2023-2024 TEXAS PROPERTY TAX CASE LAW IN REVIEW

(Cases and opinions current through February 22, 2024)

TEXAS SUPREME COURT DECISIONS

TAXPAYERS ARE ENTITLED TO RECEIVE TAX EXEMPTIONS FOR SUBSEQUENT TAX YEARS WITHOUT FILING APPLICATIONS IF THEY PREVAIL IN A PREVIOUSLY FILED EXEMPTION LAWSUIT.

The Duncan House Charitable Corp. v. Harris County Appraisal District, 676 S.W.3d 653 (Tex. 2023).

A nonprofit entity ("Nonprofit") sought a charitable exemption for tax year 2017 from the Harris County Appraisal District ("HCAD"). HCAD denied the exemption, and the denial was upheld by the Harris County Appraisal Review Board ("ARB"). The Nonprofit timely appealed the decision to district court. In 2018, the Nonprofit amended its lawsuit to add the 2018 tax year to its prior year claim, but it had not filed an exemption application for 2018 and did not file a protest with the ARB. HCAD filed a Plea to the Jurisdiction asserting that the Nonprofit had failed to exhaust its administrative remedies. The Court of Appeals agreed and dismissed the Nonprofit's claim for tax year 2018. The Texas Supreme Court reversed the Court of Appeals ruling, stating that charitable exemptions are not required to be refiled annually once granted. It held that the Nonprofit would be entitled to receive an exemption for 2018 if the Nonprofit were to prevail at trial on its 2017 claim. If the taxpayer was to lose its 2017 lawsuit, the 2018 exemption would also be denied because of the Nonprofit's failure to file a 2018 application.

TAXING UNITS CANNOT HIRE ATTORNEYS ON A CONTINGENT-FEE BASIS TO FIND AND RECOVER OMITTED PROPERTY TAXES.

Pecos County Appraisal District v. Iraan-Sheffield Independent School District, 672 S.W.3d 401(Tex.2023)

A school district retained an attorney on a contingent-fee basis to find and recover property taxes that were allegedly missed or omitted due to tax fraud. 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

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been fraudulently or erroneously omitted. The appraisal review board denied the challenge and the school district appealed to district court, naming both the appraisal district and the taxpayer as defendants.

The taxpayer filed a motion to show authority, claiming that the school district attorney was not authorized to engage in contingent-fee agreements to recover missing or omitted property taxes. The district court granted the motion and dismissed the case. The school district appealed. The appellate court reversed holding that contingency-fee agreements are permissible under §6.30(c) of the Texas Tax Code (which allows attorneys to recover 20 percent of contingent-fees in suits "to enforce the collection of delinquent taxes"). The appraisal district and taxpayer appealed. The Supreme Court held that allegedly missed or omitted property taxes are not delinquent taxes because they have not yet been assessed. Thus, §6.30(c) does not apply to actions seeking to recover such taxes. The Supreme Court reversed and remanded the case back to the district court with instructions to allow the school district to revise its contract with the attorney to provide for a non-contingent fee or to find a new attorney willing to undertake the case on a non-contingent fee basis.

TEXAS COURTS OF APPEALS DECISIONS

TAXING UNITS HAVE AUTHORITY TO SEIZE PROPERTY BY TAX WARRANT EVEN IF TAXES WERE NEVER ASSESSED AGAINST THE CORRECT OWNER; PROPERTY OWNERS HAVE RESPONSIBILITY TO ENSURE THAT APPRAISAL DISTRICTS CORRECTLY LIST OWNERSHIP INFORMATION.

ATI Jet Sales, LLC, v. City of El Paso, 677 S.W.3d 180 (Tex. App.—El Paso 2023, no pet.)

An appraisal district included several planes on its appraisal roll after discovering that their situs was in its county. The planes were owned by several related companies but were erroneously placed on the appraisal roll in the name of only one owner. The named owner disputed the assessment of the planes, but the appraisal review board determined that the appraisal records were correct. No tax payments were made, and several taxing units filed suits to collect the resulting delinquent taxes. The owner listed on the appraisal roll and one related entity (the true owner of one of the planes at issue) were named as defendants. Thereafter, the taxing units obtained a tax warrant and seized the airplane owned by the related entity (which was not listed as owner on the appraisal roll). The taxing units subsequently returned the plane and moved to nonsuit the true owner from the delinquent tax suit.

