filing administrative challenges under Tex. Tax Code Ann. § 25.25(d) are precluded from seeking relief under Tex. Tax Code Ann. § 42.25 in a district court; an excessive appraisal challenge brought under Tex. Tax Code Ann. § 25.25(d) must allege the appraisal district over-valued a property by more than one-third; therefore, it logically follows that Tex. Tax Code Ann. § 42.25 applies on judicial review of such administrative challenge since Tex. Tax Code Ann. § 42.25 explicitly authorizes a court to remedy an excessive valuation by an appraisal district. Benson Chevrolet, Inc. v. Bexar Appraisal Dist., 242 S.W.3d 54, 2007 Tex. App. LEXIS 6452 (Tex. App. San Antonio Aug. 15, 2007), reh'g denied, No. 04-07-00204-CV, 2007 Tex. App. LEXIS 10109 (Tex. App. San Antonio Oct. 1, 2007).

Upon request by a prevailing party in an excessive appraisal action under Tex. Tax Code Ann. § 42.25, an award of reasonable attorney's fees is mandatory, not discretionary, under Tex. Tax Code Ann. § 42.29; therefore, a taxpayer was entitled to attorney fees after the trial court ruled in its favor on an excessive appraisal issue. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006, no pet.).

Sec. 42.26. Remedy for Unequal Appraisal.

(a) The district court shall grant relief on the ground that a property is appraised unequally if:

(1) the appraisal ratio of the property exceeds by at least 10 percent the median level of appraisal of a reasonable and representative sample of other properties in the appraisal district;

(2) the appraisal ratio of the property exceeds by at least 10 percent the median level of appraisal of a sample of properties in the appraisal district consisting of a reasonable number of other properties similarly situated to, or of the same general kind or character as, the property subject to the appeal; or

(3) the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.

(b) If a property owner is entitled to relief under Subsection (a)(1), the court shall order the property's appraised value changed to the value as calculated on the basis of the median level of appraisal according to Subsection (a)(1). If a property owner is entitled to relief under Subsection (a)(2), the court shall order the property's appraised value changed to the value calculated on the basis of the median level of appraisal according to Subsection (a)(2). If a property owner is entitled to relief under Subsection (a)(3), the court shall order the property's appraised value changed to the value calculated on the basis of the median appraised value according to Subsection (a)(3). If a property owner is entitled to relief under more than one subdivision of Subsection (a), the court shall order the property's appraised value changed to the value that results in the lowest appraised value. The court shall determine each applicable median level of appraisal or median appraised value according to law, and is not required to adopt the median level of appraisal or median appraised value proposed by a party to the appeal. The court may not limit or deny relief to the property owner entitled to relief under a subdivision of Subsection (a) because the appraised value determined according to another subdivision of Subsection (a) results in a higher appraised value.

(c) For purposes of establishing the median level of appraisal under Subsection (a)(1), the median level of appraisal in the appraisal district as determined by the comptroller under Section 5.10 is admissible as evidence of the median level of appraisal of a reasonable and representative sample of properties in the appraisal district for the year of the comptroller's determination, subject to the Texas Rules of Evidence and the Texas Rules of Civil Procedure.

(d) For purposes of this section, the value of the property subject to the suit and the value of a comparable property or sample property that is used for comparison must be the market value determined by the appraisal district when the property is a residence homestead subject to the limitation on appraised value imposed by Section 23.23.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 153, effective August 14, 1981; am. Acts 1983, 68th Leg., ch. 877 (H.B. 1395), § 3, effective January 1, 1984; am. Acts 1985, 69th Leg., ch. 823 (S.B. 908), § 3, effective January 1, 1986; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 45, effective June 15, 1989; am. Acts 1991, 72nd Leg., ch. 843 (S.B. 984), § 12, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 42, effective January 1, 1998; am. Acts 2003, 78th Leg., ch. 1041 (H.B. 1082), § 4, effective September 1, 2003.

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CIVIL PROCEDURE
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Requests for Production & Inspection. — In a taxpayer's challenge to the valuation of its coking unit, the trial court erred in ordering the taxpayer to respond to the appraisal district's discovery requests under Tex. R. Civ. P. 192 as the challenged requests were not reasonably tailored to include only matters relevant to prove the coker unit's value in the unequal taxation context, and thus were overly broad and unduly burdensome requests. In re MHCB (USA) Leasing & Fin. Corp., No. 01-06-00075-CV, 2006 Tex. App. LEXIS 3515 (Tex. App. Houston 1st Dist. Apr. 27, 2006).

SUMMARY JUDGMENT
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Supporting Materials. — Taxpayer's response to the appraisal district's motion for summary judgment in the taxpayer's appeal from an appraisal was insufficient to raise an issue of fact. The response itself was not evidence, and an affidavit from an expert contained no opinion regarding the value of the property or whether the appraised value was excessive or unequal. Wol+med Wol+Med Southwest Dallas L.P. v. Dallas Cent. Appraisal Dist., No. 05-12-00011-CV, 2013 Tex. App. LEXIS 1969 (Tex. App. Dallas Feb. 27, 2013).

TRIALS
Jury Trials
Jury Instructions

General Overview. — Trial court submitted a proper charge under Tex. R. Civ. P. 278 in a property tax appeal by instructing the jury to find the equal and uniform value of each property and quoting Tex. Tax Code Ann. § 42.26(a)(3). Bexar County Appraisal Dist. v. Abdo, 399 S.W.3d 248, 2012 Tex. App. LEXIS 7745 (Tex. App. San Antonio Sept. 12, 2012, no pet.).

REMEDIES
Costs & Attorney Fees
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Statutory Awards. — There was evidence to support the trial court's denial of attorney fees for challenging the tax appraisal of the business because the evidence suggested that the property was overvalued because of a clerical error, rather than because it was excessively or unequally appraised. Because the business did not establish that it prevailed in an appeal to the court under the statutes, which was a prerequisite for an award of attorney's fees, the trial court did not abuse its discretion in denying the business's request for fees. Sam Griffin Family Investments-I, Inc. v. Dallas Cent. Appraisal Dist., No. 05-12-01470-CV, 2014 Tex. App. LEXIS 7890 (Tex. App. Dallas July 21, 2014).

Tex. Tax Code Ann. §§ 42.25 and 42.26 did not apply because the realtor association did not challenge the appraised value of its property; it challenged the Appraisal District's denial of a tax exemption, and consequently, since the association did not prevail on a claim "under Section 42.25 or 42.26," attorney's fees were not authorized by Tex. Tax Code Ann. § 42.29. Brazos County Appraisal Dist. v. Bryan-College Station Reg'l Ass'n of Realtors, 419 S.W.3d 462, 2013 Tex. App. LEXIS 4929 (Tex. App. Waco Apr. 18, 2013), reh'g denied, No. 10-11-00438-CV, 2013 Tex. App. LEXIS 15545 (Tex. App. Waco May 22, 2013).

Tex. Tax Code Ann. § 42.29 authorized attorney's fees for only two distinct types of protest: excessive value and unequal appraisal; therefore, because a protest to an appraisal district's ability to tax oil located in an interstate pipeline did not fall under Tex. Tax Code Ann. §§ 42.25, 42.26, several oil companies were not able to recover such fees. In addition, the appraisal district did not waive a complaint to an award of attorney's fees because repeated objections were made. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

APPEALS

Costs & Attorney Fees. — Where a county appraisal review board and a county appraisal district sought review of the trial court's judgment that parking lots owned by a church and leased to a realty company were exempt from property taxes, the court held that under Tex. Prop. Tax Code Ann. §§ 42.25, 42.26, and 42.29, and Tex. Civ. Prac. & Rem. Code Ann. § 37.009, attorney's fees were improperly awarded to the church because the trial court went too far when it found that the appraised value of the property, according to the appraisal roll, exceeded the appraised value required by law, and that the church was entitled to a reduction of the appraised value on the appraisal roll to zero for each of the tax years in question; because a litigant was not permitted to have sought a declaratory judgment in an existing suit simply to recover attorney's fees that were otherwise not authorized by statute; and because if the law were otherwise, litigants could routinely have created a right to attorney's fees by seeking a declaration that they were entitled to relief on claims for which attorney's fees are not recoverable. Bexar County Appraisal Review Bd. v. First Baptist Church, 846 S.W.2d 554, 1993 Tex. App. LEXIS 538 (Tex. App. San Antonio Jan. 20, 1993, writ denied), cert. denied, 510 U.S. 1178, 114 S. Ct. 1221, 127 L. Ed. 2d 567, 1994 U.S. LEXIS 2083 (U.S. 1994).

STANDARDS OF REVIEW

Abuse of Discretion. — Trial court did not abuse its discretion in excluding the testimony of a property owner's expert who wished to testify about appropriate tax adjustments under former Tex. Tax Code Ann. § 42.26(d) to purchases of land comparable to the owner's property because the trial court could have disbelieved the expert and found that the expert lacked credibility. Weingarten Realty Advisors v. Harris County Appraisal Dist., No. 14-01-00094-CV, 2002 Tex. App. LEXIS 3170 (Tex. App. Houston 14th Dist. May 2, 2002), op. withdrawn, sub. op., 93 S.W.3d 280, 2002 Tex. App. LEXIS 5527 (Tex. App. Houston 14th Dist. July 25, 2002).

EVIDENCE
Testimony
Experts

General Overview. — In a suit challenging a real estate tax assessment, the trial court properly allowed expert testimony from the taxpayer's appraiser. The testimony was relevant, within the meaning of Tex. R. Evid. 401, 402, and 702 because the appraiser found a reasonable number of comparable properties, made appropriate adjustments, and compared the median appraisal value of those properties to the appraisal value applied to the property at issue, as required by Tex. Tax Code § 42.26. Harris County Appraisal v. Hartman Reit Operating P'ship, L.P., 186 S.W.3d 155, 2006 Tex. App. LEXIS 103 (Tex. App. Houston 1st Dist. Jan. 5, 2006, no pet.).

In a challenge to the tax liability of a shopping center, the underlying data used by the taxpayer's appraiser was reliable for purposes of Tex. R. Evid. 702 because the appraiser found properties in the surrounding area that had the same land use code and low-rent classification, and he restricted those results based on size, location, and age. The nine remaining properties represented a reasonable sample for the purposes of Tex. Tax Code § 42.26. Harris County Appraisal v. Hartman Reit Operating P'ship, L.P., 186 S.W.3d 155, 2006 Tex. App. LEXIS 103 (Tex. App. Houston 1st Dist. Jan. 5, 2006, no pet.).

ADMISSIBILITY. — Appraiser's testimony made clear that he followed a statutorily-approved methodology for estimating an appraised value, Tex. Tax Code Ann. § 42.26(a)(3), where he used the appraisal value of the comparable properties as listed in the tax rolls as his starting point, and when he adjusted the values of the comparable properties, he relied on generally accepted appraisal principles that were commonly used among professionals in his field; the appraiser testified that his methodology had been tested, was generally accepted as valid, and was mandated, to some extent, by statute, and the property owner met its burden to show the reliability of the appraiser's testimony, and the trial court did not abuse its discretion in admitting his testimony. Harris County Appraisal Dist. v. Houston 8th Wonder Prop., L.P., No. 01-10-00154-CV, 2012 Tex. App. LEXIS 3889 (Tex. App. Houston 1st Dist. May 17, 2012).

In an unequal appraisal case, an expert's testimony explaining that he found comparable properties using criteria including physical and geographic characteristics and that he made adjustments based on factors such as size, age, and location was reliable. Tex. Tax Code Ann. § 42.26(a)(3) contemplates adjustments such as he made. Harris County Appraisal Dist. v. Houston Laureate Assocs., 329 S.W.3d 52, 2010 Tex. App. LEXIS 6971 (Tex. App. Houston 14th Dist. Aug. 26, 2010, no pet.).

TAX LAW
State & Local Taxes
Administration & Proceedings

Judicial Review. — There was evidence to support the trial court's denial of attorney fees for challenging the tax appraisal of the business because the evidence suggested that the property was overvalued because of a clerical error, rather than because it was excessively or unequally appraised. Because the business did not establish that it prevailed in an appeal to the court under the statutes, which was a prerequisite for an award of attorney's fees, the trial court did not abuse its discretion in denying the business's request for fees. Sam Griffin Family Investments-I, Inc. v. Dallas Cent. Appraisal Dist., No. 05-12-01470-CV, 2014 Tex. App. LEXIS 7890 (Tex. App. Dallas July 21, 2014).

Rather than a two-step process, Tex. Tax Code Ann. § 42.26(a) requires only one determination: whether at least one of the three conditions in § 42.26(a) is satisfied. If one of those conditions is satisfied, then the property has been appraised unequally. Bexar

County Appraisal Dist. v. Abdo, 399 S.W.3d 248, 2012 Tex. App. LEXIS 7745 (Tex. App. San Antonio Sept. 12, 2012, no pet.).

Trial court submitted a proper charge under Tex. R. Civ. P. 278 in a property tax appeal by instructing the jury to find the equal and uniform value of each property and quoting Tex. Tax Code Ann. § 42.26(a)(3). Bexar County Appraisal Dist. v. Abdo, 399 S.W.3d 248, 2012 Tex. App. LEXIS 7745 (Tex. App. San Antonio Sept. 12, 2012, no pet.).

Appraisal Review Board (ARB) order actually determined that the original property appraisal was both "incorrect and unequal," and it reduced not only the "appraised" value but also the "market" value from $74,668,035 to $48,054,000; accordingly, the suggestions that the property owner did not challenge the property's market value and that the ARB did not actually lower market value were affirmatively disproved by the record on appeal. Harris County Appraisal Dist. v. Houston 8th Wonder Prop., L.P., No. 01-10-00154-CV, 2012 Tex. App. LEXIS 3889 (Tex. App. Houston 1st Dist. May 17, 2012).

TAXPAYER PROTESTS. — Tex. Tax Code Ann. §§ 42.25 and 42.26 did not apply because the realtor association did not challenge the appraised value of its property; it challenged the Appraisal District's denial of a tax exemption, and consequently, since the association did not prevail on a claim "under Section 42.25 or 42.26," attorney's fees were not authorized by Tex. Tax Code Ann. § 42.29. Brazos County Appraisal Dist. v. Bryan-College Station Reg'l Ass'n of Realtors, 419 S.W.3d 462, 2013 Tex. App. LEXIS 4929 (Tex. App. Waco Apr. 18, 2013), reh'g denied, No. 10-11-00438-CV, 2013 Tex. App. LEXIS 15545 (Tex. App. Waco May 22, 2013).

Tex. Tax Code Ann. § 42.29 authorized attorney's fees for only two distinct types of protest: excessive value and unequal appraisal; therefore, because a protest to an appraisal district's ability to tax oil located in an interstate pipeline did not fall under Tex. Tax Code Ann. §§ 42.25, 42.26, several oil companies were not able to recover such fees. In addition, the appraisal district did not waive a complaint to an award of attorney's fees because repeated objections were made. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

REAL PROPERTY TAX

General Overview. — In a suit challenging a real estate tax assessment, the trial court properly allowed expert testimony from the taxpayer's appraiser. The testimony was relevant, within the meaning of Tex. R. Evid. 401, 402, and 702 because the appraiser found a reasonable number of comparable properties, made appropriate adjustments, and compared the median appraisal value of those properties to the appraisal value applied to the property at issue, as required by Tex. Tax Code § 42.26. Harris County Appraisal v. Hartman Reit Operating P'ship, L.P., 186 S.W.3d 155, 2006 Tex. App. LEXIS 103 (Tex. App. Houston 1st Dist. Jan. 5, 2006, no pet.).

In a challenge to the tax liability of a shopping center, the underlying data used by the taxpayer's appraiser was reliable for purposes of Tex. R. Evid. 702 because the appraiser found properties in the surrounding area that had the same land use code and low-rent classification, and he restricted those results based on size, location, and age. The nine remaining properties represented a reasonable sample for the purposes of Tex. Tax Code § 42.26. Harris County Appraisal v. Hartman Reit Operating P'ship, L.P., 186 S.W.3d 155, 2006 Tex. App. LEXIS 103 (Tex. App. Houston 1st Dist. Jan. 5, 2006, no pet.).

ASSESSMENT & VALUATION

General Overview. — Former Tex. Tax Code Ann. § 42.26(d) allowed plaintiff property owner to protest defendant appraiser's tax appraisal of plaintiff's property without proof of the market value of the comparable properties. Harris County Appraisal Dist. v. United Investors Realty Trust, 47 S.W.3d 648, 2001 Tex. App. LEXIS 2436 (Tex. App. Houston 14th Dist. Apr. 12, 2001, no pet.).

Property appraisal was not unequal and a taxpayer was not entitled to to relief under former Tex. Tax Code § 42.26(d) where the taxpayer's expert did not apply any statistical formula in his calculation of the appropriate number of sample population size for the median level appraisal determination. Associates, Inc. v. Harris County Appraisal Dist., 30 S.W.3d 425, 2000 Tex. App. LEXIS 4084 (Tex. App. Corpus Christi June 15, 2000, no pet.).

VALUATION. — Taxpayer's response to the appraisal district's motion for summary judgment in the taxpayer's appeal from an appraisal was insufficient to raise an issue of fact. The response itself was not evidence, and an affidavit from an expert contained no opinion regarding the value of the property or whether the appraised value was excessive or unequal. Wol+med Wol+Med Southwest Dallas L.P. v. Dallas Cent. Appraisal Dist., No. 05-12-00011-CV, 2013 Tex. App. LEXIS 1969 (Tex. App. Dallas Feb. 27, 2013).

Rather than a two-step process, Tex. Tax Code Ann. § 42.26(a) requires only one determination: whether at least one of the three conditions in § 42.26(a) is satisfied. If one of those conditions is satisfied, then the property has been appraised unequally. Bexar County Appraisal Dist. v. Abdo, 399 S.W.3d 248, 2012 Tex. App. LEXIS 7745 (Tex. App. San Antonio Sept. 12, 2012, no pet.).

Appraiser's testimony made clear that he followed a statutorily-approved methodology for estimating an appraised value, Tex. Tax Code Ann. § 42.26(a)(3), where he used the appraisal value of the comparable properties as listed in the tax rolls as his starting point, and when he adjusted the values of the comparable properties, he relied on generally accepted appraisal principles that were commonly used among professionals in his field; the appraiser testified that his methodology had been tested, was generally accepted as valid, and was mandated, to some extent, by statute, and the property owner met its burden to show the reliability of the appraiser's testimony, and the trial court did not abuse its discretion in admitting his testimony. Harris County Appraisal Dist. v. Houston 8th Wonder Prop., L.P., No. 01-10-00154-CV, 2012 Tex. App. LEXIS 3889 (Tex. App. Houston 1st Dist. May 17, 2012).

Because market value was an element of the calculation of "appraisal ratio" that may be used to determine whether an appraisal is equal and uniform, the market value was not irrelevant, and the property owner's argument to the contrary was incorrect. Harris County Appraisal Dist. v. Houston 8th Wonder Prop., L.P., No. 01-10-00154-CV, 2012 Tex. App. LEXIS 3889 (Tex. App. Houston 1st Dist. May 17, 2012).

Appraisal Review Board (ARB) order actually determined that the original property appraisal was both "incorrect and unequal," and it reduced not only the "appraised" value but also the "market" value from $74,668,035 to $48,054,000; accordingly, the suggestions that the property owner did not challenge the property's market value and that the ARB did not actually lower market value were affirmatively disproved by the record on appeal. Harris County Appraisal Dist. v. Houston 8th Wonder Prop., L.P., No. 01-10-00154-CV, 2012 Tex. App. LEXIS 3889 (Tex. App. Houston 1st Dist. May 17, 2012).

In an unequal appraisal case, an expert's testimony explaining that he found comparable properties using criteria including physical and geographic characteristics and that he made adjustments based on factors such as size, age, and location was reliable. Tex. Tax Code Ann. § 42.26(a)(3) contemplates adjustments such as he made. Harris County Appraisal Dist. v. Houston Laureate Assocs., 329 S.W.3d 52, 2010 Tex. App. LEXIS 6971 (Tex. App. Houston 14th Dist. Aug. 26, 2010, no pet.).

Pursuant to Tex. Tax Code Ann. § 42.26, a taxpayer was required to challenge the appraised valuation of the entire improved property and not merely its component values; the landowners had alleged that only the land components, and not the entire properties, had been appraised unequally, and their complaint was properly dismissed. Covert v. Williamson Cent. Appraisal Dist., 241 S.W.3d 655, 2007 Tex. App. LEXIS 9380 (Tex. App. Austin Nov. 30, 2007, no pet.).

In a taxpayer's challenge to the valuation of its coking unit, the trial court erred in ordering the taxpayer to respond to the appraisal district's discovery requests under Tex. R. Civ. P. 192 as the challenged requests were not reasonably tailored to include only matters relevant to prove the coker unit's value in the unequal taxation context, and thus were overly broad and unduly burdensome requests. In re MHCB (USA) Leasing & Fin. Corp.,

No. 01-06-00075-CV, 2006 Tex. App. LEXIS 3515 (Tex. App. Houston 1st Dist. Apr. 27, 2006).

Sec. 42.27. Additional Remedy for Erroneous Value [Repealed].

Repealed by Acts 1983, 68th Leg., ch. 905 (H.B. 1580), § 2, effective August 29, 1983.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 154, effective August 14, 1981.

Sec. 42.28. Appeal of District Court Judgment.

A party may appeal the final judgment of the district court as provided by law for appeal of civil suits generally, except that an appeal bond is not required of the chief appraiser, the county, the comptroller, or the commissioners court.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 57, effective September 1, 1991.

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Reviewability
General Overview. — County appraisal district and review board did not have to file an appeal bond to seek review of a judgment rendered in favor of a taxpayer in an ad valorem tax case because the appraisal district was the governmental agent for the county for purposes of appraising property for ad valorem taxation and the county's statutory exemption from filing an appeal bond extended to its appraisal district. Dallas County Appraisal Dist. v. Institute for Aerobics Research, 751 S.W.2d 860, 1988 Tex. LEXIS 69 (Tex. 1988).

TAX LAW
State & Local Taxes
Real Property Tax
General Overview. — In the appeal filed by appellant chief of the county appraisal district from a summary judgment in appellee property owner's favor which permanently enjoined appellant from assessing or collecting taxes on appellee's property, Tex. Tax Code Ann. § 42.28 did not afford appellant from the requirement to file an appeal bond. Plano Independent School Dist. v. Oake, 682 S.W.2d 359, 1984 Tex. App. LEXIS 6806 (Tex. App. Dallas Nov. 2, 1984), writ granted No. C-3801 (Tex. 1985), rev'd, 692 S.W.2d 454, 1985 Tex. LEXIS 869 (Tex. 1985), overruled, Grand Prairie Independent School Dist. v. Southern Parts Imports, Inc., 813 S.W.2d 499, 1991 Tex. LEXIS 81 (Tex. 1991).

Sec. 42.29. Attorney's Fees.

(a) A property owner who prevails in an appeal to the court under Section 42.25 or 42.26, in an appeal to the court of a determination of an appraisal review board on a motion filed under Section 25.25, or in an appeal to the court of a determination of an appraisal review board of a protest of the denial in whole or in part of an exemption under Section 11.17, 11.22, 11.23, 11.231, or 11.24 may be awarded reasonable attorney's fees. The amount of the award may not exceed the greater of:

(1) $15,000; or

(2) 20 percent of the total amount by which the property owner's tax liability is reduced as a result of the appeal.

(b) Notwithstanding Subsection (a), the amount of an award of attorney's fees may not exceed the lesser of:

(1) $100,000; or

(2) the total amount by which the property owner's tax liability is reduced as a result of the appeal.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 905 (H.B. 1580), § 1, effective August 29, 1983; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 4.1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 203 (H.B. 2201), § 2, effective May 21, 1997; am. Acts 2009, 81st Leg., ch. 1267 (H.B. 1030), § 5, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 27, effective June 14, 2013.

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CIVIL PROCEDURE
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Discretion. — Plain and ordinary meaning of the words "may be awarded" in Tex. Tax Code Ann. § 42.29 vests a trial court with a measure of discretion in awarding attorney fees for an excessive appraisal. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

REMEDIES
Costs & Attorney Fees

General Overview. — Plain and ordinary meaning of the words "may be awarded" in Tex. Tax Code Ann. § 42.29 vests a trial court with a measure of discretion in awarding attorney fees for an excessive appraisal. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

Because neither Tex. Tax Code Ann. § 42.25 nor Tex. Tax Code Ann. § 42.29 mandated an award of attorney fees, and because a corporate taxpayer did not offer any other basis for its contention that a trial court abused its discretion in denying its request for attorney fees in connection with its successful declaratory judgment action against an appraisal district, the trial court's denial of attorney fees was upheld. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

Where the trial court entered a take-nothing judgment in a taxpayer's action seeking correction of a tax appraisal, the taxpayer was not entitled to recover attorney's fees. A & S Air Serv. v. Denton Cent. Appraisal Dist., 99 S.W.3d 340, 2003 Tex. App. LEXIS 1397 (Tex. App. Fort Worth Feb. 13, 2003, no pet.).

Trial court erred in denying the companies' request for attorney's fees where the award of attorney's fees under the statute was mandatory. Zapata County Appraisal Dist. v. Coastal Oil & Gas Corp., 90 S.W.3d 847, 157 Oil & Gas Rep. 1062, 2002 Tex. App. LEXIS 6727 (Tex. App. San Antonio Sept. 18, 2002, reh'g denied).

Award of attorney fees to the prevailing taxpayer in excessive appraisal cases is mandatory. Zapata County Appraisal Dist. v. Coastal Oil & Gas Corp., No. 04-01-00083-CV, 2002 Tex. App. LEXIS 5572 (Tex. App. San Antonio July 31, 2002), reh'g denied, op. withdrawn, sub. op., 90 S.W.3d 847, 157 Oil & Gas Rep. 1062, 2002 Tex. App. LEXIS 6727 (Tex. App. San Antonio Sept. 18, 2002).

Because a property owner was not the prevailing party in a tax protest against a county, the property owner was not entitled to attorney fees under Tex. Tax. Code Ann. § 42.29. Weingarten Realty Advisors v. Harris County Appraisal Dist., No. 14-01-00094-CV, 2002 Tex. App. LEXIS 3170 (Tex. App. Houston 14th Dist. May 2, 2002), op. withdrawn, sub. op., 93 S.W.3d 280, 2002 Tex. App. LEXIS 5527 (Tex. App. Houston 14th Dist. July 25, 2002).

Under Tex. Tax Code Ann. § 42.29, a property owner who is successful in a tax appeal can recover reasonable attorney fees only in two instances: excessive-appraisal claims and unequal-appraisal claims. Tex-Air Helicopters, Inc. v. Galveston County Appraisal Review Bd., 76 S.W.3d 575, 2002 Tex. App. LEXIS 2075 (Tex. App. Houston 14th Dist. Mar. 21, 2002, no pet.).

Where a marketing agent disputed the assessment of personal property taxes against him based on whether his passing of legal title from real seller of fire trucks to purchasers constituted a sale giving rise to any taxation, the appraised value of the fire trucks was not in issue; thus, the marketing agent was not entitled to recover attorney's fees after successfully challenging the assessment of taxes. Martin v. Harris County Appraisal Dist. & Harris County Appraisal Review Bd., 44 S.W.3d 190, 2001 Tex. App. LEXIS 1851 (Tex. App. Houston 14th Dist. Mar. 22, 2001, no pet.).

Trial court discretion to award attorney's fees to appellant under Tex. Tax Code Ann. § 42.29, as it was not a case of "excessive appraisal." Tex-Air Helicopters v. Harris County Appraisal Dist., 15 S.W.3d 173, 2000 Tex. App. LEXIS 1280 (Tex. App. Texarkana Feb. 25, 2000, no pet.).

In an action by appellee real estate investment firm, which challenged the appraised value of its real property, the trial court properly awarded attorney's fees and under a state high court decision, an "appeal" meant each contested year for property appraisals and appellee could have received amount in attorney's fees higher than what was originally awarded. Harris County Appraisal Dist. v. Aldine Meadow Real Estate Invest., N.V., No. 01-92-00725-CV, 1993 Tex. App. LEXIS 1080 (Tex. App. Houston 1st Dist. Apr. 15, 1993).

Under Tex. Tax Code Ann. § 42.29, attorney's fees are authorized in an appeal to the trial court from an appraisal review board order determining a taxpayer's protest of the valuation placed on his property. Because each year's valuation is subject to protest under Tex. Tax Code Ann. § 42.01, attorney's fees can be awarded for each appeal filed on the same property. Atascosa County Appraisal Dist. v. Tymrak, 858 S.W.2d 335, 1993 Tex. LEXIS 14 (Tex. 1993).

Taxpayer who settled tax suit against the county challenging the appraised value of real property was not entitled to recover more than $ 5,000 attorney's fees under Tex. Tax Code Ann. § 42.29. Harris County Appraisal Dist. v. Aldine Meadow Real Estate Invest., N.V., No. 01-92-00725-CV, 1993 Tex. App. LEXIS 29 (Tex. App. Houston 1st Dist. Jan. 7, 1993), op. withdrawn, sub. op., No. 01-92-00725-CV, 1993 Tex. App. LEXIS 1080 (Tex. App. Houston 1st Dist. Apr. 15, 1993).

