MCCREARY, VESELKA, BRAGG & ALLEN, P.C.
ATTORNEYS AT LAW
700 Jeffrey Way, Suite 100
Round Rock, Texas 78665

2016 PROPERTY TAX CASES
And Attorney General's Opinions

Last updated: March 1, 2017

Cases

Flores v. Grayson Central Appraisal District
2016 WL 7384161 (Tex. App. – Dallas, December 21, 2016, no pet. hist.) (not reported)

Issues: Burden of proof; opinion testimony

In 2014, the appraisal district appraised Flores's house at $58,000, and he challenged that value, first in a protest then in an appeal to district court. At trial, the district's appraiser explained how the district had determined its value. Flores stated his opinion of "around $37,000." He tried to present a market analysis that he had done, but the judge stopped him because he had not provided his information in advance in response to the district's discovery. The trial court then entered a directed verdict and a judgment for the district. Flores appealed.

On appeal, Flores argued that the trial court should have placed the burden of proof on the district. The court of appeals explained that the burden had been properly placed on Flores and that he had completely failed to meet it. A property owner may generally testify to his opinion about the value of his property, even if he has no formal training as an appraiser. Like an expert, however, a property owner must support his opinion with some factual basis. Flores could not do that because he had not disclosed his market analysis before the trial. His unsupported opinion had no value as evidence. The court of appeals affirmed the trial court's judgment for the district.

Cypress Creek Fayridge, L.P. v. Harris County Appraisal District
2016 WL 7164032 (Tex. App. – Houston [1st Dist.], December 8, 2016, no pet.) (not reported)

Issues: Burden of proof; income-approach appraisal

Cypress Creek challenged the appraisal district's 2013 appraisal of its low-income apartment complex. The complex was only partially complete and unoccupied on January 1, 2012. By January 1, 2013, it was completed and about two-thirds occupied. The district used the income approach to determine a 2013 value of about $5 million. At trial, Cypress Creek presented the testimony of a real estate broker who said that

because the complex had not produced any net income in 2012, its 2013 value should be the same as its 2012 value, approximately $2.2 million. The district presented the testimony of one of its staff appraisers to support its appraised value. The appraiser explained that he was aware of the complex's actual income for 2012, but he had based his opinion on typical income and expense information from comparable properties. The trial court accepted the district's value, and Cypress Creek appealed.

On appeal, Cypress Creek argued first that the burden of proof had incorrectly been placed on it by the trial court. The court of appeal cited several cases holding that the property owner bears the burden of proof in a property-tax case. In this case, the burden of proof did not really make any difference because the evidence supported the trial court's judgement regardless of which side had the burden.

Cypress Creek next argued that the district's evidence did not support the judgment because the district was required to use the property's actual 2012 income and expense figures under §23.01 of the Tax Code, which requires an appraisal district to consider a property's "individual characteristics" and evidence specific to its value. The court disagreed and explained that the Code does not require a district to rely on any specific type of data over other types. The district may have been required to take the property's actual income and expenses into account, which it did. But it was not required to base its appraisal on those actual figures. That is particularly true in this case because circumstances had changed since from 2012 to 2013. Further, §23.012 contemplates the use of income and expense data from comparable properties. The court of appeals affirmed the trial court's judgment for the district.

United Airlines, Inc. v. Harris County Appraisal District
2016 WL 7108250 (Tex. App. – Houston [14th Dist.], December 6, 2016, no pet. hist.) (to be published)

Issues: Pleadings in appeals

United protested the 2014 appraisal of its aircraft and related property at about $971 million. The ARB reduced the value to about $929 million, but that did not satisfy United, which claimed a value of $404 million. United filed a timely suit to appeal the ARB's order claiming that the appraised value was excessive. About ten months later (long after the deadline for filing suit had passed), United filed an amended petition dropping its claim of excessive valuation and substituting a new claim of unequal valuation. The district filed a plea to the jurisdiction and moved to have the case filed dismissed because: 1) the excessive-value claim had been dropped; and 2) the unequal-value claim had been filed too late. United responded that the first amended petition had been filed by mistake. It filed a second amended petition stating its excessive-value claim and also filed a motion to withdraw its first amended petition. The trial court granted the district's motion and dismissed the case. United appealed.

The court of appeals reversed the trial court and reinstated United's suit. The higher court ruled that in order to invoke the jurisdiction of a trial court, a property owner must

file its petition on time, but its timely petition does not have to state what its claims are. The appraisal district that is sued can use discovery or special exceptions to try find out what the property owner is actually complaining about. In this case, the trial court acquired jurisdiction when United filed its timely original petition and did not lose its jurisdiction when United filed its amended pleadings.

Editor's Comment: This opinion is truly bizarre. Ordinarily, courts address jurisdictional issues with respect to claims, not whole cases. A plaintiff may file a pleading asserting several claims and a defendant may respond with several counterclaims. A court may determine that it has jurisdiction over some of those claims and counterclaims but not others. If a court determines that it has jurisdiction over the claims before it, that does not mean that it will have jurisdiction over claims that may be added later.

Ordinarily, a statute of limitations is not jurisdictional. If a plaintiff files a claim after the limitations period has expired, the court may have jurisdiction, but it will dismiss the case nonetheless if the defendant asks it to do so. This opinion addresses the jurisdictional effects of §42.21 of the Tax Code, but does not address the effects of the statute as an ordinary statute of limitations. Saying that the trial court had jurisdiction over United's claim (claims?) does not necessarily answer the question of whether that claim (claims?) should be dismissed. Is the court of appeals saying that it is fine for a property owner to file a pleading that simply says that the appraisal district did *something* that the property owner doesn't like and that the property owner wants the trial court to do *something* about it?

Parker County Appraisal District v. Bosque Disposal Systems, LLC
506 S.W.3d 665 (Tex. App. – Fort Worth, December 1, 2016, no pet. hist.)

Issues: Appraisal of saltwater disposal wells

The appraisal district, relying on Pritchard & Abbott, appraised several saltwater disposal wells separately from the land above them. Operators transported saltwater from other sites and paid to inject it into the wells. The wells were appraised using the income approach to value. The property owners protested the appraisals and then took their claims to court. The trial court entered summary judgment for the property owners, ruling that the appraisals of the wells were "void as illegal double taxation." The district appealed.

The court of appeals reversed the trial court's judgment and entered summary judgment for the district. The court explained that illegal "double taxation" occurs when some properties are appraised differently than other similar properties without a valid reason in violation of the Texas Constitution's equal-and-uniform-tax clause. That had not occurred in this case. The court went on to explain that the Tax Code's definition of real property includes land, improvements, mines, quarries, minerals in place, and "an estate or interest other than a mortgage or deed of trust." Those various categories of real property may overlap, and it may not always be clear which one or more of those categories includes a particular item. But perfect clarity is not necessary in order for

something to be taxed. The various component parts of real property generally do not have to be appraised or taxed together even if they have the same owner. A component part should not escape taxation altogether merely because an appraisal district miscategorizes it. The property owners failed to show that the district had violated any law by appraising the wells separately from the surface interests. The court also explained that the district was not attempting to appraise intangible disposal permits from the Railroad Commission.

City of Austin v. Travis Central Appraisal District
506 S.W.3d 607 (Tex. App. – Austin, November 10, 2016, no pet.)

Issues: Taxing unit challenges; unequal appraisal claims

The city was concerned about the extremely strict standards that the Tax Code sets out for appraisal districts with respect to unequal-appraisal claims. Property owners with large budgets for lawyers and appraisers are often able to intimidate appraisal districts and get their properties appraised well below their actual market values. In 2015, the city filed a challenge with the ARB complaining about the levels of appraisals for commercial real property and vacant land. At the ARB hearing, representatives of the appraisal district and the city asked the ARB to deny the challenge so that the city could then appeal and take its claims to court. The ARB denied the challenge, and the city appealed. The suit was filed against the appraisal district and thousands of property owners. The city included claims that the unequal-appraisal standards set out in §§41.43(b)(3) and 42.26(a)(3) were unconstitutional. Several property owners filed answers and asked that the case be dismissed. The trial court dismissed it, ruling that: 1) the city lacked standing to challenge the constitutionality of the statute; and 2) the city had not exhausted the administrative remedies available from the ARB. The city appealed the case to the Austin Court of Appeals.