Several months later, the true owner filed suit against the taxing units alleging unlawful taking because it did not owe any delinquent taxes. The trial court granted a plea to the jurisdiction and a motion for summary judgment in favor of the taxing units, and the true owner appealed. The court of appeals affirmed, holding that no unlawful taking had occurred because the true owner had title to the plane and was not relieved of tax liability – notwithstanding that its name had been left off the appraisal roll. The court implied that the true owner was responsible for ensuring that the appraisal district correctly named it as the property owner. As a result, the mere existence of delinquent taxes on the plane

gave the taxing units authority to seize it, regardless of the inaccuracy on the appraisal roll.

APPLICATION REQUIREMENTS FOR RELIGIOUS EXEMPTIONS DO NOT VIOLATE THE FREE EXERCISE CLAUSE.

Children of the Kingdom v. Central Appraisal District of Taylor County., 674 S.W.3d 407 (Tex. App.—Eastland 2023, pet. denied)

An appraisal district filed a suit to collect delinquent taxes against a church. The trial court entered a no-answer default judgment in favor of the appraisal district. The taxpayer appealed, alleging that the assessments on the property violated the Free Exercise Clause of the First Amendment to the United States Constitution (which prohibits the government from interfering with citizens' right to practice their religion). They asserted that applying for tax exemptions was against their religious beliefs. Their beliefs prohibit them from entering into agreements with, or accepting benefits from, the government. The court of appeals affirmed the judgment, holding that the tax assessments did not violate the Free Exercise Clause because all taxpayers seeking exemptions are required to apply requesting one. As such, application requirements are not specifically directed at a religious practice and have only an incidental effect on the taxpayer's religious practices.

DISTRICT COURT LOSES JURISDICTION OVER A TIMELY FILED PROPERTY TAX LAWSUIT IF A TAXPAYER FAILS TO SERVE AN APPRAISAL DISTRICT WITH PROCESS IN A TIMELY MANNER; THE TEXAS SUPREME COURT'S ORDERS ALLOWING TRIAL COURTS TO EXTEND TRIAL DEADLINES DURING COVID DID NOT APPLY BECAUSE THE TAXPAYER NEVER REQUESTED AN EXTENSION FROM THE COURT TO SERVE PROCESS.

Sealy IDV Thompson 10, LLC v. Harris County Appraisal District, No. 01-22-00584-CV, 2024 WL 269531 (Tex. App.-Houston [1st Dist.] January 25, 2024, no pet.h.). (mem. op.)

A taxpayer timely filed a lawsuit in district court appealing a decision of an appraisal review board. The taxpayer did not request issuance of service of process on the appraisal district until 11 months later. The appraisal district filed a Motion for Summary Judgment seeking dismissal of the suit on the grounds that the district court did not have jurisdiction to hear the case as the taxpayer failed to exercise diligence in obtaining service. The taxpayer countered by stating that the lapse occurred during the Covid-19 pandemic while counsel and staff were working remotely. The Court ruled that this did not constitute an adequate explanation. Counsel did not provide any explanation for their lack of inquiry as to whether process had been issued and served. The court further ruled that the Texas Supreme Court's Covid-19 protocols, which granted trial courts the ability to extend deadlines, were not applicable because the taxpayer had not sought an extension from the trial court to serve process on the appraisal district.

APPRAISAL DISTRICT IS NOT LIMITED AT TRIAL TO GROUNDS SPECIFIED BY A CHIEF APPRAISER IN LETTER DENYING OPEN SPACE LAND VALUATION.

Johnson v. Bastrop Central Appraisal District, No. 13-22-00031-CV, 2024 WL 269528 (Tex. App.-Corpus Christi, January 25, 2024, no pet. h.). (mem. op.).

A taxpayer pursued a jury trial after an appraisal district denied his open space land valuation application. He objected at trial to testimony and to a jury instruction as to whether the property met the Tax Code's "intensity of use" requirement because the chief appraiser's letter denying him special valuation only stated the property "was not principally devoted to agricultural use." The Court of Appeals upheld the jury's verdict denying him open space land valuation and disagreed with his contention stating that the appraisal district had "not waived issues not raised [before the appraisal review board] because an appeal of the ARB determination to district court is a trial de novo in which the trial court tries each issue of fact and law afresh."

A COURT ORDER DENYING A PERSON THE RIGHT TO WITHDRAW PROCEEDS FROM A TAX FORECLOSURE SALE IS NOT APPEALABLE UNTIL TWO YEARS AFTER THE DATE OF THE SALE.

