2022-2023 TEXAS PROPERTY TAX CASE LAW IN REVIEW

(Cases and opinions current through February 24, 2023)

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TEXAS SUPREME COURT DECISION

TEXAS COMPTROLLER NOT REQUIRED TO REVIEW AND AUTHORIZE PENDING CHAPTER 313 AGREEMENTS BETWEEN TAXING UNITS AND TAXPAYERS BEFORE THE EXPIRATION OF CHAPTER 313 PROGRAM.

In re Stetson Renewables Holdings, LLC, 658 S.W.3d 292 (Tex. 2022)

The Texas Economic Development Act, codified by Chapter 313 of the Texas Tax Code, provided a mechanism for local school districts and prospective businesses to come to agreements in which a business would build property in a school district's county in exchange for ten years of discounted property taxes. The program intended to make Texas a desirable location for businesses looking to expand or relocate, which would bolster local economies by creating jobs. However, Chapter 313 included a statutory expiration date on December 31, 2022, and no legislative action was taken to extend the program.

As part of the application process, The Texas Comptroller was required by Chapter 313 to complete an economic-impact evaluation of each agreement "as soon as practicable but not later than the 90th day" after receipt of the application. This was not the final step of each application, but the Comptroller's approval was necessary for the ultimate authorization of every Chapter 313 agreement. The Office of the Comptroller anticipated an influx in applications in 2022 and had instructed businesses to submit their applications by June 1 – earlier than the official deadline. As the expiration of the program approached, many Chapter 313 agreements had been submitted but not approved by the Comptroller.

On December 16, 2022, two companies filed a Writ of Mandamus that asked the Supreme Court to compel the Comptroller to act on their pending applications before the program expired. On December 30, 2022, just one day before the expiration of Chapter 313, The Texas Supreme

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Court released an opinion denying to compel the Comptroller to act on the pending applications. The Supreme Court held that the 90-day deadline was non-discretionary, but stated that the legislation did not provide any consequences or further guidance on what happens when the deadline was not complied with. The court reasoned that the Comptroller's failure to authorize pending applications was due to constraints on resources, and stated that the legislature could have provided for options to deal with the issue at hand. It further held that the Chapter 313 program did not involve any sort of fundamental right (such as the right to vote) that would give the judiciary authority to extend a statute's availability beyond its expiration date. Lastly, the Supreme Court stated that the Comptroller's directive to submit applications early had no bearing on the decision, as the directive did not deprive the business of any right and probably led to the processing of more applications.

PERSONAL SERVICE MUST BE ATTEMPTED BEFORE SERVICE BY POSTING IN A FORECLOSURE SUIT. IF NO PERSONAL SERVICE IS ATTEMPTED, A DILLIGENT INQUIRY MUST BE MADE INTO THE RECIPIENT'S RESIDENCE.

Mitchell v. MAP Res., Inc., 649 S.W.3d 180 (Tex. 2022)

A taxpayer owned a mineral intertest in property. A tax lien on the property was foreclosed on 1999. In the foreclosure suit, the taxing units served the taxpayer and almost 500 others by posting citation on the courthouse door. The taxing units obtained a default judgment and sold the property to satisfy the tax lien. The taxpayer died in 2009. Six years later, her heirs sued the current owners claiming that her due process rights were violated, and that she should have been served personally because her name and address were available in publicly recorded deeds and the county's tax records. The trial court granted summary judgment for the current owners, and the court of appeals affirmed holding that the heirs did not conclusively establish a violation of the taxpayer's due process rights. The Texas Supreme Court reversed holding that her due process rights had been violated. It found that a "diligent inquiry" into the available records would have found her name and mailing address. Further, it found that there was no attempt of personal service, in violation of the applicable Texas rules in 1999. As no personal service was attempted, the taxing units were required to conduct a diligence inquiry into the taxpayer's residence before serving her by posting on the courthouse door. Because the taxpayer's due process rights had been violated and the original trial court in 1999 did not acquire jurisdiction over her, the Supreme Court reversed and remanded the case back to the trial court.

<u>TEXAS COURTS OF APPEALS DECISIONS</u>

FINAL ORDERS IN A §41.41 PROTEST BAR SUBSEQUENT §25.25 MOTIONS BASED ON THE "SAME CLAIMS."