The higher court affirmed the trial court's dismissal. The court ruled that the city lacked standing to challenge appraisal statutes because the appraisal district, not the city, was the entity charged with implementing those laws. The city failed to claim that it had suffered an injury that was "concrete and particularized to the city." The court of appeals also agreed that the city had failed to exhaust the remedies that might have been available from the ARB. Instead of presenting the ARB with any evidence or arguments supporting its claims the city actually asked the ARB to deny its challenge. Because the city never gave the ARB a chance to consider its claims, it could not appeal those claims to the court, and the court never had jurisdiction to consider those claims.

Anheuser-Busch, L.L.C. v. Harris County Tax Assessor-Collector
2016 WL 5920766 (Tex. App. – Houston [1st Dist.], October 11, 2016, no pet. hist.) (to be published)

Issues: Tax bills; delinquency date; immunity from lawsuits

Anheuser-Busch owned seven properties in Harris County. It had appointed an agent to represent it in connection with five of those properties. Anheuser-Busch might have appointed the agent with respect to the other two properties, but the record was not clear. Taxing units assessed total 2012 taxes of about $9 million on the properties. The tax office sent tax bills to the agent with respect to the five properties that the agent was clearly authorized to represent. Tax bills for the other two properties were sent to Anheuser-Busch. The tax office did not send bills for any property to both Anheuser-Busch and the agent. Anheuser-Busch attempted to pay the taxes on January 23, 2013, but its bank did not honor the check. It then paid the taxes with another check on February 21, 2013. The taxing units, however, claimed an additional $631,000 in penalties and interest because the tax payment was delinquent. Anheuser-Busch paid the p&i under protest and sued the tax assessor-collector for a declaratory judgment. It claimed that because tax bills had not been sent to both it and its agent, the delinquency date had been postponed and its February 21 payment was not delinquent. The trial court entered a summary judgment for the TAC, and Anheuser-Busch appealed.

The court of appeals reversed the trial court. The higher court first dealt with the TAC's claim that he was immune from the suit. It reasoned that the TAC was not immune because Anheuser-Busch was seeking declaratory relief and because it had paid the p&i under duress to prevent them from continuing to accrue. With respect to the five properties that were clearly represented by an agent, the court ruled that because the tax office had not sent bills to both the agent and Anheuser-Busch before January 10, 2013, the delinquency date was postponed under §31.04(a) of the Tax Code ("If a tax bill is mailed after January 10, the delinquency date . . . is postponed to the first day of the next month that will provide a period of at least 21 days after the date of mailing for payment of taxes . . . ."). The delinquency date was postponed because the tax office had not strictly complied with §31.01 of the Code and delivered bills to both the property owner and its agent. It didn't matter that Anheuser-Busch had actual knowledge of the taxes before January 10. Anheuser-Busch did not waive its claim to an extended delinquency date by attempting to make a payment before February 1. It did not waive its claim to duplicate tax bills by using an appointment-of-agent form that incorrectly said that duplicate copies were not required by law. Finally, the "voluntary-payment rule" did not bar Anheuser-Busch's claim. It was not seeking to recover the taxes that it paid voluntarily; it was seeking to recover the p&i that it paid under protest. The court of appeals entered its own summary judgment for Anheuser-Busch with respect to the five properties clearly represented by an agent. It sent the case back to the trial court for further proceedings concerning the other two properties.

Vick v. Floresville Independent School District
505 S.W.3d 24 (Tex. App – San Antonio, August 31, 2016, no pet. hist.)

Issues: Immunity from lawsuits

Vick was over sixty-five and had deferred the collection of taxes on his homestead. In 2010, the appraisal district cancelled Vick's homestead exemption, and that had the

effect of allowing the taxing units to sue him for delinquent taxes. Vick responded that the property had never ceased to be his homestead. He filed an affidavit with the court, and again deferred the collection of his taxes. Lawyers for the taxing units then notified the bank that held the mortgage on Vick's home. The bank paid the delinquent taxes and raised Vick's mortgage payments dramatically. The taxing units dismissed their suit. Vick then sued the appraisal district, the taxing units and their lawyers. He asserted that they had committed fraud and various other torts and that they had violated his constitutional rights. The defendants argued that they were immune from the suit, and the trial court dismissed it. Vick appealed.

The court of appeals affirmed the dismissal of the suit. The court explained that although a local government may be sued for certain torts under the Tort Claims Act, it may not be sued in connection with the assessment or collection of taxes. The same immunity that applied to the taxing unit also applied to their lawyers. If a governmental entity sues someone with a particular claim, it waives its immunity as to claims that are connected with or defensive to its own claims. But, Vick did not file counterclaims against the taxing units in their delinquent-tax suit. He waited until they had dismissed that suit, which they had the right to do under Rule 162 of the Texas Rules of Civil Procedure. By the time Vick filed his suit, the taxing units were no longer asserting any related claims against him. Even if the taxing units had been negligent in implementing their tax policies, that would not waive their immunity.

Further, Vick could not sue for a declaratory judgment because he was not suing for an interpretation of a statute or suing to challenge a statute or ordinance; he was suing for money. The Declaratory Judgements Act does not generally waive a governmental entity's immunity from suit. It merely provides a procedural device where immunity is already waived.

Sorrell v. Estate of Carlton
504 S.W.3d 379 (Tex. App. – Houston [14th Dist.], August 11, 2016, no pet. hist.)

Issues: Redemption following tax sale

Real property belonging to Carlton's estate was sold at a tax sale on February 7, 2012 and purchased by Sorrell for $68,000. The sheriff's deed to Sorrell was filed in the deed records on February 29, 2012. That meant that the estate had 180 days, or until August 27, 2012 to redeem the property. Sorrel also paid about $9,400 for taxes and insurance on the property. On July 31, 2012, the estate's lawyer sent Sorrels a letter saying that the estate would redeem the property and tender "the amount of money paid" plus twenty-five percent. On August 21, the estate's lawyer sent Sorrell another letter and included: 1) a check for $85,000; 2) a check for $28, the amount of Sorrell's filing fee; and 3) a proposed redemption deed. The letter said that the estate was tendering "the amount of money paid plus the 25% redemption funds and your filing fees." It asked Sorrell not to cash the check until the deed had been executed. It concluded, "If there are any more claimed expenses, please notify me immediately and such funds will be paid, upon review." Ten days later, Sorrell wrote back saying that the amount was

wrong and that he would not allow the redemption. The estate then sued Sorrell. The trial court ruled that if the estate paid the correct amount, the redemption would be effective. Sorrell appealed.

The court of appeals affirmed the judgment for the estate. The court said that the redemption was effective because the estate had *substantially* complied with the redemption requirements set out in §34.21 of the Tax Code. The statute should be interpreted in favor of the right of redemption. The court conceded that the estate's payment was short by more than $11,000, but said that other factors weighed in the estate's favor. Specifically, the estate's lawyer wrote Sorrell twenty-seven days before the deadline and stated an intent to redeem the property. Six days before the deadline, the estate unconditionally tendered checks for the amounts that it knew about and asked Sorrell to identify any other amounts that might be included in the redemption amount. Sorrell did not respond until after the deadline. The estate was not obligated to try redeeming the property from the tax office because it had no problem finding Sorrell and because there was no disagreement as to the redemption amount. One judge dissented and concluded that under the circumstances, the estate had not even substantially complied with the statute.

National Church Residences of Alief, Texas v. Harris County Appraisal District
2016 WL 4199148 (Tex. App. – Houston [1st Dist.], August 9, 2016, no pet. hist.) (to be published)

Issues: Charitable exemptions

NCR owned an apartment complex and rented apartments to elderly tenants. It applied for an exemption for the complex under §11.18 of the Tax Code on the grounds that it provided permanent housing and related social, health care, and educational facilities for persons who are 62 years of age or older without regard to the residents' ability to pay. NCR sued the appraisal district after the district denied the exemption application. The trial court entered a summary judgment for the district, and NCR appealed.

The court of appeals reversed the trial court's judgment because the district had not conclusively shown that the complex did not qualify for the exemption. NCR required a refundable security deposit of $50 or more from each tenant. The court noted, however that the deposits were fairly small, they could be paid from sources other than a tenant's own income and no one had been denied an apartment because he could not pay the deposit. The court characterized the deposit as "a one-time administrative charge that has little bearing on whether NCR provides housing without regard to the residents' ability to pay." Each tenant paid a portion of his monthly rent based on his income, with the rest being provided by the federal government. But NCR had a policy against evicting tenants unable to pay their share of rent. Instead it would help tenants find governmental or charitable assistance to help them pay.