Cook v. Harris County, No. 14-23-00581-CV, 2024 WL 45362 (Tex. App.-Houston [14th Dist.] January 4, 2024, no pet.). (mem. op.)

A property was foreclosed for failure to pay property taxes and was sold on January 4, 2022. Excess proceeds from the sale were deposited with the district clerk, and a person filed a motion to withdraw said funds. The motion was denied, and the person filed an appeal. The Court of Appeals dismissed the case as premature because the court's order did not constitute a final judgment. The court explained that the Tax Code allows excess proceeds claims to be filed within two years of the date of sale, and since that period had not yet lapsed, the Court of Appeals did not have jurisdiction to consider the case.

FILING A REQUEST WITH AN APPRAISAL REVIEW BOARD TO REISSUE AN ORDER DETERMINING PROTEST DOES NOT EXTEND THE 60-DAY PERIOD FOR FILING SUIT.

Mansion Partners, Ltd. v. Harris County Appraisal District, No. 01-21-00306-CV, 2023 WL 8938405 (Tex. App.-Houston [1st Dist.] December 28, 2023, no pet. h.). (mem. op.)

A taxpayer protested the valuation of a property before the appraisal review board but failed to appeal the board's decision within the 60-day period mandated by statute. The taxpayer filed a second notice of protest with the appraisal review board asking it to reissue its order so as to restart the 60-day clock. The appraisal review board refused and dismissed the second protest. The taxpayer amended its prior year lawsuit and appealed the order of dismissal. The appraisal district filed a plea to the jurisdiction claiming that the amendment had not been filed within the 60-day window for appeals. The taxpayer responded to the Plea and argued that the second protest extended the appeals period because the appraisal review board "enjoys the reasonably necessary, implied (though not inherent) authority to re-issue an Order Determining Protest…" and that that authority "follows from its general power to adjudicate property tax cases and mirrors or is somewhat akin to its authority to entertain a late-filed protest." The appellate court disagreed, ruling that "to allow a taxpayer to make what is essentially an out-of-time

appeal is not a power necessarily implied in order to carry out the ARB's power under the Tax Code to determine appraisal value protests."

CLAIMS OF INCORRECT VALUATION MAY NOT BE RAISED AS A DEFENSE IN A DELINQUENT TAX CASE.

Rodriguez v. City of El Paso, No. 08-23-00004-CV, 2023 WL 6319337 (Tex. App.-El Paso, September 28, 2023, no pet.). (mem. op.)

A city sued a taxpayer to collect delinquent taxes owed. The taxpayer asserted as a defense that the property was worthless during those years, so no taxes were owed. The appellate court upheld a delinquent tax judgment determining that valuation is a matter that should have been raised in a timely manner with an appraisal review board, and a district court has no jurisdiction to consider such a defense when a taxpayer has failed to properly exhaust remedies.

A TAX LIEN LOAN IS BINDING ON JOINTLY HELD PROPERTY IF ONE OF THE OWNERS EXECUTES LOAN DOCUMENTS

Runels v. Tax Loans USA, Ltd., No. 07-22-00130-CV, 2023 WL 5488438 (Tex. App.-Amarillo, August 24, 2023, pet. filed). (mem. op.)

A property owner died intestate leaving real property to his children. Delinquent taxes accrued thereafter, and one of his children executed documents for a tax lien loan to pay the taxes. After payments on the loan were not made, the lender sued all the children to foreclose title to the property. The lender sued all the children. One of the children who had not executed the loan documents objected, arguing that for the lien to have been effective all of the heirs needed to sign the loan documents. The appellate court disagreed, ruling that the tax lien statute states "a property owner may authorize…It does not say "the property owners," "all property owners," "the property owner or owners," "the class or group of property owners," "every property owner, or the like. Instead, it says, "a property owner." The common meaning of "a" followed by a noun denotates singularity, that is, one. We see no ambiguity in the language."

DEADLINES TO CHALLENGE A TAX SALE DO NOT APPLY IF A DUE PROCESS VIOLATION HAS OCCURRED.

Thompson v. Landry, No. 01-21-00294-CV, 2023 WL 4770126 (Tex. App.—Houston [1st Dist.] July 27, 2023, pet. filed) (mem. op.)

