2018-2019 TEXAS PROPERTY TAX CASE LAW IN REVIEW

(Cases and opinions current through February 28, 2019)

TEXAS SUPREME COURT

A PARTY SEEKING TO OVERTURN A TAX STATUTE HAS THE HEAVY BURDEN OF PROVING THAT A TAX STATUTE IS UNREASONABLE ARBITRARY OR CAPRICIOUS; THE DEALER HEAVY EQUIPMENT INVENTORY STATUTE IS CONSTITUTIONAL AS IT APPLIES TO LEASED GAS FIELD COMPRESSORS; THE TAX SITUS OF AN INVENTORY OF HEAVY EQUIPMENT IS EITHER AT THE OWNER'S PRINCIPAL PLACE OF BUSINESS OR THE YARD FROM WHICH THE EQUIPMENT IS RENTED; NOT THE ACTUAL LOCATION OF THE ITEM OF INVENTORY; A PIECE OF EQUIPMENT MEETS THE "SELF POWERED" REQUIREMENT IF IT HAS AN INTERNAL MOTOR OR ENGINE.

Loving County Appraisal District v. EXLP Leasing, LLC, 563 S.W.3d 213 **(Tex.. 2018).**
Reeves County Appraisal District v.Valerus Compression Services, 563 S.W.3d 210 **(Tex.2018).**
Reeves County Appraisal District v. Midcon Compression, L.L.C. 563 S.W.3d 207 **(Tex. 2018).**
Ward County Appraisal District v. EES Leasing LLC, 563 S.W.3d 203 **(Tex. 2018)**

Appraisal districts challenged the constitutionality of an amendment to the Property Tax Code that included leased gas field compressors into the formula for valuing heavy equipment. The practical effect of the revision was to change the individual value of a compressor from its "full" value to 1/12 of its annual lease payments. They contended that this resulted in unequal treatment when those compressors were compared to those individually owned. They also contended that the compressors should be taxed where they were situated by using the tax situs provisions of the Tax Code. The Supreme Court, citing its prior decision in *EXLP Leasing, LLC v. Galveston Central Appraisal District, 554 S.W.3d 572 (Tex. 2018),* disagreed with the appraisal district on all points. It ruled that a party seeking to find a tax statute unconstitutional has the heavy burden of proving that the statute is unreasonable, arbitrary or capricious. The Supreme Court rejected the use of the tax situs provisions included in the Tax Code for heavy equipment, finding that the statutory scheme demonstrated that the

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inventory should be valued at one location such as the company's principal place of business or from the location of the yards which it is rented. Finally, the court rejected the appraisal district's argument that a piece of equipment had to have its own internal power source to meet the statutory requirement that it be "self powered." It ruled that to meet this requirement the equipment only needed to have an internal motor or engine.

THE TEXAS SUPREME COURT HAS ORIGINAL JURISDICTION TO HEAR CLAIMS OF DOUBLE TAXATION DUE TO CLAIMS OF AN ONGOING BOUNDARY DISPUTE BETWEEN COUNTIES; ARTIFICIAL STRUCTURES CONNECTED TO THE LAND OF ONE COUNTY WHICH LIE OVER THE WATER OF ANOTHER COUNTY ARE PROPERLY TAXABLE BY THE COUNTY TO WHOSE LAND THEY ARE CONNECTED.

In re Occidental Chemical Corp., 561 S.W.3d 146 (Tex. 2018).

Taxpayer owned land in San Patricio County. It constructed piers in the adjoining waters. A boundary dispute has been on-going between San Patricio County and Nueces County for over 46 years. During this time, taxpayer has been subjected to double taxation by both counties. Notwithstanding a boundary judgment having been entered in 2003, the counties have continued to dispute the boundary line. Special legislation was introduced in 2017 granting the Texas Supreme Court original jurisdiction to resolve duplicative property tax disputes resulting from this fight. Not surprisingly, the counties argued that the legislature could not grant the Supreme Court original jurisdiction over this matter. The court disagreed, characterizing the dispute as a "Texas death match."

It held for purposes of property taxation, the 2003 judgment was binding. Under that judgment, all property covered by water at the point the waters of the bay meet the mainland at mean lower low tide belonged to Nueces County. All else, including natural and artificial modifications belonged to San Patricio County. Nueces County argued that it would be unfair for San Patricio County to be allowed to extended its boundaries into Nueces County by constructing piers into its waters. The Supreme Court disagreed by pointing out that if an emergency were to occur on one of the piers police and fire services were most likely to come by land from San Patricio County and not by water from Nueces County.