The court went on to explain that the evidence would not support a summary judgment in favor of NCR. NCR had not shown any examples of providing housing to a tenant

unable to pay his share of the rent. Its apartments were rented for market rental rates, even though some of the money came from the government. Some services were provided to the tenants, but those services were paid for by the tenants themselves or the government, not by NCR. Because the evidence did not support a summary judgment for either party, the court of appeals referred the case back to the trial court for further proceedings.

In re Vitro Asset Corp.
2016 WL 4169129 (5th Cir., August 5, 2016)

Issues: Bankruptcy

Vitro went into a Chapter 11 bankruptcy in 2010. The school billed Vitro for $465,000 in 2012 taxes in October of that year. In April of 2013, the school filed a proof of claim in the bankruptcy court seeking almost $600,000 in taxes, penalties, interests, etc. With the consent of the court, Vitro paid the base taxes. In June, the school amended its proof of claim to include only the base taxes already paid. In November, Vitro proposed a reorganization plan, which was confirmed by the bankruptcy court and became effective on December 19, 2013, but the school did not oppose it or appeal it. The plan called for the school and similar creditors to claim any post-petition interest, reimbursement of attorneys' fees and other costs within thirty days after the effective date. The property dealt with by the plan would be free and clear of any liens. The school did not act within thirty days to claim its penalties. Interest, etc. In February of 2014, the bankruptcy court closed the case. The school later sought to collect the unpaid amounts from Vitro. At Vitro's request, the bankruptcy court reopened the case and enjoined the school from trying to collect the unpaid amounts. The court ruled that the tax lien securing those amounts had been extinguished. The district court affirmed the bankruptcy court's ruling, and the school appealed to the court of appeals.

The higher court affirmed the rulings against the school. The court relied on the principle of res judicata, which bars the litigation of claims that were litigated or that should have been litigated in an earlier proceeding. When the reorganization plan took effect without any objection from the school, the school lost any right to challenge it later. When the school failed to follow the plan, it lost its lien because: 1) the plan was confirmed by the bankruptcy court; 2) the plan dealt with the property subject to the lien; 3) the school participated in the bankruptcy by filing claims; and 4) the plan did not preserve the lien. The school's claims for penalties, interest, etc. were disposed of under the plan, and the school could not reassert those claims later.

Johnson v. Liberty County
2016 WL 4040143 (Tex. App. – Beaumont, July 28, 2016, no pet.) (not reported)

Issues: Bankruptcy; tax sales

The county had a delinquent-tax judgment against Johnson and the tax sale was just days away when Johnson filed for bankruptcy. The bankruptcy triggered the automatic

stay, which prevents creditors from pursuing collections efforts against the debtor outside the bankruptcy proceedings. The county, however, proceeded to have the sheriff sell the property. The property was sold to the county with the deed being recorded on June 5, 2012. In September of 2014, the county sold the property to Zavala and gave him a quitclaim deed. Johnson was still occupying the property, but Zavala told him to vacate. Johnson then sued the county and Zavala claiming that the tax sale was void because it violated the automatic stay. The defendants responded that, at worst, the sale was voidable and that Johnson had waited too long to challenge it and violated the statute of limitations. The trial court allowed a special interlocutory appeal in order for the court of appeals to consider the issue.

The court of appeals ruled that because the tax sale violated the automatic stay, it was totally void. The sheriff's deed completely failed to pass title to the property to the county. That meant that the county had no title that it could have conveyed to Zavala. Because the tax sale and sheriff's deed were completely void, they could be challenged at any time. Johnson's lawsuit was not subject to any statute of limitations. The court of appeals sent the case back to the trial court for further proceedings.

Willie v. Harris County
499 S.W.3d 907 (Tex. App. – Houston [14th Dist.]. July 26, 2016, pet. denied)

Issues: Relief in delinquent-tax suit

Taxing units sued Willie for delinquent taxes together with: penalties; interest; court costs; fees for identifying and locating parties; and fees abstracting fees. Before the trial, Willie paid about $19,000 to cover taxes, penalties and interest. He then claimed that the case was moot and that the trial court had lost jurisdiction over it. The trial court disagreed and proceeded to enter judgment against Willie for about $1,100 in court costs, abstract fees, etc. The court ordered that the property be sold to satisfy the judgment. Willie appealed.

The court of appeals affirmed the trial court's judgment. The court explained that under §33.48 of the Tax Code, the taxing units were entitled to recover court costs and related amounts. They were still seeking those costs and had not made any agreement to waive them in exchange for Willie's payment of taxes. The costs remained a subject of live controversy, and the case was not moot. The taxing units were the prevailing parties when the trial court ruled for them on the question of costs. As successful prevailing parties, they were entitled to recover their costs and related amounts under Rule 131 of the Texas Rules of Civil Procedure as well as under §33.48.

Wineinger v. Z Bar Ranch, LP
2016 WL 3971560 (Tex. App. – Dallas, July 22, 2016, no pet.) (not reported)

Issues: Tax sales; immunity from suit

The TAC resold to Z Bar property that it had acquired in a tax sale. A month later, the TAC sold the same property to Walker. Believing that it owned the property, Z Bar spent several months adding improvements to it. Walker then contacted Z Bar and claimed that he was the rightful owner. Z Bar sued the TAC and Walker seeking a declaratory judgment that it was the rightful owner and asserting alternatively, that if it were not the rightful owner, it was entitled to compensation for the price it paid and for the improvements that it had added. Walker also sued the TAC. The TAC claimed that he was immune from the suit and asked the trial court to dismiss it. When the trial court refuses, the TAC appealed.

The court of appeals also refused to dismiss the case. The court explained that a public official can be sued for a declaratory judgment if the official is claimed to have acted without any legal authority or to have failed to perform a purely ministerial (nondiscretionary) act. Z Bar's primary claim was that the TAC had a nondiscretionary duty to provide Z Bar with a deed sufficient to convey the property and that he failed to do so. Its alternative claim was that the TAC sold the same property to two buyers, an action for which he had no legal authority. The TAC was not immune from those claims, even if they might lead to Z Bar collecting money from the taxing units. The fact that Z Bar had also plead for its attorneys' fees did not convert the suit into a suit for money damages or restore the TAC's immunity.

2012 Properties, LLC v. Garland Independent School District
2016 WL 3902585 (Tex. App. – Dallas, July 14, 2016, no pet. hist.) (not reported)

Issues: Excess proceeds following tax sale

Taxing units sued three siblings for delinquent 2010-2012 taxes. The suit led to a tax sale at which 2012 Properties purchased the property. The sale, in October of 2014, resulted in approximately $28,000 in excess proceeds. 2012 Properties then paid the 2013 and 2014 taxes on the property. Two of the siblings filed claims for the excess proceeds. 2012 Properties also filed a claim. Its theory was that the taxing units could have claimed excess proceeds to pay the 2013-2014 taxes under §34.04(c) of the Tax Code and that when it paid those taxes, it acquired the right to claim excess proceeds as reimbursement. The trial court ordered two-thirds of the excess proceeds released to the two siblings, but denied 2012 Properties's request. 2012 Properties attempted to appeal the denial of its request.

The court of appeals determined that 2012 Properties could not appeal. The court explained the general rule that only a trial court's final judgment can be appealed. 2012 Properties was not attempting to appeal a post-judgment order, not the final judgment itself. Section 34.04(e) allows an appeal from a trial court's order *releasing* excess proceeds but not from an order *denying the release* of excess proceeds. Thus, the court of appeals had no jurisdiction to consider an appeal of the trial court's refusal to release excess proceeds to 2012 Properties.

Wade v. Harris County

2016 WL 3662264 (Tex. App. – Houston [1st Dist.], July 7, 2016, no pet. hist.) (not reported)

Issues: Notice of appeal

Taxing units sued Wade for delinquent taxes. On July 16, 2014, the case was tried by a master who recommended a judgment for the taxing units. On July 26, Wade filed a notice stating that he intended to appeal the master's "final judgment" dated July 16 and mentioning the court of appeals. The trial court considered the case and entered a judgment against Wade on August 1. Wade filed a motion for new trial, which meant that he had ninety days from the date of the judgment in which to file a notice of appeal if he wanted to take the case to the court of appeals. He filed an affidavit of inability to pay court costs, but did not file a notice of appeal until well after the ninety days had passed.