Six dwellings located at one address were sold in a tax sale. Service of notice for the delinquent tax suit was conducted by posting on the county's courtroom door because the taxing units claimed they could not locate the owners after a diligent inquiry. A taxpayer living in one of the dwellings was not included as a defendant in the proceeding, even though the dwelling was designated as her homestead in the appraisal district records. Years later, the taxpayer challenged the validity of the tax sale, claiming that her due process rights had been violated because she had not been served with notice of the proceeding. Tax office records showed the taxpayer was the last individual to pay property

taxes on the dwelling before the tax sale. On appeal, the court held that a question of fact existed as to whether the taxpayer's due process rights had been violated. The court further held that the statutory deadlines for challenging a tax sale would not apply if a due process violation had in fact occurred.

AN ASSUMED NAME CERTIFICATE IS SUFFICIENT TO ESTABLISH TAX LIABILITY WHEN CERTIFIED TAX STATEMENTS LIST A TAXPAYER'S ASSUMED NAME AS OWNER.

Tai Texas Business, LLC v. Dallas County, No. 05-22-00586-CV, 2023 WL 4446288 (Tex. App.—Dallas July 11, 2023, no pet.) (mem. op.)

Several taxing units sued a taxpayer to recover delinquent business personal property taxes. While the lawsuit named the taxpayer's legal entity as defendant, the tax bills and delinquent statements listed the taxpayer's assumed business name as the property owner. At trial, the taxing units presented certified copies of the delinquent tax statements and an assumed name certificate linking the legal entity to its assumed name. Judgment was entered in favor of the taxing units. The taxpayer appealed, claiming that the taxing units failed to establish tax liability because the certified tax statements listed the taxpayer's assumed name and not its legal name. The court of appeals affirmed, holding that the assumed name certificate was sufficient to establish tax liability.

JUDGMENT ON A PROPERTY TAX LOAN MAY NOT BE AWARDED IF A DISCREPANCY EXISTS BETWEEN THE AMOUNT LOANED AND THE TAXES PAID BY THE LOAN; THE LOAN HOLDER MUST PROVE THAT DELINQUENT TAXES REMAINED ON EACH OF THE LIENS USED TO SECURE THE LOAN.

Bronco Asset Management, LLC v. FYP, LLC, No. 13-22-00078-CV, 2023 WL 4355186 (Tex. App.—Corpus Christi–Edinburg July 6, 2023, no pet.) (mem. op.)

A taxpayer obtained a property tax loan from a private company ("company") for the payment of delinquent taxes for multiple years between 2006 and 2017, totaling $309,965.60. Subsequently, the taxpayer defaulted on the loan, and the company filed suit to recover the delinquent taxes it had paid. The company introduced evidence showing the remaining principal balance. It reflected that the loan was secured by tax liens covering 1998 through 2004 and various years between 2006 and 2017. The trial court granted a motion for summary judgment and awarded a total of $376,954.78 to the company based on the remaining principal plus interest and late fees. The taxpayer appealed, claiming that the company's evidence was insufficient to support the judgment. The court of appeals reversed, holding that the evidence presented was insufficient because it did not include certified statements for the liens covering 1998 through 2004 or proof that any delinquent taxes remained on those liens when the contract was executed. Further, it held that the certified tax statements and recorded closing costs for the tax loan reflected a total amount of $298,060.60 – which was $11,905.00 less than the amount advanced to the taxpayer. Because there was no proof that this was a "reasonable closing cost" as required by section 32.06(e) of the Tax Code, the court held that the company had not established that the additional amount was secured by the tax liens.

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

J-W Power Co. v. Henderson County Appraisal District, No. 12-22-00325-CV, 2023 WL 4002733 (Tex. App.—Tyler June 14, 2023, no pet. filed) (mem. op.)

J-W Power Co. v. Frio County Appraisal District, No. 04-21-00564-CV, 2023 WL 3081772 (Tex. App.—San Antonio Apr. 26, 2023, pet. filed)

J-W Power Co. v. Wise County Appraisal District, No. 02-22-00227-CV, 2023 WL 2325507 (Tex. App.—Fort Worth Mar. 2, 2023, pet. filed) (mem. op.)

A taxpayer protested the method of valuation used for its natural gas compressors in several different counties. All of its protests were denied, and it did not exercise any of its rights to appeal the determinations. The taxpayer later filed §25.25 motions to correct, claiming that a recent Supreme Court decision required a different appraisal method to be used. The ARB's denied the motions to correct, and the taxpayer appealed each denial to district court. Each district court entered summary judgment in favor of the appraisal districts. Each appellate court affirmed, holding that the taxpayer was barred from appealing the §25.25 motions because they addressed nearly identical claims to the ones that had been resolved by the original ARB hearings. 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. To date, **nine** appellate courts have ruled against the taxpayer regarding this issue. 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.