APPRAISAL DISTRICTS MAY SET UP TAX VALUATION ACCOUNTS THAT SEPARATE LAND FROM SALT WATER DISPOSAL WELLS LOCATED ON THE LAND NOTWITHSTANDING THE LAND AND WELL BEING OWNED BY THE SAME PERSON; THE MERE EXISTENCE OF SEPARATE ACCOUNTS IS NOT AN INDICATION OF DOUBLE TAXATION; USING DIFFERENT VALUATION METHODS FOR LAND AND SALT WATER DISPOSAL WELLS IS NOT NECESSARILY IMPERMISSIBLE; IT IS NOT NECESSARILY IMPERMISSIBLE TO UTILIZE THE INCOME APPROACH IN VALUING A SALT WATER DISPOSAL WELL.

Bosque Disposal Systems, LLC v. Parker County Appraisal District, 555 S.W.3d 92 (Tex. 2018).

Taxpayers challenged the ability of an appraisal district to create new tax accounts for salt water disposal wells they owned. The wells were located on land the taxpayers owned and were listed in separate accounts. They conceded the land with salt water disposal wells would sell for a higher price than land without such wells but contended that the tax code did not give the appraisal district the authority to create and tax these interests separately. The Texas Supreme Court disagreed. It pointed out that the Texas Constitution requires all real and personal property, unless exempted, to be taxed. It cited its own decision in *Matagorda County Appraisal District v. Coastal Liquids Partners, L.P., 165 S.W.3d 329 (Tex. 2005)*, a case involving gas storage salt domes, in holding that certain types of property may not clearly fall neatly into categories of either land or improvement and that determinations need to be made on a fact specific basis as to whether separate accounts should be set up. The mere fact that the appraisal district had set up two accounts was not evidence of double taxation. Nor was it impermissible on its face that the appraisal district had used the market approach to value the land involved and the income approach to value the wells. The income approach is one of the appropriate methods of valuation specified by the legislature. Whether it is the most appropriate method is for the trier of fact. The court, while agreeing that a property tax may not be placed on the value of a business, stated that it was up to the trier of fact to determine whether the use of the income approach in this instance amounts to an impermissible business tax.

SECTION 25.25(B) OF THE TAX CODE ALLOWS A CHIEF APPRAISER TO RETROACTIVELY REALLOCATE THE VALUE OF A PROPERTY BETWEEN CO-OWNERS PROVIDED THAT THE CHIEF APPRAISER DOES NOT INCREASE THE OVERALL VALUE OF THE PROPERTY; AFFECTED PROPERTY OWNERS ARE ENTITLED TO CHALLENGE SUCH ACTIONS UNDER THE CATCHALL PROTEST PROVISIONS OF THE TAX CODE; PARTIES TO AN APPEAL TO DISTRICT COURT MAY RAISE FACTS, ARGUMENTS, AND ISSUES THAT WERE NOT RAISED AT THE UNDERLYING ADMINISTRATIVE PROTEST HEARING BECAUSE DISTRICT COURT TRIALS ARE *DE NOVO*; A CHIEF APPRAISER DOES NOT HAVE THE AUTHORITY TO MAKE BINDING LEGAL DETERMINATIONS OF OWNERSHIP; PROPERTY TAXES ATTACH TO THE PROPERTY TO WHICH THEY APPLY AND ARE OWED BY THE TRUE OWNER OF THE PROPERTY REGARDLESS OF HOW OWNERSHIP IS CARRIED ON AN APPRAISAL DISTRICT'S RECORDS; AGREEMENTS BETWEEN TAXPAYERS AND CHIEF APPRAISERS ARE VOIDABLE IF THEY ARE INDUCED BY FRAUD.

***Willacy County Appraisal District v. Sebastian Cotton & Grain, Ltd.*, 555 S.W.3d 29 (Tex. 2018).**

Section 25.25(b) of the Texas Property Tax Code provides, "The chief appraiser may change the appraisal roll at any time to correct a name or address, a determination of ownership...that does not increase the amount of tax liability."

A tax consultant representing an owner of grain, co-owned by an unrelated party, filed a rendition with the chief appraiser. The rendition and accompanying allocation of ownership was accepted by the appraisal district. Subsequently, the tax consultant contacted the chief appraiser and claimed he had misallocated the ownership percentages, and the chief appraiser agreed to readjust them. The co-owner challenged the new allocation, and the chief appraiser, using the provisions of Section 25.25(b) changed the ownership percentages again allocating most of the grain back to the original party. The original party protested the decision to the appraisal review board, gained some relief, and sued in district court

contending that the chief appraiser did not have the legal authority to allocate any additional value to it under Section 25.25(b) because the reallocation caused an "increase" to the amount of its "tax liability." It also argued that the provisions of Section 25.25(b) violated the Due Process Clause of the United States Constitution because no protests are allowed under the Tax Code for actions by the chief appraiser under Section 25.25(b) (which claim was based on several prior appellate decisions), that the appraisal district was prohibited from raising the issue of fraud in district court because it had failed to do so at the appraisal review board hearing, and that the chief appraiser could not alter the agreement between the consultant and the chief appraiser because agreements under the Tax Code are final and binding.