The court of appeals dismissed the appeal due to Wade's failure to file a timely notice of appeal. Wade argued that his July 26 notice was sufficient, but the court disagreed. The July 26 notice referred to the master's "final judgment," but it could only have meant the master's recommendation. Although it referred to the court of appeals, it could not have invoked that court's jurisdiction because that court had no jurisdiction to consider the master's recommendation. Wade's affidavit of inability to pay court costs did not serve as a notice of appeal.

In re Estate of King
2016 WL 3625663 (Tex. App. – San Antonio, July 6, 2016, no pet.) (not reported)

Issues: Payment of taxes pending appeal

King's estate owned real property on which the city demolished improvements in 2006. In 2009, the estate filed a motion with the ARB under §25.25(c) of the Tax Code alleging that the 2006-2009 appraisal rolls included property that did not exist in the form or at the location described in the rolls. The ARB denied the motion, and the estate filed an appeal in the probate court. The estate never paid any taxes on the property for the years in question, nor did it file an oath of inability to pay. The probate court dismissed the case, and the estate appealed.

The court of appeals affirmed the dismissal of the case. The court of appeals explained that the estate was required to pay at least the taxes on the portion of the property's appraised value that was not in dispute. The estate claimed that it was disputing the entire value of the property, but that was clearly not the case. It did not deny owing some taxes. By failing to make any payment or file an oath of inability to pay, the estate forfeited its right to contest the appraisals of its property. The court of appeals did not comment on the estate having appealed to the probate court.

Mandel v. Lewisville Independent School District
499 S.W.3d 65 (Tex. App. – Fort Worth, June 30, 2016, no pet. hist.)

Issues: Service of process in delinquent tax case

In July of 2011, the school sued the Mandels for delinquent 2010 taxes. The suit papers were personally served on them, but they did not file an answer. At some point, a lienholder paid the 2010 taxes on the property. In June of 2012, the school amended its petition to drop its claim for 2010 taxes and add a claim for delinquent 2011 taxes. Soon thereafter, the other taxing units filed their interventions. The trial occurred in November, and the trial court entered a default judgment for the taxing units. The clerk mailed a notice of the judgment to the Mandels. A few months later, the sheriff mailed them a notice of the upcoming sale of the property. The Mandels appealed and lost. But they also filed a new lawsuit called a bill of review. They claimed that the earlier default judgment was void because they had not been served with the school's amended petition or the interventions from the other taxing units. The trial court resolved the bill of review case with a summary judgment for the taxing units, and the Mandels appealed.

The court of appeals affirmed the summary judgment. The court explained that there is conflict between Rule 21a and Rule 117a of the Texas Rules of Civil Procedure. Rule 21a would have required the school and the other taxing units to serve their pleadings on the Mandels electronically or by mail, fax, etc. Rule 117a, on the other hand, provides that the original citation in a delinquent-tax case is sufficient to give a taxpayer notice that the taxing unit(s) filing the case may add claims for later years together with penalties and interest and that other taxing units may intervene. Rule 21a is a general rule that applies to all types of civil suite, but Rule 117a applies specifically to delinquent-tax suits. When there is a conflict between two rules, courts follow the more specific of them. Under Rule 117a, the taxing units did not need to serve the Mandels with amended pleadings or interventions. Further, Rule 117a does not violate a taxpayer's due-process rights. The information provided to a taxpayer in a Rule 117a citation is sufficient to tell what the taxpayer what he needs to know and to give him an opportunity to contest the taxing units' claims.

Duke Realty Limited Partnership v. Harris County Appraisal District
2016 WL 3574666 (Tex. App. – Houston [14th Dist.], June 30, 2016, no pet.) (not reported)

Issues: Unequal appraisal

In 2013, Duke bought a sixty-two acre tract of vacant commercial land for $14 million. It protested the appraisal district's 2013 and 2014 appraisals of the land claiming that the values were unequal compared to the appraised values of comparable properties. The ARB approved values of $8.9 million for 2013 and $13.8 million for 2014. Not satisfied with the ARB's orders, Duke took its claims to court. In a non-jury trial, Duke relied on the evidence of an appraiser named Kendall. Kendall compared Duke's land with similarly sized tracts from across a large section of the county. He concluded that the equalized value of Duke's property should be about $4.8 million in 2013 and $4 million in 2014. The district relied on an appraiser named Ballou who focused on tracts smaller

than the subject but closer to it. He explained that the equalized value of Duke's land should be about $12.3 million for 2013 and $12.7 million for 2014. The judge found Ballou's testimony more persuasive and entered a take-nothing judgment that made no changes to the ARB's values. Duke appealed.

On appeal, a party may claim that a trial court's judgment is wrong because the evidence supporting it is legally insufficient, factually insufficient or both. Duke claimed only that the evidence was legally insufficient. That meant that Duke had to show the court of appeals that there was a complete absence of evidence to support a fact vital to the judgment or that the evidence conclusively established the opposite of that vital fact. The court of appeals explained that Ballou's testimony was sufficient to support the trial court's judgment and that Kendall's testimony did not compel a different result. The court noted that Duke had never challenged Ballou's qualifications as an expert. The trial judge was free to favor Ballou's testimony over that of Kendall. The court of appeals affirmed the trial court's judgment.

La Flecha Holdings, Inc. v. Find A Home, LLC
2016 WL 3458161 (Tex. App. Houston [14th Dist.], June 23, 2016, no pet.) (not reported)

Issues: Redemption following tax sale

Taxing units sued La Flecha when it failed to pay taxes on its property. The court ordered the property sold, and the sheriff sold it to FAH. A few months later, La Flecha notified FAH that it wanted to redeem the property and asked FAH to itemize the amounts owed. FAH's itemization included $4,200 in taxes paid on the property. La Flecha then went to the tax office, reported that it could not agree with FAH as to the correct redemption amount, and paid the tax office an amount that did not include the $4,200. FAH sued La Flecha and sought a declaratory judgment to the effect that La Flecha's attempted redemption was ineffective. FAH filed a motion for summary judgment. Its evidence included an affidavit from its bookkeeper saying that FAH had paid the $4,200 in taxes. Attached to her affidavit was a copy of a check from SWE Homes showing payment of the taxes. The trial court entered summary judgment for FAH, and La Flecha appealed.

The court of appeals explained that under §34.21 of the Tax Code, when a foreclosed property is redeemed, the purchaser is entitled to recover "the amount paid by the purchaser as taxes." But FAH's summary judgment evidence did not establish that it was FAH that had paid the $4,200 in taxes. The copy of the check from SWE Homes contradicted the bookkeeper's affidavit. For that reason the trial court should not have given Fah a summary judgment. The court of appeals reversed the trial court's summary judgment and dent the case back to the lower court for further proceedings.

Heritage Operating, L.P. v. Barber Hill Independent School District
496 S.W.3d 318 (Tex. App. – Houston [14th. Dist.], June16, 2016, no pet.)

Issues: Evidence in delinquent-tax suit; exhaustion of remedies

The appraisal district discovered that inventory owned by Heritage had been omitted from the 2004 appraisal roll. Sometime in late 2006 or early 2007, the district appraised the inventory and added it to the 2004 roll. Taxing units assessed their 2004 taxes but Heritage did not pay them. The taxing units sent Heritage a delinquent-tax notice in May of 2007, but Heritage did nothing. Sometime after that, the taxing units sued Heritage. Heritage responded that the 2004 taxes were invalid because the appraisal district acted too late to pick up the omitted property. Under §25.21 of the Tax Code, the district had until the end of 2006 to pick up bpp omitted from the 2004 appraisal roll. Heritage also claimed that it was not notified of the appraisal or the taxes until it received the May, 2007 notice. The taxing units argued that Heritage could not raise those claims in response to a delinquent-tax suit. They moved for a summary judgment and filed certified copies of their delinquent-tax records as evidence. The trial court granted their motion, and Heritage appealed.

The court of appeals reversed the trial court's summary judgment. The higher court acknowledged that ordinarily appraisal related claims may not be raised in a delinquent-tax case. The court thought, however, that if the law did not allow Heritage to raise its claim of an untimely back-appraisal in a protest before the ARB, then it should be allowed to raise that claim in the suit. Heritage claimed that it could not have protested the back-appraisal of its property because under §25.23(d) such a protest had to be filed within thirty days after the district delivered notice of the back appraisal. It also claimed that it could not protest the district's failure to send a notice of the back appraisal because the deadline for protesting was the day before the taxes became delinquent. In May of 2007, when Heritage admitted first receiving notice of the taxes, the taxing units were already claiming that the taxes were delinquent. (A 2007 amendment to §41.44(c-3) that extends the deadline for filing a lack-of-notice protest if tax bills are not delivered did not take effect in time to help Heritage.) The court reasoned that if Heritage was right, it could not have raised its claims in a protest.