TAXPAYERS MUST PROTEST LACK OF NOTICE TO THE APPRAISAL REVIEW BOARD IN ORDER TO RAISE THE ISSUE AS AN AFFIRMATIVE DEFENSE IN A DELINQUENT TAX SUIT.

Nevarez v. City of El Paso, No. 08-22-00061-CV, 2023 WL 3325197 (Tex. App.—El Paso May 9, 2023, no pet.) (mem. op.)

A city sued several taxpayers to collect delinquent property taxes, penalties, and interest for three tracts of land. The taxpayer raised nineteen affirmative defenses, including that they had not received notices of the appraised values, notices of assessment, and notices of delinquency. The city filed both a motion for no-evidence summary judgment and a traditional motion for summary judgment. In the no-evidence summary judgment, the city alleged that the taxpayer "asserted various untenable defenses to the tax suit," but did not elaborate on why each defense was untenable. The trial court granted both motions, and the taxpayers appealed. The court of appeals reversed the granting of the no-evidence summary judgment, holding that the city had failed to specify and address each of the taxpayers' affirmative defenses as required by Texas Rule of Civil Procedure 166(a)(1). However, it affirmed the granting of the city's traditional summary judgment, holding that Tax Code §42.09(a) prohibits taxpayers from raising as affirmative defenses any matter they could have raised with an appraisal review board. The notice issues

raised by the taxpayers were items that could have been pursued with the appraisal review board. The failure to pursue those remedies barred the court from hearing those defenses.

TAXPAYERS MUST PROTEST A LACK OF JURISDICTION TO TAX TO THE APPRAISAL REVIEW BOARD IN ORDER TO RAISE THE ISSUE AS AN AFFIRMATVE DEFENSE IN A DELINQUENT TAX SUIT.

Montgomery County v. Mission Air Support Inc., No. 09-22-00063-CV, 2023 WL 3101508, (Tex. App.—Beaumont Apr. 27, 2023, no pet.) (mem. op.)

A taxpayer purchased two commercial aircraft in early 2017. The aircraft were located within a Texas county prior to and after the purchase but were grounded for maintenance until early 2020. In January of 2021, several taxing units filed suit against the taxpayer to recover delinquent taxes on the aircraft for 2016 and 2017. In its answer, the taxpayer claimed that the taxing units did not have jurisdiction to tax the aircraft under §21.05 of the Texas Tax Code. That section provides that any commercial aircraft that is removed from air transportation for repair, storage, or inspection is not considered to be located in the state for property tax purposes.

The taxpayer also raised the defense that it did not own the aircraft on January 1, 2016, and January 1, 2017, citing §42.09(b)(1) of the Texas Tax Code, which states that a personal liability judgment for delinquent taxes cannot be taken against a party that did not own the property on January 1 of a tax year. The taxing units amended their petition, removing their claims for personal liability and replacing them with *in rem* claims (i.e., the taxing units only sought foreclosure of the aircraft and not personal liability for the taxes.) The amended petition also added delinquencies for tax years 2019 and 2020. The taxing units filed a plea to the jurisdiction as to the taxpayer's defenses, claiming that the court did not have jurisdiction to rule on the defenses because the taxpayer had not exhausted its administrative remedies pertaining to the rights granted under §21.05 and that the non-ownership defense under §42.09(b)(1) may only be raised in delinquent tax suits seeking a personal liability judgment. The trial court denied the plea to the jurisdiction, and the taxing units appealed. The court of appeals reversed holding that the non-ownership defense could not be raised by the taxpayer because the claims for personal liability for the taxes had been deleted. Additionally, it held that the exemption afforded by §21.05 could not be raised because the taxpayer failed to raise the issue before the appraisal review board.

TAXING UNITS MAY VACATE DELINQUENT TAX JUDGMENTS TO ADD NECESSARY PARTIES; PENALTIES AND INTEREST CONTINUE TO ACCRUE IF AN INITIAL JUDGMENT IS SET ASIDE.

Benser v. Dallas County, No. 05-21-00725-CV, 2023 WL 2661255 (Tex. App.—Dallas Mar. 28, 2023, no pet.) (mem. op.)