The Texas Supreme Court disagreed with all of the taxpayer's contentions. It said that Section 25.25(b) allows changes that "do not increase the amount of tax liability." In other words, it only prohibits changes that increase the total amount of taxes imposed on a property. The section does not prevent reallocation of a previously determined value amongst co-owners. The court stated that property taxes are the obligation of the true owner of property regardless of whose name the property is listed on the appraisal roll and that the chief appraiser does not have the legal ability to alter true ownership by entering into an agreement stating otherwise. Property taxes attach to property; ownership issues are secondary.

Without distinguishing prior appellate cases holding that there is no right to appeal from a decision under Section 25.25(b), the Supreme Court said that parties whose tax liabilities are affected have the right to challenge those determinations under Section 41.41(9) of the Tax Code, which allows taxpayers to challenge "any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner" thereby satisfying the requirements of Due Process. Also, without distinguishing multiple contrary appellate rulings, the court held that no prohibition exists regarding raising matters in district court that were not challenged or raised before an appraisal review board, including fraud, because district court trials are *de novo* and trial courts are required to consider all matters of fact and law raised by the pleadings. Finally, the court acknowledged that agreements between taxpayers and chief appraisers pertaining to property taxation, including all oral agreements, are final and binding and non-appealable with the sole exception of agreements induced by the fraud of a party. It held that those agreements are voidable at the option of the defrauded party.

TEXAS COURTS OF APPEALS

MINOR ERROR IN WORDING IS NOT SUFFICIENT TO CAUSE DISMISSAL OF PROTEST; UNLIKE THE SITUATION WITH BELATED FILED RENDITIONS, THERE ARE NO GROUNDS FOR AVOIDANCE OF PENALTIES IMPOSED FOR FILING A REQUEST FOR INTERSTATE ALLOCATION OF AN AIRCRAFT.

Harris County Appraisal District v. PXP Aircraft, LLC, No. 01-17-00793-CV (Tex. App.–Houston [1st Dist.] November 29, 2018, no pet.). (to be published).

Taxpayer owned an aircraft which it flew in interstate commerce. Prior to the rendition deadline of April 15, taxpayer sought and was granted an automatic 30 day extension to file its rendition. Prior to the extended rendition deadline, taxpayer filed its rendition and simultaneously filed its request for allocation of the value of the aircraft to reflect its use in interstate commerce. Notwithstanding the fact that the deadline for requesting allocation was April 30, the appraisal district granted the allocation. In the fall, taxpayer received a tax bill for the airplane for $12,800 and a late allocation filing penalty of $102,000 ($10% of the tax difference between the allocated and unallocated value). Taxpayer immediately filed a protest challenging the legality of the "rendition penalty." The appraisal review board denied the taxpayer's request without taking evidence, The taxpayer appealed to district court. The appraisal district claimed that the district court had no jurisdiction to hear the case because no "rendition penalty" had been assessed; only an "allocation penalty." The court of appeals ruled that given the fact that only one type of penalty had been assessed, a dismissal of the taxpayer's claim due to misidentification would have been improper.

However, the court concluded that there exists no provision in the Tax Code, comparable to the one authorizing the cancellation of late rendition penalties due to the existence of "good cause," when it comes to the belated filing of requests for allocation. The court noted that the legislature had specifically amended this portion of the code to add the penalty and did not include any grounds for amelioration of penalties, and it concluded by noting that there was no requirement for the filing of a rendition for a taxpayer to qualify for an interstate allocation.

THE FAILURE BY AN APPRAISAL DISTRICT TO GIVE TAXING UNITS 45 DAYS NOTICE OF A HEARING ON A MOTION TO DISMISS A TAXPAYER'S APPRAISAL DISTRICT APPEAL SUIT DUE TO FAILURE TO PAY TAXES DOES NOT CONSTITUTE REVERSIBLE ERROR.

Munn v. Smith County Appraisal District, No. 12-17-00094-CV (Tex. App.–Tyler. April 4, 2018, pet. denied).