J-W Power Co. v. Jack Cnty. Appraisal Dist., No. 02-22-00082-CV, 2023 WL 415517 (Tex. App.—Fort Worth Jan. 26, 2023, no pet. h.)

A taxpayer protested the method of valuation used for its natural gas compressors in several different counties. Its protest in Jack County was denied by the appraisal review board, and it did not exercise any of its rights to appeal the determination. The taxpayer later filed a §25.25

motion to correct, claiming that a recent Supreme Court decision required a different appraisal method to be used. The ARB denied the motion to correct, and the taxpayer appealed to district court. The district court entered summary judgment in favor of the appraisal district. The court of appeals affirmed, holding that the taxpayer was barred from appealing the §25.25 motion because it addressed nearly identical claims to the ones that had been resolved by the original ARB hearing. As such, taxpayers are precluded from appealing §25.25 motions to district court if their issues have already been decided in a §41.41 protest. This marks the **fourth** appellate court to rule against this taxpayer. Though the taxpayer relied on Tax Code §25.25(c), it is important to note that Section §25.25(d) specifically prohibits a second appeal under §25.25(d) if a taxpayer has already protested under Section 41 and presented evidence at an ARB hearing. However, §25.25(c) does not contain such a specific prohibition.

SECTION 23.01(E) DOES NOT APPLY TO DE NOVO JUDICIAL APPEALS.

Providence Town Square Hous., Ltd. v. Harris Cnty. Appraisal Dist., No. 01-20-00835-CV, 2022 WL 17981838 (Tex. App.—Houston [1st Dist.] Dec. 29, 2022, no pet. h.) (mem. op.)

A taxpayer appealed an appraisal review board order regarding its senior living apartment complex for tax year 2017 to district court. The case was settled at a value below the initial appraisal. The following year, the appraisal district increased the value of the property to a value higher than the initial tax year 2017 value. The taxpayer protested, and the ARB slightly reduced the property's value. The taxpayer then appealed to district court, where it argued that the property was excessively appraised and that Tax Code Section 23.01(e) required the appraisal district to support the increase in appraised value with substantial evidence. Section 23.01(e) states that an appraisal district must show substantial evidence to raise the value of a property that had its value lowered by the protest or appeals process in the preceding year. The trial court ruled in favor of the appraisal district for both the excessive appraisal claim under Section 42.25 and the Section 23.01(e) claim. The taxpayer appealed only its Section 23.01 claim. The appellate court affirmed, holding that Section 23.01(e) does not apply to *de novo* judicial proceedings (proceedings where previous evidence and arguments presented are disregarded).

DISTRICT COURTS HAVE JURISDICTION TO INVALIDATE SECTION 1.111 AGREEMENTS BASED ON THE DOCTRINE OF MUTUAL MISTAKE.

Oncor Elec. Delivery Co. NTU LLC v. Mills Cent. Appraisal Dist., No. 03-21-00027-CV, 2022 WL 17419577 (Tex. App.—Austin Dec. 6, 2022, no pet. h.)

A taxpayer acquired property belonging to utility company in 2020. In June of 2019, the previous owner of the property entered into a "Settlement and Waiver of Protest," or §1.111 agreement, with multiple appraisal districts. The agreement covered many counties and calculated the appraised value of the property in each county based on the miles of transmission line present. However, the agreement mistakenly switched the mileage for two different types of transmission line throughout all of the counties, resulting in a greatly increased tax liability for the taxpayer. In 2020, the taxpayer filed a motion to correct a clerical error under Tax Code §25.25(c) for the appraisal of its transmission lines in Mills County for tax year 2019. The appraisal review board dismissed the motion holding that it did not have jurisdiction to correct

the error because the value was based on an agreement between the previous owner and the appraisal district under Tax Code §1.111(e). The taxpayer appealed to district court. The trial court dismissed the case holding that it did not have jurisdiction to review the §25.25 motion because the property value was based on a §1.111 agreement. However, the appellate court reversed holding that the doctrine of mutual mistake allowed the trial court to review the §1.111 agreement. The appellate court stated that some basic contract principles apply to the §1.111 agreement, and that the trial court has jurisdiction to invalidate the agreement based on a mutual mistake with appropriate evidence. As such, the dismissal of the case was reversed. The appellate court noted that it was aware of the conflicting decision made in *Wilbarger*, but declined to follow it for the reasons discussed in the case at hand.