A taxpayer's property taxes became delinquent. In 2016, several taxing units filed suit to recover delinquent taxes for tax years 1997, 1998, and 2000 through 2015, and obtained a default judgment in 2017. However, in 2020, notwithstanding the default judgment, the

taxing units sought and obtained an "Order for Nonsuit" after realizing they had erroneously sued the wrong parties and failed to include correct addresses for service of process. Prior to that, the taxing units filed a new suit to recover the delinquent taxes in addition to taxes that accrued in subsequent years. Following a bench trial, the taxing units were awarded a judgment for all of the delinquent taxes along with penalties and interest. The taxpayer appealed, arguing that the penalties and interest subsequent to 2016 should have been waived because it did not receive notice of the default judgment in the earlier suit. It claimed that it would have paid the default judgment upon receipt of notice, and therefore no further penalties and interest should have accrued. The appellate court affirmed the judgment holding that the earlier suit was properly revived under Tax Code §33.56, which allows for vacation of judgments in order to add necessary parties and places no time limit on the seeking of an order to vacate a judgment.

TRIAL COURT ORDER CANCELLING SHERIFF'S DEED, VACATING JUDGMENT, AND REINSTATING TAX SALE IS INTERLOCUTORY AND NOT APPEALABLE.

Chen v. County of Wharton, No. 13-22-00500-CV, 2023 WL 2603201 (Tex. App.—Corpus Christi–Edinburg Mar. 23, 2023, no pet.) (mem. op.)

In a tax sale proceeding, a trial court entered an order cancelling a sheriff's deed, vacating a judgment, and reinstating a tax sale cause of action. The purchaser of the property at the tax sale appealed the order. The court of appeals dismissed the appeal for lack of jurisdiction because the trial court's order was not final. Because the order reopened the claims instead of disposing of them, the order was not final and appealable.

A CLAIM UNDER TAX CODE §25.25(c)(2) OF MULTIPLE APPRAISAL IS APPROPRIATE WHEN PARTS OF AN ECONOMIC UNIT ARE SEPERATELY VALUED; COURTS MAY CONSIDER EVIDENCE BEYOND THE FACE OF THE APPRAISAL ROLL IN DETERMINING WHETHER A MULTIPLE APPRAISAL HAS OCCURRED.

Hunt Woodbine Realty Corp. v. Dallas Central Appraisal District, No. 05-22-00182-CV, 2023 WL 2596074 (Tex. App.—Dallas Mar. 22, 2023, no pet.) (mem. op.)

A taxpayer owned parking lots near a hotel and leased them to the hotel owner (a related entity). The taxpayer protested the inclusion of the parking lots on the appraisal roll, alleging that they were doubly assessed under Texas Tax Code §25.25(c)(2). It argued that the hotel and parking lots were valued together as an economic unit, and that the parking lots should not have been separately assessed because their income and utility was considered in the assessment of the hotel. The appraisal review board denied the motion, and the taxpayer appealed. The parties filed cross motions for summary judgment. The trial court ruled in favor of the appraisal district, and the taxpayer appealed. The appellate court reversed the summary judgment, holding that a court may consider evidence beyond an appraisal roll in determining the validity of a challenge claiming multiple appraisals and that a multiple appraisal can occur when parts of an economic unit are valued separately. However, it found that the evidence created a fact issue as to the amount of value of the parking lots that was included within the valuation of the hotel. The court also *sua sponte* questioned whether the hotel owner was a necessary party to the appeal.

COURTS MAY NOT ENTER A SECOND ORDER FOR DISTRIBUTION OF EXCESS PROCEEDS FOR A TAX FORECLOSURE WITHOUT SETTING ASIDE ITS PRIOR ORDER.

Miller v. Jackson County, No. 13-21-00094-CV, 2023 WL 2414904 (Tex. App.—Corpus Christi–Edinburg Mar. 9, 2023, no pet.) (mem. op.)