Where the taxpayer instituted a suit against the county appraisal review board, against the county appraisal district board (district), and others, the court held that the trial court properly awarded attorney's fees under Tex. Tax Code Ann. § 42.29 (Supp. 1986), because the award was not unreasonable or excessive. Uvalde County Appraisal Dist. v. F.T. Kincaid Estate, 720 S.W.2d 678, 1986 Tex. App. LEXIS 9314 (Tex. App. San Antonio Nov. 19, 1986, writ ref'd n.r.e.).

ATTORNEY EXPENSES & FEES

General Overview. — Appellate court overruled the taxpayer's complaint that he was unable to recover attorney fees, because he was pro se in the matter, and never offered evidence of actually having incurred attorney fees; Tex. Tax Code Ann. § 42.29 presumed that an attorney actually represented the taxpayer. Daily v. Bowie County Appraisal Dist., No. 06-07-00055-CV, 2007 Tex. App. LEXIS 9222 (Tex. App. Texarkana Nov. 28, 2007).

STATUTORY AWARDS. — There was evidence to support the trial court's denial of attorney fees for challenging the tax appraisal of the business because the evidence suggested that the property was overvalued because of a clerical error, rather than because it was excessively or unequally appraised. Because the business did not establish that it prevailed in an appeal to the court under the statutes, which was a prerequisite for an award of attorney's fees, the trial court did not abuse its discretion in denying the business's request for fees. Sam Griffin Family Investments-I, Inc. v. Dallas Cent. Appraisal Dist., No. 05-12-01470-CV, 2014 Tex. App. LEXIS 7890 (Tex. App. Dallas July 21, 2014).

Taxpayer could not recover attorney's fees because it did not prevail in challenging an appraisal district's use of supplemental appraisal records to add omitted personal property. Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 2014 Tex. App. LEXIS 3030 (Tex. App. El Paso Mar. 19, 2014, no pet.).

Term "may" in Tex. Tax Code Ann. § 42.29 gave the trial court discretion in allowing the recovery of attorney's fees by a prevailing party, and because the taxpayer was not a prevailing property owner in the trial court, it had no reason to address whether to

award attorney's fees, and the trial court on remand had to determine whether to award the taxpayer attorney's fees. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., No. 01-12-00052-CV, 2013 Tex. App. LEXIS 10086 (Tex. App. Houston 1st Dist. Aug. 13, 2013).

Taxpayers whose travel trailers and recreational vehicles were not improvements or real property but were tangible personal property exempt from taxation under Tex. Tax Code Ann. § 11.14, and who successfully protested the denial of the exemption under Tex. Tax. Code Ann. § 41.41(4), were entitled to mandatory attorney's fees under Tex. Tax. Code Ann. § 42.29. Rourk v. Cameron Appraisal Dist., No. 13-11-00751-CV, 2013 Tex. App. LEXIS 8947 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 443 S.W.3d 217, 2013 Tex. App. LEXIS 10348 (Tex. App. Corpus Christi Aug. 15, 2013).

Trial court erred in finding that taxpayers were not entitled to attorney's fees, because the taxpayers had successfully protested the denial of a partial exemption under Tex. Tax Code Ann. 41.41(4) and were therefore entitled to mandatory attorney's fees under Tex. Tax Code Ann. 42.29. Boll v. Cameron Appraisal Dist., No. 13-11-00750-CV, 2013 Tex. App. LEXIS 8946 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 445 S.W.3d 397, 2013 Tex. App. LEXIS 10345 (Tex. App. Corpus Christi Aug. 15, 2013).

Tex. Tax Code Ann. §§ 42.25 and 42.26 did not apply because the realtor association did not challenge the appraised value of its property; it challenged the Appraisal District's denial of a tax exemption, and consequently, since the association did not prevail on a claim "under Section 42.25 or 42.26," attorney's fees were not authorized by Tex. Tax Code Ann. § 42.29. Brazos County Appraisal Dist. v. Bryan-College Station Reg'l Ass'n of Realtors, 419 S.W.3d 462, 2013 Tex. App. LEXIS 4929 (Tex. App. Waco Apr. 18, 2013), reh'g denied, No. 10-11-00438-CV, 2013 Tex. App. LEXIS 15545 (Tex. App. Waco May 22, 2013).

Whether each appeal is prosecuted in separate lawsuits or in a single consolidated lawsuit, Tex. Tax Code Ann. § 42.29(a) authorizes an award of attorney's fees for each separate order appealed from in a multiple-property tax case. Bexar County Appraisal Dist. v. Abdo, 399 S.W.3d 248, 2012 Tex. App. LEXIS 7745 (Tex. App. San Antonio Sept. 12, 2012, no pet.).

Because a county appraisal review board issued a separate order for each property when it determined the appraised value of three real property tracts, the trial court did not err in awarding attorney's fees separately for each of the three appeals, applying the statutory cap in Tex. Tax Code Ann. § 42.29(a) to each of the fee amounts awarded by the jury. Calculating the statutory cap was the responsibility of the trial court, not the jury, and it was correct to treat each property separately rather than in the aggregate when calculating the cap. Bexar County Appraisal Dist. v. Abdo, 399 S.W.3d 248, 2012 Tex. App. LEXIS 7745 (Tex. App. San Antonio Sept. 12, 2012, no pet.).

Because a taxpayer successfully appealed an excessive appraisal under Tex. Tax Code Ann. § 42.25, he was entitled to recover mandatory attorney's fees pursuant to Tex. Tax Code Ann. § 42.29. Martinez v. Dallas Cent. Appraisal Dist., 339 S.W.3d 184, 2011 Tex. App. LEXIS 2031 (Tex. App. Dallas Mar. 22, 2011, no pet.).

Record established that a taxpayer was obligated to bring this motion for sanctions in order to enforce the earlier judgment, thus providing a basis for the trial court's award of attorney's fees in this proceeding, for purposes of Tex. Tax Code Ann. § 42.29(a). Travis Cent. Appraisal Dist. v. Wells Fargo Bank Minn., N.A., No. 03-09-00013-CV, 2010 Tex. App. LEXIS 427 (Tex. App. Austin Jan. 26, 2010), op. withdrawn, sub. op., No. 03-09-00013-CV, 2010 Tex. App. LEXIS 1921 (Tex. App. Austin Mar. 19, 2010).

Upper and lower ceilings on recoverable attorney's fees in Tex. Tax Code Ann. § 42.29 was not a violation of substantive due process or the right of access to the courts. There was no showing that taxpayers could not obtain counsel or that the cap on fees was not rationally related to a legitimate state interest. Gard v. Bandera County Appraisal Dist., 293 S.W.3d 613, 2009 Tex. App. LEXIS 3048 (Tex. App. San Antonio May 6, 2009, no pet.).

Tex. Tax Code Ann. § 42.29 authorized attorney's fees for only two distinct types of protest: excessive value and unequal appraisal; therefore, because a protest to an appraisal district's ability to tax oil located in an interstate pipeline did not fall under Tex. Tax Code Ann. §§ 42.25, 42.26, several oil companies were not able to recover such fees. In addition, the appraisal district did not waive a complaint to an award of attorney's fees because repeated objections were made. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

In a case involving a dispute over the taxation of two underground salt caverns, a taxpayer was not entitled to recover attorney's fees because it did not prevail in its appeal from a taxing district's valuation. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., No. 13-02-237-CV, 2008 Tex. App. LEXIS 3149 (Tex. App. Corpus Christi Apr. 30, 2008).

Upon request by a prevailing party in an excessive appraisal action under Tex. Tax Code Ann. § 42.25, an award of reasonable attorney's fees is mandatory, not discretionary, under Tex. Tax Code Ann. § 42.29; therefore, a taxpayer was entitled to attorney fees after the trial court ruled in its favor on an excessive appraisal issue. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006, no pet.).

APPEALS

Costs & Attorney Fees. — Tex. Tax Code Ann. § 42.29, as amended, does not alter the already existing restrictions on fee awards, including the restriction that the prevailing property owner is entitled to no more in attorneys' fees than the total amount of tax savings resulting from the appeal. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

In an appeal relating to the appraised value of property, a district court erred in ordering an appraisal district court pay two taxpayers a large amount of attorneys' fees because they were limited under Tex. Tax Code Ann. § 42.29 to an award of no more than $ 225.51, which was the total amount of their tax savings. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

Where a county appraisal review board and a county appraisal district sought review of the trial court's judgment that parking lots owned by a church and leased to a realty company were exempt from property taxes, the court held that under Tex. Prop. Tax Code Ann. §§ 42.25, 42.26, and 42.29, and Tex. Civ. Prac. & Rem. Code Ann. § 37.009, attorney's fees were improperly awarded to the church because the trial court went too far when it found that the appraised value of the property, according to the appraisal roll, exceeded the appraised value required by law, and that the church was entitled to a reduction of the appraised value on the appraisal roll to zero for each of the tax years in question; because a litigant was not permitted to have sought a declaratory judgment in an existing suit simply to recover attorney's fees that were otherwise not authorized by statute; and because if the law were otherwise, litigants could routinely have created a right to attorney's fees by seeking a declaration that they were entitled to relief on claims for which attorney's fees are not recoverable. Bexar County Appraisal Review Bd. v. First Baptist Church, 846 S.W.2d 554, 1993 Tex. App. LEXIS 538 (Tex. App. San Antonio Jan. 20, 1993, writ denied), cert. denied, 510 U.S. 1178, 114 S. Ct. 1221, 127 L. Ed. 2d 567, 1994 U.S. LEXIS 2083 (U.S. 1994).

CONSTITUTIONAL LAW

Bill of Rights

Fundamental Rights

Procedural Due Process

General Overview. — Statutory limit on the amount of attorneys' fees that can be awarded in a tax appeal under Tex. Tax Code Ann. § 42.29 does not carry due process implications. Therefore, in an appeal relating to the appraised value of property, two taxpayers failed to show that Tex. Tax Code Ann. § 42.29 violated the Due Process Clause of the United States Constitution and Tex. Const. art. I, § 3 since the taxpayers provided no indication of the manner in which § 42.29 was unconstitutional. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

EQUAL PROTECTION

Level of Review. — Tex. Tax Code Ann. § 42.29 carries out a legitimate governmental purpose by limiting attorneys' fee awards in all cases and for every property owner in the same manner. Therefore, in an appeal relating to the appraised value of property, two taxpayers failed to show that Tex. Tax Code Ann. § 42.29 violated the Equal Protection Clause of the United States Constitution and Tex. Const. art. I, § 3 based on their bare assertion that, because § 42.29 allowed higher attorneys' fee awards in cases involving greater tax savings, it effectively barred all but the rich from the protections afforded by Tex. Tax Code Ann. ch. 42. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

Because the classification made by Tex. Tax Code Ann. § 42.29 does not impinge on a fundamental right or distinguish between persons on a suspect basis, § 42.29 need only be rationally related to a legitimate governmental purpose to survive an equal-protection challenge; in attacking the rationality of § 42.29, the challenger has the burden to negate every conceivable basis which might support § 42.29. Tex-Air Helicopters, Inc. v. Galveston County Appraisal Review Bd., 76 S.W.3d 575, 2002 Tex. App. LEXIS 2075 (Tex. App. Houston 14th Dist. Mar. 21, 2002, no pet.).

SCOPE OF PROTECTION. — Assertion that Tex. Tax Code Ann. § 42.29, which allowed a property owner who was successful in a tax appeal to recover attorney's fees only in two instances, excessive-appraisal claims and unequal-appraisal claims, violated the Equal Protection Clause because it gave attorney's fees to two categories of successful taxpayers but not to all successful taxpayers was without merit because a helicopter owner did show that the varying treatment of different groups or person was so unrelated to the achievement of any combination of legitimate purposes that the court could only conclude that the legislature's actions were irrational. Tex-Air Helicopters, Inc. v. Galveston County Appraisal Review Bd., 76 S.W.3d 575, 2002 Tex. App. LEXIS 2075 (Tex. App. Houston 14th Dist. Mar. 21, 2002, no pet.).

On tax appeal, Texas helicopter owner did not prove that Tex. Tax Code Ann. § 42.29, as applied to it, violated the Equal Protection Clause of the United States Constitution as there was a rational basis for allowing attorney's fees to successful landowners asserting excessive-appraisal and uneven-appraisal claims but not to successful landowners in other cases. Tex-Air Helicopters, Inc. v. Galveston County Appraisal Review Bd., 76 S.W.3d 575, 2002 Tex. App. LEXIS 2075 (Tex. App. Houston 14th Dist. Mar. 21, 2002, no pet.).

TAX LAW

State & Local Taxes

Administration & Proceedings

General Overview. — Plain and ordinary meaning of the words "may be awarded" in Tex. Tax Code Ann. § 42.29 vests a trial court with a measure of discretion in awarding attorney fees for an excessive appraisal. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

Because neither Tex. Tax Code Ann. § 42.25 nor Tex. Tax Code Ann. § 42.29 mandated an award of attorney fees, and because a corporate taxpayer did not offer any other basis for its contention that a trial court abused its discretion in denying its request for attorney fees in connection with its successful declaratory judgment action against an appraisal district, the trial court's denial of attorney fees was upheld. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., No. 03-05-00171-CV, 2006 Tex. App. LEXIS 2247 (Tex. App. Austin Mar. 23, 2006), op. withdrawn, sub. op., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006).

Attorney's fees were recoverable under Tex. Tax Code Ann. § 42.29 when the underlying dispute was resolved by settlement; § 42.29 specifically requires an appeal but not a trial. Atascosa County Appraisal Dist. v. Tymrak, 815 S.W.2d 364, 1991 Tex. App. LEXIS 2422 (Tex. App. San Antonio Aug. 30, 1991), writ granted No. D-1804 (Tex. 1992), aff'd, 858 S.W.2d 335, 1993 Tex. LEXIS 14 (Tex. 1993).

Taxpayers' successful challenge to excessive appraisal value placed on their properties because the appraisals did not take into consideration the open-space use of the properties entitled them to an award of attorney's fees under Tex. Tax Code Ann. § 42.29. May v. Appraisal Review Bd., 794 S.W.2d 906, 1990 Tex. App. LEXIS 2327 (Tex. App. Fort Worth Aug. 8, 1990, writ denied), overruled, Dallas Cent. Appraisal Dist. v. Seven Inv. Co., 835 S.W.2d 75, 1992 Tex. LEXIS 67 (Tex. 1992).

ASSESSMENTS. — Term "may" in Tex. Tax Code Ann. § 42.29 gave the trial court discretion in allowing the recovery of attorney's fees by a prevailing party, and because the taxpayer was not a prevailing property owner in the trial court, it had no reason to address whether to award attorney's fees, and the trial court on remand had to determine whether to award the taxpayer attorney's fees. Bauer-Pileco, Inc. v. Harris County Appraisal Dist., No. 01-12-00052-CV, 2013 Tex. App. LEXIS 10086 (Tex. App. Houston 1st Dist. Aug. 13, 2013).

Taxpayer, a heavy equipment dealer, was not entitled to recover attorney's fees under Tex. Tax Code Ann. § 42.29 because it did not prevail in its appeal from the appraisal district's disallowance of certain subtractions it made from its inventory for property tax purposes. Briggs Equip. Trust v. Harris County Appraisal Dist., 294 S.W.3d 667, 2009 Tex. App. LEXIS 3877 (Tex. App. Houston 1st Dist. June 4, 2009), reh'g denied, No. 01-08-00190-CV, 2009 Tex. App. LEXIS 9970 (Tex. App. Houston 1st Dist. Sept. 17, 2009).

JUDICIAL REVIEW. — There was evidence to support the trial court's denial of attorney fees for challenging the tax appraisal of the business because the evidence suggested that the property was overvalued because of a clerical error, rather than because it was excessively or unequally appraised. Because the business did not establish that it prevailed in an appeal to the court under the statutes, which was a prerequisite for an award of attorney's fees, the trial court did not abuse its discretion in denying the business's request for fees. Sam Griffin Family Investments-I, Inc. v. Dallas Cent. Appraisal Dist., No. 05-12-01470-CV, 2014 Tex. App. LEXIS 7890 (Tex. App. Dallas July 21, 2014).

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Because a taxpayer successfully appealed an excessive appraisal under Tex. Tax Code Ann. § 42.25, he was entitled to recover mandatory attorney's fees pursuant to Tex. Tax Code Ann. § 42.29. Martinez v. Dallas Cent. Appraisal Dist., 339 S.W.3d 184, 2011 Tex. App. LEXIS 2031 (Tex. App. Dallas Mar. 22, 2011, no pet.).

Record established that a taxpayer was obligated to bring this motion for sanctions in order to enforce the earlier judgment, thus providing a basis for the trial court's award of attorney's fees in this proceeding, for purposes of Tex. Tax Code Ann. § 42.29(a). Travis Cent. Appraisal Dist. v. Wells Fargo Bank Minn., N.A., No. 03-09-00013-CV, 2010 Tex. App. LEXIS 427 (Tex. App. Austin Jan.

26, 2010), op. withdrawn, sub. op., No. 03-09-00013-CV, 2010 Tex. App. LEXIS 1921 (Tex. App. Austin Mar. 19, 2010).

Statutory limit on the amount of attorneys' fees that can be awarded in a tax appeal under Tex. Tax Code Ann. § 42.29 does not carry due process implications. Therefore, in an appeal relating to the appraised value of property, two taxpayers failed to show that Tex. Tax Code Ann. § 42.29 violated the Due Process Clause of the United States Constitution and Tex. Const. art. I, § 3 since the taxpayers provided no indication of the manner in which § 42.29 was unconstitutional. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

Tex. Tax Code Ann. § 42.29 carries out a legitimate governmental purpose by limiting attorneys' fee awards in all cases and for every property owner in the same manner. Therefore, in an appeal relating to the appraised value of property, two taxpayers failed to show that Tex. Tax Code Ann. § 42.29 violated the Equal Protection Clause of the United States Constitution and Tex. Const. art. I, § 3 based on their bare assertion that, because § 42.29 allowed higher attorneys' fee awards in cases involving greater tax savings, it effectively barred all but the rich from the protections afforded by Tex. Tax Code Ann. ch. 42. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

Tex. Tax Code Ann. § 42.29, as amended, does not alter the already existing restrictions on fee awards, including the restriction that the prevailing property owner is entitled to no more in attorneys' fees than the total amount of tax savings resulting from the appeal. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

In an appeal relating to the appraised value of property, a district court erred in ordering an appraisal district court pay two taxpayers a large amount of attorneys' fees because they were limited under Tex. Tax Code Ann. § 42.29 to an award of no more than $ 225.51, which was the total amount of their tax savings. Burnet Cent. Appraisal Dist. v. Millmeyer, 287 S.W.3d 753, 2009 Tex. App. LEXIS 2271 (Tex. App. Austin Apr. 2, 2009, no pet.).

In a case involving a dispute over the taxation of two underground salt caverns, a taxpayer was not entitled to recover attorney's fees because it did not prevail in its appeal from a taxing district's valuation. Coastal Liquids Partners, L.P. v. Matagorda County Appraisal Dist., No. 13-02-237-CV, 2008 Tex. App. LEXIS 3149 (Tex. App. Corpus Christi Apr. 30, 2008).

TAXPAYER PROTESTS. — Taxpayers whose travel trailers and recreational vehicles were not improvements or real property but were tangible personal property exempt from taxation under Tex. Tax Code Ann. § 11.14, and who successfully protested the denial of the exemption under Tex. Tax. Code Ann. § 41.41(4), were entitled to mandatory attorney's fees under Tex. Tax. Code Ann. § 42.29. Rourk v. Cameron Appraisal Dist., No. 13-11-00751-CV, 2013 Tex. App. LEXIS 8947 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 443 S.W.3d 217, 2013 Tex. App. LEXIS 10348 (Tex. App. Corpus Christi Aug. 15, 2013).

Trial court erred in finding that taxpayers were not entitled to attorney's fees, because the taxpayers had successfully protested the denial of a partial exemption under Tex. Tax Code Ann. 41.41(4) and were therefore entitled to mandatory attorney's fees under Tex. Tax Code Ann. 42.29. Boll v. Cameron Appraisal Dist., No. 13-11-00750-CV, 2013 Tex. App. LEXIS 8946 (Tex. App. Corpus Christi July 18, 2013), op. withdrawn, sub. op., reh'g denied, 445 S.W.3d 397, 2013 Tex. App. LEXIS 10345 (Tex. App. Corpus Christi Aug. 15, 2013).

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Tex. Tax Code Ann. § 42.29 authorized attorney's fees for only two distinct types of protest: excessive value and unequal appraisal; therefore, because a protest to an appraisal district's ability to tax oil located in an interstate pipeline did not fall under Tex. Tax Code Ann. §§ 42.25, 42.26, several oil companies were not able to recover such fees. In addition, the appraisal district did not waive a complaint to an award of attorney's fees because repeated objections were made. Midland Cent. Appraisal Dist. v. BP Am. Prod. Co., 282 S.W.3d 215, 172 Oil & Gas Rep. 428, 2009 Tex. App. LEXIS 2048 (Tex. App. Eastland Mar. 26, 2009), cert. denied, 563 U.S. 936, 131 S. Ct. 2097, 179 L. Ed. 2d 891, 2011 U.S. LEXIS 3129 (U.S. 2011).

PERSONAL PROPERTY TAX

Tangible Property

Imposition of Tax. — Taxpayer, a heavy equipment dealer, was not entitled to recover attorney's fees under Tex. Tax Code Ann. § 42.29 because it did not prevail in its appeal from the appraisal district's disallowance of certain subtractions it made from its inventory for property tax purposes. Briggs Equip. Trust v. Harris County Appraisal Dist., 294 S.W.3d 667, 2009 Tex. App. LEXIS 3877 (Tex. App. Houston 1st Dist. June 4, 2009), reh'g denied, No. 01-08-00190-CV, 2009 Tex. App. LEXIS 9970 (Tex. App. Houston 1st Dist. Sept. 17, 2009).

REAL PROPERTY TAX

General Overview. — Since the trial court had jurisdiction to hear the underlying case under Tex. Tax Code Ann. § 42.29, the trial court did not err in awarding attorney's fees to the taxpayer. Harris County Appraisal Dist. v. Drever Partners, 938 S.W.2d 196, 1997 Tex. App. LEXIS 271 (Tex. App. Houston 14th Dist. Jan. 23, 1997, no writ).

ASSESSMENT & VALUATION

Valuation. — Upper and lower ceilings on recoverable attorney's fees in Tex. Tax Code Ann. § 42.29 was not a violation of substantive due process or the right of access to the courts. There was no showing that taxpayers could not obtain counsel or that the cap on fees was not rationally related to a legitimate state interest. Gard v. Bandera County Appraisal Dist., 293 S.W.3d 613, 2009 Tex. App. LEXIS 3048 (Tex. App. San Antonio May 6, 2009, no pet.).

Upon request by a prevailing party in an excessive appraisal action under Tex. Tax Code Ann. § 42.25, an award of reasonable attorney's fees is mandatory, not discretionary, under Tex. Tax Code Ann. § 42.29; therefore, a taxpayer was entitled to attorney fees after the trial court ruled in its favor on an excessive appraisal issue. Aaron Rents, Inc. v. Travis Cent. Appraisal Dist., 212 S.W.3d 665, 2006 Tex. App. LEXIS 8068 (Tex. App. Austin Sept. 8, 2006, no pet.).

Sec. 42.30. Attorney Notice of Certain Engagements.

(a) An attorney who accepts an engagement or compensation from a third party to represent a person in an appeal under this chapter shall provide notice to the person represented:

(1) informing the person that the attorney has been retained by a third party to represent the person;

(2) explaining the attorney's ethical obligations to the person in relation to the third party, including the obligation to ensure that the third party does not interfere with the attorney's independent judgment or the attorney-client relationship;

(3) describing the general activities the third party may perform in the appeal;

(4) explaining that compensation will be received by the attorney from the third party; and

(5) informing the person that the person's consent is required before the attorney may accept compensation from the third party.

(b) The attorney shall mail the notice by certified mail to the person represented by the attorney not later than the 30th day after the date the attorney accepts the engagement from the third party.

(c) Notwithstanding the other provisions of this section, an engagement complies with this section if each party related to the engagement, including the person represented in the appeal, the third party, and the attorney, enters into an agreement not later than the 30th day after the date of the filing of the appeal by the attorney that contains the information required by Subsection (a).

(d) A person may void an engagement that does not comply with this section. An attorney who does not comply with this section may be reported to the Office of Chief Disciplinary Counsel for the State Bar of Texas.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 18, effective September 1, 2011.

Secs. 42.31 to 42.40. [Reserved for expansion].

Subchapter C

Postappeal Administrative Procedures

Sec. 42.41. Correction of Rolls.

(a) Not later than the 45th day after the date an appeal is finally determined, the chief appraiser shall:

(1) correct the appraisal roll and other appropriate records as necessary to reflect the final determination of the appeal; and

(2) certify the change to the assessor for each affected taxing unit.

(b) The assessor for each affected taxing unit shall correct the tax roll and other appropriate records for which the assessor is responsible.

(c) A chief appraiser is irrebutably presumed to have complied with Subsection (a)(2).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 155, effective August 14, 1981; am. Acts 2003, 78th Leg., ch. 481 (H.B. 893), § 1, effective September 1, 2003.

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TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Where a taxpayer did not file notice of tax valuation protest with the county's appraisal review board (ARB), appear in person or by affidavit before the ARB, and did not timely appeal the ARB's decision as provided under Tex. Tax Code Ann. § 42.41, the district court did not have jurisdiction to hear the protest, and the county officials' appeal of the denial of their motion for summary judgment was dismissed for lack of jurisdiction. Even though the taxpayer claimed that he was discouraged by county officials from pursuing his protest, he did not meet his burden to prove that the alleged extrinsic fraud by the county officials denied him the opportunity to fully litigate all the rights and defenses he was entitled to assert or that he was in any way prevented from obtaining his own counsel to gain independent advice on the issues. Gibbud v. Moron, 972 S.W.2d 797, 1998 Tex. App. LEXIS 2591 (Tex. App. Corpus Christi Apr. 30, 1998, no pet.).

ASSESSMENTS. — Executor failed to follow all necessary administrative procedures to appeal the 2003 and 2004 tax year valuations to the district court because the original petition failed to complain about the Board's 2003 order, instead focusing on tax year 2002. The executor only sought relief from the 2003 order when he filed an amended petition on August 20, 2004; however, that date was more than a year after the July 9, 2003, issuance of the Board's order pertaining to the 2003 valuation. Canales v. Kleberg County Appraisal Dist., No. 13-07-666-CV, 2008 Tex. App. LEXIS 6165 (Tex. App. Corpus Christi Aug. 14, 2008).

JUDICIAL REVIEW. — Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive

means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

TAXPAYER PROTESTS. — Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — Trial court properly concluded it lacked subject-matter jurisdiction over the claims of all the property owners against the county appraisal district for tax year 2007, because although the first owner filed the protest and subsequent suit for judicial review, it had conveyed the property to the second owner in 2004, and since the second owner did not exercise its right to protest and the district did not determine any protest by it, the second owner lacked standing to appeal the district's determination. Skylane W. Ltd. v. Harris County Appraisal Dist., No. 14-08-00507-CV, 2009 Tex. App. LEXIS 9683 (Tex. App. Houston 14th Dist. Dec. 22, 2009).

Executor failed to follow all necessary administrative procedures to appeal the 2003 and 2004 tax year valuations to the district court because the original petition failed to complain about the Board's 2003 order, instead focusing on tax year 2002. The executor only sought relief from the 2003 order when he filed an amended petition on August 20, 2004; however, that date was more than a year after the July 9, 2003, issuance of the Board's order pertaining to the 2003 valuation. Canales v. Kleberg County Appraisal Dist., No. 13-07-666-CV, 2008 Tex. App. LEXIS 6165 (Tex. App. Corpus Christi Aug. 14, 2008).

After reduction of a property appraisal, a taxpayer was entitled under Tex. Tax Code Ann. § 42.43(a) to a refund of penalties and interest that had been calculated on the incorrect appraised value because Tex. Tax Code Ann. § 33.47(a) provided that a taxing unit's recovery of delinquent taxes, penalties, and interest had to be assessed from the current tax roll, and pursuant to Tex. Tax Code Ann. § 42.41(a), (b), the tax roll was corrected when the appraised value was lowered. Carrollton-Farmers Branch Indep. Sch. Dist. v. JPD, Inc., 168 S.W.3d 184, 2005 Tex. App. LEXIS 3987 (Tex. App. Dallas May 25, 2005, no pet.).

Where a taxpayer did not file notice of tax valuation protest with the county's appraisal review board (ARB), appear in person or by affidavit before the ARB, and did not timely appeal the ARB's decision as provided under Tex. Tax Code Ann. § 42.41, the district court did not have jurisdiction to hear the protest, and the county officials' appeal of the denial of their motion for summary judgment was dismissed for lack of jurisdiction. Even though the taxpayer claimed that he was discouraged by county officials from pursuing his protest, he did not meet his burden to prove that the alleged extrinsic fraud by the county officials denied him the opportunity to fully litigate all the rights and defenses he was entitled to assert or that he was in any way prevented from obtaining his own counsel to gain independent advice on the issues. Gibbud v. Moron, 972 S.W.2d 797, 1998 Tex. App. LEXIS 2591 (Tex. App. Corpus Christi Apr. 30, 1998, no pet.).