SECTION 1.111 AGREEMENT TOTALLY WAIVES REMEDIES UNDER SECTION 25.25.

Wilbarger Cnty. Appraisal Dist. v. Oncor Elec. Delivery Co. NTU, LLC, No. 07-21-00264-CV, 2022 WL 14504688 (Tex. App.—Amarillo Oct. 25, 2022, pet. filed)

This case involves the same underlying facts as *Mills*. After acquiring property belonging to a utility company, a taxpayer discovered an error in the Wilbarger County appraisal roll for 2019 which greatly increased its tax liability for that year. The taxpayer filed a motion to correct the error, but the appraisal review board dismissed the motion holding that it did not have jurisdiction to correct the error because the value was based on an agreement between the previous owner and the appraisal district under Tax Code §1.111(e). The appraisal district filed a plea to the jurisdiction and motion for summary judgment, claiming that the 2019 agreement was final and binding. The trial court denied both, and the appraisal district appealed. The appellate court reversed holding that the legislature expressly stated that §1.111 agreements are final if the agreement relates to a matter that may be corrected under §25.25. As such, the agreement was binding, and the taxpayer's §25.25(c) motion was barred. However, the court made no mention of § 25.25(d-1)(2), which provides that §1.111 agreements only bar corrections of clerical errors under §25.25(d).

THE EXISTENCE OF A LONG TERM BELOW-MARKET LEASE DOES NOT COMPEL APPRAISAL DISTRICTS TO USE ACTUAL EXISITNG LEASES IN AN INCOME APPROACH APPRAISAL. MARKET LEASES MUST BE USED FOR INCOME APPROACH.

Amelang v. Harris Cnty. Appraisal Dist., No. 01-20-00623-CV, 2022 WL 4371518 (Tex. App.—Houston [1st Dist.] Sept. 22, 2022, no pet.)

A taxpayer appealed the appraisal review board values of two warehouse buildings that were subject to long term leases which were below market. The taxpayer argued that a sales comparison approach was not appropriate because any buyer would be subject to the leases and could not repurpose the property. As such, it argued that an income approach must be used to determine market value. The trial court ruled in favor of the appraisal district, holding that the taxpayer had failed to meet its burden to establish the market value of the properties. The appellate court affirmed holding that market value appraisal was not limited to the income

approach because of the leases. Rather, it was appropriate in this case to consider highest and best use along with the potential effects of the leases on market value. The court followed previous case law which held that actual rents may not be used under the income approach if they are the result of long term below-market leases.

LACK OF DUE PROCESS DEFEATS THE STATUTE OF LIMITATIONS FOR AN IMPROPER FORECLOSURE, BUT EVIDENCE SUPPORTING THE LACK OF DUE PROCESS MUST BE PRESENTED.

Gill v. Hill, No. 08-20-00081-CV, 2022 WL 3755048 (Tex. App.—El Paso Aug. 30, 2022, pet. filed)

Two individuals challenged a tax lien foreclosure which had occurred 20 years prior. As successors in interest of the mineral interests, they claimed that their predecessors had not been given due process because they were not properly served notice before the foreclosure. The trial court granted judgment in favor of the buyers, holding that the claim was barred by the statute of limitations because the successors in interest had failed to present any evidence on the allegedly inadequate notice. The appellate court affirmed, noting that any evidence tending to show a lack of proper notice would have defeated the statute of limitations. Because no such evidence was provided, the court held that the successors in interest were barred by Tax Code §33.54's one-year statute of limitations.

FINAL ORDERS IN A §41.41 PROTEST BAR SUBSEQUENT §25.25 MOTIONS BASED ON THE "SAME CLAIMS."

J-W Power Co. v. Sterling Cnty. Appraisal Dist., No. 03-21-00069-CV, 2022 WL 2836807 (Tex. App.—Austin July 21, 2022, pet. filed) (mem. op.); AND

J-W Power Co. v. Irion Cnty. Appraisal Dist., No. 03-21-00005-CV, 2022 WL 2836812 (Tex. App.—Austin July 21, 2022, pet. filed) (mem. op.)