The court next addressed whether Heritage had established that the May, 2007 delinquent–tax notice was the first notice delivered to it. Heritage had filed an affidavit saying that the notice was the first that it received. Additionally, its lawyer filed an affidavit sating that he had filed a public-information request with the district and the district had not provided him with any records showing that an earlier notice had been sent. The taxing units filed an affidavit from the chief appraiser saying that Capital Appraisal Group had sent an earlier notice of the back-appraisal, but the affidavit was improper because it was not based on the chief appraiser's personal knowledge. That was enough to satisfy the court of appeals with respect to Heritage's lack-of-notice claim.

The court reached the conclusion Heritage could raise its claim about the timeliness of the back-appraisal in court because it could not have raised the claim through a protest. The summary-judgment evidence was not sufficient to conclusively confirm or refute that claim. The court of appeals sent the case back to the trial court for further consideration of that question.

Editor's Comment: The court of appeals issued its first opinion in this case in mid-2015. The court later reconsidered its opinion and issued this new one. The new opinion not only changes the outcome of the case, it changes the crucial facts of the case.
The main flaw in the new opinion is that it consistently allows Heritage to assert two contradictory claims and prevail on each. For example, Heritage argued that the district *had* delivered a notice of the back-appraisal and that the thirty-day period for filing a protest based on that notice had passed. But Heritage also argued that the district *had not* delivered any notice of the back-appraisal and, thus, that the period for filing a protest had never passed. The court let Heritage have it both ways. Similarly, Heritage argued that the taxing units *had* delivered tax bills that would establish the delinquency date under §31.04(a-1). But it also argued that the taxing units *had not* delivered the tax bills, and, thus that there was no delinquency date. The court should have given more thought to the logical consequences of Heritage's contradictory claims.

Tomball Independent School District v. Mustang Machinery Co. Ltd.
497 S.W.3d 131 (Tex. App. __ Houston [1st Dist.], June 16, 2016, no pet.)

Issues: Appraisal roll corrections; penalties and interest on delinquent taxes

Mustang was a heavy equipment dealer. In 2012, the appraisal district divided Mustang's personal property into a dealer inventory account and a regular bpp account. Mustang timely paid the taxes on the bpp account but not on the inventory account. At some later time, Mustang filed a motion to correct the appraisal roll by transferring some property from the bpp account to the inventory account. (The opinion does not state the value of this property but notes that the school taxes on it were approximately $300,000.) Mustang also requested that the appraised value of the transferred property be raised by $1.7 million. The district agreed to the motion and the requested corrections were made. The school refunded $300,000 in taxes on the bpp account and billed Mustang for an extra $300,000 in taxes on the inventory account plus the additional taxes on the extra $1.7 million in value. The school included penalties and interest on the bill. When Mustang did not pay the penalties and interest, the school filed suit. The trial court entered a summary judgment that Mustang was not liable for the penalties and interest, and the school appealed.

The court of appeals explained that a motion for the correction of an appraisal roll under §25.25 of the Tax Code does not change the delinquency date for the taxes involved. The property owner must pay the taxes on the undisputed portion of the value of the property before they become delinquent. Under §§25.26 and 42.42, if additional taxes are due after the motion is resolved, the property owner will owe penalties and interest on those taxes. But the statutes refer to taxes on *the property,* not on a particular account. Mustang timely paid $300,000 in taxes on its property. The transfer of that property from one account to another did not trigger penalties and interest. The court, however, reached a different conclusion about the taxes on the extra $1.7 million of value. Those taxes constituted an "additional amount due" after Mustang's original timely payment. They triggered penalties and interest dating back to the original delinquency date. The court of appeals affirmed the trial court's summary judgment as

to penalties and interest on the original $300,000 in taxes but reversed as to the penalties and interest on the additional taxes.

Lower Colorado River Authority v. Burnet Central Appraisal District
497 S.W.3d 117 (Tex. App. – Austin, June 7, 2016, no pet. hist.)

Issues: Public property exemption

The LCRA owned the sixty-three acre Sunset Point RV Park on Lake LBJ and leased it to a private for-profit business. The lease called for the business to operate the park "for the development and operation of a public commercial recreation facility and public park." The appraisal district denied a public-property exemption for the park on the grounds that it was not used for public purposes to the extent required by the Texas Constitution. Article VIII, §2 allows an exemption for public property "used for public purposes." Article XI, §9 exempts public property "used exclusively for public purposes." After an unsuccessful protest, the LCRA filed suit. The trial court entered summary judgment for the appraisal district, and the LCRA appealed.

The court of appeals reversed the trial court's judgment. The court of appeals reasoned that the park was used to provide park and recreational facilities for the public, and it would satisfy the public-purpose requirement if it were operated by the LCRA itself. The fact that the LCRA leased the park to a private business to be operated as a public facility did not disqualify it from receiving the exemption. The court acknowledged that if the park were leased for purposes that did not serve the public, it would not qualify for the exemption.

City of Aledo v. Brennan
2016 WL 3157354 (Tex. App. – Fort Worth, June 2, 2016, no pet. hist.) (not reported)

Issues: Omitted property; class actions

This is a case that was considered by the court of appeals previously and referred back to the trial court for further proceedings. It concerns several properties that were appraised by the appraisal district in the years 2003-3007. The district's appraisal records and appraisal rolls, however, failed to note that the properties were taxable in a city. The two cities involved did not assess taxes on the properties during those years. The district discovered the error in 2008 and attempted to add the properties to the cities' tax rolls as omitted property. The court of appeals ruled that the omitted-property law, §25.21 of the Tax Code did not apply where property *was* included on an appraisal roll but the name of a taxing unit was not. The higher court also ruled that the property owner's did not have to follow the Tax Code's procedures because those procedures did not apply to these circumstances.

Having received the case back from the court of appeals, the trial court made some additional rulings. It refused to allow the property owners to proceed with a class action suit. The cities filed motions for summary judgment targeting some of the property

owners' reasons for claiming that the cities' taxes were invalid. The trial court denied those motions. Both the property owners and the cities than took the case back to the court of appeals.

The higher court affirmed the lower court's decisions. The trial court did not have to allow the case to proceed as a class action. The court of appeals focused primarily on the voluntary-payment rule, the rule that a taxpayer who pays a tax voluntarily may not then contest the tax. The voluntary-payment rule would have to be analyzed separately for each property owner involved. The trial court would have to consider whether each owner had paid the disputed taxes under protest as allowed by §31.115 as well as each owner's individual circumstances. That would mean that individual issues applicable to particular owners could predominate over the issues that all of the owners had in common.

The cities were not entitled to summary judgment on the question of the validity of the taxes. They argued that the district was required to add the properties to the cities' appraisal rolls even though the Tax Code did not expressly say so. The court of appeals disagreed and said that the Code was controlling. The cities should have followed the Code's procedures and filed timely challenges when the appraisal rolls did not show the properties to be taxable by the cities. Further the cities were not entitled to summary judgments on the property owners' claims of equal-protection violations because the cities had not presented any summary judgment evidence on that issue. They were not entitled to summary judgments on the owners' due-process claims because the notices that the district sent to the property owners erroneously referred them to the ARB and the protest procedures even though those procedures did not apply.

Morath v. Texas Taxpayer and Student Fairness Coalition
2016 WL 2853868 (Tex. May 13, 2016)

Issues: Schools; school finance

This is the Texas Supreme Court's new opinion on constitutional issues affecting schools and school finance. A district court in Travis County had ruled that the current system violated several constitutional provisions. The Supreme Court reversed the lower court and upheld the current system against all challenges. The Court was very differential to the legislature and very reluctant to disturb the status quo. It did not endorse or praise the current system; it ruled only that the system meets minimum constitutional requirements.

The Court found no violation of Art. VII, §1 of the Texas Constitution because there was no proof that the legislature had acted arbitrarily or unreasonably with respect to the goal of providing a general diffusion of knowledge in the state. The Constitutional requires financial efficiency, which means that school districts should have substantially equal access to similar revenues per pupil at similar levels of tax effort. Efficiency is required only up to the level of funding necessary to provide a general diffusion of knowledge. The Court reviewed the wide differences between the finances of wealthy

school districts and the finances of poor school districts that caused courts to intervene in the past and concluded that the differences were not that bad today.