Sec. 42.42. Corrected and Supplemental Tax Bills.

(a) Except as provided by Subsection (b) of this section, if the final determination of an appeal that changes a property owner's tax liability occurs after the tax bill is mailed, the assessor for each affected taxing unit shall prepare and mail a corrected tax bill in the manner provided by Chapter 31 of this code for tax bills generally. The assessor shall include with the bill a brief explanation of the reason for and effect of the corrected bill.

(b) If the final determination of an appeal that increases a property owner's tax liability occurs after the property owner has paid his taxes, the assessor for each affected taxing unit shall prepare and mail a supplemental tax bill in the manner provided by Chapter 31 for tax bills generally. The assessor shall include with the bill a brief explanation of the reason for and effect of the supplemental bill. The additional tax is due on receipt of the supplemental bill and becomes delinquent if not paid before the delinquency date prescribed by Chapter 31 or before the first day of the next month after the date of mailing that will provide at least 21 days for payment of the tax, whichever is later.

(c) If the final determination of an appeal occurs after the property owner has paid a portion of the tax finally determined to be due as required by Section 42.08, the assessor for each affected taxing unit shall prepare and mail a supplemental tax bill in the form and manner prescribed by Subsection (b). The additional tax is due and becomes delinquent as provided by Subsection (b). If the additional tax is not paid by the delinquency date for the additional tax, the property owner is liable for penalties and interest on the tax included in the supplemental bill calculated as provided by Section 33.01 as if the tax included in the supplemental bill became delinquent on the original delinquency date prescribed by Chapter 31.

(d) If the property owner did not pay any portion of the taxes imposed on the property because the court found that payment would constitute an unreasonable restraint on the owner's right of access to the courts as provided by Section 42.08(d), after the final determination of the appeal the assessor for each affected taxing unit shall prepare and mail a supplemental tax bill in the form and manner prescribed by Subsection (b). The additional tax is due and becomes delinquent as provided by Subsection (b). If the additional tax is not paid by the delinquency date for the additional tax, the property owner is liable for interest on the tax included in the supplemental bill calculated as provided by Section 33.01 as if the tax included in the supplemental bill became delinquent on the delinquency date prescribed by Chapter 31.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1997, 75th Leg., ch. 203 (H.B. 2201), § 3, effective May 21, 1997; am. Acts 2019, 86th Leg., ch. 252 (H.B. 861), § 1, effective September 1, 2019.

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TAX LAW
State & Local Taxes
Administration & Proceedings

Judicial Review. — Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

TAXPAYER PROTESTS. — Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — Defendant company's partial tender of assessed taxes prior to delinquency date was sufficient to preclude imposition of penalty and interest on the unpaid balance and to avoid any effort by taxing entities to collect balance due pending resolution of the property valuation suit. Jefferson County v. Clark Ref. & Mktg., 7 S.W.3d 324, 1999 Tex. App. LEXIS 9622 (Tex. App. Beaumont Dec. 30, 1999, no pet.).

Sec. 42.43. Refund.

(a) If the final determination of an appeal that decreases a property owner's tax liability occurs after the property owner has paid his taxes, the taxing unit shall refund to the property owner the difference between the amount of taxes paid and amount of taxes for which the property owner is liable.

(b) For a refund made under this section, the taxing unit shall include with the refund interest on the amount refunded calculated at an annual rate of 9.5 percent, calculated from the delinquency date for the taxes until the date the refund is made.

(b-1) A taxing unit may not send a refund made under this section before the earlier of:

(1) the 21st day after the final determination of the appeal; or

(2) the date the property owner files the form prescribed by Subsection (i) with the taxing unit.

(c) Notwithstanding Subsection (b), if a taxing unit does not make a refund, including interest, required by this section before the 60th day after the date the chief appraiser certifies a correction to the appraisal roll under Section 42.41, the taxing unit shall include with the refund interest on the amount refunded at an annual rate of 12 percent, calculated from the delinquency date for the taxes until the date the refund is made. A refund is not considered made under this section until sent to the proper person as provided by this section.

(d) A property owner who prevails in a suit to compel a refund, including interest, required by this section that is filed on or after the 180th day after the date the chief appraiser certifies a correction to the appraisal roll is entitled to court costs and reasonable attorney's fees.

(e) Except as provided by Subsection (f) or (g), a taxing unit shall send a refund made under this section to the property owner.

(f) The final judgment in an appeal under this chapter may designate to whom and where a refund is to be sent.

(g) If a form prescribed by the comptroller under Subsection (i) is filed with a taxing unit before the 21st day after the final determination of an appeal that requires a refund be made, the taxing unit shall send the refund to the person and address designated on the form.

(h) A separate form must be filed with a taxing unit under Subsection (g) for each appeal to which the property owner is a party. A form may be revoked in a written revocation filed with the taxing unit by the property owner.

(i) The comptroller shall prescribe the form necessary to allow a property owner to designate the person to whom a refund must be sent. The comptroller shall include on the form a space for the property owner to designate to whom and where the refund must be sent and provide options to mail the refund to:

(1) the property owner;

(2) the business office of the property owner's attorney of record in the appeal; or

(3) any other individual and address designated by the property owner.

(j) A property owner is not entitled to a refund under this section resulting from the final determination of an appeal of the denial of an exemption under Section 11.31, wholly or partly, unless the property owner is entitled to the refund under Subsection (a) or has entered into a written agreement with the chief appraiser that authorizes the refund as part of an agreement related to the taxation of the property pending a final determination by the Texas Commission on Environmental Quality under Section 11.31.

(k) Not later than the 10th day after the date a property owner and the chief appraiser enter into a written agreement described by Subsection (j), the chief appraiser shall provide to each taxing unit that taxes the property a copy of the agreement. The agreement is void if a taxing unit that taxes the property objects in writing to the agreement on or before the 60th day after the date the taxing unit receives a copy of the agreement.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 640 (H.B. 2213), § 4, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 46, effective June 15, 1989; am. Acts 1993, 73rd Leg., ch. 592 (S.B. 1295), § 1, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 43, effective January 1, 1998; am. Acts 2001, 77th Leg., ch. 253 (S.B. 863), § 1, effective May 22, 2001; am. Acts 2009, 81st Leg., ch. 905 (H.B. 986), § 2, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 19, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 956 (H.B. 1090), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 964 (H.B. 1897), § 3, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 481 (S.B. 1760), § 10, effective January 1, 2016.

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CIVIL PROCEDURE
Remedies
Costs & Attorney Fees

General Overview. — Taxpayer's successful counterclaim under Tex. Tax Code Ann. § 42.43(a) for a refund of penalties and interest after a reduction of appraised value did not entitle the taxpayer to attorney fees under Tex. Tax Code Ann. § 42.43(d) because its counterclaim was filed less than 180 days after the correction to the tax rolls. Carrollton-Farmers Branch Indep. Sch. Dist. v. JPD, Inc., 168 S.W.3d 184, 2005 Tex. App. LEXIS 3987 (Tex. App. Dallas May 25, 2005, no pet.).

INJUNCTIONS

Preliminary & Temporary Injunctions. — In a property appraisal dispute, pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 65.011(1), where the owners did not rely on a statute that expressly authorized injunctive relief without a showing of the equitable requirements, they were required to prove both a probable right to the relief sought and a probable, imminent, and irreparable injury, but the owners' claimed injury was purely conjectural and thus insufficient to support a finding of probable imminent harm and the Texas Tax Code, Tex. Tax Code Ann. §§ 42.43(a), (d) and 31.11, provided full, practical, and complete relief for taxpayers who ultimately prevailed in their appeals; thus, the owners failed to show that they lacked an adequate remedy at law for recovering any taxes they might be found to have overpaid, they failed to show probable imminent and irreparable harm, the trial court abused its discretion in issuing the temporary injunction, and the temporary injunction was dissolved. Kendall Appraisal Dist. v. Cordillera Ranch, Ltd., No. 04-03-00150-CV, 2003 Tex. App. LEXIS 6293 (Tex. App. San Antonio July 23, 2003).

TAX LAW
State & Local Taxes
Administration & Proceedings

General Overview. — Statutory scheme does not force taxpayers to pay all of the taxes assessed, but rather requires only that taxpayers pay the portion of the assessed taxes with which they have no disagreement, pursuant to Tex. Tax Code Ann. §§ 41.411(c), 42.08(a); therefore, paying the taxes the taxpayers agreed were due would not have caused them harm, and the taxpayers could have paid the disputed portions and been entitled to a refund under Tex. Tax Code Ann. § 42.43(a) if they prevailed in their protest. MAG-T, L.P. v. Travis Cent. Appraisal Dist., 161 S.W.3d 617, 2005 Tex. App. LEXIS 859 (Tex. App. Austin Feb. 3, 2005, no pet.).

CREDITS, OVERASSESSMENTS & REFUNDS. — Trial court, having previously found that the taxpayer was entitled to a full exemption under Tex. Tax Code Ann. § 11.31, was authorized under Tex. Tax Code Ann. § 42.24(3) to enter any orders necessary to carry out the earlier, unappealed judgment; because the record showed that the district did not comply with the earlier judgment by refunding the taxpayer under Tex. Tax Code Ann. § 42.43(a) the amount it paid under protest, the order directing the district to pay a sanction was not arbitrary or unreasonable. Travis Cent. Appraisal Dist. v. Wells Fargo Bank, No. 03-09-00013-CV, 2010 Tex. App. LEXIS 1921 (Tex. App. Austin Mar. 19, 2010).

For purposes of Tex. Tax Code Ann. § 42.24(3), the trial court, having determined that the taxpayer was entitled to a full exemption for purposes of Tex. Const. art. VIII, § 1-l and Tex. Tax Code Ann. § 11.31 as urged, was authorized to enter any orders necessary to carry out the earlier, unappealed judgment; because the record established that the district did not comply with the earlier judgment by refunding, under Tex. Tax Code Ann. § 42.43(a), the taxpayer the amount it had paid under protest, the order directing the district to pay that amount as a sanction was neither arbitrary nor unreasonable. Although the district disagreed with the trial court's prior ruling, the district did not perfect an appeal from that ruling and the trial court was entitled to compel compliance with its prior order. Travis Cent. Appraisal Dist. v. Wells Fargo Bank Minn., N.A., No. 03-09-00013-CV, 2010 Tex. App. LEXIS 427 (Tex. App. Austin Jan. 26, 2010), op. withdrawn, sub. op., No. 03-09-00013-CV, 2010 Tex. App. LEXIS 1921 (Tex. App. Austin Mar. 19, 2010).

JUDICIAL REVIEW. — Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47,

and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

TAXPAYER PROTESTS. — Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it was immune from taxation could not be considered at trial and could not be considered on appeal. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

Where a church failed to pursue the administrative procedures that were its exclusive means of relief pursuant to Tex. Tax Code Ann. §§ 41.41(a)(3), (9), (b)(3), 41.47, and 42.09(a), its argument that it could not submit jurisdiction to any other by paying taxes or filling out demanded government forms could not be considered at trial and could not be considered on appeal because that basis for protest could have been presented to the appropriate appraisal review board. Because the tax-protest procedure set forth in the Texas Tax Code was the exclusive means to assert the argument, it was not a legally-cognizable defense in a tax collection proceeding. Grace Mem'l Baptist Church v. Harris County, No. 14-07-00447-CV, 2008 Tex. App. LEXIS 7070 (Tex. App. Houston 14th Dist. Aug. 28, 2008).

REAL PROPERTY TAX
Assessment & Valuation

General Overview. — After reduction of a property appraisal, a taxpayer was entitled under Tex. Tax Code Ann. § 42.43(a) to a refund of penalties and interest that had been calculated on the incorrect appraised value because Tex. Tax Code Ann. § 33.47(a) provided that a taxing unit's recovery of delinquent taxes, penalties, and interest had to be assessed from the current tax roll, and pursuant to Tex. Tax Code Ann. § 42.41(a), (b), the tax roll was corrected when the appraised value was lowered. Carrollton-Farmers Branch Indep. Sch. Dist. v. JPD, Inc., 168 S.W.3d 184, 2005 Tex. App. LEXIS 3987 (Tex. App. Dallas May 25, 2005, no pet.).

COLLECTION

General Overview. — After reduction of a property appraisal, a taxpayer was entitled under Tex. Tax Code Ann. § 42.43(a) to a refund of penalties and interest that had been calculated on the incorrect appraised value because Tex. Tax Code Ann. § 33.47(a) provided that a taxing unit's recovery of delinquent taxes, penalties, and interest had to be assessed from the current tax roll, and pursuant to Tex. Tax Code Ann. § 42.41(a), (b), the tax roll was corrected when the appraised value was lowered. Carrollton-Farmers Branch Indep. Sch. Dist. v. JPD, Inc., 168 S.W.3d 184, 2005 Tex. App. LEXIS 3987 (Tex. App. Dallas May 25, 2005, no pet.).

ATTORNEY GENERAL OPINIONS

Calculation.

Section 42.43 of the Tax Code requires a taxing unit to pay interest on refunds of taxes that are paid on or after June 15, 1989, regardless of whether the lawsuit giving rise to the refund was filed before, on, or after that date. Because the formula for calculating the interest requires the amount of the tax refund to be multiplied by a specified percentage calculated from the delinquency date for that tax until the date the refund is made, the interest must be calculated for each year separately. 1990 Tex. Op. Att'y Gen. JM-1205.

CHAPTER 43

Suit Against Appraisal Office

Section		Section	
43.01.	Authority to Bring Suit.	43.03.	Action by Court.
43.02.	Venue.	43.04.	Suit to Compel Compliance with Deadlines.

Sec. 43.01. Authority to Bring Suit.

A taxing unit may sue the appraisal district that appraises property for the unit to compel the appraisal district to comply with the provisions of this title, rules of the comptroller, or other applicable law.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 58, effective September 1, 1991.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax

Assessment & Valuation. — Taxing unit could not attack appraisal review board's decision to reduce individual taxpayer's property appraisal; this section allows a taxing unit to challenge the level of appraisals of any category of property, but not the appraised value of a single taxpayer's property. Carr v. Bell Sav. & Loan Ass'n, 786 S.W.2d 761, 1990 Tex. App. LEXIS 162 (Tex. App. Texarkana Jan. 23, 1990, writ denied).

Sec. 43.02. Venue.

Venue is in the county in which the appraisal district is established.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 43.03. Action by Court.

The court as the evidence warrants shall enter those orders necessary to compel compliance by the appraisal office.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982.

Sec. 43.04. Suit to Compel Compliance with Deadlines.

The governing body of a taxing unit may sue the chief appraiser or members of the appraisal review board, as applicable, for failure to comply with the deadlines imposed by Section 25.22(a), 26.01(a), or 41.12. If the court finds that the chief appraiser or appraisal review board failed to comply for good cause shown, the court shall enter an order fixing a reasonable deadline for compliance. If the court finds that the chief appraiser or appraisal review board failed to comply without good cause, the court shall enter an order requiring the chief appraiser or appraisal review board to comply with the deadline not later than the 10th day after the date the judgment is signed. In a suit brought under this section, the court may enter any other order the court considers necessary to ensure compliance with the court's deadline or the applicable statutory requirements. Failure to obey an order of the court is punishable as contempt.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 312 (H.B. 2301), § 5, effective June 7, 1985; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 47, effective September 1, 1989.

CHAPTERS 44 TO 100

[Reserved for expansion]

TITLE 3
LOCAL TAXATION

SUBTITLE B
SPECIAL PROPERTY TAX PROVISIONS

CHAPTER 311
Tax Increment Financing Act

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Sec. 311.001. Short Title.

This chapter may be cited as the Tax Increment Financing Act.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987.

Sec. 311.002. Definitions.

In this chapter:

(1) "Project costs" means the expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the municipality or county designating a reinvestment zone that are listed in the project plan as costs of public works, public improvements, programs, or other projects benefiting the zone, plus other costs incidental to those expenditures and obligations. "Project costs" include:

(A) capital costs, including the actual costs of the acquisition and construction of public works, public improvements, new buildings, structures, and fixtures; the actual costs of the acquisition, demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; the actual costs of the remediation of conditions that contaminate public or private land or buildings; the actual costs of the preservation of the facade of a public or private building; the actual costs of the demolition of public or private buildings; and the actual costs of the acquisition of land and equipment and the clearing and grading of land;

(B) financing costs, including all interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs and any premium paid over the principal amount of the obligations because of the redemption of the obligations before maturity;

(C) real property assembly costs;

(D) professional service costs, including those incurred for architectural, planning, engineering, and legal advice and services;

(E) imputed administrative costs, including reasonable charges for the time spent by employees of the municipality or county in connection with the implementation of a project plan;

(F) relocation costs;

(G) organizational costs, including the costs of conducting environmental impact studies or other studies, the cost of publicizing the creation of the zone, and the cost of implementing the project plan for the zone;

(H) interest before and during construction and for one year after completion of construction, whether or not capitalized;

(I) the cost of operating the reinvestment zone and project facilities;

(J) the amount of any contributions made by the municipality or county from general revenue for the implementation of the project plan;

(K) the costs of school buildings, other educational buildings, other educational facilities, or other buildings owned by or on behalf of a school district, community college district, or other political subdivision of this state; and

(L) payments made at the discretion of the governing body of the municipality or county that the governing body finds necessary or convenient to the creation of the zone or to the implementation of the project plans for the zone.

(2) "Project plan" means the project plan for the development or redevelopment of a reinvestment zone approved under this chapter, including all amendments of the plan approved as provided by this chapter.

(3) "Reinvestment zone financing plan" means the financing plan for a reinvestment zone described by this chapter.

(4) "Taxing unit" has the meaning assigned by Section 1.04.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 35, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 1, effective June 17, 2011.

Sec. 311.003. Procedure for Creating Reinvestment Zone.

(a) The governing body of a county by order may designate a contiguous geographic area in the county and the governing body of a municipality by ordinance may designate a contiguous or noncontiguous geographic area that is in the corporate limits of the municipality, in the extraterritorial jurisdiction of the municipality, or in both to be a reinvestment zone to promote development or redevelopment of the area if the governing body determines that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future. The designation of an area that is wholly or partly located in the extraterritorial jurisdiction of a municipality is not affected by a subsequent annexation of real property in the reinvestment zone by the municipality.

(b) Before adopting an ordinance or order designating a reinvestment zone, the governing body of the municipality or county must prepare a preliminary reinvestment zone financing plan.

(c) Before adopting an ordinance or order providing for a reinvestment zone, the municipality or county must hold a public hearing on the creation of the zone and its benefits to the municipality or county and to property in the proposed zone. At the hearing an interested person may speak for or against the creation of the zone, its boundaries, or the concept of tax increment financing. Not later than the seventh day before the date of the hearing, notice of the hearing must be published in a newspaper having general circulation in the municipality or county.

(d) A municipality or county proposing to designate a reinvestment zone must provide a reasonable opportunity for the owner of property to protest the inclusion of the property in a proposed reinvestment zone.

(e) to (g) [Repealed by Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 21, effective June 17, 2011.]

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 16, effective September 1, 1989; am. Acts 1999, 76th Leg., ch. 983 (H.B. 2684), § 14, effective June 18, 1999; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 36, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 910 (H.B. 1770), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), §§ 2, 21, effective June 17, 2011.

ATTORNEY GENERAL OPINIONS

Reinvestment Zones.

Absent a constitutional amendment, it is likely a court would conclude that a county may not form and operate a county energy transportation reinvestment zone, a tax increment reinvestment zone, or a transportation reinvestment zone, to the extent that doing so utilizes a captured increment of ad valorem taxes to fund a county-created tax increment reinvestment zone. 2015 Tex. Op. Att'y Gen. KP-0004.

Sec. 311.0031. Enterprise Zone.

Designation of an area under the following other law constitutes designation of the area as a reinvestment zone under this chapter without further hearing or other procedural requirements other than those provided by the other law:

(1) Chapter 2303, Government Code; and

(2) Chapter 373A, Local Government Code.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1106 (S.B. 1205), § 26, effective August 28, 1989; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(22), effective September 1, 1995; am. Acts 2007, 80th Leg., ch. 1175 (H.B. 470), § 16, effective September 1, 2007. § 16, effective September 1, 2007.

Sec. 311.004. Contents of Reinvestment Zone Ordinance or Order.

(a) The ordinance or order designating an area as a reinvestment zone must:

(1) describe the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;

(2) create a board of directors for the zone and specify the number of directors of the board as provided by Section 311.009 or 311.0091, as applicable;

(3) provide that the zone take effect immediately upon passage of the ordinance or order;

(4) provide a date for termination of the zone;

(5) assign a name to the zone for identification, with the first zone created by a municipality or county designated as "Reinvestment Zone Number One, City (or Town, as applicable) of (name of municipality)," or "Reinvestment Zone Number One, (name of county) County," as applicable, and subsequently created zones assigned names in the same form numbered consecutively in the order of their creation;

(6) establish a tax increment fund for the zone; and

(7) contain findings that:

(A) improvements in the zone will significantly enhance the value of all the taxable real property in the zone and will be of general benefit to the municipality or county; and

(B) the area meets the requirements of Section 311.005.

(b) For purposes of complying with Subsection (a)(7)(A), the ordinance or order is not required to identify the specific parcels of real property to be enhanced in value.

(c) To designate a reinvestment zone under Section 311.005(a)(4), the governing body of a municipality or county must specify in the ordinance or order that the reinvestment zone is designated under that section.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 17, effective September 1, 1989; am. Acts 1999, 76th Leg., ch. 983 (H.B. 2684), § 1, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 1162 (H.B. 3006), § 1, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 36, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.002, effective September 1, 2007.

Sec. 311.005. Criteria for Reinvestment Zone.

(a) To be designated as a reinvestment zone, an area must:

(1) substantially arrest or impair the sound growth of the municipality or county designating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

(A) a substantial number of substandard, slum, deteriorated, or deteriorating structures;

(B) the predominance of defective or inadequate sidewalk or street layout;

(C) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(D) unsanitary or unsafe conditions;

(E) the deterioration of site or other improvements;

(F) tax or special assessment delinquency exceeding the fair value of the land;

(G) defective or unusual conditions of title;

(H) conditions that endanger life or property by fire or other cause; or

(I) structures, other than single-family residential structures, less than 10 percent of the square footage of which has been used for commercial, industrial, or residential purposes during the preceding 12 years, if the municipality has a population of 100,000 or more;

(2) be predominantly open or undeveloped and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality or county;

(3) be in a federally assisted new community located in the municipality or county or in an area immediately adjacent to a federally assisted new community; or

(4) be an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the municipality or county by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

(a-1) Notwithstanding Subsection (a), if the proposed project plan for a potential zone includes the use of land in the zone in connection with the operation of an existing or proposed regional commuter or mass transit rail system, or for a structure or facility that is necessary, useful, or beneficial to such a regional rail system, the governing body of a municipality may designate an area as a reinvestment zone.

(b) In this section, "federally assisted new community" means a federally assisted area that has received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act, if a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.05(a), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1106 (S.B. 1205), § 27, effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 18, effective September 1, 1989; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 37, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1347 (S.B. 771), § 1, effective June 18, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.003, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1361 (H.B. 2092), § 1, effective June 15, 2007; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 3, effective June 17, 2011.

NOTES TO DECISIONS

GOVERNMENTS

Public Improvements

Assessments. — School district and community college district were political corporations or subdivisions within the meaning of Tex. Const. art. III, § 52, and were subject to tax increment financing of reinvestment zones under former Tex. Rev. Civ. Stat. Ann. art. 1066e, § 3(b). El Paso v. El Paso Community College Dist., 729 S.W.2d 296, 1986 Tex. LEXIS 574 (Tex. 1986).

ATTORNEY GENERAL OPINIONS

Analysis

Reinvestment Zone Designation.
Zone Requirements.

Reinvestment Zone Designation.

A city may not designate an area as a reinvestment zone under section 311.005(a)(5) unless the area is "unproductive, underdeveloped, or blighted" within the meaning of article VIII, section 1-g(b) of the Texas Constitution, even if the area's plan of tax increment financing does not include issuance of bonds or notes. 2007 Tex. Op. Att'y Gen. GA-0514.

Zone Requirements.

A city may not designate an area as a tax increment financing reinvestment zone, including an area subject to a petition under section 311.005(a)(5) of the Tax Code, unless the area is "unproductive, underdeveloped, or blighted" within the meaning of article VIII, section 1-g(b) of the Texas Constitution. 1999 Tex. Op. Att'y Gen. JC-0152.

Sec. 311.006. Restrictions on Composition of Reinvestment Zone.

(a) A municipality may not designate a reinvestment zone if:

(1) more than 30 percent of the property in the proposed zone, excluding property that is publicly owned, is used for residential purposes; or

(2) the total appraised value of taxable real property in the proposed zone and in existing reinvestment zones exceeds:

(A) 25 percent of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality, if the municipality has a population of 100,000 or more; or

(B) 50 percent of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality, if the municipality has a population of less than 100,000.

(b) A municipality may not change the boundaries of an existing reinvestment zone to include property in excess of the restrictions on composition of a zone described by Subsection (a).

(c) [Repealed by Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 21, effective June 17, 2011.]

(d) For purposes of this section, property is used for residential purposes if it is occupied by a house having fewer than five living units, and the appraised value is determined according to the most recent appraisal rolls of the municipality.

(e) Subsection (a)(1) does not apply to a reinvestment zone designated under Section 311.005(a)(4).

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 19, effective September 1, 1989; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.004, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 543 (S.B. 1633), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 910 (H.B. 1770), § 2, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), §§ 4, 21, effective June 17, 2011.

Sec. 311.007. Changing Boundaries or Term of Existing Zone.

(a) Subject to the limitations provided by Section 311.006, if applicable, the boundaries of an existing reinvestment zone may be reduced or enlarged by ordinance or resolution of the governing body of the municipality or by order or resolution of the governing body of the county that created the zone.

(b) The governing body of the municipality or county may enlarge an existing reinvestment zone to include an area described in a petition requesting that the area be included in the zone if the petition is submitted to the governing body of the municipality or county by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located. The composition of the board of directors of the zone continues to be governed by Section 311.009(a) or (b), whichever applied to the zone immediately before the enlargement of the zone, except that the membership of the board must conform to the requirements of the applicable subsection of Section 311.009 as applied to the zone after its enlargement. The provision of Section 311.006(b) relating to the amount of property used for residential purposes that may be included in the zone does not apply to the enlargement of a zone under this subsection.

(c) The governing body of the municipality or county that designated a reinvestment zone by ordinance or resolution or by order or resolution, respectively, may extend the term of all or a portion of the zone after notice and hearing in the manner provided for the designation of the zone. A taxing unit other than the municipality or county that designated the zone is not required to participate in the zone or portion of the zone for the extended term unless the taxing unit enters into a written agreement to do so.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 20, effective September 1, 1989; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 38, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), §§ 5, 6, effective June 17, 2011.

Sec. 311.008. Powers of Municipality or County.

(a) In this section, "educational facility" includes equipment, real property, and other facilities, including a public school building, that are used or intended to be used jointly by the municipality or county and an independent school district.

(b) A municipality or county may exercise any power necessary and convenient to carry out this chapter, including the power to:

(1) cause project plans to be prepared, approve and implement the plans, and otherwise achieve the purposes of the plan;

(2) acquire real property by purchase, condemnation, or other means and sell real property, on the terms and conditions and in the manner it considers advisable, to implement project plans;

(3) enter into agreements, including agreements with bondholders, determined by the governing body of the municipality or county to be necessary or convenient to implement project plans and achieve their purposes, which agreements may include conditions, restrictions, or covenants that run with the land or that by other means regulate or restrict the use of land; and

(4) consistent with the project plan for the zone:

(A) acquire blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed real property or other property in a blighted area or in a federally assisted new community in the zone for the preservation or restoration of historic sites, beautification or conservation, the provision of public works or public facilities, or other public purposes;

(B) acquire, construct, reconstruct, or install public works, facilities, or sites or other public improvements, including utilities, streets, street lights, water and sewer facilities, pedestrian malls and walkways, parks, flood and drainage facilities, or parking facilities, but not including educational facilities; or

(C) in a reinvestment zone created on or before September 1, 1999, acquire, construct, or reconstruct educational facilities in the municipality.

(c) The powers authorized by Subsection (b)(2) prevail over any law or municipal charter to the contrary.

(d) A municipality or county may make available to the public on request financial information regarding the acquisition by the municipality or county of land in the zone when the municipality or county acquires the land.

(e) The implementation of a project plan to alleviate a condition described by Section 311.005(a)(1), (2), or (3) and to promote development or redevelopment of a reinvestment zone in accordance with this chapter serves a public purpose.

HISTORY: am. Acts 1987, 70th Leg., 2nd C.S., ch. 44 (H.B. 126), § 2, effective October 20, 1987; Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1999, 76th Leg., ch. 1521 (S.B. 824), § 1, effective June 19, 1999; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), §§ 39, 40, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1347 (S.B. 771), § 2, effective June 18, 2005; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 7, effective June 17, 2011.