A taxpayer protested the method of valuation used for its natural gas compressors. The protest was denied by the appraisal review board, and the taxpayer did not exercise any of its rights to appeal the determination. The taxpayer later filed a §25.25 motion to correct, claiming that a recent Supreme Court decision required a different appraisal method to be used. The ARB denied the motion to correct, and the taxpayer appealed to district court. The district court entered summary judgment in favor of the appraisal district. The court of appeals affirmed, holding that the taxpayer was barred from appealing the §25.25 motion because it addressed nearly identical claims to the ones that had been resolved by the original ARB hearing. As such, taxpayers are precluded from appealing §25.25 motions to district court if their issues have already been decided in a §41.41 protest. Though the taxpayer relied on Tax Code §25.25(c), it is important to note that Section §25.25(d) specifically prohibits a second appeal under §25.25(d) if a taxpayer has already protested under Section 41 and presented evidence at an ARB hearing. However, §25.25(c) does not contain such a specific prohibition.

STATE-CREATED RETIREMENT SYSTEMS ARE GOVERNMENTAL ENTITIES AND CANNOT BE SUED FOR DELINQUENT PROPERTY TAXES; THE ISSUE MAY BE RAISED FOR THE FIRST TIME ON APPEAL.

Midland Firemen's Relief & Ret. Fund v. Midland Cent. Appraisal Dist., No. 11-20-00204-CV, 2022 WL 2252654 (Tex. App.—Eastland June 23, 2022, no pet.) (mem. op.)

A state-created retirement system was sued for delinquent taxes on property it owned. The trial court granted a default judgment in favor of the taxing units when the retirement system failed to file an answer. The appellate court reversed holding that the fund was a governmental entity and thus any action against it was barred by governmental immunity. The appellate court did not discuss whether the fund was exempt from taxation. In effect, the court held that entities with governmental immunity need not defend themselves if sued for delinquent taxes. Instead, they may have any judgment taken against them voided by an appellate court.

TAXING UNITS MUST PROPERLY SERVE PROCESS TO TAKE JUDGMENT AGAINST TAXPAYER. TAXPAYER WAS NOT NEGLIGENT IN FAILING TO UPDATE REGISTERED AGENT ADDRESS.

Majgek Partners, LLC v. Mo & Assoc., LLC, No. 05-21-00545-CV, 2022 WL 2236086 (Tex. App.—Dallas June 22, 2022, no pet.) (mem. op.)

Taxing authorities sued a taxpayer for delinquent taxes. However, the petition was returned because the taxpayer's registered agent had moved to a new address. The taxing authorities served the taxpayer by posting in its county courthouse. The taxpayer never appeared in the suit, and the court ruled in favor of the taxing authorities. Years later, the taxpayer sought to void the judgment. The trial court held that the judgment was valid because the taxpayer had acted negligently by failing to update the address of its registered agent. The appellate court voided the judgment, holding that a lack of proper service deprived the original court of jurisdiction over the case.

AN APPRAISAL DISTRICT MAY RAISE MARKET VALUE ISSUES IN A JUDICIAL APPEAL EVEN IF NO DETERMINATION ON MARKET VALUE WAS MADE BY THE APPRAISAL REVIEW BOARD; THE TAX CODE REQUIREMENT THAT A CHIEF APPRAISER OBTAIN APPROVAL FROM THE APPRAISAL DISTRICT'S BOARD OF DIRECTORS PRIOR TO APPEALING AN APPRAISAL REVIEW BOARD DECISION IS NOT JURISDICTIONAL.

Travis Cent. Appraisal Dist. ex rel Crigler v. Tex. Disposal Sys. Landfill, Inc., No. 03-20-00122-CV, 2022 WL 2236109 (Tex. App.—Austin June 22, 2022, pet. filed) (mem. op.)