A property was sold in a tax sale on October 6, 2020. The owner of the property was deceased. Following the tax sale, excess proceeds totaling $145,116 were deposited into the registry of the county court. On November 10, 2020, five heirs of the deceased owner ("heirs") petitioned to withdraw the excess proceeds from the registry of the court, each requesting one fifth of the total amount in the registry. The petition was granted, and an order was signed to distribute the entire amount of excess proceeds to the heirs. On November 20, 2020, before the proceeds were distributed to the heirs, three additional parties ("second claimants") claimed an interest in the property and petitioned for a disbursement for a portion of the excess proceeds. The trial court issued a second distribution order on April 5, 2021, making no mention of its original order to distribute the proceeds. In the second order, the court distributed $25,395 to each of the second claimants, $518 to each of the heirs, and left $65,820.57 in the registry of the court. The heirs appealed, claiming that the trial court did not have jurisdiction to issue the second distribution order. The court of appeals voided the second distribution order, holding that it was not valid because the first order had not been set aside.

PROPERTY TAX PAYMENTS MADE BY A NON-OWNER WITH APPARENT AUTHORITY WERE NOT MADE ERRONEOUSLY.

Sundial Owner's Association, Inc. v. Nueces County, No. 13-21-00069-CV, 2023 WL 2414898 (Tex. App.—Corpus Christi–Edinburg Mar. 9, 2023, pet. denied) (mem. op.)

Different corporations managed and operated timeshare units in a condominium over the course of a long period of time. Their responsibilities included collecting each timeshare owner's portion of property taxes, challenging tax assessments, and paying taxes on behalf of the owners. In 2015, the corporation managing the property at that time was prohibited by the appraisal district from negotiating appraised values because the appraisal district's records continued to list the name of the prior management corporation as owner.

Subsequently, the current management corporation applied for a refund claiming five years of "erroneous" tax payments under §31.11(c) of the Texas Tax Code, which allows taxpayers to submit a refund application within three years of the date of an erroneous payment. The provision allows the governing body of a taxing unit to extend the three-year deadline up to two years if the taxpayer shows good cause. The refund request claimed that the corporation did not have authority to pay the taxes on behalf of the timeshare owners. The taxing units denied the refund request, and the denial was appealed. The trial court granted summary judgment in favor of the taxing units, and the management corporation appealed. The appellate court affirmed, holding that the 2010 and 2011 refund applications were not timely submitted. Further, it held that the tax payments were not erroneous because they were made voluntarily, and the management

corporation had apparent authority to make the payments as the agent of the timeshare unit owners.

COURT SANCTIONS ATTORNEY ENTIRE AMOUNT OF TAX SALE EXCESS PROCEEDS AFTER THE ATTORNEY FILED A PETITION FOR DISBURSEMENT WITHOUT PROPER AUTHORITY.

Vilt v. Midland Central Appraisal District, No. 11-21-00112-CV, 2023 WL 2025862 (Tex. App.—Eastland Feb. 16, 2023, no pet.)

A court-ordered sale of a property to obtain delinquent property taxes resulted in excess proceeds amounting to $21,097.21. Two months later, an attorney filed a motion to release the excess proceeds on behalf of the brother of the deceased owner and the estate of the deceased owner. The next day, the trial court signed an order to release the excess funds, but the appraisal district filed an objection to the motion to withdraw the excess proceeds and the funds were not released. The appraisal district then filed a motion for sanctions. At the hearing for this motion, the daughter of the deceased owner testified that she, nor any of the other members of the owner's estate, had hired the attorney and that the attorney did not have authority to make a request for the excess proceeds. The trial court entered an order requiring the attorney to pay $21,097.21 in sanctions. The attorney filed a written response claiming that the sanction amount was excessive when he could only have received $1,000 for his work under the requirements of Tax Code §34.04(i), and then appealed the order. The court of appeals affirmed holding that sanctions were proper because the attorney acted in bad faith by making false states to induce the court to sign an order releasing the excess proceeds. It held that the sanction amount was appropriate because the trial court had not abused its discretion. Further, it held that the attorney's complaint of excessive sanctions was not preserved for review because it was only presented in his written response, and not addressed to the trial court as a legal argument.

ATTORNEY GENERAL OPINIONS

TAX CODE §6.43(c) DOES NOT AUTHORIZE A COUNTY ATTORNEY TO SERVE AS LEGAL COUNSEL TO THE TAX APPRAISAL DISTRICT.

Tex. Att'y Gen. No. KP-0432 (2023)

The Texas Attorney General released an opinion on whether Tax Code §6.43 permitted county attorneys to serve as legal counsel for local appraisal districts. The provision authorizes county attorneys to provide legal services to appraisal review boards, but the Attorney General clarified that §6.43 does not grant authority to represent a local appraisal district. Therefore, a county attorney must find authority to do so under a different statute.