NOTES TO DECISIONS

Analysis

Constitutional Law
•Bill of Rights
••Fundamental Rights
•••Eminent Domain & Takings
Governments
•Public Improvements
••Community Redevelopment

CONSTITUTIONAL LAW

Bill of Rights

Fundamental Rights

Eminent Domain & Takings. — In denying a property owner's request for a temporary injunction to enjoin a city from pursuing condemnation proceedings against property located in an area designated as a redevelopment zone, the trial court did not abuse its discretion in failing to find that the property owner demonstrated a probable right, on final trial, to the declaratory relief his pleadings sought. The owner cited to no authority establishing that the trial court had the power through a declaratory judgment to determine that a property was entitled to designation as an historical property. Even if the trial court had such power, the evidence that the structure had been moved from its original location and divided into four apartments would support a conclusion that the owner had not shown a probable right to such a declaration. Hardwicke v. City of Lubbock, 150 S.W.3d 708, 2004 Tex. App. LEXIS 8157 (Tex. App. Amarillo Sept. 3, 2004, no pet.).

Arbitrary and capricious action, in the condemnation context, is willful and unreasoning action, action without consideration and in disregard of the facts and circumstances. When there is room for two opinions, an action cannot be deemed arbitrary when it is exercised honestly and upon due consideration, regardless how strongly one believes an erroneous conclusion was reached. Hardwicke v. City of Lubbock, 150 S.W.3d 708, 2004 Tex. App. LEXIS 8157 (Tex. App. Amarillo Sept. 3, 2004, no pet.).

In denying a property owner's request for a temporary injunction to enjoin a city from pursuing condemnation proceedings, the trial court did not abuse its discretion in failing to find that the property owner demonstrated a probable right, on final trial, to the declaratory relief his pleadings sought. The trial court's failure to find that the city unlawfully delegated its eminent domain power to the developer was not an abuse of discretion. The agreement between the city and the developer required the developer to use the property in implementing a redevelopment plan approved by the city. Hardwicke v. City of Lubbock, 150 S.W.3d 708, 2004 Tex. App. LEXIS 8157 (Tex. App. Amarillo Sept. 3, 2004, no pet.).

In denying a property owner's request for a temporary injunction to enjoin a city from pursuing condemnation proceedings, the trial court did not abuse its discretion in failing to find that the property owner demonstrated a probable right, on final trial, to the declaratory relief his pleadings sought. The court rejected the owner's argument that the taking violated the constitutional provisions limiting the exercise of the power of eminent domain to the taking of property for public use. There was evidence from which the trial court could conclude that acquisition of the property, which was located in an area designated as a reinvestment zone, was necessary to carry out the redevelopment plan approved by the city. Hardwicke v. City of Lubbock, 150 S.W.3d 708, 2004 Tex. App. LEXIS 8157 (Tex. App. Amarillo Sept. 3, 2004, no pet.).

GOVERNMENTS

Public Improvements

Community Redevelopment. — In denying a property owner's request for a temporary injunction to enjoin a city from pursuing condemnation proceedings against property located in an area designated as a redevelopment zone, the trial court did not abuse its discretion in failing to find that the property owner demonstrated a probable right, on final trial, to the declaratory relief his pleadings sought. The owner cited to no authority establishing that the trial court had the power through a declaratory judgment to determine that a property was entitled to designation as an historical property. Even if the trial court had such power, the evidence that the structure had been moved from its original location and divided into four apartments would support a conclusion that the owner had not shown a probable right to such a declaration. Hardwicke v. City of Lubbock, 150

S.W.3d 708, 2004 Tex. App. LEXIS 8157 (Tex. App. Amarillo Sept. 3, 2004, no pet.).

Sec. 311.0085. Power of Certain Municipalities.

(a) This section applies only to a municipality with a population of less than 130,000 as shown by the 2000 federal decennial census that has territory in three counties.

(b) In this section, "educational facility" has the meaning assigned by Section 311.008.

(c) In addition to exercising the powers described by Section 311.008, a municipality may enter into a new agreement, or amend an existing agreement, with a school district that is located in whole or in part in a reinvestment zone created by the municipality to dedicate revenue from the tax increment fund to the school district for acquiring, constructing, or reconstructing an educational facility located in or outside of the zone.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1133 (H.B. 2682), § 1, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 38 (H.B. 752), § 1, effective May 19, 2009.

Sec. 311.0087. Restriction on Powers of Certain Municipalities.

(a) This section applies only to a proposed reinvestment zone:

(1) the designation of which is requested in a petition submitted under Section 311.005(a)(4) before July 31, 2004, to the governing body of a home-rule municipality that:

(A) has a population of more than 1.1 million;

(B) is located primarily in a county with a population of 1.5 million or less; and

(C) has created at least 20 reinvestment zones under this chapter; and

(2) that is the subject of a resolution of intent that was adopted before October 31, 2004, by the governing body of the municipality.

(b) If the municipality imposes a fee of more than $25,000 for processing the petition, the municipality may not require a property owner who submitted the petition, as a condition of designating the reinvestment zone or approving a development agreement, interlocal agreement, or project plan for the proposed reinvestment zone:

(1) to waive any rights of the owner under Chapter 245, Local Government Code, or under any agreed order or settlement agreement to which the municipality is a party;

(2) to dedicate more than 20 percent of the owner's land in the area described in the petition as open-space land; or

(3) to use a nonconventional use pattern for a development to be located within the proposed reinvestment zone.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1347 (S.B. 771), § 3, effective June 18, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.005, effective September 1, 2007.

Sec. 311.009. Composition of Board of Directors.

(a) Except as provided by Subsection (b), the board of directors of a reinvestment zone consists of at least five and not more than 15 members, unless more than 15 members are required to satisfy the requirements of this subsection. Each taxing unit other than the municipality or county that designated the zone that levies taxes on real property in the zone may appoint one member of the board if the taxing unit has approved the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone. A unit may waive its right to appoint a director. The governing body of the municipality or county that designated the zone may appoint not more than 10 directors to the board; except that if there are fewer than five directors appointed by taxing units other than the municipality or county, the governing body of the municipality or county may appoint more than 10 members as long as the total membership of the board does not exceed 15.

(b) If the zone was designated under Section 311.005(a)(4), the governing body of the municipality or county that designated the zone may provide that the board of directors of the zone consists of nine members appointed as provided by this subsection, unless more than nine members are required to comply with this subsection. Each taxing unit, other than the municipality or county that designated the zone, that levies taxes on real property in the zone may appoint one member of the board if the taxing unit has approved the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone. The member of the state senate in whose district the zone is located is a member of the board, and the member of the state house of representatives in whose district the zone is located is a member of the board, except that either may designate another individual to serve in the member's place at the pleasure of the member. If the zone is located in more than one senate or house district, this subsection applies only to the senator or representative in whose district a larger portion of the zone is located than any other senate or house district, as applicable. If fewer than seven taxing units, other than the municipality or county that designated the zone, are eligible to appoint members of the board of directors of the zone, the municipality or county may appoint a number of members of the board such that the board comprises nine members. If at least seven taxing units, other than the municipality or county that designated the zone, are eligible to appoint members of the board of directors of the zone, the municipality or county may appoint one member.

(c) Members of the board are appointed for terms of two years unless longer terms are provided under Article XI, Section 11, of the Texas Constitution. Terms of members may be staggered.

(d) A vacancy on the board is filled for the unexpired term by appointment of the governing body of the taxing unit that appointed the director who served in the vacant position.

(e) To be eligible for appointment to the board by the governing body of the municipality or county that designated the zone, an individual must be at least 18 years of age and:

(1) if the board is covered by Subsection (a):

(A) be a resident of the county in which the zone is located or a county adjacent to that county; or

(B) own real property in the zone, whether or not the individual resides in the county in which the zone is located or a county adjacent to that county; or

(2) if the board is covered by Subsection (b), own real property in the zone or be an employee or agent of a person that owns real property in the zone.

(f) Each year the governing body of the municipality or county that created the zone shall appoint one member of the board to serve as chairman for a term of one year that begins on January 1 of the following year. The board of directors may elect a vice-chairman to preside in the absence of the chairman or when there is a vacancy in the office of chairman. The board may elect other officers as it considers appropriate.

(g) A member of the board of directors of a reinvestment zone:

(1) is not a public official by virtue of that position; and

(2) unless otherwise ineligible, may be appointed to serve concurrently on the board of directors of a local government corporation created under Subchapter D, Chapter 431, Transportation Code.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 21, effective September 1, 1989; am. Acts 1999, 76th Leg., ch. 983 (H.B. 2684), § 2, effective June 18, 1999; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 41, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.006, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 8, effective June 17, 2011.

ATTORNEY GENERAL OPINIONS

Analysis

Charter Provisions.
Conflict of Interest.

Charter Provisions.

A charter provision allowing only city residents to serve on a tax increment reinvestment zone board is inconsistent with Tex. Tax Code Ann. § 311.009(e) and is likely void; similarly, a charter provision limiting the number of terms a tax increment reinvestment zone board member may serve where Tex. Tax Code Ann. § 311.009(c) would permit the board member to serve an unlimited number of terms likely renders such a charter provision void. 2015 Tex. Op. Att'y Gen. KP-0026.

Conflict of Interest.

A city council member is not prohibited from simultaneously serving as a member of the board of directors of a tax increment reinvestment zone created by his or her municipality under chapter 311 of the Tax Code.

Sec. 311.0091. Composition of Board of Directors of Certain Reinvestment Zones.

(a) This section applies to a reinvestment zone designated by a municipality which is wholly or partially located in a county with a population of less than 1.8 million in which the principal municipality has a population of 1.1 million or more.

(b) Except as provided by Subsection (c), the board of directors of a reinvestment zone consists of at least five and not more than 15 members, unless more than 15 members are required to satisfy the requirements of this subsection. Each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint a number of members to the board in proportion to the taxing unit's pro rata share of the total anticipated tax increment to be deposited into the tax increment fund during the term of the zone. In determining the number of members a taxing unit may appoint to the board, the taxing unit's percentage of anticipated pro rata contributions to the tax increment fund is multiplied by the number of members of the board, and a number containing a fraction that is one-half or greater shall be rounded up to the next whole number. Notwithstanding any other provision of this subsection, each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint at least one member of the board, and the municipality that designated the zone is entitled to appoint at least as many members of the board as any other participating taxing unit. A taxing unit may waive its right to appoint a director.

(c) If the zone was designated under Section 311.005(a)(4), the board of directors of the zone consists of nine members, unless a greater number of members is necessary to comply with this subsection. Each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint a number of members to the board in proportion to the taxing unit's pro rata share of the total anticipated tax increment to be deposited into the tax increment fund during the term of the zone. In determining the number of members a taxing unit may appoint to the board, the taxing unit's percentage of anticipated pro rata contributions to the tax increment fund is multiplied by nine, and a number containing a fraction that is one-half or greater shall be rounded up to the next whole number. Notwithstanding any other provision of this subsection, each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint at least one member of the board, and the municipality that designated the zone is entitled to appoint at least as many members of the board as any other participating taxing

unit. A taxing unit may waive its right to appoint a director. The member of the state senate in whose district the zone is located is a member of the board, and the member of the state house of representatives in whose district the zone is located is a member of the board, except that either may designate another individual to serve in the member's place at the pleasure of the member. If the zone is located in more than one senate or house district, this subsection applies only to the senator or representative in whose district a larger portion of the zone is located than any other senate or house district, as applicable.

(d) Members of the board are appointed for terms of two years unless longer terms are provided under Section 11, Article XI, Texas Constitution. Terms of members may be staggered.

(e) A vacancy on the board is filled for the unexpired term by appointment of the governing body of the taxing unit that appointed the director who served in the vacant position.

(f) Except as provided by Subsection (i), to be eligible for appointment to the board, an individual must:

(1) be a qualified voter of the municipality; or

(2) be at least 18 years of age and own real property in the zone or be an employee or agent of a person that owns real property in the zone.

(g) Each year the board of directors of a reinvestment zone shall elect one of its members to serve as presiding officer for a term of one year. The board of directors may elect an assistant presiding officer to preside in the absence of the presiding officer or when there is a vacancy in the office of presiding officer. The board may elect other officers as it considers appropriate.

(h) A member of the board of directors of a reinvestment zone:

(1) is not a public official by virtue of that position; and

(2) unless otherwise ineligible, may be appointed to serve concurrently on the board of directors of a local government corporation created under Subchapter D, Chapter 431, Transportation Code.

(i) The eligibility criteria for appointment to the board specified by Subsection (f) do not apply to an individual appointed by a conservation and reclamation district:

(1) created under Section 59, Article XVI, Texas Constitution; and

(2) the jurisdiction of which covers four counties.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1162 (H.B. 3006), § 2, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.007, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 9, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 116, effective September 1, 2011.

Sec. 311.0092. Notice to State Senator and State Representative; Waiver of Service on Board.

(a) Not later than the 90th day after the date a member of the state senate or state house of representatives who is an ex officio member of the board of directors of a reinvestment zone under Section 311.009(b) or 311.0091(c), as applicable, is elected to the state senate or the state house of representatives, as applicable, at a general or special election, the board shall send to the member of the state senate or state house of representatives written notice by certified mail informing the state senator or state representative of the person's membership on the board.

(b) Notwithstanding Section 311.009(b) or 311.0091(c), as applicable, a state senator or state representative may elect not to serve on the board or designate another individual to serve in the member's place. If the state senator or state representative elects not to serve on the board or designate another individual to serve in the member's place, the state senator or state representative shall notify the board in writing as soon as practicable after receipt of the notice under Subsection (a) by certified mail and may not be counted as a member of the board for voting or quorum purposes.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 600 (S.B. 1465), § 1, effective September 1, 2017.

Sec. 311.010. Powers and Duties of Board of Directors.

(a) The board of directors of a reinvestment zone shall make recommendations to the governing body of the municipality or county that created the zone concerning the administration of this chapter in the zone. The governing body of the municipality by ordinance or resolution or the county by order or resolution may authorize the board to exercise any of the municipality's or county's powers with respect to the administration, management, or operation of the zone or the implementation of the project plan for the zone, except that the governing body may not authorize the board to:

(1) issue bonds;

(2) impose taxes or fees;

(3) exercise the power of eminent domain; or

(4) give final approval to the project plan.

(b) The board of directors of a reinvestment zone and the governing body of the municipality or county that creates a reinvestment zone may each enter into agreements as the board or the governing body considers necessary or convenient to implement the project plan and reinvestment zone financing plan and achieve their purposes. An agreement may provide for the regulation or restriction of the use of land by imposing conditions, restrictions, or covenants that run with the land. An agreement may during the term of the agreement dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay any project costs that benefit the reinvestment zone, including project costs relating to the cost of buildings, schools, or other educational facilities owned by or on behalf of

a school district, community college district, or other political subdivision of this state, railroad or transit facilities, affordable housing, the remediation of conditions that contaminate public or private land or buildings, the preservation of the facade of a private or public building, the demolition of public or private buildings, or the construction of a road, sidewalk, or other public infrastructure in or out of the zone, including the cost of acquiring the real property necessary for the construction of the road, sidewalk, or other public infrastructure. An agreement may dedicate revenue from the tax increment fund to pay the costs of providing affordable housing or areas of public assembly in or out of the zone.

(c) Subject to the approval of the governing body of the municipality that created the zone, the board of a zone designated by the governing body of a municipality under Section 311.005(a)(4) may exercise the power granted by Chapter 211, Local Government Code, to the governing body of the municipality that created the zone to restrict the use or uses of property in the zone. The board may provide that a restriction adopted by the board continues in effect after the termination of the zone. In that event, after termination of the zone the restriction is treated as if it had been adopted by the governing body of the municipality.

(d) The board of directors of a reinvestment zone may exercise any power granted to a municipality or county by Section 311.008, except that:

(1) the municipality or county that created the reinvestment zone by ordinance, resolution, or order may restrict any power granted to the board by this chapter; and

(2) the board may exercise a power granted to a municipality or county under Section 311.008(b)(2) only with the consent of the governing body of the municipality or county.

(e) After the governing body of a municipality by ordinance or the governing body of a county by order creates a reinvestment zone under this chapter, the board of directors of the zone may exercise any power granted to a board under this chapter.

(f) The board of directors of a reinvestment zone and the governing body of the municipality or county that created the zone may enter into a contract with a local government corporation or a political subdivision to manage the reinvestment zone or implement the project plan and reinvestment zone financing plan for the term of the agreement. In this subsection, "local government corporation" means a local government corporation created by the municipality or county under Chapter 431, Transportation Code.

(g) Chapter 252, Local Government Code, does not apply to a dedication, pledge, or other use of revenue in the tax increment fund for a reinvestment zone under Subsection (b).

(h) Subject to the approval of the governing body of the municipality or county that designated the zone, the board of directors of a reinvestment zone, as necessary or convenient to implement the project plan and reinvestment zone financing plan and achieve their purposes, may establish and provide for the administration of one or more programs for the public purposes of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants and loans from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone for activities that benefit the zone and stimulate business and commercial activity in the zone. For purposes of this subsection, on approval of the municipality or county, the board of directors of the zone has all the powers of a municipality under Chapter 380, Local Government Code. The approval required by this subsection may be granted in an ordinance, in the case of a zone designated by a municipality, or in an order, in the case of a zone designated by a county, approving a project plan or reinvestment zone financing plan or approving an amendment to a project plan or reinvestment zone financing plan.

(i) The board of directors of a reinvestment zone or a local government corporation administering a reinvestment zone may contract with the municipality that created the zone to allocate from the tax increment fund for the zone an amount equal to the tax increment produced by the municipality and paid into the tax increment fund for the zone to pay the incremental costs of providing municipal services incurred as a result of the creation of the zone or the development or redevelopment of the land in the zone, regardless of whether the costs of those services are identified in the project plan or reinvestment zone financing plan for the zone.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 22, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 11 (S.B. 41), § 58, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(23), effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 983 (H.B. 2684), § 3, effective June 18, 1999; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 42, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1347 (S.B. 771), § 4, effective June 18, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.008, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1358 (S.B. 576), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 10, effective June 17, 2011.

ATTORNEY GENERAL OPINIONS

Expenditures Outside of Plan.

Under chapter 311 of the Tax Code, a city is not authorized to undertake or complete a reinvestment zone project in a manner that is not consistent with the reinvestment zone board of directors' project and financing plans, which must provide for projects within the zone. Therefore, as a general matter, a city may not use unexpended tax increment fund money after termination of a reinvestment zone to build an improvement outside the zone. The city may do so only if, prior to the zone's termination, the reinvestment zone board of directors agreed to dedicate revenue from the tax increment fund to replace areas of public assembly, and if construction of the improvement is a cost of replacing an area of public assembly under section 311.010(b) of the Tax Code. 1999 Tex. Op. Att'y Gen. JC-0141.

Sec. 311.01005. Costs Associated with Transportation or Transit Projects.

(a) In this section:

(1) "Bus rapid transit project" means a mass transportation facility designed to give preferential treatment to buses on a roadway in order to reduce bus travel time, improve service reliability, increase the convenience of users, and increase bus ridership, including:

(A) a fixed guideway, high occupancy vehicle lane, bus way, or bus lane;

(B) a transit center or station;

(C) a maintenance facility; and

(D) other real property associated with a bus rapid transit operation.

(2) "Rail transportation project" means a passenger rail facility, including:

(A) tracks;

(B) a rail line;

(C) a depot;

(D) a maintenance facility; and

(E) other real property associated with a passenger rail operation.

(b) This section does not affect the power of the board of directors of a reinvestment zone or the governing body of the municipality that creates a reinvestment zone to enter into an agreement under Section 311.010(b) to dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay the costs of acquiring, constructing, operating, or maintaining property located in the zone or to acquire or reimburse acquisition costs of real property outside the zone for right-of-way or easements necessary to construct public rights-of-way or infrastructure that benefits the zone.

(c) An agreement under Section 311.010(b) may dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay the costs of acquiring land, or the development rights or a conservation easement in land, located outside the reinvestment zone, if:

(1) the zone is or will be served by a rail transportation project or bus rapid transit project;

(2) the land or the development rights or conservation easement in the land is acquired for the purpose of preserving the land in its natural or undeveloped condition; and

(3) the land is located in the county in which the zone is located.

(d) The board of directors of a reinvestment zone, if all of the members of the board are appointed by the municipality that creates the zone, or the governing body of the municipality that creates a reinvestment zone may enter into an agreement described by Subsection (c) only if:

(1) the board or the governing body determines that the acquisition of the land, or the development rights or conservation easement in the land, located outside the zone benefits or will benefit the zone by facilitating the preservation of regional open space in order to balance the regional effects of urban development promoted by the rail transportation project or bus rapid transit project; and

(2) the municipality that creates the reinvestment zone and the county in which the zone is located pay the same portion of their tax increment into the tax increment fund for the zone.

(e) Property acquired under Subsection (c) may not be acquired through condemnation.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1134 (H.B. 2653), § 1, effective June 18, 2005.

Sec. 311.0101. Participation of Disadvantaged Businesses in Certain Zones.

(a) It is the goal of the legislature, subject to the constitutional requirements spelled out by the United States Supreme Court in J. A. Croson Company v. City of Richmond (822 F.2d 1355) and as hereafter further elaborated by federal and state courts, that all disadvantaged businesses in the zone designated under Section 311.005(a)(4) be given full and complete access to the procurement process whereby supplies, materials, services, and equipment are acquired by the board. It is also the intent of the legislature that to the extent constitutionally permissible, a preference be given to disadvantaged businesses. The board and general contractor shall give preference, among bids or other proposals that are otherwise comparable, to a bid or other proposal by a disadvantaged business having its home office located in this state.

(b) It is the intent of the legislature that the zone shall:

(1) implement a program or programs targeted to disadvantaged businesses in order to inform them fully about the zone procurement process and the requirements for their participation in that process;

(2) implement such steps as are necessary to ensure that all disadvantaged businesses are made fully aware of opportunities in the zone, including but not limited to specific opportunities to submit bids and proposals. Steps that may be appropriate in certain circumstances include mailing requests for proposals or notices inviting bids to all disadvantaged businesses in the county;

(3) require prime contractors, as part of their responses to requests for proposals or bids, to make a specific showing of how they intend to maximize participation by disadvantaged businesses as subcontractors. The zone shall be required to evaluate such actions by prime contractors as a factor in the award of contracts within the zone procurement process;

(4) identify disadvantaged businesses in the county that provide or have the potential to provide supplies, materials, services, and equipment to the zone; and

(5) identify barriers to participation by disadvantaged businesses in the zone procurement process, such as bonding, insurance, and working capital requirements that may be imposed on businesses.

(c) It is the intent of the legislature that the zone shall be required to develop a program pursuant to this Act for the purchase of supplies, materials, services, and equipment and that the board of the zone compile a report on an annual basis listing the total number and dollar amount of contracts awarded to disadvantaged businesses during the previous year as well as the total number and dollar amount of all contracts awarded. Such annual report shall be available for inspection by the general public during regular business hours.

(d) The board by rule shall adopt goals for the participation of minority business enterprises and women-owned business enterprises in the awarding of state contracts for professional services. To implement the participation goals, the board shall encourage each issuer to award to minority business enterprises and women-owned business enterprises not less than 15 percent of the total value of all professional services contract awards that the issuer expects to make in its fiscal year.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 23, effective September 1, 1989; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.009, effective September 1, 2007.

Sec. 311.011. Project and Financing Plans.

(a) The board of directors of a reinvestment zone shall prepare and adopt a project plan and a reinvestment zone financing plan for the zone and submit the plans to the governing body of the municipality or county that designated the zone.

(b) The project plan must include:

(1) a description and map showing existing uses and conditions of real property in the zone and proposed uses of that property;

(2) proposed changes of zoning ordinances, the master plan of the municipality, building codes, other municipal ordinances, and subdivision rules and regulations, if any, of the county, if applicable;

(3) a list of estimated nonproject costs; and

(4) a statement of a method of relocating persons to be displaced, if any, as a result of implementing the plan.

(c) The reinvestment zone financing plan must include:

(1) a detailed list describing the estimated project costs of the zone, including administrative expenses;

(2) a statement listing the proposed kind, number, and location of all public works or public improvements to be financed by the zone;

(3) a finding that the plan is economically feasible and an economic feasibility study;

(4) the estimated amount of bonded indebtedness to be incurred;

(5) the estimated time when related costs or monetary obligations are to be incurred;

(6) a description of the methods of financing all estimated project costs and the expected sources of revenue to finance or pay project costs, including the percentage of tax increment to be derived from the property taxes of each taxing unit anticipated to contribute tax increment to the zone that levies taxes on real property in the zone;

(7) the current total appraised value of taxable real property in the zone;

(8) the estimated captured appraised value of the zone during each year of its existence; and

(9) the duration of the zone.

(d) The governing body of the municipality or county that designated the zone must approve a project plan or reinvestment zone financing plan after its adoption by the board. The approval must be by ordinance, in the case of a municipality, or by order, in the case of a county, that finds that the plan is feasible.

(e) The board of directors of the zone at any time may adopt an amendment to the project plan consistent with the requirements and limitations of this chapter. The amendment takes effect on approval by the governing body of the municipality or county that created the zone. That approval must be by ordinance, in the case of a municipality, or by order, in the case of a county. If an amendment reduces or increases the geographic area of the zone, increases the amount of bonded indebtedness to be incurred, increases or decreases the percentage of a tax increment to be contributed by a taxing unit, increases the total estimated project costs, or designates additional property in the zone to be acquired by the municipality or county, the approval must be by ordinance or order, as applicable, adopted after a public hearing that satisfies the procedural requirements of Sections 311.003(c) and (d).

(f) In a zone designated under Section 311.005(a)(4) that is located in a county with a population of 3.3 million or more, the project plan must provide that at least one-third of the tax increment of the zone be used to provide affordable housing during the term of the zone.

(g) A school district that participates in a zone is not required to increase the percentage or amount of the tax increment to be contributed by the school district because of an amendment to the project plan or reinvestment zone financing plan for the zone unless the governing body of the school district by official action approves the amendment.

(h) Unless specifically provided otherwise in the plan, all amounts contained in the project plan or reinvestment zone financing plan, including amounts of expenditures relating to project costs and amounts relating to participation by taxing units, are considered estimates and do not act as a limitation on the described items, but the amounts contained

in the project plan or reinvestment zone financing plan may not vary materially from the estimates. This subsection may not be construed to increase the amount of any reduction under Section 403.302(d)(4), Government Code, in the total taxable value of the property in a school district that participates in the zone as computed under Section 403.302(d) of that code.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 24, effective September 1, 1989; am. Acts 1999, 76th Leg., ch. 983 (H.B. 2684), § 4, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 669 (H.B. 2810), § 120, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 43, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.010, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 11, effective June 17, 2011.

ATTORNEY GENERAL OPINIONS

Expenditures Outside of Plan.

Under chapter 311 of the Tax Code, a city is not authorized to undertake or complete a reinvestment zone project in a manner that is not consistent with the reinvestment zone board of directors' project and financing plans, which must provide for projects within the zone. Therefore, as a general matter, a city may not use unexpended tax increment fund money after termination of a reinvestment zone to build an improvement outside the zone. The city may do so only if, prior to the zone's termination, the reinvestment zone board of directors agreed to dedicate revenue from the tax increment fund to replace areas of public assembly, and if construction of the improvement is a cost of replacing an area of public assembly under section 311.010(b) of the Tax Code. 1999 Tex. Op. Att'y Gen. JC-0141.

Sec. 311.012. Determination of Amount of Tax Increment.

(a) The amount of a taxing unit's tax increment for a year is the amount of property taxes levied and assessed by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone or the amount of property taxes levied and collected by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone. The governing body of a taxing unit shall determine which of the methods specified by this subsection is used to calculate the amount of the unit's tax increment.

(b) The captured appraised value of real property taxable by a taxing unit for a year is the total taxable value of all real property taxable by the unit and located in a reinvestment zone for that year less the tax increment base of the unit.

(c) The tax increment base of a taxing unit is the total taxable value of all real property taxable by the unit and located in a reinvestment zone for the year in which the zone was designated under this chapter. If the boundaries of a zone are enlarged, the tax increment base is increased by the taxable value of the real property added to the zone for the year in which the property was added. If the boundaries of a zone are reduced, the tax increment base is reduced by the taxable value of the real property removed from the zone for the year in which the property was originally included in the zone's boundaries. If the municipality that designates a zone does not levy an ad valorem tax in the year in which the zone is designated, the tax increment base is determined by the appraisal district in which the zone is located using assumptions regarding exemptions and other relevant information provided to the appraisal district by the municipality.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1999, 76th Leg., ch. 983 (H.B. 2684), § 5, effective June 18, 1999; am. Acts 2009, 81st Leg., ch. 910 (H.B. 1770), § 3, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 12, effective June 17, 2011.

ATTORNEY GENERAL OPINIONS

Adjusting Tax Increment Base.

There is no mechanism for adjusting the tax increment base of a reinvestment zone to account for a severe decrease in the total appraised value of the real property in the reinvestment zone. See Tax Code § 311.012(c). 1996 Tex. Op. Att'y Gen. DM-390.

Sec. 311.0123. Sales Tax Increment.

(a) In this section, "sales tax base" for a reinvestment zone means the amount of municipal sales and use taxes attributable to the zone for the year in which the zone was designated under this chapter.

(b) The governing body of a municipality may determine, in an ordinance designating an area as a reinvestment zone or in an ordinance adopted subsequent to the designation of a zone, the portion or amount of tax increment generated from municipal sales and use taxes attributable to the zone, above the sales tax base, to be deposited into the tax increment fund. Nothing in this section requires a municipality to contribute sales tax increment into a tax increment fund.