A taxpayer protested the valuation of its property on the grounds of market value and unequal appraisal. It dropped its market value claim prior to the appraisal review board hearing. The ARB significantly lowered the appraised value of the property based on tax equity. The appraisal district appealed to district court. It did so without specific approval from the appraisal district's board of directors, but instead relied on a three-year-old board resolution which gave the chief

appraiser *carte blanche* authority to appeal decisions of the ARB. The appraisal district claimed that the ARB value was both below market value and unequally appraised. The district court dismissed the market value claim. In doing so, the district court held that the appraisal district could not bring a claim based on market value because the ARB had not made any determination based on market value. Additionally, it held that the appraisal district's blanket approval did not satisfy §42.02(a)'s requirement that a chief appraiser obtain permission from the appraisal district's board of directors prior to suing a taxpayer, and that this failure deprived the court of jurisdiction. The court of appeals disagreed and reversed, holding that the tax code allows parties to challenge any matter they want as long as they raise it in their pleadings. Further, it held that a failure to satisfy the §42.02(a) requirement for written approval was not a jurisdictional issue, stating that the Supreme Court's trend was not to find provisions jurisdictional unless specified by a statute. It refrained from deciding if the blanket approval satisfied the §42.02(a) requirement.

PROPERTY LEASED BY A POLITICAL SUBDIVISION FOR A PUBLIC PURPOSE WHICH CONTAINS A PROVISION GRANTING THE GOVERNMENT A UNILATERAL OPTION TO IMMEDIATELY PURCHASE THE PROPERTY ALLOWS THE PROPERTY TO BE EXEMPTED FROM PROPERTY TAXATION.

Jubilee Academic Center, Inc. v. Cameron Appraisal Dist., No 13-20-00511-CV, 2022 WL 2163856 (Tex. App.-Corpus Christi, June 16, 2022, pet. filed) (mem. op.)

A charter school entered into a "build to suit lease with an option to buy." It sought a public property exemption from taxation but was denied by the appraisal district on the grounds that it did not own the leased property. The court of appeals approved of the exemption because charter schools are political subdivisions of the state and because the charter school possessed equitable title to the property. This was because the school had the unilateral right to compel transfer of title to itself immediately by exercising its lease option. As such, the school was the owner of the property for purposes of *ad valorem* taxation.

MARRIED VETERANS, EACH WITH 100% SERVICE-RELATED DISABILITIES, OWNING AND LIVING SEPARATELY IN THEIR OWN COMMUNITY PROPERTY HOMESTEADS, ARE BOTH ENTITLED TO FULL EXEMPTIONS ON THEIR HOMESTEADS.

Johnson v. Bexar Appraisal District, No. 04-21-00402-CV, 2022 WL 1395332 (Tex. App.—San Antonio, May 4, 2022, pet. filed)

Veterans who are 100% disabled due to military service-related causes are entitled to a 100% exemption of their residential homesteads. The tax code prohibits multiple homestead exemptions, elderly exemptions, and disability exemptions from being granted on community property. Under these circumstances, only one party receives the exemption to which they are entitled even if both qualify. A husband and wife were both 100% disabled veterans. They entered into a separate living agreement, and each purchased and lived in their own residential homestead. Each applied for the 100% disabled exemption. Both homes were community property. The appraisal district granted the husband's application but denied the wife's on the

grounds that spouses could not have homestead exemptions on more than one property or double up exemptions. The court of appeals reversed finding that the limitations on multiple homestead claims applied only to traditional exemptions and not to the 100% disabled veterans' exemption which is contained in its own section of the tax code.

OFFICERS AND EMPLOYEES OF ENTITIES MAY TESTIFY AS TO MARKET VALUE AND EQUALIZED TAX VALUE WITHOUT POSSESSING PARTICULAR QUALIFICATIONS UNDER THE "PROPERTY OWNER" RULE. AN OFFICER OF A PARENT COMPANY MAY NOT TESTIFY UNLESS THEY POSSESS THE NECESSARY KNOWLEDGE AND EXPERIENCE TO QUALIFY AS AN EXPERT WITNESS.

Aspenwood Apartments Partners, LP v. Harris Cnty. Appraisal Dist., No. 01-20-00335-CV, 2022 WL 1249956 (Tex. App.—Houston [1st Dist.] April 28, 2022, no pet.) (mem. op.)

Under the "property owner" rule, an owner of property may testify to the market value and the equitable tax value of their own property without qualifying as expert witnesses. This rule extends to officers and employees of an owner provided that their duties relate in some part to the property. An officer of a parent company of a taxpayer, who did not possess particularized expert knowledge sought to testify as to the market value and equitable tax value of a subsidiary's property. The trial court excluded his testimony. The appellate court affirmed finding that the "property owner" rule does not extend to officers or employees of parent companies.