The Court also determined that property taxes levied by school districts were not unconstitutional state property taxes because local school districts have an adequate amount of discretion when it comes to setting their tax rates. The fact that higher tax rates may require the approval of a school district's voters does not mean that the district has no discretion.

San Patricio County v. Nueces County
492 S.W.3d 476 (Tex. App. – Corpus Christi-Edinburg, May 12, 2016, no pet. hist.)

Issues: Intergovernmental disputes over boundaries and taxing authority

For years, the boundary between San Patricio County and Nueces County was disputed. The dispute was decided in 2003 by a judgment from court in Refugio County. In 2009, however, San Patricio County sued Nueces County and the Nueces County Appraisal District claiming that they were trying to tax properties that, under the 2003 judgement, were in San Patricio County. The suit was filed in the Refugio County court, but Nueces County and the appraisal district sought to transfer venue to Nueces County. The Refugio County court granted their motion and transferred the case. The Nueces County court entered a summary judgment in favor of the defendants. San Patricio County appealed.

The court of appeals reversed the Nueces County court and ruled that the case should have stayed in Refugio County. The court cited Section 72.009 of the Local Government Code, which states that when one county sues another over a boundary dispute, the case should be filed in a neutral adjoining county. That rule also applies to claims that are related and incidental to a boundary line between the counties. Section 72.009 controls over other venue statutes that might produce a different result. Consequently, San Patricio County's suit was properly filed in neutral Refugio County and should not have been transferred. The court of appeals sent the case back to the trial court with instructions to transfer it back to Refugio County.

Johnson v. Harris County
2016 WL 2744943 (Tex. App. – Houston [1st Dist.], May 10, 2016, no pet.) (not reported)

Issues: Trial record

Taxing units sued Johnson for delinquent taxes. The trial was conducted before a master, but no court reporter's record was made. When Johnson did not seek a de novo hearing, the district court entered judgment against him based on the master's recommendation. Johnson appealed.

On appeal, Johnson argued that he had not owned the property for all the years involved in the suit and that the taxes had been calculated without regard for his

homestead exemption. He also argued that the taxing units had not sent required notices—some of the taxes dated back to the days when taxing units had to send delinquent tax notices every five years. The court of appeals explained that in the absence of a reporter's record, it had to presume that the evidence presented at the trial was sufficient to support the judgment against Johnson. The court affirmed that judgment.

Sebastian Cotton & Grain, Ltd. v. Willacy County Appraisal District
492 S.W.3d 824 (Tex. App. – Corpus Christi – Edinburg, April 28, 2016, no pet. hist.)

Issues: De novo review; changing owner on appraisal roll; attorney's fees on appeal

Sebastian rendered some grain for taxation, and the appraisal district appraised the grain in Sebastian's name. Then Sebastian filed a protest claiming that it did not own the grain and that the grain had been sold to DeBruce. The protest was resolved by a written agreement between Sebastian and the district with the district agreeing to transfer the grain into the name of DeBruce. DeBruce then filed a protest claiming that although it had contracted to buy the grain from Sebastian, the title had not changed as of the January 1 appraisal date—Sebastian still owned the grain. The district responded by transferring the grain back into Sebastian's name, and Sebastian filed another protest. The ARB denied the protest and upheld the district's transfer of the grain back to Sebastian. Sebastian then sued the district. In the trial court, the district argued that fraud on Sebastian's part authorized it to make the transfer. The trial court ruled for the district, and Sebastian appealed.

On appeal, Sebastian argued that because the district had not accused Sebastian of fraud in the ARB hearing, it could not do so in the trial court. The court of appeals disagreed. The higher court explained that an ARB's order is reviewed by trial de novo in a trial court. Section 42.23 of the Tax Code directs the trial court to "try all issues of fact and law raised by the pleadings." The ARB's order is not even admissible as evidence. This de novo review allows a party to make an argument and present evidence in court even if it did not make that argument or present the evidence at the ARB hearing.

The court of appeals next considered whether the district had the authority to transfer the grain back into Sebastian' name under §25.25(b), which allows a chief appraiser to change an appraisal roll at any time to correct a determination of ownership if the change does not "increase the amount of tax liability." The district argued that there was no net increase in tax liability because any increase in Sebastian's taxes was offset by a reduction in DeBruce's taxes. Sebastian argued that the district could not make a change that would increase anybody's tax liability. The court sided with Sebastian and ruled that the district did not have the authority under §25.25(b) to transfer the grain. The court further stated that a property owner such as Sebastian that prevails in an appeal of a §25.25 motion has a right to recover its attorney's fees from the appraisal

district. The court sent the case back to the trial court for a determination of the amount of Sebastian's attorney's fees.

Editor's Comment: There was another approach that might have worked for the district, but the district apparently did not act in time to try it. Earlier court opinions ruled that if property is not on an appraisal roll because of fraud on the part of the property owner, an appraisal district can pick it up as omitted property. *Beck & Masten Pontiac GMC, Inc. v. Harris County Appraisal District*, 830 S.W.2d 291 (Tex. App. – Houston [14th Dist.], 1992, writ denied). Suppose the district had taken the grain off the roll when it discovered that DeBruce was not the owner. It might then have treated the grain as omitted property and added it to the roll under Sebastian's name. That would not have raised any questions about the district's authority under §25.25(b). It appears that the district was not able to act in time to appraise the grain as omitted property for the relevant year. Omitted personal property can only be picked up during the two years following the year in which it was omitted.

Quijano v. Cameron County
2016 WL 1732439 (Tex. App. – Corpus Christi-Edinburg, April 28, 2016, no pet.) (not reported)

Issues: Notice of delinquent-tax trial; evidence of delinquent taxes

In 2013 taxing units sued Quijano for 2005-2011 delinquent taxes in connection with a business he had operated. He filed a pro se answer and included documents showing that his business had ceased operations in late 2009. The trial began on September 16, 2014, but the judge continued it in order to allow time for settlement discussions. Quijano agreed to the continuance. The judge announced that the new trial date would be November 18, 2014. When that day arrived the taxing units' lawyers appeared before the judge, but Quijano did not. The lawyers offered copies of the delinquent tax records for 2005 through 2009. They no longer claimed taxes for years after Quijano's business had ceased operations. The trial court entered judgement for the taxing units, and Quijano appealed.

Quijano claimed that he had somehow been deprived of due process by the continuance of the trial, but the court of appeals explained that he had actual knowledge of the new trial date. He was not deprived of due process when he failed to appear. Quijano also claimed that the taxing units' evidence was not sufficient to support the judgment against him, but the court explained that under the Tax Code, copies of a taxing unit's delinquent tax records are evidence sufficient to support a judgment for the unit.

Wagoner v. Dallas County
2016 WL 1652291 (Tex. App. – Dallas, April 26, 2016, no pet.) (not reported)

Issues: Evidence of delinquent taxes; attorneys ad litem

Wagoner and Wilson were among numerous people sued for delinquent taxes as heirs of a deceased property owner. The heirs were served by posting and an attorney ad litem was appointed to represent them. Wilson, who was incarcerated, filed an answer and sought a bench warrant so that he could appear at the trial. The trial court denied his request. Wagoner didn't file an answer but was apparently included in the attorney ad litem's answer. Neither the attorney ad litem nor any of the defendants appeared at the trial. The taxing units introduced as evidence their delinquent tax records, an affidavit of heirship and a deed. The trial court entered judgement for the taxing units in the amount of $54,000. Wilson and Wagoner appealed pro se.

The court of appeals affirmed the judgment for the taxing units. The court explained that the appellants' briefs did not raise any issues for it to consider but nevertheless made a few comments. The taxing units' evidence was sufficient to support the judgment in their favor. A criminal defendant may sometimes appeal his conviction on the grounds that his lawyer provided ineffective assistance, but that rule does not apply in civil cases. Further, Wilson had failed to provide any information to prove that his appearance at the trial was necessary. Thus, the trial court did not err when it denied his request for a bench warrant.