(c) Before the issuance of a bond, note, or other obligation under this chapter that pledges the payments into the tax increment fund under Subsection (b), the governing body of a municipality may enter into an agreement, under Subchapter E, Chapter 271, Local Government Code, to authorize and direct the comptroller to:

(1) withhold from any payment to which the municipality may be entitled the amount of the payment into the tax increment fund under Subsection (b);

(2) deposit that amount into the tax increment fund; and

(3) continue withholding and making additional payments into the tax increment fund until an amount sufficient to satisfy the amount due has been met.

(d) A local government corporation created under Chapter 431, Transportation Code, that has contracted with a

reinvestment zone and a municipality under Section 311.010(f) may be a party to an agreement under Subsection (c) and the agreement may provide for payments to be made to a paying agent of the local government corporation.

(e) The sales and use taxes to be deposited into the tax increment fund under this section may be disbursed from the fund only to:

(1) satisfy claims of holders of tax increment bonds, notes, or other obligations issued or incurred for the reinvestment zone;

(2) pay project costs for the zone; and

(3) make payments in accordance with an agreement made under Section 311.010(b) dedicating revenue from the tax increment fund.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 114 (S.B. 1199), § 1, effective May 20, 2005; am. Acts 2007, 80th Leg., ch. 189 (S.B. 1264), § 1, effective May 23, 2007.

Sec. 311.0125. Tax Abatement Agreements.

(a) Notwithstanding any provision in this chapter to the contrary, a taxing unit other than a school district may enter into a tax abatement agreement with an owner of real or personal property in a reinvestment zone, regardless of whether the taxing unit deposits or agrees to deposit any portion of its tax increment into the tax increment fund.

(b) To be effective, an agreement to abate taxes on real property in a reinvestment zone must be approved by:

(1) the board of directors of the reinvestment zone; and

(2) the governing body of each taxing unit that imposes taxes on real property in the reinvestment zone and deposits or agrees to deposit any of its tax increment into the tax increment fund for the zone.

(c) In any contract entered into by the board of directors of a reinvestment zone in connection with bonds or other obligations, the board may convenant that the board will not approve a tax abatement agreement that applies to real property in that zone.

(d) If a taxing unit enters into a tax abatement agreement authorized by this section, taxes that are abated under that agreement are not considered taxes to be imposed or produced by that taxing unit in calculating the amount of:

(1) the tax increment of that taxing unit; or

(2) that taxing unit's deposit to the tax increment fund for the reinvestment zone.

(e) The Texas Department of Economic Development or its successor may recommend that a taxing unit enter into a tax abatement agreement with a person under this chapter. In determining whether to approve an agreement to abate taxes on real property in a reinvestment zone under Subsection (b), the board of directors of the reinvestment zone and the governing body of a taxing unit shall consider any recommendation made by the Texas Department of Economic Development or its successor.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 983 (H.B. 2684), § 6, effective June 18, 1999; am. Acts 2003, 78th Leg., ch. 978 (S.B. 1771), § 4, effective September 1, 2003.

Sec. 311.013. Collection and Deposit of Tax Increments.

(a) Each taxing unit that taxes real property located in a reinvestment zone shall provide for the collection of its taxes in the zone as for any other property taxed by the unit.

(b) Each taxing unit shall pay into the tax increment fund for the zone an amount equal to the tax increment produced by the unit, less the sum of:

(1) property taxes produced from the tax increments that are, by contract executed before the designation of the area as a reinvestment zone, required to be paid by the unit to another political subdivision; and

(2) for a taxing unit other than the municipality that created the zone, a portion, not to exceed 15 percent, of the tax increment produced by the unit as provided by the reinvestment zone financing plan or a larger portion as provided by Subsection (f).

(c) Notwithstanding any termination of the reinvestment zone under Section 311.017(a) and unless otherwise specified by an agreement between the taxing unit and the municipality or county that created the zone, a taxing unit shall make a payment required by Subsection (b) not later than the 90th day after the later of:

(1) the delinquency date for the unit's property taxes; or

(2) the date the municipality or county that created the zone submits to the taxing unit an invoice specifying the tax increment produced by the taxing unit and the amount the taxing unit is required to pay into the tax increment fund for the zone.

(c-1) A delinquent payment incurs a penalty of five percent of the amount delinquent and accrues interest at an annual rate of 10 percent.

(d),(e) [Repealed by Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 21, effective June 17, 2011.]

(f) A taxing unit is not required to pay into the tax increment fund any of its tax increment produced from property located in a reinvestment zone designated under Section 311.005(a) or in an area added to a reinvestment zone under Section 311.007 unless the taxing unit enters into an agreement to do so with the governing body of the municipality or county that designated the zone. A taxing unit may enter into an agreement under this subsection at any time before or after the zone is designated or enlarged. The agreement may include conditions for payment of that tax increment into the fund and must specify the portion of the tax increment to be paid into the fund and the years for which that

tax increment is to be paid into the fund. In addition to any other terms to which the parties may agree, the agreement may specify the projects to which a participating taxing unit's tax increment will be dedicated and that the taxing unit's participation may be computed with respect to a base year later than the original base year of the zone. The agreement and the conditions in the agreement are binding on the taxing unit, the municipality or county, and the board of directors of the zone.

(f-1) This subsection does not apply to a hospital district to which Section 281.095, Health and Safety Code, applies. Notwithstanding Subsection (f), the commissioners court of a county that enters into an agreement with the governing body of a municipality under Subsection (f) may enter into an agreement with the governing body of the municipality under that subsection on behalf of a taxing unit other than the county if by statute the ad valorem tax rate of the other taxing unit is approved by the commissioners court or the commissioners court is expressly required by statute to levy the ad valorem taxes of the other taxing unit. The agreement entered into on behalf of the other taxing unit is not required to contain the same conditions as the agreement entered into on behalf of the county. This subsection does not authorize the commissioners court of a county to enter into an agreement on behalf of another taxing unit solely because the county tax assessor-collector is required by law to assess or collect the taxing unit's ad valorem taxes.

(f-2) This subsection does not apply to a hospital district to which Section 281.095, Health and Safety Code, applies. Notwithstanding Subsection (f), the commissioners court of a county that creates a zone may provide by order for the payment into the tax increment fund for the zone of a portion of the tax increment produced by a taxing unit other than the county if by statute the ad valorem tax rate of the other taxing unit is approved by the commissioners court or the commissioners court is expressly required by statute to levy the ad valorem taxes of the other taxing unit. The order may include conditions for payment of that tax increment into the fund that are different from the conditions applicable to the county's obligation to pay into the fund the tax increment produced by the county. This subsection does not authorize the commissioners court of a county to provide for the payment into the fund of a portion of the tax increment produced by another taxing unit solely because the county tax assessor-collector is required by law to assess or collect the taxing unit's ad valorem taxes.

(g) Subject to the provisions of Section 311.0125, in lieu of permitting a portion of its tax increment to be paid into the tax increment fund, and notwithstanding the provisions of Section 312.203, a taxing unit, including a municipality, may elect to offer the owners of taxable real property in a reinvestment zone created under this chapter an exemption from taxation of all or part of the value of the property. To be effective, an agreement to exempt real property from ad valorem taxes under this subsection must be approved by:

(1) the board of directors of the reinvestment zone; and

(2) the governing body of each taxing unit that imposes taxes on real property in the reinvestment zone and deposits or agrees to deposit any of its tax increment into the tax increment fund for the zone.

(h) [Repealed by Acts 2003, 78th Leg., ch. 8 (S.B. 353), § 1, effective. April 24, 2003.]

(i) Notwithstanding Subsection (c) and Section 311.012(a), a taxing unit is not required to pay into a tax increment fund the applicable portion of a tax increment attributable to delinquent taxes until those taxes are collected.

(j) Section 26.05(f) does not prohibit a taxing unit from depositing all of the tax increment produced by the taxing unit in a reinvestment zone into the tax increment fund for that zone.

(k) A school district is not required to pay into the tax increment fund any of its tax increment produced from property located in an area added to the reinvestment zone under Section 311.007(a) or (b) unless the governing body of the school district enters into an agreement to do so with the governing body of the municipality or county that created the zone. The governing body of a school district may enter into an agreement under this subsection at any time before or after the zone is created or enlarged. The agreement may include conditions for payment of that tax increment into the fund and must specify the portion of the tax increment to be paid into the fund and the years for which that tax increment is to be paid into the fund. The agreement and the conditions in the agreement are binding on the school district, the municipality or county, and the board of directors of the zone.

(*l*) The governing body of a municipality or county that designates an area as a reinvestment zone may determine, in the designating ordinance or order adopted under Section 311.003 or in the ordinance or order adopted under Section 311.011 approving the reinvestment zone financing plan for the zone, the portion of the tax increment produced by the municipality or county that the municipality or county is required to pay into the tax increment fund for the zone. If a municipality or county does not determine the portion of the tax increment produced by the municipality or county that the municipality or county is required to pay into the tax increment fund for a reinvestment zone, the municipality or county is required to pay into the fund for the zone the entire tax increment produced by the municipality or county, except as provided by Subsection (b)(1).

(m) The governing body of a municipality that is located in a county with a population of more than 1.8 million but less than 1.9 million or in a county with a population of 3.3 million or more by ordinance may reduce the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for the zone. The municipality may not reduce under this subsection the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for the zone unless the municipality provides each county that has entered into an agreement with the municipality to pay all or a portion of the county's tax increment into the fund an opportunity to enter into an agreement with the municipality to reduce the portion of the tax increment produced by the county that the county is required to pay into the tax increment fund for the zone by the same proportion that the portion of the municipality's tax increment that the municipality is required to pay into

the fund is reduced. The portion of the tax increment produced by a municipality that the municipality is required to pay into the tax increment fund for a reinvestment zone, as reduced by the ordinance adopted under this subsection, together with all other revenues required to be paid into the fund, must be sufficient to complete and pay for the estimated costs of projects listed in the reinvestment zone financing plan and pay any tax increment bonds or notes issued for the zone, and any other obligations of the zone.

(n) This subsection applies only to a school district whose taxable value computed under Section 403.302(d), Government Code, is reduced in accordance with Subdivision (4) of that subsection. In addition to the amount otherwise required to be paid into the tax increment fund, the district shall pay into the fund an amount equal to the amount by which the amount of taxes the district would have been required to pay into the fund in the current year if the district levied taxes at the rate the district levied in 2005 exceeds the amount the district is otherwise required to pay into the fund in the year of the reduction. This additional amount may not exceed the amount the school district receives in state aid for the current tax year under Section 48.253, Education Code. The school district shall pay the additional amount after the district receives the state aid to which the district is entitled for the current tax year under Section 48.253, Education Code.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 25, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 17.06, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 112 (H.B. 1453), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 983 (H.B. 2684), § 7, effective June 18, 1999; am. Acts 2003, 78th Leg., ch. 8 (S.B. 353), § 1, effective April 24, 2003; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 44, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1347 (S.B. 771), § 5, effective June 18, 2005; am. Acts 2006, 79th Leg., 3rd C.S., ch. 5 (H.B. 1), § 1.16, effective May 31, 2006; am. Acts 2009, 81st Leg., ch. 910 (H.B. 1770), § 4, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1328 (H.B. 3646), § 89, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1358 (S.B. 576), § 2, effective June 19, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 57.30, effective September 28, 2011; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), §§ 13, 21, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 117, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1326 (S.B. 627), § 1, effective June 17, 2011; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.092, effective September 1, 2019.

ATTORNEY GENERAL OPINIONS

Bonds.

The Legislature has not authorized a county to issue tax increment financing bonds as a city may under chapter 311 of the Tax Code. 2012 Tex. Op. Att'y Gen. GA-0953.

Sec. 311.014. Tax Increment Fund.

(a) In addition to the deposits required by Section 311.013, all revenues from the sale of tax increment bonds or notes, revenues from the sale of any property acquired as part of the tax increment financing plan, and other revenues to be used in the reinvestment zone shall be deposited in the tax increment fund for the zone.

(b) Money may be disbursed from the fund only to satisfy claims of holders of tax increment bonds or notes issued for the zone, to pay project costs for the zone, to make payments pursuant to an agreement made under Section 311.010(b) dedicating revenue from the tax increment fund, or to repay other obligations incurred for the zone.

(c) Subject to an agreement with the holders of tax increment bonds or notes, money in a tax increment fund may be temporarily invested in the same manner as other funds of the municipality or county that created the zone.

(d) After all project costs, all tax increment bonds or notes issued for a reinvestment zone, and any other obligations incurred for the zone have been paid, and subject to any agreement with bondholders, any money remaining in the tax increment fund shall be paid to the municipality or county that created the zone and other taxing units levying taxes on property in the zone in proportion to the municipality's or county's and each other unit's respective share of the total amount of tax increments derived from taxable real property in the zone that were deposited in the fund during the fund's existence.

(e) A taxing unit that levies taxes on real property in a reinvestment zone may make a loan to the board of directors of the zone for deposit in the tax increment fund for the zone if the governing body of the taxing unit determines that the loan is beneficial to, and serves a public purpose of, the taxing unit. The loan is payable on the terms agreed to by the taxing unit, or an instrumentality of the taxing unit if applicable, and the board of directors of the zone. A loan under this subsection:

(1) is not considered to be a tax increment bond or note under Section 311.015; and

(2) is considered to be:

(A) an authorized investment under Chapter 2256, Government Code; and

(B) an obligation incurred for the zone.

(f) Money in the tax increment fund for a reinvestment zone may be transferred to the tax increment fund for an adjacent zone if:

(1) the taxing units that participate in the zone from which the money is to be transferred participate in the adjacent zone and vice versa;

(2) each participating taxing unit has agreed to deposit the same portion of its tax increment in the fund for each zone;

(3) each participating taxing unit has agreed to the transfer; and

(4) the holders of any tax increment bonds or notes issued for the zone from which the money is to be transferred have agreed to the transfer.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 26, effective September 1, 1989; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 45, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 189 (S.B. 1264), § 2, effective May 23, 2007; am. Acts 2013, 83rd Leg., ch. 1023 (H.B. 2636), § 1, effective September 1, 2013.

ATTORNEY GENERAL OPINIONS

Use of Fund.

Under chapter 311 of the Tax Code, a city is not authorized to undertake or complete a reinvestment zone project in a manner that is not consistent with the reinvestment zone board of directors' project and financing plans, which must provide for projects within the zone. Therefore, as a general matter, a city may not use unexpended tax increment fund money after termination of a reinvestment zone to build an improvement outside the zone. The city may do so only if, prior to the zone's termination, the reinvestment zone board of directors agreed to dedicate revenue from the tax increment fund to replace areas of public assembly, and if construction of the improvement is a cost of replacing an area of public assembly under section 311.010(b) of the Tax Code. 1999 Tex. Op. Att'y Gen. JC-0141.

Sec. 311.015. Tax Increment Bonds and Notes.

(a) A municipality designating a reinvestment zone may issue tax increment bonds or notes, the proceeds of which may be used to make payments pursuant to agreements made under Section 311.010(b), to pay project costs for the reinvestment zone on behalf of which the bonds or notes were issued, or to satisfy claims of holders of the bonds or notes. The municipality may issue refunding bonds or notes for the payment or retirement of tax increment bonds or notes previously issued by it.

(b) Tax increment bonds and notes are payable, as to both principal and interest, solely from the tax increment fund established for the reinvestment zone. The governing body of the municipality may pledge irrevocably all or part of the fund for payment of tax increment bonds or notes. The part of the fund pledged in payment may be used only for the payment of the bonds or notes or interest on the bonds or notes until the bonds or notes have been fully paid. A holder of the bonds or notes or of coupons issued on the bonds has a lien against the fund for payment of the bonds or notes and interest on the bonds or notes and may protect or enforce the lien at law or in equity.

(c) Tax increment bonds are issued by ordinance of the municipality without any additional approval other than that of the attorney general.

(d) Tax increment bonds or notes, together with the interest on and income from those bonds or notes, are exempt from all taxes.

(e) The issuing municipality may provide in the contract with the owners or holders of tax increment bonds that it will pay into the tax increment fund all or any part of the revenue produced or received from the operation or sale of a facility acquired, improved, or constructed pursuant to a project plan, to be used to pay principal and interest on the bonds. If the municipality agrees, the owners or holders of tax increment bonds may have a lien or mortgage on a facility acquired, improved, or constructed with the proceeds of the bonds.

(f) Tax increment bonds may be issued in one or more series. The ordinance approving a tax increment bond or note, or the trust indenture or mortgage issued in connection with the bond or note, shall provide:

(1) the date that the bond or note bears;
(2) that the bond or note is payable on demand or at a specified time;
(3) the interest rate that the bond or note bears;
(4) the denomination of the bond or note;
(5) whether the bond or note is in coupon or registered form;
(6) the conversion or registration privileges of the bond or note;
(7) the rank or priority of the bond or note;
(8) the manner of execution of the bond or note;
(9) the medium of payment in which and the place or places at which the bond or note is payable;
(10) the terms of redemption, with or without premium, to which the bond or note is subject;
(11) the manner in which the bond or note is secured; and
(12) any other characteristic of the bond or note.

(g) A bond or note issued under this chapter is fully negotiable. In a suit, action, or other proceeding involving the validity or enforceability of a bond or note issued under this chapter or the security of a bond or note issued under this chapter, if the bond or note recites in substance that it was issued by the municipality for a reinvestment zone, the bond or note is conclusively deemed to have been issued for that purpose, and the development or redevelopment of the zone is conclusively deemed to have been planned, located, and carried out as provided by this chapter.

(h) A bank, trust company, savings bank or institution, savings and loan association, investment company or other person carrying on a banking or investment business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, curator, trustee, or other fiduciary may invest any sinking funds, money, or other funds belonging to it or in its control in tax increment bonds or notes issued under this chapter. Tax increment bonds or notes are authorized security for all public deposits. A person, political subdivision, or public or private officer may use funds owned or controlled by the person, political subdivision, or officer to purchase tax increment bonds or notes. This chapter does not relieve any person of the duty to exercise reasonable care in selecting securities.

(i) A tax increment bond or note is not a general obligation of the municipality issuing the bond or note. A tax increment bond or note does not give rise to a charge against the general credit or taxing powers of the municipality and is not payable except as provided by this chapter. A tax increment bond or note issued under this chapter must state the restrictions of this subsection on its face.

(i-1) A municipality's obligation to deposit sales and use taxes into the tax increment fund is not a general obligation of the municipality. An obligation to make payments from sales and use taxes under Section 311.0123 does not give rise to a charge against the general credit or taxing powers of the municipality and is not payable except as provided by this chapter. A tax increment bond or note issued under this chapter that pledges payments made under Section 311.0123 must state the restrictions of this subsection on its face.

(j) A tax increment bond or note may not be included in any computation of the debt of the issuing municipality.

(k) A municipality may not issue tax increment bonds or notes in an amount that exceeds the total cost of implementing the project plan for the reinvestment zone for which the bonds or notes are issued.

(*l*) A tax increment bond or note must mature on or before the date by which the final payments of tax increment into the tax increment fund are due.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 2005, 79th Leg., ch. 114 (S.B. 1199), § 2, effective May 20, 2005; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 14, effective June 17, 2011.

ATTORNEY GENERAL OPINIONS

Bonds.

The Legislature has not authorized a county to issue tax increment financing bonds as a city may under chapter 311 of the Tax Code. 2012 Tex. Op. Att'y Gen. GA-0953.

Sec. 311.016. Annual Report by Municipality or County.

(a) On or before the 150th day following the end of the fiscal year of the municipality or county, the governing body of a municipality or county shall submit to the chief executive officer of each taxing unit that levies property taxes on real property in a reinvestment zone created by the municipality or county a report on the status of the zone. The report must include:

(1) the amount and source of revenue in the tax increment fund established for the zone;

(2) the amount and purpose of expenditures from the fund;

(3) the amount of principal and interest due on outstanding bonded indebtedness;

(4) the tax increment base and current captured appraised value retained by the zone; and

(5) the captured appraised value shared by the municipality or county and other taxing units, the total amount of tax increments received, and any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the governing body of the municipality or county.

(b) The municipality or county shall send a copy of a report made under this section to the comptroller.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.06(a), effective August 28, 1989; am. Acts 2001, 77th Leg., ch. 471 (H.B. 612), §§ 1, 2, effective June 11, 2001; am. Acts 2005, 79th Leg., ch. 977 (H.B. 1820), § 2, effective June 18, 2005; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 46, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 990 (H.B. 1781), § 9, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), §§ 15, 16, effective June 17, 2011.

Sec. 311.0163. Annual Report by Comptroller.

(a) Not later than December 31 of each even-numbered year, the comptroller shall submit a report to the legislature and to the governor on reinvestment zones designated under this chapter and on project plans and reinvestment zone financing plans adopted under this chapter.

(b) A report submitted under this section must include, for each reinvestment zone designated under this chapter, a summary of the information reported under Section 311.016.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 471 (H.B. 612), § 3, effective June 11, 2001.

Sec. 311.017. Termination of Reinvestment Zone.

(a) A reinvestment zone terminates on the earlier of:

(1) the termination date designated in the ordinance or order, as applicable, designating the zone or an earlier or later termination date designated by an ordinance or order adopted under Section 311.007(c); or

(2) the date on which all project costs, tax increment bonds and interest on those bonds, and other obligations have been paid in full.

(a-1) **[2 Versions: As added by Acts 2009, 81st Leg., ch. 137]** This subsection applies only to a reinvestment zone created by a municipality that has a population of more than 220,000 but less than 235,000 and is the county seat of a county that has a population of 280,000 or less. Notwithstanding Subsection (a)(1), a municipality by ordinance adopted subsequent to the ordinance adopted by the municipality creating a reinvestment zone may designate a termination date for the zone that is later than the termination date designated in the ordinance creating the zone but

not later than the 20th anniversary of that date. If a municipality adopts an ordinance extending the termination date for a reinvestment zone as authorized by this subsection, the zone terminates on the earlier of:

(1) the termination date designated in the ordinance; or

(2) the date provided by Subsection (a)(2).

(a-1) **[2 Versions: As added by Acts 2009, 81st Leg., ch. 910]** Notwithstanding the designation of a later termination date under Subsection (a), a taxing unit that taxes real property located in the reinvestment zone, other than the municipality or county that created the zone, is not required to pay any of its tax increment into the tax increment fund for the zone after the termination date designated in the ordinance or order creating the zone unless the governing body of the taxing unit enters into an agreement to do so with the governing body of the municipality or county that created the zone.

(b) The tax increment pledged to the payment of bonds and interest on the bonds and to the payment of any other obligations may be discharged and the reinvestment zone may be terminated if the municipality or county that created the zone deposits or causes to be deposited with a trustee or other escrow agent authorized by law funds in an amount that, together with the interest on the investment of the funds in direct obligations of the United States, will be sufficient to pay the principal of, premium, if any, and interest on all bonds issued on behalf of the reinvestment zone at maturity or at the date fixed for redemption of the bonds, and to pay any other amounts that may become due, including compensation due or to become due to the trustee or escrow agent, as well as to pay the principal of and interest on any other obligations incurred on behalf of the zone.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 47, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 189 (S.B. 1264), § 3, effective May 23, 2007; am. Acts 2009, 81st Leg., ch. 137 (S.B. 1105), § 1, effective May 23, 2009; am. Acts 2009, 81st Leg., ch. 910 (H.B. 1770), § 5, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 17, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 118, effective September 1, 2011.

ATTORNEY GENERAL OPINIONS

Analysis

Creating New Reinvestment Zone.
Termination Date Extension.

Creating New Reinvestment Zone.

A municipality that terminates a reinvestment zone by ordinance pursuant to section 311.017(a) may then create a new reinvestment zone with geographic boundaries identical to those of the original zone. 1996 Tex. Op. Att'y Gen. DM-390.

Termination Date Extension.

A home-rule city may not extend a Tax Code, chapter 311 reinvestment zone's termination date beyond the date provided in the ordinance designating the zone. 2004 Tex. Op. Att'y Gen. GA-0276 (Superseded by Tex. Tax Code §§ 311.007, 311.017) .

Sec. 311.018. Conflicts with Municipal Charter.

To the extent of a conflict between this chapter and a municipal charter, this chapter controls.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 983 (H.B. 2684), § 8, effective June 18, 1999.

Sec. 311.019. Central Registry.

(a) The comptroller shall maintain a central registry of:

(1) reinvestment zones designated under this chapter;

(2) project plans and reinvestment zone financing plans adopted under this chapter; and

(3) annual reports submitted under Section 311.016.

(b) A municipality or county that designates a reinvestment zone or approves a project plan or reinvestment zone financing plan under this chapter shall deliver to the comptroller before April 1 of the year following the year in which the zone is designated or the plan is approved a report containing:

(1) a general description of each zone, including:

(A) the size of the zone;

(B) the types of property located in the zone;

(C) the duration of the zone; and

(D) the guidelines and criteria established for the zone under Section 311.005;

(2) a copy of each project plan or reinvestment zone financing plan adopted; and

(3) any other information required by the comptroller to administer this section and Subchapter F, Chapter 111.

(c) A municipality or county that amends or modifies a project plan or reinvestment zone financing plan adopted under this chapter shall deliver a copy of the amendment or modification to the comptroller before April 1 of the year following the year in which the plan was amended or modified.

(d) [Expired pursuant to Acts 2001, 77th Leg., ch. 471 (H.B. 612), § 4, effective January 1. 2003.]

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 471 (H.B. 612), § 4, effective June 11, 2001; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 47, effective September 1, 2005.

Sec. 311.020. State Assistance.

(a) On request of the governing body of a municipality or county or of the presiding officer of the governing body, the comptroller may provide assistance to a municipality or county relating to the administration of this chapter.

(b) The Texas Department of Economic Development and the comptroller may provide technical assistance to a municipality or county regarding:

(1) the designation of reinvestment zones under this chapter; and

(2) the adoption and execution of project plans or reinvestment zone financing plans under this chapter.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 471 (H.B. 612), § 4, effective June 11, 2001; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 48, effective September 1, 2005.

Sec. 311.021. Act or Proceeding Presumed Valid.

(a) A governmental act or proceeding of a municipality or county, the board of directors of a reinvestment zone, or an entity acting under Section 311.010(f) relating to the designation, operation, or administration of a reinvestment zone or the implementation of a project plan or reinvestment zone financing plan under this chapter is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if:

(1) the third anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before the later of that second anniversary or August 1, 2011.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or

(4) a matter that on the effective date of the Act enacting this section:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 18, effective June 17, 2011.

CHAPTER 312

Property Redevelopment and Tax Abatement Act [Expires September 1, 2029]

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Subchapter A

General Provisions
[Expires September 1, 2029]

Sec. 312.001. Short Title.

This chapter may be cited as the Property Redevelopment and Tax Abatement Act.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987.

Sec. 312.002. Eligibility of Taxing Unit to Participate in Tax Abatement.

(a) A taxing unit may not enter into a tax abatement agreement under this chapter and the governing body of a municipality or county may not designate an area as a reinvestment zone unless the governing body has established guidelines and criteria governing tax abatement agreements by the taxing unit and a resolution stating that the taxing unit elects to become eligible to participate in tax abatement. The guidelines applicable to property other than property described by Section 312.211(a) must provide for the availability of tax abatement for both new facilities and structures and for the expansion or modernization of existing facilities and structures.

(b) The governing body of a taxing unit may not enter into a tax abatement agreement under this chapter unless it finds that the terms of the agreement and the property subject to the agreement meet the applicable guidelines and criteria adopted by the governing body under this section.

(c) The guidelines and criteria adopted under this section are effective for two years from the date adopted. During that period, the guidelines and criteria may be amended or repealed only by a vote of three-fourths of the members of the governing body.

(c-1) Before the governing body of a taxing unit may adopt, amend, repeal, or reauthorize guidelines and criteria, the body must hold a public hearing regarding the proposed adoption, amendment, repeal, or reauthorization at which members of the public are given the opportunity to be heard.

(c-2) A taxing unit that maintains an Internet website shall post the current version of the guidelines and criteria governing tax abatement agreements adopted under this section on the website.

(d) The adoption of the guidelines and criteria by the governing body of a taxing unit does not:

(1) limit the discretion of the governing body to decide whether to enter into a specific tax abatement agreement;

(2) limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for tax abatement; or

(3) create any property, contract, or other legal right in any person to have the governing body consider or grant a specific application or request for tax abatement.

(e) The guidelines and criteria adopted by the commissioners court of a county may include a requirement that an application or request for tax abatement submitted to the county under this chapter must be accompanied by a reasonable application fee not to exceed $1,000.

(f) On or after September 1, 2001, a school district may not enter into a tax abatement agreement under this chapter.

(g) "Taxing unit" has the meaning assigned by Section 1.04, except that for a tax abatement agreement executed on

or after September 1, 2001, the term does not include a school district that is subject to Chapter 48, Education Code, and that is organized primarily to provide general elementary and secondary public education.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.07(a), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), § 22, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 391 (H.B. 2885), § 26, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 9.2, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.13(2), effective May 31, 1993; am. Acts 1997, 75th Leg., ch. 855 (H.B. 1239), § 9, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1333 (S.B. 1596), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1029 (H.B. 1449), § 3, effective June 15, 2001; am. Acts 2001, 77th Leg., ch. 1145 (H.B. 2782), § 1, effective June 15, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(124), effective September 1, 2003; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.093, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1155 (H.B. 3143), § 1, effective September 1, 2019.