A COURT WILL LOOK AT THE ENTIRETY OF A LEASE AND HOW IT IS IMPLEMENTED TO DETERMINE WHETHER LEASED PROPERTY QUALIFIES FOR A PUBLIC PURPOSE EXEMPTION.

I-10 R.V., L.L.C. v. Jefferson Cnty. Appraisal Dist., No 09-20-00166-CV, 2022 WL 1177610 (Tex. App.—Beaumont, April 21, 2022, no pet.) (mem. op.)

A county entered into an "RV Park Management Agreement" with a taxpayer utilizing public lands that were intended to be part of a baseball and softball sports complex and park. A portion of the property was to be used for the construction of an RV Park with the intention that the RV Park would be used by persons attending sports tournaments at the field. The county and the taxpayer were to share revenue but the cost to build the park and all operational costs were to be borne by the taxpayer. The taxpayer claimed a "public purpose" exemption for the property but was denied by the appraisal district. A trial ensued and conflicting evidence was presented as to the actual use of the property and the intent of the agreement. The trial court denied the exemption and the court of appeals upheld the trial court finding that it was the taxpayer's "burden to show that the evidence established as a matter of law all vital facts supporting the RV Park was used for a public purpose." Failing to do so, no exemption could be allowed.

A DECLARATORY JUDGMENT SUIT AGAINST A CURRENT CHIEF APPRAISER ALLEGING USE OF AN UNLAWFUL VALUATION METHODOLOGY MAY

PROCEED TO TRIAL BECAUSE GOVERNMENTAL IMMUNITY DOES NOT APPLY TO *ULTRA VIRES* ACTS.

Falls County Appraisal District v. Burns, No. 10-21-00119-CV (Tex. App.—Waco, March 23, 2022, pet. filed) (mem. op.)

A declaratory judgment suit was filed against an appraisal district, a former chief appraiser and the current chief appraiser claiming that a $6,000 uniform valuation added to all rural homesteads due to utilities being available to them constituted "made up" numbers and were not based on any recognized valuation methodology. The defendants pleaded governmental immunity from suit as a defense. The court of appeals agreed that the defense was valid as to the appraisal district because specific remedies are provided in the tax code for challenging errant appraisal district decisions. It dismissed the suit against the former chief appraiser since he was no longer in office and could not affect what was being done. But it ruled that the petition sufficiently pleaded *ultra vires* conduct against the current chief appraiser, ruling that the use of an appraisal methodology not authorized by the tax code was beyond the conduct allowed for chief appraisers and thus the chief appraiser possessed no immunity from suit for her illegal conduct.

25.25(C)(3) MOTION CANNOT BE USED TO CORRECT VALUE IF THERE WAS "SOME EXISTENCE" OF THE PROPERTY IN THE FORM OR AT THE LOCATION DESCRIBED IN THE APPRAISAL ROLL

J-W Power Co. v. Duval Cnty. Appraisal Dist., No. 04-21-00172-CV, 2022 WL 789345 (Tex. App.—San Antonio Mar. 16, 2022, no pet.) (mem. op.)

A taxpayer protested the method of valuation used for its natural gas compressors. The protest was denied by the appraisal review board, and the taxpayer did not exercise any of its rights to appeal the determination. The taxpayer later filed a §25.25 motion to correct, claiming that its property had been doubly appraised and that the property did not exist in the form or at the location described in the appraisal roll. The ARB denied the motion to correct, and the taxpayer appealed to district court. The district court entered summary judgment in favor of the appraisal district. The appellate court affirmed, holding that the property had not been doubly appraised because only some of the compressors it owned in Duval were appraised by Duval County, while others had been appraised in a different county. Further, it held that the property did exist in the form and at the location described in the appraisal role because there was "some existence" at the location. The court did not address whether the ARB could hear "the same claims" in a §25.25 motion as previously presented in a §41.41 motion.

SETTLEMENT AGREEMENTS BETWEEN TAXPAYERS AND APPRAISAL DISTRICTS DO NOT FORECLOSE JUDICIAL REVIEW OF MOTIONS TO CORRECT CONCERNING UNRELATED MATTERS.

Zeon Chemicals, L.P. v. Harris Cnty. Appraisal Dist., No. 14-20-00798-CV, 2022 WL 619681 (Tex. App.—Houston [14th Dist.] Mar. 3, 2022, no pet.) (mem. op.)