Haider v. Jefferson County Appraisal District
2016 WL 1468757 (Tex. App. – Beaumont, April 9, 2016, pet. denied) (not reported)

Issues: Situs of pooled minerals; tax payment for appeal

Manion owned a mineral interest in 400 acres of land just outside the city. She pooled 83 of her acres with other land lying inside the city, resulting in a 425 acre unit primarily in the city. The appraisal district determined that, as a result of the pooling, Manion owned minerals with taxable situs in the city. Following unsuccessful protests, Manion sued the district in 2011 and 2012. She did not pay any of the taxes assessed by the city in 2012. The trial court entered summary judgment for the district and ruled that: 1) by not paying city taxes in 2012, Manion had forfeited her right to sue for that year; 2) Manion's claims were barred by the principle of quasi-estoppel; and 3) Manion did own minerals taxable by the city. Manion appealed.

The court of appeals first noted that Manion's lease would be critical to a determination of whether she owned minerals in the city. The lease would reveal whether a cross-conveyance had occurred that would have given Manion a legal interest in minerals located in the city. Without the lease, the evidence did not support the trial court's summary judgment for the district. The court of appeals next addressed the question of quasi-estoppel and concluded that by merely accepting royalties from the pooled unit, Manion had not done anything inconsistent with her position that she did not own minerals in the city. Finally the court explained that Manion was not required to pay any 2012 taxes in order to challenge the district's appraisal because she disputed the district's claim that her property was in the city at all. The court of appeals reversed the trial court's summary judgment on all grounds and sent the case back to the lower court for further proceedings.

Texas Workforce Commission v. Harris County Appraisal District
488 S.W.3d 843 (Tex. App. – Houston [14th Dist.], March 31, 2016, no pet. hist.) (Supreme Court will hear oral argument March 23, 2017)

Issues: ARB members as appraisal district employees

Several former members of the ARB filed claims for unemployment benefits contending that they had been employees of the appraisal district. Following an administrative hearing, the TWC determined that the members were former district employees entitled to benefits. The district then took the matter to the trial court, which denied the TWC's motion for summary judgment and entered summary judgment for the district. The TWC appealed.

The court of appeals reversed the judgement for the district and entered judgment for the TWC. The court of appeals explained that the relevant statute was §207.004 of the Labor Code, which defines employment as "a service performed by an individual for wages . . . unless it is shown . . . that the individual's performance of the service has been and will continue to be free from control or direction . . ." The fact that a person receives wages for his services raised a presumption of employment, but the purported employer can rebut the presumption by proving that it did not control or direct the person's work. Twenty factors are potentially relevant to the question of whether someone is an employee. The court applied the very deferential substantial-evidence standard to the TWC's decision and concluded that there was more than a scintilla of evidence to support that decision. The record showed that the district paid ARB members from its budget and withheld federal taxes from their compensation. The district selected the ARB chairman, who assigned members to panels. The district paid for the Comptroller's training provided to the members in the district's building and required members to use its timekeeping system. Members had continuing relationships with the district but could resign at any time. Members did not realize any profits or losses from their relationship with the district.

The court of appeals rejected the district's arguments based on two other laws. Section 201.063 of the Labor Code states that a "member of the judiciary" performing services for a local government is not an employee, but ARB members were administrative not judicial officers. Their positions were only quasi-judicial. Section 6.412 of the Tax Code states that appraisal-district employees may not be ARB members, but the court read that section to only preclude an ARB member from also holding some other employment with the district. The court was similarly unimpressed with other laws establishing an ARB's independence from the appraisal district and noted that the district had not proven that it was actually following those laws.

Cohen v. Midtown Management District
490 S.W.3d 624 (Tex. App. – Houston [1st Dist.], March 8, 2016, no pet.)

Issues: Judgments nunc pro tunc

The management district sued Cohen for delinquent taxes on several of his properties, and the County intervened to assert its own delinquent tax claims and those of the school and college. Cohen did not appear for the trial, and the trial court entered a default judgment against him in November of 2013. In June of 2014, the taxing units moved for a judgment nunc pro tunc to correct the original judgment. The original judgment included an award of the school's taxes and the school's name appeared on one page of that judgment, but it did not appear where taxing units were listed on another page. The trial court entered a judgment tunc pro tunc, and Cohen appealed. While the appeal was pending, the taxing units requested a second judgment nunc pro tunc to include the college's taxes, which were not included in the original judgment and to change the property values stated in the original judgment. The trial court entered the second judgment nunc pro tunc in May of 2015, and Cohen included it in his appeal.

The court of appeals explained that a trial court may use a judgment nunc pro tunc to correct clerical errors in an earlier judgment, even if the trial court would otherwise no longer have jurisdiction over the case. A judgment nunc pro tunc can correct a clerical error, but not a mistake of fact or law that requires judicial reasoning. The court of appeals approved of the first judgment nunc pro tunc. The trial court's record showed that the trial judge intended to award taxes to all taxing units, including the school. Naming the school on one page of the judgment but not on another page was a clerical error. The court of appeals, however disapproved of the second judgment nunc pro tunc. The record as a whole did not establish that the trial court had intended to award taxes to the college, even though the college was named as a plaintiff. Some language in the original judgment might have been read to dismiss the college. There was nothing in the record to show that the trial judge had intended to determine values for the properties different from the ones stated in the original judgment. Consequently, the errors corrected in the second judgment nunc pro tunc were not clerical errors, and the trial court had no authority to correct them.

HDSA Westfield Lake, LLC v. Harris County Appraisal District
490 S.W.3d 558 (Tex. App. –Houston [14th Dist.], February 11, 2016, no pet.)

Issues: CHDO exemption

A community housing development organization defaulted on bonds secured by two apartment complexes exempted under §11.182 of the Tax Code. The bondholder, Fundamental Partners decided to foreclose. A complicated deal was worked out under which Fundamental Partners created a new entity called MFH to buy the complexes at the foreclosure sale and then resell them to two new CHDOs. The new CHDOs applied to the appraisal district to have the exemptions remain in place despite the change in ownership. The district denied the applications on the grounds that MFH was not a CHDO, and the ARB denied protests by the two new CHDOs. When the new CHDOs filed suit, the trial court entered a summary judgment denying the exemptions. An appeal followed.

The court of appeals reversed the trial court's summary judgment and ruled that the new CHDOs were entitled to the exemptions. The court relied on §11.182(k), which states that property may continue to receive a CHDO exemption if it is sold at a foreclosure sale and, within thirty days, the new owner provides the appraisal district with evidence that the new owner qualifies as a CHDO. The party that buys the property at the foreclosure sale (MFH in this instance) does not have to be a CHDO as long as the property comes to be owned by a CHDO within the thirty days. In this case it was undisputed that within thirty days following the foreclosure sale, the complexes were owned by the new CHDOs and those organizations had filed the necessary documents with the appraisal district.

Kirkwood v. Jefferson County
2016 WL 536852 (Tex. App. – Beaumont, February 11, 2016, no pet.) (not reported)

Issues: Challenge to tax sale

In 2010, the county sued Gleason for delinquent taxes. When she did not answer, the court entered a default judgment. Gleason soon sold the property to Kirkwood. He recorded the deed, which said that he would be responsible for the taxes. He apparently even paid some of the delinquent taxes. In 2013 the tax office and the sheriff sent Gleason notice of a foreclosure sale and provided public notice of the sale. The notices satisfied §34.01 of the Tax Code, but no individualized notice was sent to Kirkwood. W. Properties bought the property at the sheriff's sale. A few months later, Kirkwood filed a petition for bill of review asking the court to undo the tax sale. The county asked the trial court to dismiss the case because: 1) Kirkwood had no standing; and 2) the county was immune from the suit. The trial court dismissed the case, and Kirkwood appealed.

The court of appeals reversed the trial court's dismissal of the case. The court reasoned that Kirkwood was entitled to notice of the tax sale, even though he had no interest in the property at the time of the original delinquent-tax suit. The county violated his constitutional right to due process of law by not sending him a notice. Because his rights were violated, he had standing to file his bill-of-review action. He was "entitled to attack the sale independent of the Texas Tax Code." The county was not immune from a suit for equitable relief arising from a violation of constitutional rights. The court of appeals sent the case back to the trial court for further proceedings.