Sec. 312.0021. Prohibition on Abatement of Taxes on Certain Property Near Military Aviation Facility.

(a) In this section:

(1) "Military aviation facility" means a base, station, fort, or camp at which fixed-wing aviation operations or training is conducted by the United States Air Force, the United States Air Force Reserve, the United States Army, the United States Army Reserve, the United States Navy, the United States Navy Reserve, the United States Marine Corps, the United States Marine Corps Reserve, the United States Coast Guard, the United States Coast Guard Reserve, or the Texas National Guard.

(2) "Wind-powered energy device" has the meaning assigned by Section 11.27.

(b) Notwithstanding any other provision of this chapter, an owner or lessee of a parcel of real property that is located wholly or partly in a reinvestment zone may not receive an exemption from taxation of any portion of the value of the parcel of real property or of tangible personal property located on the parcel of real property under a tax abatement agreement under this chapter that is entered into on or after September 1, 2017, if, on or after that date, a wind-powered energy device is installed or constructed on the same parcel of real property at a location that is within 25 nautical miles of the boundaries of a military aviation facility located in this state. The prohibition provided by this section applies regardless of whether the wind-powered energy device is installed or constructed at a location that is in the reinvestment zone.

(c) The prohibition provided by this section does not apply if the wind-powered energy device is installed or constructed as part of an expansion or repowering of an existing project.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 444 (S.B. 277), § 2, effective September 1, 2017.

Sec. 312.0025. Designation of Reinvestment Zone by School District.

(a) Notwithstanding any other provision of this chapter to the contrary, the governing body of a school district, in the manner required for official action and for purposes of Subchapter B or C, Chapter 313, may designate an area entirely within the territory of the school district as a reinvestment zone if the governing body finds that, as a result of the designation and the granting of a limitation on appraised value under Subchapter B or C, Chapter 313, for property located in the reinvestment zone, the designation is reasonably likely to:

(1) contribute to the expansion of primary employment in the reinvestment zone; or

(2) attract major investment in the reinvestment zone that would:

(A) be a benefit to property in the reinvestment zone and to the school district; and

(B) contribute to the economic development of the region of this state in which the school district is located.

(b) The governing body of the school district may seek the recommendation of the commissioners court of each county and the governing body of each municipality that has territory in the school district before designating an area as a reinvestment zone under Subsection (a).

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 4, effective January 1, 2002.

Sec. 312.003. Confidentiality of Proprietary Information.

Information that is provided to a taxing unit in connection with an application or request for tax abatement under this chapter and that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which tax abatement is sought is confidential and not subject to public disclosure until the tax abatement agreement is executed. That information in the custody of a taxing unit after the agreement is executed is not confidential under this section.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 2, effective September 1, 1989.

Sec. 312.004. Taxing Unit with Tax Rate Set by Commissioners Court.

(a) The commissioners court of a county that enters into a tax abatement agreement for the county may enter into a tax abatement agreement applicable to the same property on behalf of a taxing unit other than the county if by statute the ad valorem tax rate of the other taxing unit is approved by the commissioners court or the commissioners court is expressly required by statute to levy the ad valorem taxes of the other taxing unit. The tax abatement agreement

entered into on behalf of the other taxing unit is not required to contain the same terms as the tax abatement agreement entered into on behalf of the county.

(b) This section does not apply to a taxing unit because the county tax assessor-collector is required by law to assess or collect the taxing unit's ad valorem taxes.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 3, effective September 1, 1989; am. Acts 1999, 76th Leg., ch. 1039 (H.B. 3034), § 1, effective September 1, 1999.

Sec. 312.005. State Administration.

(a) The comptroller shall maintain a central registry of reinvestment zones designated under this chapter and of ad valorem tax abatement agreements executed under this chapter. The chief appraiser of each appraisal district that appraises property for a taxing unit that has designated a reinvestment zone or executed a tax abatement agreement under this chapter shall deliver to the comptroller before July 1 of the year following the year in which the zone is designated or the agreement is executed a report providing the following information:

(1) for a reinvestment zone, a general description of the zone, including its size, the types of property located in it, its duration, and the guidelines and criteria established for the reinvestment zone under Section 312.002, including subsequent amendments and modifications of the guidelines or criteria;

(2) a copy of each tax abatement agreement to which a taxing unit that participates in the appraisal district is a party; and

(3) any other information required by the comptroller to administer this section and Subchapter F, Chapter 111.

(a-1) For each of the first three tax years following the expiration of a tax abatement agreement executed under this chapter, the chief appraiser shall deliver to the comptroller a report containing the appraised value of the property that was the subject of the agreement.

(b) The comptroller may provide assistance to a taxing unit on request of its governing body or the presiding officer of its governing body relating to the administration of this chapter. The Texas Department of Commerce and the comptroller may provide technical assistance to a local governing body regarding the designation of reinvestment zones, the adoption of tax abatement guidelines, and the execution of tax abatement agreements.

(c) Not later than December 31 of each even-numbered year, the comptroller shall submit a report to the legislature and to the governor on reinvestment zones designated under this chapter and on tax abatement agreements adopted under this chapter, including a summary of the information reported under this section.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 4, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 6 (S.B. 45), § 59, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 995 (S.B. 345), § 2, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 1382 (H.B. 1526), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 268 (S.B. 1095), § 4, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1029 (H.B. 1449), § 2, effective June 15, 2001; am. Acts 2019, 86th Leg., ch. 1155 (H.B. 3143), § 2, effective September 1, 2019.

Sec. 312.006. Expiration Date.

If not continued in effect, this chapter expires September 1, 2029.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 5, effective September 1, 1989; am. Acts 1991, 72nd Leg., 1st C.S., ch. 17 (H.B. 222), § 2.16, effective November 12, 1991; am. Acts 1995, 74th Leg., ch. 995 (S.B. 345), § 4, effective August 31, 1995; am. Acts 2001, 77th Leg., ch. 1029 (H.B. 1449), § 1, effective June 15, 2001; am. Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 5, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 610 (H.B. 773), § 1, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1195 (H.B. 3896), § 1, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1225 (S.B. 1458), § 1, effective June 19, 2009; am. Acts 2019, 86th Leg., ch. 1155 (H.B. 3143), § 3, effective September 1, 2019.

Sec. 312.007. Deferral of Commencement of Abatement Period.

(a) In this section, "abatement period" means the period during which all or a portion of the value of real property or tangible personal property that is the subject of a tax abatement agreement is exempt from taxation.

(b) Notwithstanding any other provision of this chapter, the governing body of the taxing unit granting the abatement and the owner of the property that is the subject of the agreement may agree to defer the commencement of the abatement period until a date that is subsequent to the date the agreement is entered into, except that the duration of an abatement period may not exceed 10 years.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1195 (H.B. 3896), § 2, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1225 (S.B. 1458), § 2, effective June 19, 2009.

Secs. 312.008 to 312.200. [Reserved for expansion].

Subchapter B

Tax Abatement In Municipal Reinvestment Zone

Sec. 312.201. Designation of Reinvestment Zone.

(a) The governing body of a municipality by ordinance may designate as a reinvestment zone an area, or real or personal property the use of which is directly related to outdoor advertising, in the taxing jurisdiction or extraterritorial jurisdiction of the municipality that the governing body finds satisfies the requirements of Section 312.202.

(b) The ordinance must describe the boundaries of the zone and the eligibility of the zone for residential tax abatement or commercial-industrial tax abatement or tax increment financing as provided for in Chapter 311.

(c) Area of a reinvestment zone designated for residential tax abatement or commercial-industrial tax abatement may be included in an overlapping or coincidental residential or commercial-industrial zone. In that event, the zone in which the property is considered to be located for purposes of executing an agreement under Section 312.204 or 312.211 is determined by the comprehensive zoning ordinance, if any, of the municipality.

(d) The governing body may not adopt an ordinance designating an area as a reinvestment zone until the governing body has held a public hearing on the designation and has found that the improvements sought are feasible and practical and would be a benefit to the land to be included in the zone and to the municipality after the expiration of an agreement entered into under Section 312.204 or 312.211, as applicable. At the hearing, interested persons are entitled to speak and present evidence for or against the designation. Not later than the seventh day before the date of the hearing, notice of the hearing must be:

(1) published in a newspaper having general circulation in the municipality; and

(2) delivered in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone.

(e) A notice made under Subsection (d)(2) is presumed delivered when placed in the mail postage paid and properly addressed to the appropriate presiding officer. A notice properly addressed and sent by registered or certified mail for which a return receipt is received by the sender is considered to have been delivered to the addressee.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.08(a), effective August 28, 1989; am. Acts 1997, 75th Leg., ch. 855 (H.B. 1239), § 10, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1333 (S.B. 1596), § 2, effective September 1, 1997.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — In an action by a landowner against a city seeking to enforce a tax abatement, summary judgment for the city was affirmed where there was no reinvestment zone created by the city in compliance with Tex. Tax Code Ann. § 312.201, there was no tax abatement agreement which included the specific terms which must be included pursuant to Tex. Tax Code Ann. § 312.205, and there was no formal agreement executed in the same manner as other contracts made by the city as required by Tex. Tax Code Ann. § 312.207. McCormick Mktg. v. City of Colo. City, 42 S.W.3d 162, 2001 Tex. App. LEXIS 284 (Tex. App. Eastland Jan. 11, 2001, no pet.).

Sec. 312.2011. Enterprise Zone.

Designation of an area as an enterprise zone under Chapter 2303, Government Code constitutes designation of the area as a reinvestment zone under this subchapter without further hearing or other procedural requirements other than those provided by Chapter 2303, Government Code.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1106 (S.B. 1205), § 28, effective August 28, 1989; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(22), effective September 1, 1995.

Sec. 312.202. Criteria for Reinvestment Zone.

(a) To be designated as a reinvestment zone under this subchapter, an area must:

(1) substantially arrest or impair the sound growth of the municipality creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

(A) a substantial number of substandard, slum, deteriorated, or deteriorating structures;

(B) the predominance of defective or inadequate sidewalks or streets;

(C) faulty size, adequacy, accessibility, or usefulness of lots;

(D) unsanitary or unsafe conditions;

(E) the deterioration of site or other improvements;

(F) tax or special assessment delinquency exceeding the fair value of the land;

(G) defective or unusual conditions of title;

(H) conditions that endanger life or property by fire or other cause; or

(I) any combination of these factors;

(2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality;

(3) be in a federally assisted new community located in a home-rule municipality or in an area immediately adjacent to a federally assisted new community located in a home-rule municipality;

(4) be located entirely in an area that meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5318);

(5) encompass signs, billboards, or other outdoor advertising structures designated by the governing body of the municipality for relocation, reconstruction, or removal for the purpose of enhancing the physical environment of the municipality, which the legislature declares to be a public purpose; or

(6) be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the municipality.

(b) For purposes of this section, a federally assisted new community is a federally assisted area:

(1) that has received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act (12 U.S.C. Section 1749aa et seq.); and

(2) a portion of which has received grants under Section 107 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5307) made pursuant to the authority created by that section for grants in behalf of new communities assisted under Title VII of the Housing and Urban Development Act of 1970 or Title IV of the Housing and Urban Development Act of 1968 or in behalf of new community projects assisted under Title X of the National Housing Act (12 U.S.C. Section 1749aa et seq.).

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.09(a), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1106 (S.B. 1205), § 29, effective August 28, 1989.

Sec. 312.203. Expiration of Reinvestment Zone.

The designation of a reinvestment zone for residential or commercial-industrial tax abatement expires five years after the date of the designation and may be renewed for periods not to exceed five years, except that a reinvestment zone that is a state enterprise zone is designated for the same period as a state enterprise zone as provided by Chapter 2303, Government Code. The expiration of the designation does not affect an existing tax abatement agreement made under this subchapter.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1995, 74th Leg., ch. 985 (H.B. 2065), § 12, effective September 1, 1995.

Sec. 312.204. Municipal Tax Abatement Agreement.

(a) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of taxable real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property located on the real property, or both, for a period not to exceed 10 years, on the condition that the owner of the property make specific improvements or repairs to the property. The governing body of an eligible municipality may agree in writing with the owner of a leasehold interest in tax-exempt real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt a portion of the value of property subject to ad valorem taxation, including the leasehold interest, improvements, or tangible personal property located on the real property, for a period not to exceed 10 years, on the condition that the owner of the leasehold interest make specific improvements or repairs to the real property. A tax abatement agreement under this section is subject to the rights of holders of outstanding bonds of the municipality. An agreement exempting taxable real property or leasehold interests or improvements on tax-exempt real property may provide for the exemption of such taxable interests in each year covered by the agreement only to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement exempting tangible personal property located on taxable or tax-exempt real property may provide for the exemption of tangible personal property located on the real property in each year covered by the agreement other than tangible personal property that was located on the real property at any time before the period covered by the agreement with the municipality, including inventory and supplies. In a municipality that has a comprehensive zoning ordinance, an improvement, repair, development, or redevelopment taking place under an agreement under this section must conform to the comprehensive zoning ordinance.

(b) The agreements made with the owners of property in a reinvestment zone must contain identical terms for the portion of the value of the property that is to be exempt and the duration of the exemption. For purposes of this subsection, if agreements made with the owners of property in a reinvestment zone before September 1, 1989, exceed 10 years in duration, agreements made with owners of property in the zone on or after that date must have a duration of 10 years.

(c) The property subject to an agreement made under this section may be located in the extraterritorial jurisdiction of the municipality. In that event, the agreement applies to taxes of the municipality if the municipality annexes the property during the period specified in the agreement.

(d) Except as otherwise provided by this subsection, property that is in a reinvestment zone and that is owned or leased by a person who is a member of the governing body of the municipality or a member of a zoning or planning board or commission of the municipality is excluded from property tax abatement or tax increment financing. Property that is subject to a tax abatement agreement in effect when the person becomes a member of the governing body or of the zoning or planning board or commission does not cease to be eligible for property tax abatement under that agreement because of the person's membership on the governing body, board, or commission. Property that is subject to tax increment financing when the person becomes a member of the governing body or of the zoning or planning board or commission does not become ineligible for tax increment financing in the same reinvestment zone because of the person's membership on the governing body, board, or commission.

(e) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner or lessee of real property that is located in a reinvestment zone to exempt from taxation for a period not to exceed 10 years a portion of the value of the real property or of personal property, or both, located within the zone and owned or leased by a certificated air carrier, on the condition that the certificated air carrier make specific real property improvements or lease for a term of 10 years or more real property improvements located within the reinvestment zone. An agreement may provide for the exemption of the real property in each year covered by the agreement to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement may provide for the exemption of the personal property owned or leased by a certificated air carrier located within the reinvestment zone in each year covered by the agreement other than specific personal property that was located within the reinvestment zone at any time before the period covered by the agreement with the municipality.

(f) The agreements made with owners of property in an enterprise zone that is also designated as a reinvestment zone are not required to contain identical terms for the portion of the value of property that is to be exempt and the duration of the agreement.

(g) Notwithstanding the other provisions of this chapter, the governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of real property that is located in a reinvestment zone to exempt from taxation for a period not to exceed five years a portion of the value of the real property or of tangible personal property located on the real property, or both, that is used to provide housing for military personnel employed at a military facility located in or near the municipality. An agreement may provide for the exemption of the real property in each year covered by the agreement only to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement may provide for the exemption of tangible personal property located on the real property in each year covered by the agreement other than tangible personal property that was located on the real property at any time before the period covered by the agreement with the municipality and other than inventory or supplies. The governing body of the municipality may adopt guidelines and criteria for tax abatement agreements entered into under this subsection that are different from the guidelines and criteria that apply to tax abatement agreements entered into under another provision of this section. Tax abatement agreements entered into under this subsection are not required to contain identical terms for the portion of the value of the property that is to be exempt or for the duration of the exemption as tax abatement agreements entered into with the owners of property in the reinvestment zone under another provision of this section.

(h) The Texas Department of Economic Development or its successor may recommend that a taxing unit enter into a tax abatement agreement with a person under this chapter. In determining whether to enter into a tax abatement agreement under this section, the governing body of a municipality shall consider any recommendation made by the Texas Department of Economic Development or its successor.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.10(a), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 486 (H.B. 2043), § 1, effective June 14, 1989; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), §§ 6, 7, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 985 (H.B. 2065), § 13, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 560 (H.B. 3001), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 640 (H.B. 1448), § 1, effective June 13, 2001; am. Acts 2001, 77th Leg., ch. 765 (S.B. 1710), § 2, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1016 (H.B. 1194), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1258 (S.B. 985), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 149 (S.B. 652), § 18, effective May 28, 2003; am. Acts 2003, 78th Leg., ch. 978 (S.B. 1771), § 5, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 412 (S.B. 1652), § 16, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(82), effective September 1, 2005.

ATTORNEY GENERAL OPINIONS

Analysis

Conflict of Interest.
Duration.
Improvement or Repair.
Loss of Exemption.
Tax Abatement.
Tax Increment Financing. —

Conflict of Interest.

The Property Redevelopment and Tax Abatement Act, chapter 312 of the Tax Code, does not bar a property owner from serving on the city council that granted a municipal tax abatement to the property owner. However, the owner's position on the council makes his property ineligible to continue to receive a tax abatement. Section 171.004 of the Local Government Code bars him from participating in a vote on a matter involving the property if he has a substantial interest in the property or in the business that owns the property, and if it is reasonably foreseeable that an action on the matter would confer a special economic benefit on the property that is distinguishable from the effect on the public. Votes made in violation of section 171.004 of the Local Govern-

ment Code are voidable only if the measures on which the property owner voted would not have passed without his vote. 1999 Tex. Op. Att'y Gen. JC-0155 (Clarified by JC-0236 (2000)).

Duration.

A tax abatement agreement made pursuant to chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act, may not exceed ten years. A governmental entity may not grant a tax abatement for property that previously received a ten-year tax abatement. In order for property to receive more than ten years of tax abatement, the agreement for the abatement must have been made prior to September 1, 1989. 1999 Tex. Op. Att'y Gen. JC-0133.

Improvement or Repair.

The movement of a structure from one location on a piece of property in a reinvestment zone to another location on the property may constitute a "specific improvement or repair" to the property for purposes of a tax abatement agreement under Property Redevelopment and Tax Abatement Act, chapter 312 of the Tax Code, if it improves or repairs the property in the ordinary sense and if the improvement or repair is consistent with the purpose of the reinvestment zone designation. 1999 Tex. Op. Att'y Gen. JC-0106.

Loss of Exemption.

If the owner of property subject to the tax abatement agreement is elected to the municipality's governing body, the tax exemption created by the agreement is lost on the date the property owner assumes office as a member of the governing body. The tax due on the property for the year is determined according to the method set out in section 26.10 of the Tax Code. 2000 Tex. Op. Att'y Gen. JC-0236.

Tax Abatement.

The maximum ten-year tax abatement period authorized under Tax Code section 312.204(a) may commence in a year subsequent to the year in which an agreement providing for the tax abatement is entered into by the taxing unit and the owner of the property subject to the agreement. 2009 Tex. Op. Att'y Gen. GA-0734.

Tax Increment Financing. —

Tax Code section 312.204(d) excludes real property owned by a member of a city's governing body from tax increment financing. It is unlikely that a city council member, who in a deed conveying real property reserves to himself the sale proceeds of the property, if and when the property is sold, is the owner of the property under section 312.204(d) by virtue of the reservation. Thus, such a reservation does not by itself appear to operate to exclude property from tax increment financing under section 312.204(d). 2009 Tex. Op. Att'y Gen. GA-0725.

Sec. 312.2041. Notice of Tax Abatement Agreement to Other Taxing Units.

(a) Not later than the seventh day before the date on which a municipality enters into an agreement under Section 312.204 or 312.211, the governing body of the municipality or a designated officer or employee of the municipality shall deliver to the presiding officer of the governing body of each other taxing unit in which the property to be subject to the agreement is located a written notice that the municipality intends to enter into the agreement. The notice must include a copy of the proposed agreement.

(b) A notice is presumed delivered when placed in the mail postage paid and properly addressed to the appropriate presiding officer. A notice properly addressed and sent by registered or certified mail for which a return receipt is received by the sender is considered to have been delivered to the addressee.

(c) Failure to deliver the notice does not affect the validity of the agreement.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.11(a), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 8, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 855 (H.B. 1239), § 11, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1333 (S.B. 1596), § 3, effective September 1, 1997.

Sec. 312.205. Specific Terms of Tax Abatement Agreement.

(a) An agreement made under Section 312.204 or 312.211 must:

(1) list the kind, number, and location of all proposed improvements of the property;

(2) provide access to and authorize inspection of the property by municipal employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;

(3) limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;

(4) provide for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;

(5) contain each term agreed to by the owner of the property;

(6) require the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement; and

(7) provide that the governing body of the municipality may cancel or modify the agreement if the property owner fails to comply with the agreement.

(b) An agreement made under Section 312.204 or 312.211 may include, at the option of the governing body of the municipality, provisions for:

(1) improvements or repairs by the municipality to streets, sidewalks, and utility services or facilities associated with the property, except that the agreement may not provide for lower charges or rates than are made for other services or properties of a similar character;

(2) an economic feasibility study, including a detailed list of estimated improvement costs, a description of the methods of financing all estimated costs, and the time when related costs or monetary obligations are to be incurred;

(3) a map showing existing uses and conditions of real property in the reinvestment zone;

(4) a map showing proposed improvements and uses in the reinvestment zone;

(5) proposed changes of zoning ordinances, the master plan, the map, building codes, and city ordinances; and

(6) the recapture of all or a portion of property tax revenue lost as a result of the agreement if the owner of the property fails to create all or a portion of the number of new jobs provided by the agreement, if the appraised value of the property subject to the agreement does not attain a value specified in the agreement, or if the owner fails to meet any other performance criteria provided by the agreement, and payment of a penalty or interest, or both, on that recaptured property tax revenue.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1995, 74th Leg., ch. 995 (S.B. 345), § 3, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 855 (H.B. 1239), § 12, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1333 (S.B. 1596), § 4, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 740 (S.B. 986), § 1, effective June 13, 2001.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — In an action by a landowner against a city seeking to enforce a tax abatement, summary judgment for the city was affirmed where there was no reinvestment zone created by the city in compliance with Tex. Tax Code Ann. § 312.201, there was no tax abatement agreement which included the specific terms which must be included pursuant to Tex. Tax Code Ann. § 312.205, and there was no formal agreement executed in the same manner as other contracts made by the city as required by Tex. Tax Code Ann. § 312.207. McCormick Mktg. v. City of Colo. City, 42 S.W.3d 162, 2001 Tex. App. LEXIS 284 (Tex. App. Eastland Jan. 11, 2001, no pet.).

Sec. 312.206. Tax Abatement by Other Taxing Units.

(a) If property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made under Section 312.204 or 312.211, the governing body of each other taxing unit eligible to enter into tax abatement agreements under Section 312.002 in which the property is located may execute a written tax abatement agreement with the owner of the property. The agreement is not required to contain terms identical to those contained in the agreement with the municipality. The execution, duration, and other terms of an agreement made under this section are governed by the provisions of Sections 312.204, 312.205, and 312.211 applicable to a municipality. If the governing body of the taxing unit by official action at any time before the execution of the municipal agreement expresses an intent to be bound by the terms of the municipal agreement if the municipality enters into an agreement under Section 312.204 or 312.211 with the owner relating to the property, the terms of the municipal agreement regarding the share of the property to be exempt in each year of the municipal agreement apply to the taxation of the property by the taxing unit.

(b) If property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made by the municipality before September 1, 1989, the terms of the agreement with the municipality regarding the share of the property that is to be exempt in each year of the agreement apply to the taxation of the property by every other taxing unit, other than a county or school district, in which the property is located. If the agreement was made before September 1, 1987, the terms regarding the share of the property to be exempt in each year of the agreement also apply to the taxation of the property by a county or school district.

(c) If the governing body of a municipality designates a reinvestment zone that includes property in the extraterritorial jurisdiction of the municipality, the governing body of a taxing unit eligible to enter into tax abatement agreements under Section 312.002 in which the property is located may execute a written agreement with the owner of the property to exempt from its property taxes all or part of the value of the property in the same manner and subject to the same restrictions as provided by Section 312.204 or 312.211 for a municipality. The taxing unit may execute an agreement even if the municipality does not execute an agreement for the property, and the terms of the agreement are not required to be identical to the terms of a municipal agreement. However, if the governing body of another eligible taxing unit has previously executed an agreement to exempt all or part of the value of the property and that agreement is still in effect, the terms of the subsequent agreement relating to the share of the property that is to be exempt in each year that the existing agreement remains in effect must be identical to those of the existing agreement.

(d) If property taxes are abated on property in the extraterritorial jurisdiction of a municipality due to an agreement with a county or school district made before September 1, 1989, the terms of the agreement with the county or school district relating to the share of the property that is to be exempt in each year of the agreement apply to the taxation of the property by every other taxing unit, other than a municipality, school district, or county, in which the property is located.

(e) If property taxes on property located in an enterprise zone are abated under this chapter, the governing body of each taxing jurisdiction may execute a written agreement with the owner of the property not later than the 90th day after the date the municipal or county agreement is executed, whichever is later. The agreement may, but is not required to, contain terms that are identical to those contained in the agreement with the municipality, county, or both, whichever applies, and the only terms of the agreement that may vary are the portion of the property that is to be exempt from taxation under the agreement and the duration of the agreement.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.10(b), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 9, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 985 (H.B. 2065), § 14, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 855 (H.B. 1239), § 13, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1333 (S.B. 1596), § 5, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1039 (H.B. 3034), § 2, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 765 (S.B. 1710), § 1, effective September 1, 2001.

Sec. 312.207. Approval by Governing Body.

(a) To be effective, an agreement made under this subchapter must be approved by the affirmative vote of a majority of the members of the governing body of the municipality or other taxing unit at a regularly scheduled meeting of the governing body.

(b) On approval by the governing body, an agreement may be executed in the same manner as other contracts made by the municipality or other taxing unit.

(c) In addition to any other requirement of law, the public notice of a meeting at which the governing body of a municipality or other taxing unit will consider the approval of a tax abatement agreement with a property owner must contain:

(1) the name of the property owner and the name of the applicant for the tax abatement agreement ;

(2) the name and location of the reinvestment zone in which the property subject to the agreement is located;

(3) a general description of the nature of the improvements or repairs included in the agreement; and

(4) the estimated cost of the improvements or repairs.

(d) The notice of a meeting required by this section must be given in the manner required by Chapter 551, Government Code, except that the notice must be provided at least 30 days before the scheduled time of the meeting.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 2019, 86th Leg., ch. 1155 (H.B. 3143), § 4, effective September 1, 2019.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Real Property Tax

General Overview. — In an action by a landowner against a city seeking to enforce a tax abatement, summary judgment for the city was affirmed where there was no reinvestment zone created by the city in compliance with Tex. Tax Code Ann. § 312.201, there was no tax abatement agreement which included the specific terms which must be included pursuant to Tex. Tax Code Ann. § 312.205, and there was no formal agreement executed in the same manner as other contracts made by the city as required by Tex. Tax Code Ann. § 312.207. McCormick Mktg. v. City of Colo. City, 42 S.W.3d 162, 2001 Tex. App. LEXIS 284 (Tex. App. Eastland Jan. 11, 2001, no pet.).

Sec. 312.208. Modification or Termination of Agreement.

(a) At any time before the expiration of an agreement made under this subchapter, the agreement may be modified by the parties to the agreement to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. The modification must be made by the same procedure by which the original agreement was approved and executed. The original agreement may not be modified to extend beyond 10 years from the date of the original agreement.

(b) An agreement made under this subchapter may be terminated by the mutual consent of the parties in the same manner that the agreement was approved and executed.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 10, effective September 1, 1989.

NOTES TO DECISIONS

TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property

General Overview. — Where, after May 31, 1993, a school district proposed an extension of a tax abatement agreement pursuant to Tex. Tax Code Ann. § 312.208(a), the state comptroller was not permitted to exclude the abated value from computation of the district's total taxable value, beyond the original expiration date of the abatement. Calhoun County Indep. Sch. Dist. v. Meno, 902 S.W.2d 748, 1995 Tex. App. LEXIS 1532 (Tex. App. Austin July 12, 1995, writ denied).

ATTORNEY GENERAL OPINIONS

Analysis

Amendment.
Duration.

Amendment.

Section 312.208 of the Tax Code, permitting amendment of tax abatement agreements, does not modify the rule established by section 11.42(a) of the Tax Code that a "person who does not qualify for an exemption on January 1 of any year may not receive the exemption that year." In addition, a retroactive amendment of a tax abatement agreement that extinguishes an existing tax liability violates article III, section 55 of the Texas Constitution. 2004 Tex. Op. Att'y Gen. GA-134.

Duration.

A tax abatement agreement made pursuant to chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act, may not exceed ten years. A governmental entity may not grant a tax abatement for property that previously received a ten-year tax abatement. In order for property to receive more than ten years of tax abatement, the agreement for the abatement must have been made prior to September 1, 1989. 1999 Tex. Op. Att'y Gen. JC-0133.

Sec. 312.209. Application of Nonseverability Provision.