A taxpayer mistakenly entered the value for "total sales" instead of "cost of goods sold" in its freeport-exemption application. The taxpayer protested the values for the property subject to the exemption and entered settlement agreements with the appraisal district for three out of four accounts. Subsequently, the taxpayer filed motions to correct based on a clerical error in the freeport-exemption application. The motions to correct were denied by the appraisal review board. Litigation ensued and the trial court held that the settlement agreements deprived it of jurisdiction. The appellate court reversed holding that settlement agreements regarding property values do not "relate to" issues regarding exemptions as needed to deprive a trial court of jurisdiction.

ELECTRONIC SERVICE IS NOT SUFFICIENT TO PROVE RECEIPT OF NOTICE OF ARB ORDER UNLESS THE PARTIES HAVE ENTERED AN AGREEMENT PROVIDING SO.

Mansion Partners, Ltd. v. Harris Cnty. Appraisal Dist., No. 01-20-00565-CV, 2022 WL 175357 (Tex. App.—Houston [1st Dist.] Jan. 20, 2022, no pet.) (mem. op.)

A taxpayer appealed the value of its property to district court in 2018. It protested the property again in 2019, and the appraisal review board denied the protest. The order determining protest to the taxpayer through electronic service to its tax consultant. The order was dated "8/12/2019" at the top, but contained the words "Signed this 2nd day of August, 2019" under the signature of the chairman of the ARB. The taxpayer's lawsuit was amended to include the 2019 tax year on January 3, 2020. The appraisal district filed a plea to the jurisdiction seeking to remove the tax year 2019 claims because it had not been added to the lawsuit within the statutory deadline of 60 days after receipt of the order determining protest. The trial court granted the plea to the jurisdiction, and the taxpayer appealed. The court of appeals reversed holding that electronic service receipt did not satisfy notice under section 1.07 of the Texas Tax Code unless the parties agreed that notice could be delivered electronically. Because there was no agreement that electronic service was sufficient and the appraisal district had not sent a copy of the order through the mail, the court of appeals held that receipt of the notice had not been proven and the 2019 claims could remain in the lawsuit.

TAXPAYER COMMUNICATIONS TO APPRAISAL DISTRICTS ARE PROTECTED BY THE TEXAS CITIZENS PROTECTION ACT.

Kinder Morgan SACROC, LP v. Scurry Cnty., No. 11-21-00205-CV, 2022 WL 120803 (Tex. App.—Eastland Jan. 13, 2022, no pet.)

Several taxing units brought suit against an oil company, claiming that the company had fraudulent excluded property from the county's appraisal role. The company filed a motion to dismiss claiming that the taxing units had failed to allege any facts to support a legally cognizable right to relief. The taxing units filed an amended petition, and the company withdrew its motion to dismiss. Shortly after, the company filed a motion to dismiss under the Texas Citizens Protection Act ("TCPA"), which protects citizens from retaliatory lawsuits meant to intimidate or silence them on matters of public concern. This motion was appealed up to the

Supreme Court based on timing issues and was ultimately remanded back to the trial court to be decided on the merits. The trial court denied the motion to dismiss, and the company appealed. The court of appeals reversed, holding that the company's communications with the appraisal district were "statements" under the TCPA. Because the taxing units' claims were connected to the company's exercise of its right to petition through its communications to the appraisal districts, the court held that the claims fell within the scope of the TCPA and remanded the case.

SLIGHT ERROR IN THE TAXPAYER'S NAME DOES NOT INVALIDATE A NOTICE OF APPRAISAL; A TAXPAYER HAS NOT EXHAUSTED ALL ADMINISTRATIVE REMEDIES IF IT DID NOT PAY ANY PORTION OF TAXES BEFORE DELINQUENCY DATE.

Desert NDT, LLC v. Ector Cnty. Appraisal Dist., 654 S.W.3d 302 (Tex. App.—Eastland 2022, no pet.)

