2019-2020 TEXAS PROPERTY TAX CASE LAW IN REVIEW

(Cases and opinions current through February 9, 2020)

TEXAS SUPREME COURT

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY IS REQUIRED TO GRANT AT LEAST A PARTIAL PROPERTY TAX EXEMPTION ON ITEMS SPECIFIED BY THE LEGISLATURE UNLESS IT ACTS UNDER ITS AUTHORITY TO REMOVE THOSE ITEMS FROM THE PRE-AUTHORIZED LIST.

Brazos Electric Power Cooperative, Inc. v. Texas Commission on Environmental Quality, 576 S.W.3d 374 (Tex. 2019).

Whole and partial pollution control property tax exemptions are determined by the Texas Commission on Environmental Quality ("TCEQ"). TCEQ has found some items to be clearly designed for pollution control, and it exempts them automatically upon application; however, some items have mixed purposes–contributing both to pollution control but also aiding in revenue generation. To obtain an exemption for those items, a taxpayer must submit an application with TCEQ that demonstrates that the pollution control benefit outweighs the income generation benefit, and if it does so it is granted a partial exemption. If the pollution control benefit does not outweigh the income generation benefit, TCEQ issues a "negative" determination, in effect denying the exemption in its entirety. In 2007, the legislature amended the exemption provisions to create a non-exclusive list of qualified items that did not have to go through the benefit analysis. Simultaneously, it granted TCEQ the ability to review the list and to add or remove items.

One of the items on the legislative list is heat recovery steam generators. These are used to recapture steam energy in the process of producing electricity, and reuse it to create more

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electricity. As a result, more energy is produced and fewer pollutants are emitted. For a number of years due to the list, TCEQ granted 100% exemptions for these items.

Subsequently, a number of taxpayers applied for the exemption, but TCEQ issued "negative" determinations finding that the income benefit exceeded the pollution control benefit. The taxpayers appealed claiming that the legislature had not granted TCEQ discretion to issue "negative" use determinations because the items were on the statutory list, and that the taxpayers were entitled to receive, at a minimum, partial exemptions. The Supreme Court agreed with these taxpayers and ruled that under the statute, TCEQ was required to grant at least a partial exemption to them; but added that, should it chose to do so, TCEQ could through the regulatory rule making process granted by the amendment, remove these items from the automatic list.

FOR PURPOSES OF PROPERTY TAXATION, THE RULE THAT MODIFICATIONS CONSTRUCTED ON A WATERLINE BOUNDARY BETWEEN COUNTIES BELONGS TO THE COUNTY FROM WHICH THEY PROTRUDE MAY NOT APPLY TO MAJOR FACILITIES CONSTRUCTED IN THE SAME LOCATION.

In re: Corpus Christi Liquefaction, LLP*, *585 S.W.3d 275 (Tex. 2019).

In *In re Occidental Chemical Corp., 561 S.W.3d 146 (Tex. 2018)*, the Texas Supreme Court ruled, in an original proceeding dealing with a property tax boundary dispute between Nueces County and San Patricio County, that all property covered by water in Corpus Christi Bay belonged to Nueces County. All else, including natural and artificial modifications such as piers belonged to San Patricio County. Relying on this decision, Corpus Christi Liquefaction, LLC ("taxpayer") sought relief from the court. The taxpayer was constructing a "massive natural gas liquefaction and export facility" on the same shoreline. The court refused to extend its holding to cover this property stating, "we did not hold that the rule applies to every structure imaginable." Because the Court cannot resolve factual issues, it dismissed the original appeal without prejudice to the taxpayer's ability to pursue relief in the district court.

TAXPAYERS ARE NOT REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES PRIOR TO FILING SUIT IF THE ISSUE PRESENTED IS PURELY A QUESTION OF LAW.

White Deer Independent School District v. Martin, No. 07-18-00193-CV (Tex. App.–Amarillo, November 5, 2019, no pet. h.). (to be published).

During the 2015 legislative session, the Texas legislature proposed a constitutional amendment and passed a bill increasing the school district homestead property tax exemption from $15,000 to $25,000. Both the amendment and the bill provided that school districts that granted an optional additional homestead exemption in 2014 could not reduce the amount of their exemption prior to the 2020 tax year. The legislature provided funding to school districts to cover their tax losses caused by the increase in the homestead exemption. White Deer Independent School District voted timely under an existing provision in the Tax Code and before

the constitutional amendment election to reduce their optional additional homestead exemption from 20% to 10%. The voters subsequently adopted the constitutional amendment. The taxpayer sued for declaratory and injunctive relief barring the reduction in the homestead exemption. The school district sought dismissal of the suit because the taxpayer failed to exhaust administrative remedies prior to filing suit. The court of appeals disagreed, ruling that one of the recognized exemptions to the doctrine of exhaustion of administrative remedies pertains to issues that present pure questions of law. Given that no facts needed to be determined, no exhaustion was required.