Section 2, Article 5, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985, applies to the provisions of this

subchapter that are derived from amendments to the Property Redevelopment and Tax Abatement Act made by Chapter 221, Acts of the 69th Legislature, Regular Session, 1985.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987.

Sec. 312.210. Agreement by Taxing Units Relating to Property in Certain School Districts.

(a) This section applies only to a tax abatement agreement applicable to property located in a reinvestment zone with respect to which a municipality, county, and junior college district have entered into a joint agreement to offer tax abatements exempting from taxation a specified portion of the value of the property in the reinvestment zone.

(b) A tax abatement agreement with the owner of real property or tangible personal property that is located in the reinvestment zone described by Subsection (a) and in a school district that has a local revenue level that does not exceed the level established under Section 48.257 must exempt from taxation:

(1) the portion of the value of the property in the amount specified in the joint agreement among the municipality, county, and junior college district; and

(2) an amount equal to 10 percent of the maximum portion of the value of the property that may under Section 312.204(a) be otherwise exempted from taxation.

(c) [Repealed.]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 1053 (H.B. 2860), § 1, effective June 17, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.84, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 640 (H.B. 1448), § 2, effective June 13, 2001; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), §§ 3.094, 4.001(c)(2), effective September 1, 2019.

Sec. 312.211. Agreement by Municipality Relating to Property Subject to Voluntary Cleanup Agreement.

(a) This section applies only to:

(1) real property:

(A) that is located in a reinvestment zone;

(B) that is not in an improvement project financed by tax increment bonds; and

(C) that is the subject of a voluntary cleanup agreement under Section 361.606, Health and Safety Code; and

(2) tangible personal property located on the real property.

(b) The governing body of a municipality eligible to enter into a tax abatement agreement under Section 312.002 may agree in writing with the owner of property described by Subsection (a) to exempt from taxation a portion of the value of the property for a period not to exceed four years. The agreement takes effect on January 1 of the next tax year after the date the owner receives a certificate of completion for the property under Section 361.609, Health and Safety Code. The agreement may exempt from taxation:

(1) not more than 100 percent of the value of the property in the first year covered by the agreement;

(2) not more than 75 percent of the value of the property in the second year covered by the agreement;

(3) not more than 50 percent of the value of the property in the third year covered by the agreement; and

(4) not more than 25 percent of the value of the property in the fourth year covered by the agreement.

(c) A property owner may not receive a tax abatement under this section for the first tax year covered by the agreement unless the property owner includes with the application for an exemption under Section 11.28 filed with the chief appraiser of the appraisal district in which the property has situs a copy of the certificate of completion for the property.

(d) A property owner who files a copy of the certificate of completion for property for the first tax year covered by the agreement is not required to refile the certificate in a subsequent tax year to receive a tax abatement under this section for the property for that tax year.

(e) The chief appraiser shall accept a certificate of completion filed under Subsection (c) as conclusive evidence of the facts stated in the certificate.

(f) The governing body of the municipality may cancel or modify the agreement if:

(1) the use of the land is changed from the use specified in the certificate of completion; and

(2) the governing body determines that the new use may result in an increased risk to human health or the environment.

(g) A municipality may enter into a tax abatement agreement covering property described by Subsection (a) under this section or under Section 312.204, but not under both sections. Section 312.204 applies to an agreement entered into under this section except as otherwise provided by this section.

(h) A school district may not enter into a tax abatement agreement under this section.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 855 (H.B. 1239), § 8, effective September 1, 1997; enacted by Acts 1997, 75th Leg., ch. 1333 (S.B. 1596), § 6, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 483 (H.B. 1027), § 6, effective September 1, 2001.

Secs. 312.212 to 312.400. [Reserved for expansion].

Subchapter C

Tax Abatement In County Reinvestment Zone

Sec. 312.401. Designation of Reinvestment Zone.

(a) The commissioners court of a county eligible to do so under Section 312.002 by order may designate as a reinvestment zone an area of the county that does not include area in the taxing jurisdiction of a municipality.

(b) The commissioners court may not designate an area as a reinvestment zone until it holds a public hearing on the designation and finds that the designation would contribute to the retention or expansion of primary employment or would attract major investment in the zone that would be a benefit to the property to be included in the zone and would contribute to the economic development of the county. At the hearing, interested persons are entitled to speak and present evidence for or against the designation. Notice of the hearing must be given in the same manner as provided for notice of a hearing to be held by a municipality under Section 312.201.

(c) The designation of a reinvestment zone under this section expires five years after the date of the designation and may be renewed for periods not to exceed five years. The expiration of the designation does not affect existing agreements made under this subchapter.

(d) Property may be located both in a reinvestment zone designated by a county under this subchapter and in a reinvestment zone designated by a municipality under Subchapter B.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.12(a), effective August 28, 1989.

ATTORNEY GENERAL OPINIONS

Tax Abatement Agreements.

A county is not authorized to amend a Tax Code chapter 312 tax abatement agreement by deleting land from an existing reinvestment zone. A county reinvestment zone under chapter 312 must be contiguous and may not consist of only a portion of a building. 1997 Tex. Op. Att'y Gen. DM-0456.

Sec. 312.4011. Enterprise Zone.

Designation of an area as an enterprise zone under Chapter 2303, Government Code constitutes designation of the area as a reinvestment zone under this subchapter without further hearing or other procedural requirements other than those provided by Chapter 2303, Government Code.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1106 (S.B. 1205), § 30, effective August 28, 1989; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(22), effective September 1, 1995.

Sec. 312.402. County Tax Abatement Agreement.

(a) The commissioners court may execute a tax abatement agreement with the owner of taxable real property located in a reinvestment zone designated under this subchapter or with the owner of tangible personal property located on real property in a reinvestment zone to exempt from taxation all or a portion of the value of the real property, all or a portion of the value of the tangible personal property located on the real property, or all or a portion of the value of both.

(a-1) The commissioners court may execute a tax abatement agreement with the owner of a leasehold interest in tax-exempt real property located in a reinvestment zone designated under this subchapter to exempt all or a portion of the value of the leasehold interest in the real property. The court may execute a tax abatement agreement with the owner of tangible personal property or an improvement located on tax-exempt real property that is located in a designated reinvestment zone to exempt all or a portion of the value of the tangible personal property or improvement located on the real property.

(a-2) The execution, duration, and other terms of an agreement entered into under this section are governed by the provisions of Sections 312.204, 312.205, and 312.211 applicable to a municipality. Section 312.2041 applies to an agreement entered into under this section in the same manner as that section applies to an agreement entered into under Section 312.204 or 312.211.

(a-3) The commissioners court may execute a tax abatement agreement with a lessee of taxable real property located in a reinvestment zone designated under this subchapter to exempt from taxation all or a portion of the value of the fixtures, improvements, or other real property owned by the lessee and located on the property that is subject to the lease, all or a portion of the value of tangible personal property owned by the lessee and located on the real property that is the subject of the lease, or all or a portion of the value of both the fixtures, improvements, or other real property and the tangible personal property described by this subsection.

(b) A tax abatement agreement made by a county has the same effect on the school districts and other taxing units in which the property subject to the agreement is located as is provided by Sections 312.206(a) and (b) for an agreement made by a municipality to abate taxes on property located in the taxing jurisdiction of the municipality.

(c) If on or after September 1, 1989, property subject to an agreement with a county under this section is annexed by a municipality during the existence of the agreement, the terms of the county agreement regarding the share of the

property to be exempt in each year of the agreement apply to the taxation of the property by the municipality if before the annexation the governing body of the municipality by official action expresses an intent to enter into an agreement with the owner of the property to abate taxes on the property if it is annexed or to be bound by the terms of the county agreement after annexation, even if that official action of the governing body of the municipality expressing that intent occurs before September 1, 1989.

(d) Except as otherwise provided by this subsection, property that is located in a reinvestment zone designated by a county under this subchapter and that is owned or leased by a person who is a member of the commissioners court may not be subject to a tax abatement agreement made under this section. Property that is subject to a tax abatement agreement under this section in effect when the person becomes a member of the commissioners court does not cease to be eligible for property tax abatement under that agreement because of the person's membership on the commissioners court.

(e) An agreement made under this section by a county or other taxing unit may be modified or terminated in the same manner and subject to the same limitations as provided by Section 312.208 for an agreement made under Subchapter B.

(f) The Texas Department of Economic Development or its successor may recommend that a taxing unit enter into a tax abatement agreement with a person under this chapter. In determining whether to enter into a tax abatement agreement under this section, the commissioners court of a county shall consider any recommendation made by the Texas Department of Economic Development or its successor.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.12(b), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 11, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 855 (H.B. 1239), § 14, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1333 (S.B. 1596), § 7, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 640 (H.B. 1448), § 3, effective June 13, 2001; am. Acts 2001, 77th Leg., ch. 1016 (H.B. 1194), § 2, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 978 (S.B. 1771), § 6, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1195 (H.B. 3896), § 3, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1225 (S.B. 1458), § 3, effective June 19, 2009.

ATTORNEY GENERAL OPINIONS

Analysis

Navigation District and Tax Abatement Agreement.
Payment to Private Companies.
Tax Abatements.

Navigation District and Tax Abatement Agreement.

The authority of the Chambers-Liberty Counties Navigation District to enter into a tax abatement agreement pertaining to land that is the subject of a county tax abatement agreement expired 90 days after the date of the execution of the county agreement. 1992 Tex. Op. Att'y Gen. DM-90.

Payment to Private Companies.

Chapter 312 of the Tax Code neither precludes nor authorizes a commissioners court agreement to make payments of county funds to a private company that are the economic equivalent of an abatement of real property taxes. However, section 381.004 of the Local Government Code neither expressly or impliedly authorizes a commissioners court to enter into an agreement of this kind. The legislative history indicates that the legislature did not intend section 381.004 to implement article III, section 52-a of the Texas Constitution and, moreover, confirms that the legislature did not intend section 381.004 to authorize county economic development loans and grants. 1999 Tex. Op. Att'y Gen. JC-0092.

Tax Abatements.

Assuming that the "fixtures and improvements" owned by a wind turbine company constitute "improvements on tax-exempt real property that is located in a reinvestment zone" under Tex. Tax Code Ann. § 312.402, the mere fact that a member of a commissioners court owns the real property on which the fixtures and improvements will be located does not prohibit fixtures and improvements from being the subject of a tax abatement agreement. 2008 Tex. Op. Att'y Gen. GA-0600, 2008 Tex. AG LEXIS 12 (Superseded in part by Tex. Tax Code § 312.402).

Sec. 312.403. Tax Abatement Agreement for Nuclear Electric Power Generation Facility in County Reinvestment Zone.

(a) In this section, "nuclear electric power generation" has the meaning assigned by Section 313.024(e).

(b) An agreement made under this subchapter with the owner of property that is a nuclear electric power generation facility may include a provision that defers the effective date of the agreement to a later date agreed to by the taxing unit and the owner of the property, but not later than the seventh anniversary of the date the agreement is made.

(c) If the effective date of an agreement is deferred under Subsection (b), the agreement may have a term ending not later than 10 years after the effective date of the agreement, notwithstanding Sections 312.204 and 312.208.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1262 (H.B. 2994), § 1, effective June 15, 2007.

Sec. 312.404. Approval by Governing Body.

To be effective, an agreement made under this subchapter must be approved by the governing body of the county or other taxing unit in the manner that the governing body of a municipality authorizes an agreement under Section 312.207.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1155 (H.B. 3143), § 5, effective September 1, 2019.

Secs. 312.405 to 312.600. [Reserved for expansion].

Subchapter D

County Development Districts
[Renumbered]

Sec. 312.601. Short Title [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.001 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.602. Legislative Intent [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.002 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.603. Legislative Findings [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.003 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.604. Definitions [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.004 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.605. Counties Authorized to Create Districts [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.021 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.6055. Petition of Landowners [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.022 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.606. Contents of Petition [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.023 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.607. Hearing on Petition [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.024 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.608. Notice of Hearing [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.025 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.609. Hearing [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.026 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.610. Granting or Refusing Petition [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.027 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.611. Temporary Directors; Vacancy in Office [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.028 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.612. Qualification of Temporary Directors [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.029 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.613. Confirmation and Sales and Use Tax Election [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.030 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.614. Election Order [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.031 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.615. Notice [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.032 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.616. Conduct of Election [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.033 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.617. Results of Election [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.034 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.618. Board of Directors [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.041 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.619. Qualifications for Directors [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.042 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.620. Persons Disqualified to Serve [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.043 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.621. Vacancies on the Board [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.045 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.622. Removal of Director [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.044 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.623. Organization of Board [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.047 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.624. Quorum; Officers' Duties; Management of District [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.048 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.625. Meetings and Notice [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.053 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.626. Director's Compensation; Bond and Oath of Office [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.046 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.627. Governmental Agency; Suits [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.062 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.628. Powers [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.061 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.629. Competitive Bidding; Contract Award [Renumbered].

Renumbered to Tex. Local Gov't Code §§ 383.111 and 383.112 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.630. Eminent Domain [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.063 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.631. Expenditures [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.064 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.632. Purposes for Borrowing Money [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.065 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.633. Repayment of Organizational Expenses [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.066 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.634. Issuance of Bonds [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.081 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.635. Manner of Repayment of Bonds [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.082 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.636. Use of Bond Proceeds [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.083 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.637. Sales and Use Tax [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.101 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.638. Adding and Excluding Land from the District [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.084 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.639. Dissolution of District [Renumbered].

Renumbered to Tex. Local Gov't Code §§ 383.121 and 383.122 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

Sec. 312.640. Dissolution of District on Agreement with Municipality [Renumbered].

Renumbered to Tex. Local Gov't Code § 383.123 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 23.05, effective September 1, 1997.

CHAPTER 313

Texas Economic Development Act

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Subchapter A

General Provisions

Sec. 313.001. Short Title.

This chapter may be cited as the Texas Economic Development Act.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Sec. 313.002. Findings.

The legislature finds that:

(1) many states have enacted aggressive economic development laws designed to attract large employers, create jobs, and strengthen their economies;

(2) given Texas' relatively high ad valorem taxes, it is difficult for the state to compete for new capital projects without temporarily limiting ad valorem taxes imposed on new capital investments;

(3) a significant portion of the Texas economy continues to be based in manufacturing and other capital-intensive industries, and their continued growth and overall health serve the Texas economy well;

(4) without a vibrant, strong manufacturing sector, other sectors of the economy, especially the state's service sector, will also suffer adverse consequences; and

(5) the current ad valorem tax system of this state does not favor capital-intensive businesses such as manufacturers.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 1, effective January 1, 2014.

Sec. 313.003. Purposes.

The purposes of this chapter are to:

(1) encourage large-scale capital investments in this state;

(2) create new, high-paying jobs in this state;

(3) attract to this state large-scale businesses that are exploring opportunities to locate in other states or other countries;

(4) enable state and local government officials and economic development professionals to compete with other states by authorizing economic development incentives that are comparable to incentives being offered to prospective employers by other states and to provide state and local officials with an effective means to attract large-scale investment;

(5) strengthen and improve the overall performance of the economy of this state;

(6) expand and enlarge the ad valorem tax base of this state; and

(7) enhance this state's economic development efforts by providing state and local officials with an effective economic development tool.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 1, effective January 1, 2014.

Sec. 313.004. Legislative Intent.

It is the intent of the legislature in enacting this chapter that:

(1) economic development decisions involving school district taxes should occur at the local level with oversight by the state and should be consistent with identifiable statewide economic development goals;

(2) this chapter should not be construed or interpreted to allow:

(A) property owners to pool investments to create sufficiently large investments to qualify for an ad valorem tax benefit provided by this chapter;

(B) an applicant for an ad valorem tax benefit provided by this chapter to assert that jobs will be eliminated if certain investments are not made if the assertion is not true; or

(C) an entity not subject to the tax imposed by Chapter 171 to receive an ad valorem tax benefit provided by this chapter;

(3) in implementing this chapter, school districts should:

(A) strictly interpret the criteria and selection guidelines provided by this chapter; and

(B) approve only those applications for an ad valorem tax benefit provided by this chapter that:

(i) enhance the local community;

(ii) improve the local public education system;

(iii) create high-paying jobs; and

(iv) advance the economic development goals of this state; and

(4) in implementing this chapter, the comptroller should:

(A) strictly interpret the criteria and selection guidelines provided by this chapter; and

(B) issue certificates for limitations on appraised value only for those applications for an ad valorem tax benefit provided by this chapter that:

(i) create high-paying jobs;

(ii) provide a net benefit to the state over the long term; and

(iii) advance the economic development goals of this state.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 1, effective January 1, 2014.

Sec. 313.005. Definitions.

Unless this chapter defines a word or phrase used in this chapter, Section 1.04 or any other section of Title 1 or this title that defines the word or phrase or ascribes a meaning to the word or phrase applies to the word or phrase used in this chapter.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Sec. 313.006. Imposition of Impact Fee.

(a) In this section, "impact fee" means a charge or assessment imposed against a qualified property, as defined by Section 313.021, in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions for water, wastewater, or storm water services or for roads necessitated by or attributable to property that receives a limitation on appraised value under this chapter.

(b) Notwithstanding any other law, including Chapter 395, Local Government Code, a municipality or county may impose and collect from the owner of a qualified property a reasonable impact fee under this section to pay for the cost of providing improvements associated with or attributable to property that receives a limitation on appraised value under this chapter.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Sec. 313.007. Expiration.

Subchapters B and C expire December 31, 2022.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2007, 80th Leg., ch. 864 (H.B. 1470), § 1, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 1, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 1, effective January 1, 2014.

Sec. 313.008. Report on Compliance with Energy-Related Agreements [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 22(1), effective January 1, 2014.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 939 (H.B. 3693), § 17, effective September 1, 2007.

ATTORNEY GENERAL OPINIONS

Comptroller Reports. —
In preparing the report on limitation agreements under the Texas Economic Development Act, the Comptroller of Public Accounts may include more information than is required by sections 313.008 and 313.032 of the Tax Code if the information is reasonably necessary to assess the progress of such agreements. The Comptroller may use in the report information provided by recipients of limitations, regardless of whether the information is marked as confidential by the recipients, so long as the information is not confidential by law. The Comptroller must, in the first instance, determine whether information is confidential by law. 2008 Tex. Op. Att'y Gen. GA-0686.

Sec. 313.009. Certain Entities Ineligible.

An entity that has been issued a registration number under Section 151.359 or Section 151.3595 is not eligible to receive a limitation on appraised value under this chapter.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1274 (H.B. 1223), § 4, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 412 (H.B. 2712), § 3, effective June 10, 2015; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(47), effective September 1, 2015 (renumbered from Sec. 313.010).; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 17.002, effective September 1, 2017.

Sec. 313.010. Audit of Agreements by State Auditor.

(a) Each year, the state auditor shall review at least three major agreements, as determined by the state auditor, under this chapter to determine whether:

(1) each agreement accomplishes the purposes of this chapter as expressed in Section 313.003;

(2) each agreement complies with the intent of the legislature in enacting this chapter as expressed in Section 313.004; and

(3) the terms of each agreement were executed in compliance with the terms of this chapter.

(b) As part of the review, the state auditor shall make recommendations relating to increasing the efficiency and effectiveness of the administration of this chapter.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 2, effective January 1, 2014.

Secs. 313.011 to 313.020. [Reserved for expansion].

Subchapter B

Limitation on Appraised Value of Certain Property Used to Create Jobs
[Expires December 31, 2022]

Sec. 313.021. Definitions.

In this subchapter:

(1) "Qualified investment" means:

(A) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is described as Section 1245 property by Section 1245(a), Internal Revenue Code of 1986;

(B) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually located in the cleanroom environment, including:

(i) integrated systems, fixtures, and piping;

(ii) all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances; and

(iii) production equipment and machinery, moveable cleanroom partitions, and cleanroom lighting;

(C) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with the operation of a nuclear electric power generation facility, including:

(i) property, including pressure vessels, pumps, turbines, generators, and condensers, used to produce nuclear electric power; and

(ii) property and systems necessary to control radioactive contamination;

(D) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with operating an integrated gasification combined cycle electric generation facility, including:

(i) property used to produce electric power by means of a combined combustion turbine and steam turbine application using synthetic gas or another product produced by the gasification of coal or another carbon-based feedstock; or

(ii) property used in handling materials to be used as feedstock for gasification or used in the gasification process to produce synthetic gas or another carbon-based feedstock for use in the production of electric power in the manner described by Subparagraph (i);

(E) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2010, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with operating an advanced clean energy project, as defined by Section 382.003, Health and Safety Code; or

(F) a building or a permanent, nonremovable component of a building that is built or constructed during the applicable qualifying time period that begins on or after January 1, 2002, and that houses tangible personal property described by Paragraph (A), (B), (C), (D), or (E).

(2) **[2 Versions: As amended by Acts 2013, 83rd Leg., ch. 1272]** "Qualified property" means:

(A) land:

(i) that is located in an area designated as a reinvestment zone under Chapter 311 or 312 or as an enterprise zone under Chapter 2303, Government Code;

(ii) on which a person proposes to construct a new building or erect or affix a new improvement that does not exist before the date the person applies for a limitation on appraised value under this subchapter;

(iii) that is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(iv) on which, in connection with the new building or new improvement described by Subparagraph (ii), the owner or lessee of, or the holder of another possessory interest in, the land proposes to:

(a) make a qualified investment in an amount equal to at least the minimum amount required by Section 313.023; and

(b) create at least 25 new jobs;

(B) the new building or other new improvement described by Paragraph (A)(ii); and

(C) tangible personal property:

(i) that is not subject to a tax abatement agreement entered into by a school district under Chapter 312;

(ii) for which a sales and use tax refund is not claimed under Section 151.3186; and

(iii) except for new equipment described in Section 151.318(q) or (q-1), that is first placed in service in the new building or in or on the new improvement described by Paragraph (A)(ii), or on the land on which that new building or new improvement is located, if the personal property is ancillary and necessary to the business conducted in that new building or in or on that new improvement.

(2) **[2 Versions: As amended by Acts 2013, 83rd Leg., ch. 1304]** "Qualified property" means:

(A) land:

(i) that is located in an area designated as a reinvestment zone under Chapter 311 or 312 or as an enterprise zone under Chapter 2303, Government Code;

(ii) on which a person proposes to construct a new building or erect or affix a new improvement that does not exist before the date the person submits a complete application for a limitation on appraised value under this subchapter;

(iii) that is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(iv) on which, in connection with the new building or new improvement described by Subparagraph (ii), the owner or lessee of, or the holder of another possessory interest in, the land proposes to:

(a) make a qualified investment in an amount equal to at least the minimum amount required by Section 313.023; and

(b) create at least 25 new qualifying jobs;

(B) the new building or other new improvement described by Paragraph (A)(ii); and

(C) tangible personal property that:

(i) is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(ii) except for new equipment described in Section 151.318(q) or (q-1), is first placed in service in the new building, in the newly expanded building, or in or on the new improvement described by Paragraph (A)(ii), or on

the land on which that new building or new improvement is located, if the personal property is ancillary and necessary to the business conducted in that new building or in or on that new improvement.

(3) "Qualifying job" means a permanent full-time job that:

(A) requires at least 1,600 hours of work a year;

(B) is not transferred from one area in this state to another area in this state;

(C) is not created to replace a previous employee;

(D) is covered by a group health benefit plan for which the business offers to pay at least 80 percent of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage; and

(E) pays at least 110 percent of the county average weekly wage for manufacturing jobs in the county where the job is located.

(F) In determining whether a property owner has created the number of qualifying jobs required under this chapter, operations, services and other related jobs created in connection with the project, including those employed by third parties under contract, may satisfy the minimum qualifying jobs requirement for the project if the Texas Workforce Commission determines that the cumulative economic benefits to the state of these jobs is the same or greater than that associated with the minimum number of qualified jobs required to be created under this chapter. The Texas Workforce Commission may adopt rules to implement this subsection.

(4) "Qualifying time period" means:

(A) the period that begins on the date that a person's application for a limitation on appraised value under this subchapter is approved by the governing body of the school district and ends on December 31 of the second tax year that begins after that date, except as provided by Paragraph (B) or (C) of this subdivision or Section 313.027(h);

(B) in connection with a nuclear electric power generation facility, the first seven tax years that begin on or after the third anniversary of the date the school district approves the property owner's application for a limitation on appraised value under this subchapter, unless a shorter time period is agreed to by the governing body of the school district and the property owner; or

(C) in connection with an advanced clean energy project, as defined by Section 382.003, Health and Safety Code, the first five tax years that begin on or after the third anniversary of the date the school district approves the property owner's application for a limitation on appraised value under this subchapter, unless a shorter time period is agreed to by the governing body of the school district and the property owner.

(5) "County average weekly wage for manufacturing jobs" means:

(A) the average weekly wage in a county for manufacturing jobs during the most recent four quarterly periods for which data is available at the time a person submits an application for a limitation on appraised value under this subchapter, as computed by the Texas Workforce Commission; or

(B) the average weekly wage for manufacturing jobs in the region designated for the regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, in which the county is located during the most recent four quarterly periods for which data is available at the time a person submits an application for a limitation on appraised value under this subchapter, as computed by the Texas Workforce Commission.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2003, 78th Leg., ch. 1310 (H.B. 2425), § 113, effective June 20, 2003; am. Acts 2007, 80th Leg., ch. 1262 (H.B. 2994), § 2, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 1109 (H.B. 469), § 6, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 2, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1272 (H.B. 1133), § 2, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 3, effective January 1, 2014.

Sec. 313.022. Applicability; Categorization of School Districts.

(a) This subchapter applies to each school district in this state other than a school district to which Subchapter C applies.

(b) For purposes of determining the required minimum amount of a qualified investment under Section 313.021(2)(A)(iv)(a), and the minimum amount of a limitation on appraised value under Section 313.027(b), school districts to which this subchapter applies are categorized according to the taxable value of property in the district for the preceding tax year determined under Subchapter M, Chapter 403, Government Code, as follows:

CATEGORY	TAXABLE VALUE OF PROPERTY
I	$10 billion or more
II	$1 billion or more but less than $10 billion
III	$500 million or more but less than $1 billion
IV	$100 million or more but less than $500 million
V	less than $100 million

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Sec. 313.023. Minimum Amounts of Qualified Investment.

For each category of school district established by Section 313.022, the minimum amount of a qualified investment under Section 313.021(2)(A)(iv)(a) is as follows:

CATEGORY	MINIMUM QUALIFIED INVESTMENT
I	$100 million
II	$80 million
III	$60 million
IV	$40 million
V	$20 million

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Sec. 313.024. Eligible Property.

(a) This subchapter and Subchapter C apply only to property owned by an entity subject to the tax imposed by Chapter 171.

(a-1) [Expired pursuant to Acts 2007, 80th Leg., ch. 1262 (H.B. 2994), § 3, effective January 1, 2008.]

(b) To be eligible for a limitation on appraised value under this subchapter, the entity must use the property for:

(1) manufacturing;

(2) research and development;

(3) a clean coal project, as defined by Section 5.001, Water Code;

(4) an advanced clean energy project, as defined by Section 382.003, Health and Safety Code;

(5) renewable energy electric generation;

(6) electric power generation using integrated gasification combined cycle technology;

(7) nuclear electric power generation;

(8) a computer center primarily used in connection with one or more activities described by Subdivisions (1) through (7) conducted by the entity; or

(9) a Texas priority project.

(b-1) Notwithstanding any other provision of this subchapter, an owner of a parcel of land that is located wholly or partly in a reinvestment zone, a new building constructed on the parcel of land, a new improvement erected or affixed on the parcel of land, or tangible personal property placed in service in the building or improvement or on the parcel of land may not receive a limitation on appraised value under this subchapter for the parcel of land, building, improvement, or tangible personal property under an agreement under this subchapter that is entered into on or after September 1, 2017, if, on or after that date, a wind-powered energy device is installed or constructed on the same parcel of land at a location that is within 25 nautical miles of the boundaries of a military aviation facility located in this state. The prohibition provided by this subsection applies regardless of whether the wind-powered energy device is installed or constructed at a location that is in the reinvestment zone.

(c) For purposes of determining an applicant's eligibility for a limitation under this subchapter:

(1) the land on which a building or component of a building described by Section 313.021(1)(E) is located is not considered a qualified investment;

(2) property that is leased under a capitalized lease may be considered a qualified investment;

(3) property that is leased under an operating lease may not be considered a qualified investment; and

(4) property that is owned by a person other than the applicant and that is pooled or proposed to be pooled with property owned by the applicant may not be included in determining the amount of the applicant's qualifying investment.

(d) To be eligible for a limitation on appraised value under this subchapter, the property owner must create the required number of new qualifying jobs as defined by Section 313.021(3) and the average weekly wage for all jobs created by the owner that are not qualifying jobs must exceed the county average weekly wage for all jobs in the county where the jobs are located.

(d-1) [Blank.]

(d-2) For purposes of determining whether a property owner has created the number of new qualifying jobs required for eligibility for a limitation on appraised value under this subchapter, the new qualifying jobs created under an agreement between the property owner and another school district may be included in the total number of new qualifying jobs created in connection with the project if the Texas Economic Development and Tourism Office determines that the projects covered by the agreements constitute a single unified project. The Texas Economic Development and Tourism Office may adopt rules to implement this subsection.