Taxpayer filed an application for open space land valuation months after the application deadline. After being denied special valuation and having his protest denied by the appraisal review board, taxpayer appealed to district court. Taxpayer failed to make any form of tax tender or to file a claim of indigency to support his reason for nonpayment. The appraisal district filed a motion to dismiss taxpayers suit due to his noncompliance with the tax tender provisions of the Tax Code. It did not notify the taxing units of the filing of the motion or the hearing on the motion. The taxpayer did not appear at the hearing and his case was dismissed. On appeal, the taxpayer argued that the provision in Section 42.08 that requires notices to be given to taxing units of a hearing on a question of tax tenders was a mandatory condition precedent and that the case needed to be reversed since the appraisal district failed to send out the notice. The court of appeals disagreed. It held that the notice provision existed to protect the interests of taxing units in case they wished to appear and dispute any claims by taxpayers that tenders had been properly made. Since the statute was not intended to benefit taxpayers, the taxpayer could not raise its violation as grounds for appeal.

THE TEN PERCENT ANNUAL STATUTORY LIMITATION ON INCREASES IN TAXABLE VALUE OF A RESIDENTIAL HOMESTEAD DOES NOT TAKE EFFECT UNTIL THE TAX YEAR FOLLOWING THE QUALIFICATION OF A RESIDENCE FOR TAX HOMESTEAD; THE QUALIFICATION DATE FOR TAX HOMESTEAD DIFFERS FROM QUALIFICATION OF A PROPERTY FOR HOMESTEAD PROTECTION FROM CLAIMS OF CREDITORS.

Denton Central Appraisal District v. Gladden, 554 S.W.3d 749 (Tex. App.–Fort Worth 2018, pet. denied).

Taxpayer purchased and moved into a residence in May 2012. In early 2013, the taxpayer timely applied for and was granted a homestead exemption for the residence. The appraisal district raised the taxable value of the home from its 2012 valuation of $203,595 to $312,352 for 2013. Taxpayer sued the appraisal district claiming that the increase violated the Tax Code's prohibition against increases of residential homestead valuations by more than ten percent. The court of appeals disagreed and held that the provisions of the tax code were clear. To qualify for a homestead exemption, a person must own the property on January 1 of the year in question. Additionally, the tax statute provides that the ten percent limitation on valuation increases takes effect in the tax year following the year the property qualifies for exemption as a tax homestead. Although the home likely qualified for homestead protection from claims of creditors upon its acquisition in 2012, the taxpayer was not entitled to qualify it for tax homestead exemption until January 1, 2013 and the ten percent limitation on valuation increases did not take effect until January 1, 2014. Qualification for protection of a homestead from creditors differs from qualification of property for tax exemption.

IN A PROPERTY TAX LAWSUIT LIMITED TO CHALLENGING A PROPERTY'S TAX EQUITY, AN APPRAISAL DISTRICT IS NOT ENTITLED TO DISCOVER DATA WHICH SOLELY PERTAINS TO THE MARKET VALUE OF THE PROPERTY.

In re Catherine Tower, LLC, 553 S.W.3d 679-CV (Tex. App.–Austin 2018, pet. denied.).

Taxpayer, having recently purchased an apartment complex, sued an appraisal district under a statute that authorizes claims of properties being incorrectly valued when compared to the tax valuation of a number of other comparable properties. The taxpayer did not challenge the market value of its property as determined by the appraisal district. The appraisal district sought discovery from the lender on the property including an appraisal obtained by the taxpayer, confidential financial information pertaining to the taxpayer, and specific information regarding the tenants leasing property and operating data for the property. Taxpayer objected on relevancy grounds but produced 29 pages from the appraisal that identified properties that were deemed to be comparable to the subject for purposes of appraisal and the adjustments that were made to those comparable properties by the appraiser. The appraisal district

argued that because it was charged with determining the "market value" of the property the production of these items was relevant. The court disagreed. It held that a tax equity challenge was a separate and discrete legal ground for disputing an appraisal district's valuation determination and was intended to provide taxpayers with a less costly method for challenging their taxes than by challenging market value. To authorize such discovery would deter taxpayers from exercising this remedy and would have "the practical effect of mandatory sale-price disclosure despite the Legislature's longstanding refusal to require it."

TEXAS ATTORNEY GENERAL OPINIONS

A TAXING UNIT MAY NOT GRANT A HIGHER MINIMUM HOMESTEAD EXEMPTION THAN THE $5,000 FLOOR SET IN THE CONSTITUTION; IT IS THE DUTY OF A CHIEF APPRAISER TO REFUSE TO ENFORCE UNLAWFULLY ENACTED HOMESTEAD EXEMPTIONS.

Op. Tex. Att'y Gen. No. KP-0215 (2018).

A taxing unit may not grant a higher minimum homestead exemption than the $5,000 floor set in the constitution; it is the duty of a chief appraiser to refuse to enforce unlawfully enacted homestead exemptions.