THE GREEN ENERGY PROPERTY TAX EXEMPTION IS AVAILABLE ONLY TO THE OWNERS OF PROPERTY ON WHICH THE DEVICES ARE INSTALLED; NOT TO THE PRODUCER OR LESSOR OF SUCH DEVICES.

Sunnova AP5 Conduit LLC v. Hunt County Appraisal District, No. 05-18-00995 (Tex. App.–Dallas, August 19, 2019, pet. filed). (to be published).

Taxpayer is in the business of selling and leasing solar power devices. It leased and installed a solar energy device on a residence in Hunt County and sought a property tax exemption for itself for the value of the device under the provision of the Tax Code that states, "A person is entitled to an exemption from taxation of the amount of appraised value 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." The court of appeals ruled against the taxpayer, citing the Comptroller of Public Accounts Exemptions publication which stated the tax exemption for such items belonged to the owner of the real estate whose property was being benefitted.

NO JURISDICTIONAL PROBLEM OCCURRED AS A RESULT OF A TAXPAYER FILING A SERIES OF IDENTICAL PETITIONS AGAINST VARIOUS APPRAISAL DISTRICTS IN ONE DISTRICT COURT.

Eastland County Appraisal District v. Peninsula Pipelines (North Texas), LLC, No. 11-17-00135-CV (Tex. App.– Eastland, June 13, 2019, no pet.) (to be published).

A pipeline ran across nine counties including Eastland County. Taxpayer filed suit challenging the valuation of the pipeline in Eastland County. It thereafter, one after the other, filed under the same cause number in Eastland County, lawsuits against other appraisal districts. Each subsequent suit was styled as an original petition. The appraisal districts filed pleas to the jurisdiction claiming that each subsequent petition constituted an amended petition and deleted all previously named appraisal districts, resulting in the fact that the district court in Eastland County not having jurisdiction over them. (Appraisal districts are required to be sued in the county in which they are located.) The court of appeals ruled that because the appraisal districts did not raise a claim that the district court did not have subject matter jurisdiction over the property tax suits, a plea to the jurisdiction was not an appropriate means of challenging the taxpayer's conduct. The district court's jurisdiction was lawfully invoked. Whether a judgment

could be properly taken against all of the appraisal districts was not a matter of jurisdiction.

AN OWNER OF REAL PROPERTY MAY APPEAL AN ORDER DETERMINING PROTEST ON A PROTEST FILED BY ITS LESSEE.

College Retail LLC v. Jefferson Central Appraisal District, 589 S.W.3d 856 (Tex. App.–Corpus Christi 2019, no pet.)

Both the lessor and lessee of a retail store filed notices of protest challenging the valuation of a property. Lessees are not allowed to proceed with protests on properties that have been challenged by lessors. To allow the lessee to proceed, the lessor withdrew its protest. After the lessee lost its protest hearing, the lessor appealed to district court. The appraisal district sought dismissal of the suit claiming that the lessor did not have the right to appeal since it was not the protesting party before the appraisal review board. Citing Section 42.21(h) of the Tax Code, the appellate court ruled that the district court "has jurisdiction over an appeal...brought on behalf of a property owner or lessee [and] is considered to have exhausted 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."

A TEXAS CHARTER SCHOOL IS NOT ENTITLED TO A PROPERTY TAX EXEMPTION FOR REAL ESTATE IT LEASES FOR SCHOOL PURPOSES.

Odyssey 2020 Academy, Inc. v. Galveston Central Appraisal District, 585 S.W.3d 530 (Tex. App.–Houston [14th Dist.] 2019, pet. filed).

Under Section 12.128(a) of the Texas Education Code, a Texas charter school's owned and leased property is "considered to be public property for all purposes under state law." A charter school leased its facilities from a private party and sought exemption from property taxation. The Tax Code, based on a specific grant of authority under the Texas Constitution, requires that public property be owned and used by the government for it to be exempt. The court of appeals found that exemption was not appropriate, notwithstanding the provision in the Education Code, because the real property was not owned by the public entity.

A TAXPAYER CHALLENGING THE DENIAL OF A SPECIAL AGRICULTURAL VALUATION IS REQUIRED TO TIMELY TENDER THE AMOUNT OF TAXES THAT WOULD BE OWED UNDER THE AGRICULTURAL VALUATION TO MAINTAIN THE SUIT.

Grimes County Appraisal District v. Harvey, 573 S.W.3d 430 (Tex. App.–Houston [1st District] 2019, no pet.)

An appraisal district revoked a long standing special agricultural valuation. After taxpayer's appeal to the appraisal review board was denied, he appealed to district court. However, he failed to make any tender of taxes prior to the delinquency date. Failure to make a timely tender, except under proof of indigency, deprives the district court of jurisdiction to proceed with the case. Having admitted that he would owe taxes based on the agricultural valuation of $138, his tender of zero dollars caused the district court to lose jurisdiction over the case.