A taxpayer appealed ARB values of its property for the 2015, 2016, and 2017 tax years. The taxpayer and appraisal district came to a settlement agreement for the 2015 and 2016 tax years after the taxpayer provided evidence that a portion of the appraised property was not in the County for those tax years. For the 2017 tax year, the taxpayer claimed that its due process had been violated because the notice of appraisal it received contained an error in the owner's name. The trial court dismissed the 2017 case for lack of jurisdiction, holding that the appraisal district did not violate the taxpayer's due process, that the appraisal district was not required to extend the previous judgment to the 2017 tax year, and that the taxpayer had not exhausted its administrative remedies because it did not meet the payment requirements under §42.08 of the Tax Code. The appellate court affirmed, holding that a slight misnomer in a notice of protest does not affect validity if there is actual notice. Without explanation, the Court stated that the appraisal district had conceded a failure to deliver proper notice. However, it then focused on the conditions precedent under §41.411, and held that the taxpayer had not exhausted its administrative remedies because it did not pay any portion of the taxes for 2017 until a year after the delinquency deadline.

A TAXING UNIT EXHAUSTED ITS ADMINISTRATIVE REMEDIES REGARDING FRAUD BY SHOWING A DISCREPANCY IN VALUES TO THE ARB AND CLAIMING IT WAS A RESULT OF FRAUD.

Iraan-Sheffield Indep. Sch. Dist. v. Kinder Morgan Prod. Co. LLC, 657 S.W.3d 525 (Tex. App.—El Paso 2022, pet. filed.)

A taxing unit contracted to find and recover property taxes that were missed or omitted. The taxing unit filed a challenge with the appraisal review board on the basis that a category of property within the county had been erroneously appraised and that taxable property in the county had been erroneously omitted. At the ARB hearing, the taxing unit argued that an error by the appraisal district or fraud must have occurred because one taxpayer's public filing records valued interests in the county more than 25% higher than the appraised value in the county. The ARB denied the challenge, and litigation ensued. The trial court dismissed the case, holding that the taxing unit had not exhausted its administrative remedies because it had not litigated whether

the taxpayer made an intentional misrepresentation before the ARB. The court of appeals reversed, holding that the taxing unit sufficiently placed the issue of fraud before the ARB by showing the alleged enormous discrepancy of values.

SUIT SEEKING TO OVERTURN TAX SALE CLAIMING SHERIFF'S DEED WAS VOID HAD TO BE FILED WITHIN ONE YEAR AFTER THE SHERIFF'S DEED WAS RECORDED.

Haynes v. DOH Oil Co., 647 S.W.3d 793 (Tex. App.-Eastland, 2022, no pet.)

More than a decade after mineral property was sold at a property tax foreclosure sale, the former owner filed suit to quiet title alleging that the sheriff's deed transferring the property violated the statute of frauds by containing an inadequate property description, thereby rendering the deed void ab initio. The purchaser responded that the suit was barred by the one-year statute of limitations for challenging tax sale deeds. The court of appeals agreed finding the one-year statute applicable and noting that the former owner could have tolled the commencement of the running of limitations by annually paying the taxes assessed against the property.

TRUE OWNERS OF PROPERTY ARE RESPONSIBLE FOR PAYMENT OF TAXES EVEN IF THEIR NAMES ARE NOT LISTED ON THE APPRAISAL ROLL OR TAX ROLL; WHEN ISSUES AS TO OWNERSHIP ARE RAISED, THE PRESUMPTION AS TO THE ACCURACY OF THE DELINQUENT TAX ROLL IS LOST AND THE TAXING UNITS ARE REQUIRED TO PROVE WHO THE TRUE OWNERS ARE.

Getosa, Inc. v. City of El Paso, 642 S.W.3d 941 (Tex. App.—El Paso 2022, pet. denied)

Taxing units sued a corporation to collect delinquent taxes. The appraisal district and taxing units addressed all notices and tax bills to an entity owned by the same individuals which had been dissolved years prior to the delinquent years in issue. The "business" relocated from the location of the dissolved entity to a location several blocks away. Errors were made by the property owner in governmental filings listing the address for the new entity at the old location and in one year the owners filed a rendition in the name of the dissolved entity. The owners admitted receiving notices and tax bills and throwing them away believing that they did not apply to their new corporation but only to the non-existent entity. The taxpayers contended that they could not be held legally responsible for taxes that were never listed in the name of their new entity. The court of appeals held that such mistakes do not affect the legality of the tax and that the true owners of the property were responsible for paying the taxes. The only impact the evidence had was to remove the presumption of correctness of the sworn delinquent tax statements and require the taxing units to present a prima facie case as to who the true owners were, which under these facts, the court found they did.