(e) In this section:

(1) "Manufacturing" means an establishment primarily engaged in activities described in sectors 31—33 of the 2007 North American Industry Classification System.

(2) "Renewable energy electric generation" means an establishment primarily engaged in activities described in category 221119 of the 1997 North American Industry Classification System.

(3) "Integrated gasification combined cycle technology" means technology used to produce electricity in a combined combustion turbine and steam turbine application using synthetic gas or another product produced from the gasification of coal or another carbon-based feedstock, including related activities such as materials-handling and gasification of coal or another carbon-based feedstock.

(4) "Nuclear electric power generation" means activities described in category 221113 of the 2002 North American Industry Classification System.

(5) "Research and development" means an establishment primarily engaged in activities described in category 541710 of the 2002 North American Industry Classification System.

(6) "Computer center" means an establishment primarily engaged in providing electronic data processing and information storage.

(7) "Texas priority project" means a project on which the applicant has committed to expend or allocate a qualified investment of more than $1 billion.

(8) "Military aviation facility" has the meaning assigned by Section 312.0021.

(9) "Wind-powered energy device" has the meaning assigned by Section 11.27.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2005, 79th Leg., ch. 1097 (H.B. 2201), § 5, effective June 18, 2005; am. Acts 2006, 79th Leg., 3rd C.S., ch. 1 (H.B. 3), § 16(b), (c), effective January 1, 2008; am. Acts 2007, 80th Leg., ch. 1262 (H.B. 2994), §§ 3, 5, effective June 15, 2007; am. Acts 2007, 80th Leg., ch. 1262 (H.B. 2994), § 4, effective January 1, 2008; am. Acts 2007, 80th Leg., ch. 1277 (H.B. 3732), § 10, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), §§ 3, 4, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), §§ 4, 5, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 444 (S.B. 277), §§ 3, 4, effective September 1, 2017.

Sec. 313.025. Application; Action on Application.

(a) The owner or lessee of, or the holder of another possessory interest in, any qualified property described by Section 313.021(2)(A), (B), or (C) may apply to the governing body of the school district in which the property is located for a limitation on the appraised value for school district maintenance and operations ad valorem tax purposes of the person's qualified property. An application must be made on the form prescribed by the comptroller and include the information required by the comptroller, and it must be accompanied by:

(1) the application fee established by the governing body of the school district;

(2) information sufficient to show that the real and personal property identified in the application as qualified property meets the applicable criteria established by Section 313.021(2); and

(3) any information required by the comptroller for the purposes of Section 313.026.

(a-1) Within seven days of the receipt of each document, the school district shall submit to the comptroller a copy of the application and the proposed agreement between the applicant and the school district. If the applicant submits an economic analysis of the proposed project to the school district, the district shall submit a copy of the analysis to the comptroller. In addition, the school district shall submit to the comptroller any subsequent revision of or amendment to any of those documents within seven days of its receipt. The comptroller shall publish each document received from the school district under this subsection on the comptroller's Internet website. If the school district maintains a generally accessible Internet website, the district shall provide on its website a link to the location of those documents posted on the comptroller's website in compliance with this subsection. This subsection does not require the comptroller to post information that is confidential under Section 313.028.

(b) The governing body of a school district is not required to consider an application for a limitation on appraised value. If the governing body of the school district elects to consider an application, the governing body shall deliver a copy of the application to the comptroller and request that the comptroller conduct an economic impact evaluation of the investment proposed by the application. The comptroller shall conduct or contract with a third person to conduct the economic impact evaluation, which shall be completed and provided to the governing body of the school district, along with the comptroller's certificate or written explanation under Subsection (d), as soon as practicable but not later than the 90th day after the date the comptroller receives the application. The governing body shall provide to the comptroller or to a third person contracted by the comptroller to conduct the economic impact evaluation any requested information. A methodology to allow comparisons of economic impact for different schedules of the addition of qualified investment or qualified property may be developed as part of the economic impact evaluation. The governing body shall provide a copy of the economic impact evaluation to the applicant on request. The comptroller may charge the applicant a fee sufficient to cover the costs of providing the economic impact evaluation. The governing body of a school district shall approve or disapprove an application not later than the 150th day after the date the application is filed, unless the economic impact evaluation has not been received or an extension is agreed to by the governing body and the applicant.

(b-1) The comptroller shall promptly deliver a copy of the application to the Texas Education Agency. The Texas Education Agency shall determine the effect that the applicant's proposal will have on the number or size of the school district's instructional facilities and submit a written report containing the agency's determination to the school district. The governing body of the school district shall provide any requested information to the Texas Education Agency. Not later than the 45th day after the date the Texas Education Agency receives the application, the Texas Education Agency shall make the required determination and submit the agency's written report to the governing body of the school district.

(c) In determining whether to approve an application, the governing body of the school district is entitled to request and receive assistance from:

(1) the comptroller;

(2) the Texas Economic Development and Tourism Office;

(3) the Texas Workforce Investment Council; and

(4) the Texas Workforce Commission.

(d) Not later than the 90th day after the date the comptroller receives the copy of the application, the comptroller shall issue a certificate for a limitation on appraised value of the property and provide the certificate to the governing body of the school district or provide the governing body a written explanation of the comptroller's decision not to issue a certificate.

(d-1) The governing body of a school district may not approve an application unless the comptroller submits to the governing body a certificate for a limitation on appraised value of the property.

(e) Before approving or disapproving an application under this subchapter that the governing body of the school district elects to consider, the governing body must make a written finding as to any criteria considered by the comptroller in conducting the economic impact evaluation under Section 313.026. The governing body shall deliver a copy of those findings to the applicant.

(f) The governing body may approve an application only if the governing body finds that the information in the application is true and correct, finds that the applicant is eligible for the limitation on the appraised value of the person's qualified property, and determines that granting the application is in the best interest of the school district and this state.

(f-1) Notwithstanding any other provision of this chapter to the contrary, including Section 313.003(2) or 313.004(3)(A) or (B)(iii), the governing body of a school district may waive the new jobs creation requirement in Section 313.021(2)(A)(iv)(b) or 313.051(b) and approve an application if the governing body makes a finding that the jobs creation requirement exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility of the property owner that is described in the application.

(g) The Texas Economic Development and Tourism Office or its successor may recommend that a school district approve an application under this chapter. In determining whether to approve an application, the governing body of the school district shall consider any recommendation made by the Texas Economic Development and Tourism Office or its successor.

(h) After receiving a copy of the application, the comptroller shall determine whether the property meets the requirements of Section 313.024 for eligibility for a limitation on appraised value under this subchapter. The comptroller shall notify the governing body of the school district of the comptroller's determination and provide the applicant an opportunity for a hearing before the determination becomes final. A hearing under this subsection is a contested case hearing and shall be conducted by the State Office of Administrative Hearings in the manner provided by Section 2003.101, Government Code. The applicant has the burden of proof on each issue in the hearing. The applicant may seek judicial review of the comptroller's determination in a Travis County district court under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

(i) If the comptroller's determination under Subsection (h) that the property does not meet the requirements of Section 313.024 for eligibility for a limitation on appraised value under this subchapter becomes final, the comptroller is not required to provide an economic impact evaluation of the application or to submit a certificate for a limitation on appraised value of the property or a written explanation of the decision not to issue a certificate, and the governing body of the school district may not grant the application.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2003, 78th Leg., ch. 818 (S.B. 281), § 6.11, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 978 (S.B. 1771), § 7, effective September 1, 2003; am. Acts 2006, 79th Leg., 3rd C.S., ch. 1 (H.B. 3), § 16(d), effective January 1, 2008; am. Acts 2007, 80th Leg., ch. 864 (H.B. 1470), § 2, effective December 31, 2007; am. Acts 2007, 80th Leg., ch. 864 (H.B. 1470), §§ 3, 6, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 5, effective January 1, 2010; am. Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 5, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 6, effective January 1, 2014.

ATTORNEY GENERAL OPINIONS

Qualified Property Owner.

Tax Code section 313.025(a) authorizes "the owner of qualified property" to apply to a school district for a limitation on the appraised value of the qualified property for the purposes of school district-imposed maintenance and operation property taxes. Under Tax Code section 313.021(2), land, building or other improvement, and tangible personal property each constitute "qualified property." Accordingly, a person that owns a building or other improvement or tangible personal property is an "owner of qualified property" under section 313.025(a). Thus, a person meeting the other requirements of chapter 313 who owns such qualified property—building or other improvement or tangible personal property—is eligible to apply for a limitation on the appraised value of the person's qualified property irrespective of whether the person owns or leases the land on which the qualified property is to be placed. 2008 Tex. Op. Att'y Gen. GA-0665(Superseded by Tex. Tax Code § 313.021(2)(A)).

Sec. 313.026. Economic Impact Evaluation.

(a) The economic impact evaluation of the application must include any information the comptroller determines is necessary or helpful to:

(1) the governing body of the school district in determining whether to approve the application under Section 313.025; or

(2) the comptroller in determining whether to issue a certificate for a limitation on appraised value of the property under Section 313.025.

(b) Except as provided by Subsections (c) and (d), the comptroller's determination whether to issue a certificate for a limitation on appraised value under this chapter for property described in the application shall be based on the

economic impact evaluation described by Subsection (a) and on any other information available to the comptroller, including information provided by the governing body of the school district.

(c) The comptroller may not issue a certificate for a limitation on appraised value under this chapter for property described in an application unless the comptroller determines that:

(1) the project proposed by the applicant is reasonably likely to generate, before the 25th anniversary of the beginning of the limitation period, tax revenue, including state tax revenue, school district maintenance and operations ad valorem tax revenue attributable to the project, and any other tax revenue attributable to the effect of the project on the economy of the state, in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement; and

(2) the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in this state.

(d) The comptroller shall state in writing the basis for the determinations made under Subsections (c)(1) and (2).

(e) The applicant may submit information to the comptroller that would provide a basis for an affirmative determination under Subsection (c)(2).

(f) Notwithstanding Subsections (c) and (d), if the comptroller makes a qualitative determination that other considerations associated with the project result in a net positive benefit to the state, the comptroller may issue the certificate.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2007, 80th Leg., ch. 864 (H.B. 1470), § 4, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 6, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 7, effective January 1, 2014.

Sec. 313.0265. Disclosure of Appraised Value Limitation Information.

(a) The comptroller shall post on the comptroller's Internet website each document or item of information the comptroller designates as substantive before the 15th day after the date the document or item of information was received or created. Each document or item of information must continue to be posted until the appraised value limitation expires.

(b) The comptroller shall designate the following as substantive:

(1) each application requesting a limitation on appraised value; and

(2) the economic impact evaluation made in connection with the application.

(c) If a school district maintains a generally accessible Internet website, the district shall maintain a link on its Internet website to the area of the comptroller's Internet website where information on each of the district's agreements to limit appraised value is maintained.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 7, effective January 1, 2010; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 8, effective January 1, 2014.

Sec. 313.027. Limitation on Appraised Value; Agreement.

(a) If the person's application is approved by the governing body of the school district, the appraised value for school district maintenance and operations ad valorem tax purposes of the person's qualified property as described in the agreement between the person and the district entered into under this section in the school district may not exceed the lesser of:

(1) the market value of the property; or

(2) subject to Subsection (b), the amount agreed to by the governing body of the school district.

(a-1) The agreement must:

(1) provide that the limitation under Subsection (a) applies for a period of 10 years; and

(2) specify the beginning date of the limitation, which must be January 1 of the first tax year that begins after:

(A) the application date;

(B) the qualifying time period; or

(C) the date commercial operations begin at the site of the project.

(b) The amount agreed to by the governing body of a school district under Subsection (a)(2) must be an amount in accordance with the following, according to the category established by Section 313.022 to which the school district belongs:

CATEGORY	MINIMUM AMOUNT OF LIMITATION
I	$100 million
II	$80 million
III	$60 million
IV	$40 million
V	$20 million

(c) The limitation amounts listed in Subsection (b) are minimum amounts. A school district, regardless of category, may agree to a greater amount than those amounts.

(d) The governing body of the school district and the property owner shall enter into a written agreement for the implementation of the limitation on appraised value under this subchapter on the owner's qualified property.

(e) The agreement must describe with specificity the qualified investment that the person will make on or in connection with the person's qualified property that is subject to the limitation on appraised value under this subchapter. Other property of the person that is not specifically described in the agreement is not subject to the limitation unless the governing body of the school district, by official action, provides that the other property is subject to the limitation.

(f) In addition, the agreement:

(1) must incorporate each relevant provision of this subchapter and, to the extent necessary, include provisions for the protection of future school district revenues through the adjustment of the minimum valuations, the payment of revenue offsets, and other mechanisms agreed to by the property owner and the school district;

(2) may provide that the property owner will protect the school district in the event the district incurs extraordinary education-related expenses related to the project that are not directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the project;

(3) must require the property owner to maintain a viable presence in the school district for at least five years after the date the limitation on appraised value of the owner's property expires;

(4) must provide for the termination of the agreement, the recapture of ad valorem tax revenue lost as a result of the agreement if the owner of the property fails to comply with the terms of the agreement, and payment of a penalty or interest, or both, on that recaptured ad valorem tax revenue;

(5) may specify any conditions the occurrence of which will require the district and the property owner to renegotiate all or any part of the agreement;

(6) must specify the ad valorem tax years covered by the agreement; and

(7) must be in a form approved by the comptroller.

(g) When appraising a person's qualified property subject to a limitation on appraised value under this section, the chief appraiser shall determine the market value of the property and include both the market value and the appropriate value under Subsection (a) in the appraisal records.

(h) The agreement between the governing body of the school district and the applicant may provide for a deferral of the date on which the qualifying time period for the project is to commence or, subsequent to the date the agreement is entered into, be amended to provide for such a deferral. The agreement may not provide for the deferral of the date on which the qualifying time period is to commence to a date later than January 1 of the fourth tax year that begins after the date the application is approved except that if the agreement is one of a series of agreements related to the same project, the agreement may provide for the deferral of the date on which the qualifying time period is to commence to a date not later than January 1 of the sixth tax year that begins after the date the application is approved. This subsection may not be construed to permit a qualifying time period that has commenced to continue for more than the number of years applicable to the project under Section 313.021(4).

(i) A person and the school district may not enter into an agreement under which the person agrees to provide supplemental payments to a school district or any other entity on behalf of a school district in an amount that exceeds an amount equal to the greater of $100 per student per year in average daily attendance, as defined by Section 48.005, Education Code, or $50,000 per year, or for a period that exceeds the period beginning with the period described by Section 313.021(4) and ending December 31 of the third tax year after the date the person's eligibility for a limitation under this chapter expires. This limit does not apply to amounts described by Subsection (f)(1) or (2).

(j) An agreement under this chapter must disclose any consideration promised in conjunction with the application and the limitation.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 8, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 9, effective January 1, 2014; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.095, effective September 1, 2019.

Sec. 313.0275. Recapture of Ad Valorem Tax Revenue Lost.

(a) Notwithstanding any other provision of this chapter to the contrary, a person with whom a school district enters into an agreement under this subchapter must make the minimum amount of qualified investment during the qualifying time period.

(b) If in any tax year a property owner fails to comply with Subsection (a), the property owner is liable to this state for a penalty equal to the amount computed by subtracting from the market value of the property for that tax year the value of the property as limited by the agreement and multiplying the difference by the maintenance and operations tax rate of the school district for that tax year.

(c) A penalty imposed under Subsection (b) becomes delinquent if not paid on or before February 1 of the following tax year. Section 33.01 applies to the delinquent penalty in the manner that section applies to delinquent taxes.

(d) In the event of a casualty loss that prevents a person from complying with Subsection (a), the person may request and the comptroller may grant a waiver of the penalty imposed under Subsection (b).

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 9, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 10, effective January 1, 2014.

Sec. 313.0276. Penalty for Failure to Comply with Job-Creation Requirements.

(a) The comptroller shall conduct an annual review and issue a determination as to whether a person with whom a school district has entered into an agreement under this chapter satisfied in the preceding year the requirements of this chapter regarding the creation of the required number of qualifying jobs. If the comptroller makes an adverse determination in the review, the comptroller shall notify the person of the cause of the adverse determination and the corrective measures necessary to remedy the determination.

(b) If a person who receives an adverse determination fails to remedy the determination following notification of the determination and the comptroller makes an adverse determination with respect to the person's compliance in the following year, the person must submit to the comptroller a plan for remedying the determination and certify the person's intent to fully implement the plan not later than December 31 of the year in which the determination is made.

(c) If a person who receives an adverse determination under Subsection (b) fails to comply with that subsection following notification of the determination and receives an adverse determination in the following year, the comptroller shall impose a penalty on the person. The penalty is in an amount equal to the amount computed by:

(1) subtracting from the number of qualifying jobs required to be created the number of qualifying jobs actually created; and

(2) multiplying the amount computed under Subdivision (1) by the average annual wage for all jobs in the county during the most recent four quarters for which data is available.

(d) Notwithstanding Subsection (c), if a person receives an adverse determination and the comptroller has previously imposed a penalty on the person under this section one or more times, the comptroller shall impose a penalty on the person in an amount equal to the amount computed by multiplying the amount computed under Subsection (c)(1) by an amount equal to twice the amount computed under Subsection (c)(2).

(e) Notwithstanding Subsections (c) and (d), a penalty imposed under this section may not exceed an amount equal to the difference between the amount of the ad valorem tax benefit received by the person under the agreement in the preceding year and the amount of any supplemental payments made to the school district in that year.

(f) A job created by a person that is not a qualifying job because the job does not meet a numerical requirement of Section 313.021(3)(A), (D), or (E) is considered for purposes of this section to be a nonqualifying job only if the job fails to meet the numerical requirement by at least 10 percent.

(g) An adverse determination under this section is a deficiency determination under Section 111.008. A penalty imposed under this section is an amount the comptroller is required to collect, receive, administer, or enforce, and the determination is subject to the payment and redetermination requirements of Sections 111.0081 and 111.009.

(h) A redetermination under Section 111.009 of an adverse determination under this section is a contested case as defined by Section 2001.003, Government Code.

(i) If a person on whom a penalty is imposed under this section contends that the amount of the penalty is unlawful or that the comptroller may not legally demand or collect the penalty, the person may challenge the determination of the comptroller under Subchapters A and B, Chapter 112.

(j) If the comptroller imposes a penalty on a person under this section three times, the comptroller may rescind the agreement between the person and the school district under this chapter.

(k) A person may contest a determination by the comptroller to rescind an agreement between the person and a school district under this chapter pursuant to Subsection (j) by filing suit against the comptroller and the attorney general. The district courts of Travis County have exclusive, original jurisdiction of a suit brought under this subsection. This subsection prevails over a provision of Chapter 25, Government Code, to the extent of any conflict.

(*l*) If a person files suit under Subsection (k) and the comptroller's determination to rescind the agreement is upheld on appeal, the person shall pay to the comptroller any tax that would have been due and payable to the school district during the pendency of the appeal, including statutory interest and penalties imposed on delinquent taxes under Sections 111.060 and 111.061.

(m) The comptroller shall deposit a penalty collected under this section, including any interest and penalty applicable to the penalty, to the credit of the foundation school fund.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 11, effective January 1, 2014.

Sec. 313.028. Certain Business Information Confidential.

Information provided to a school district in connection with an application for a limitation on appraised value under this subchapter that describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property covered by the application shall be segregated in the application from other information in the application and is confidential and not subject to public disclosure unless the governing body of the school district approves the application. Other information in the custody of a school district or the comptroller in connection with the application, including information related to the economic impact of a project or the essential elements of eligibility under this chapter, such as the nature and amount of the projected investment, employment, wages, and benefits, may not be considered confidential business information if the governing body of the school district agrees to consider the application. Information in the custody of a school district or the comptroller if the governing body approves the application is not confidential under this section.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 10, effective June 19, 2009.

Sec. 313.029. Tax Rate Limitation [Repealed].

Repealed by Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 14, effective June 19, 2009.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Sec. 313.030. Property Not Eligible for Tax Abatement.

Property subject to a limitation on appraised value in a tax year under this subchapter is not eligible for tax abatement by a school district under Chapter 312 in that tax year.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Sec. 313.031. Rules and Forms; Fees.

(a) The comptroller shall:

(1) adopt rules and forms necessary for the implementation and administration of this chapter, including rules for determining whether a property owner's property qualifies as a qualified investment under Section 313.021(1); and

(2) provide without charge one copy of the rules and forms to any school district and to any person who states that the person intends to apply for a limitation on appraised value under this subchapter.

(b) The governing body of a school district by official action shall establish reasonable nonrefundable application fees to be paid by property owners who apply to the district for a limitation on the appraised value of the person's property under this subchapter. The amount of an application fee must be reasonable and may not exceed the estimated cost to the district of processing and acting on an application, including any cost to the school district associated with the economic impact evaluation required by Section 313.025.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 12, effective January 1, 2014.

Sec. 313.032. Report on Compliance with Agreements.

(a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature a report on the agreements entered into under this chapter that includes:

(1) an assessment of the following with regard to the agreements entered into under this chapter, considered in the aggregate:

(A) the total number of jobs created, direct and otherwise, in this state;

(B) the total effect on personal income, direct and otherwise, in this state;

(C) the total amount of investment in this state;

(D) the total taxable value of property on the tax rolls in this state, including property for which the limitation period has expired;

(E) the total value of property not on the tax rolls in this state as a result of agreements entered into under this chapter; and

(F) the total fiscal effect on the state and local governments; and

(2) an assessment of the progress of each agreement made under this chapter that states for each agreement:

(A) the number of qualifying jobs each recipient of a limitation on appraised value committed to create;

(B) the number of qualifying jobs each recipient created;

(C) the total amount of wages and the median wage of the new qualifying jobs each recipient created;

(D) the amount of the qualified investment each recipient committed to spend or allocate for each project;

(E) the amount of the qualified investment each recipient spent or allocated for each project;

(F) the market value of the qualified property of each recipient as determined by the applicable chief appraiser, including property that is no longer eligible for a limitation on appraised value under the agreement;

(G) the limitation on appraised value for the qualified property of each recipient;

(H) the dollar amount of the taxes that would have been imposed on the qualified property if the property had not received a limitation on appraised value; and

(I) the dollar amount of the taxes imposed on the qualified property.

(b) The report may not include information that is confidential by law.

(b-1) In preparing the portion of the report described by Subsection (a)(1), the comptroller may use standard economic estimation techniques, including economic multipliers.

(c) The portion of the report described by Subsection (a)(2) must be based on data certified to the comptroller by each recipient or former recipient of a limitation on appraised value under this chapter.

(d) The comptroller may require a recipient or former recipient of a limitation on appraised value under this chapter to submit, on a form the comptroller provides, information required to complete the report.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1262 (H.B. 2994), § 6, effective June 15, 2007; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 13, effective January 1, 2014.

ATTORNEY GENERAL OPINIONS

Comptroller Reports. —

In preparing the report on limitation agreements under the Texas Economic Development Act, the Comptroller of Public Accounts may include more information than is required by sections 313.008 and 313.032 of the Tax Code if the information is reasonably necessary to assess the progress of such agreements. The Comptroller may use in the report information provided by recipients of limitations, regardless of whether the information is marked as confidential by the recipients, so long as the information is not confidential by law. The Comptroller must, in the first instance, determine whether information is confidential by law. 2008 Tex. Op. Att'y Gen. GA-0686.

Sec. 313.033. Report on Compliance with Job-Creation Requirements.

Each recipient of a limitation on appraised value under this chapter shall submit to the comptroller an annual report on a form provided by the comptroller that provides information sufficient to document the number of qualifying jobs created.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 14, effective January 1, 2014.

Secs. 313.034 to 313.050. [Reserved for expansion].

Subchapter C

Limitation on Appraised Value of Property in Strategic Investment Area or Certain Rural School Districts [Expires December 31, 2022]

Sec. 313.051. Applicability.

(a) In this section, "strategic investment area" means an area the comptroller determines under Subsection (a-3) is:

(1) a county within this state with unemployment above the state average and per capita income below the state average;

(2) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community; or

(3) a defense economic readjustment zone designated under Chapter 2310, Government Code.

(a-1) This subchapter applies only to a school district that has territory in:

(1) an area that qualifies as a strategic investment area; or

(2) a county:

(A) that has a population of less than 50,000; and

(B) in which, from 2000 to 2010, according to the federal decennial census, the population:

(i) remained the same;

(ii) decreased; or

(iii) increased, but at a rate of not more than the average rate of increase in the state during that period.

(a-2) Notwithstanding Subsection (a-1), if on January 1, 2002, this subchapter applied to a school district in whose territory is located a federal nuclear facility, this subchapter continues to apply to the school district regardless of whether the school district ceased or ceases to be described by Subsection (a-1) after that date.

(a-3) Not later than September 1 of each year, the comptroller shall determine areas that qualify as a strategic investment area using the most recently completed full calendar year data available on that date and, not later than October 1, shall publish a list and map of the designated areas. A determination under this subsection is effective for the following tax year for purposes of this subchapter.

(b) The governing body of a school district to which this subchapter applies may enter into an agreement in the same manner as a school district to which Subchapter B applies may do so under Subchapter B, subject to Sections 313.052—313.054. Except as otherwise provided by this subchapter, the provisions of Subchapter B apply to a school district to which this subchapter applies. For purposes of this subchapter, a property owner is required to create at least 10 new qualifying jobs as defined by Section 313.021(3) on the owner's qualified property.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2006, 79th Leg. 3rd C.S., ch. 1 (H.B. 3), § 16(e), effective January 1, 2008; am. Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 11, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 16, effective January 1, 2014.

Sec. 313.052. Categorization of School Districts.

For purposes of determining the required minimum amount of a qualified investment under Section 313.021(2)(A)(iv)(a) and the minimum amount of a limitation on appraised value under this subchapter, school districts to which this subchapter applies are categorized according to the taxable value of industrial property in the district for the preceding tax year determined under Subchapter M, Chapter 403, Government Code, as follows:

CATEGORY	TAXABLE VALUE OF INDUSTRIAL PROPERTY
I	$200 million or more
II	$90 million or more but less than $200 million
III	$1 million or more but less than $90 million
IV	$100,000 or more but less than $1 million
V	less than $100,000

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Sec. 313.053. Minimum Amounts of Qualified Investment.

For each category of school district established by Section 313.052, the minimum amount of a qualified investment under Section 313.021(2)(A)(iv)(a) is as follows:

CATEGORY	MINIMUM QUALIFIED INVESTMENT
I	$30 million
II	$20 million
III	$10 million
IV	$5 million
V	$1 million

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Sec. 313.054. Limitation on Appraised Value.

(a) For a school district to which this subchapter applies, the amount agreed to by the governing body of the district under Section 313.027(a)(2) must be an amount in accordance with the following, according to the category established by Section 313.052 to which the school district belongs:

CATEGORY	MINIMUM AMOUNT OF LIMITATION
I	$30 million
II	$25 million
III	$20 million
IV	$15 million
V	$10 million

(b) The limitation amounts listed in Subsection (a) are minimum amounts. A school district, regardless of category, may agree to a greater amount than those amounts.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 17, effective January 1, 2014.

Secs. 313.055 to 313.100. [Reserved for expansion].

Subchapter D

School Tax Credits
[Repealed]

Sec. 313.101. Definition [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 22(2), effective January 1, 2014.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Sec. 313.102. Eligibility for Tax Credit; Amount of Credit [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 22(2), effective January 1, 2014.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Sec. 313.103. Application [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 22(2), effective January 1, 2014.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 12, effective June 19, 2009.

Sec. 313.104. Action on Application; Grant of Credit [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 22(2), effective January 1, 2014.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2007, 80th Leg., ch. 864 (H.B. 1470), § 5, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 1186 (H.B. 3676), § 12, effective June 19, 2009.

Sec. 313.105. Remedy for Erroneous Credit [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 22(2), effective January 1, 2014.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002.

Secs. 313.106 to 313.170. [Reserved for expansion].

Subchapter E

Availability of Tax Credit After Program Expires or is Repealed

Sec. 313.171. Saving Provisions.

(a) A limitation on appraised value approved under Subchapter B or C before the expiration of that subchapter continues in effect according to that subchapter as that subchapter existed immediately before its expiration, and that law is continued in effect for purposes of the limitation on appraised value.

(b) The repeal of Subchapter D does not affect a property owner's entitlement to a tax credit granted under Subchapter D if the property owner qualified for the tax credit before the repeal of Subchapter D.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1505 (H.B. 1200), § 1, effective January 1, 2002; am. Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 19, effective January 1, 2014.

CHAPTER 320

Miscellaneous Provisions

Section
320.001. Saving Provision After Expiration of Chapter 312.

Sec. 320.001. Saving Provision After Expiration of Chapter 312.

The expiration of Chapter 312 under Section 312.006 does not affect the validity of a reinvestment zone designated or a tax abatement agreement executed before the expiration of Chapter 312. A reinvestment zone designated or a tax abatement agreement executed before the expiration of Chapter 312 under Section 312.006 is governed by the applicable law in effect immediately before the expiration of Chapter 312, except that the designation of an existing reinvestment zone may not be renewed after the expiration of Chapter 312. A tax abatement agreement in effect when Chapter 312 expires may be extended as provided by the law in effect immediately before the expiration of Chapter 312. A tax abatement agreement executed after the expiration of Chapter 312 may not be extended.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 14, effective September 1, 1989.

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