Cameron County Appraisal District v. Rourk
2016 WL 380309 (Tex. App. – Corpus Christi-Edinburg, January 28, 2016, pet. denied) (not reported)

Issues: Immunity from suit

This is the latest development in a long-running dispute between the appraisal district and various owners of travel trailers and recreational vehicles. The property owners claim that their vehicles are exempt from taxation under §11.14 of the Tax Code as personal property not used to produce income. In an earlier opinion (*Rourk II*) the court

of appeals determined that certain specific vehicles were exempt. In another opinion (*Rourk III*), the court determined that the appraisal district was immune from a suit under the Uniform Declaratory Judgments Act (UDJA). The property owners (including some who were not involved when the *Roark II* opinion was written) amended their pleadings to name the chief appraiser as a defendant. They claimed that he had wrongfully appraised their vehicles as taxable property. The trial court ruled that the chief appraiser was not immune from suit under the UDJA and that he had acted illegally. The trial court even ordered the chief appraiser to pay the property owners' attorneys' fees. The district and the chief appraiser appealed.

A two-judge majority of the court of appeals reversed the trial court's judgment and entered judgment for the district and the chief appraiser. The majority explained that a public official is ordinarily immune from suit under the UDJA. But there is an exception called the *ultra vires* exception. An official cannot be sued for making wrong decisions in the exercise of his authority, but he can be sued for acting without any legal authority at all. He can also be sued if he fails to perform a purely ministerial act, i.e., an action that is so specifically prescribed by law that nothing is left to the official's discretion. A chief appraiser has the authority to make decisions about exemption claims. Doing so requires him to exercise judgment and discretion in interpreting the law and determining the relevant facts. Exemption decisions are not purely ministerial. Consequently, the chief appraiser was immune from the suit.

One judge partially disagreed with his colleagues and wrote a dissenting opinion. He believed that the earlier *Roark II* opinion was so specific with respect to the particular vehicles involved that the chief appraiser was left with no discretion concerning the exemption of those vehicles. Consequently he could be sued under the *ultra vires* exception.

Jack County Appraisal District v. Jack County Hospital District
484 S.W.3d 228 (Tex. App. – Fort Worth, January 14, 2016, no pet.)

Issues: Public property exemption

The hospital district leased a CT scanner from Celtic. The lease said that title to the scanner would remain with Celtic during the sixty-month term of the lease but the hospital district would be responsible for the taxes on it. The contract said the transaction was a "finance lease." At the end of the lease term, the hospital district could purchase the scanner for its fair market value. If Celtic and the district could not agree on the market value, the value would be determined by appraisers. The district's monthly rent payments would not be applied to the purchase price. Celtic rendered the scanner and the appraisal district appraised it in Celtic's name. Celtic paid the taxes and then billed them to the hospital district. The hospital district filed a protest claiming that the scanner was exempt as public property used for public purposes. The appraisal district responded that the scanner did not qualify for the exemption because it was owned by Celtic, a private company. When the ARB denied the protest, the hospital

district filed suit. The trial court entered a summary judgment for the hospital district, and the appraisal district appealed.

The court of appeals affirmed the judgment for the hospital district. A two-judge majority reasoned that the hospital district should be considered the owner of the scanner under §11.11(h) of the Tax Code, which states that, "tangible personal property is owned by this state or a political subdivision of this state if it is subject to a lease-purchase agreement providing that the state or political subdivision, as applicable, is entitled to compel delivery of the legal title to the property to the state or political subdivision, as applicable, at the end of the lease term." The majority thought that the scanner lease was a lease-purchase agreement even though the hospital district would still have to pay the full market value of the scanner if it wanted to buy the scanner at the end of the lease term. By paying the market price, the district could compel Celtic to deliver legal title.

One judge dissented and explained his opinion that the transaction was not a lease-purchase agreement. A lease-purchase agreement and a finance lease are distinct transactions defined by law. In a lease-purchase transaction, the payments are applied to the purchase price, and, at the end of the term, the lessee receives the title without having to make any additional payment or by making just a nominal payment. The scanner transaction did not give the hospital district the right to receive the title; it only gave the district the right to negotiate with Celtic for the purchase of the scanner at its market value. The district had no equity in the scanner and therefore had no equitable title.

Babaria v. City of Southlake
2016 WL 287523 (Tex. App. – Fort Worth, January 14, 2016, pet. denied) (not reported)

Issues: Appraiser testimony; discovery

This is not a tax case, but the court's opinion makes some interesting points related to proving the value of real property. Babaria owned eight acres and a house. The city proposed to take a quarter-acre strip for the widening of a road and for a sewer line. The parties disagreed about what the city should pay to compensate Babaria for the strip and for any changes to the value of his remaining property. In a jury trial, each side presented the testimony of an appraiser. The city's appraiser, Stearman testified based on an appraisal report that he had prepared and provided to Banaria in October, about three months before the date of the taking. His report estimated that the strip was worth $77,000 in October and stated that any use of the appraisal for any other date would make it "unreliable." He testified at trial that $77,000 was still the value of the strip on the date of the taking. The taking did not change the value of the remaining property. Stearman found sales of vacant tracts of approximately the same size as Babaris's eight acres, determined the value per square foot and applied that value to the quarter-acre taken by the city. Babaria objected to Stearman's methodology and objected to the fact that the city had not provided an updated appraisal or anything stating that Stearman would testify that his $77,000 value applied to the date of the taking. The trial

judge overruled Babaria's objections and let Stearman testify. The jury's verdict fell between the values claimed by the two appraisers, but it was much closer to Stearman's value. Babaria appealed the trial court's judgment based on the jury's verdict.

The court of appeals affirmed the trial court's judgment and found that the trial judge did not err when he allowed Stearman to testify. The court explained that the city did not need to supplement its discovery responses. The city produced Stearman's October report, and there was no evidence of any changes that would have made the report incorrect or unreliable by the time of the trial, especially in light of Stearman's testimony that his value was correct for the date of the taking. The caveat in the report was there to prevent its unauthorized use, not because the value was in flux. The court found nothing wrong with Stearman's methodology. The strip was vacant land, so Stearman did not make a mistake when he considered comparable sales of vacant land. He did not make a mistake when he considered sales of land approximately the same size as Babaria's in order to find the value per square foot.

Silberstein v. Trustmark National Bank
2016 WL 93871 (tex. App. – Houston [14th Dist.], January 7, 2016, pet. denied) (to be published)

Issues: Evidence of value

This is not a property tax case, but it does concern evidence offered to prove the values of real properties. Silberstein owned several rent houses subject to a mortgage held by Trustmark. (For the sake of brevity, this summary will give the figures relevant to just one typical house.) When Silberstein fell behind on his payments, Trustmark foreclosed. Trustmark bought the houses at its own foreclosure sale. It determined the amount of its bid through a rough income approach using a 20% capitalization rate. It paid $49,500 for one house. That was less than the amount that Silberstein owed, so Trustmark sued him for the deficiency. That led to the values of the houses being litigated in a jury trial. Silberman acted as his own expert. His opinions of value were based on an income approach with an 8% cap rate, $90,834 for the typical house. Trustmark presented an appraiser named Bradley, who had appraised the houses using the market approach and the cost approach. His market approach involved primarily foreclosure sales and yielded a value of $30,000. He admitted that his foreclosed comparables had also sold in recent arm's-length sales at considerably higher prices. He also used the cost approach and used $48 per square foot as the replacement cost of the houses, yielding a value of $56,686 for the typical house and its lot. He admitted that $60 per square foot would have been more realistic. The jury was asked to find the fair market values of the houses, but they were not instructed about the definition of fair market value. They found the values to be exactly equal to what Trustmark had paid at the foreclosure sale. Silberstein appealed the trial court's judgement based on the jury's verdict.

The court of appeals reversed the judgment and concluded that the evidence did not support the jury's verdict. The opinion explained that the market approach is favored by

courts, but an appraisal must be based on voluntary sales, not foreclosures. Bradley's market approach was based on foreclosures and was not probative evidence of the values of the houses. Silberstein's income approach was competent evidence. So was Bradley's cost approach. The jury could have found a value between those two numbers ($90,834 and $56,686), but the evidence did not support a value of $49,500. The court of appeals sent the case back to the trial court for a new trial.

Hydrogeo, LLC v. Quitman Independent School District
483 S.W.3d 51 (Tex. App – Texarkana, January 6, 2016, no pet.)

Issues: Evidence of delinquent taxes

Hydrogeo bought mineral interests in two properties and then discovered that the interests had delinquent taxes for the years 2009-2011, when the interests were owned by someone else. Taxing units filed suit and named Hydrogeo and other owners and lienholders as defendants. The pleadings explained that the taxing units were also claiming: any other taxes that might become delinquent after the suit was filed; and penalties interest, costs, etc. that might accrue up until the entry of a judgment. Hydrogeo answered and specifically denied that it had owned the interests on January 1 of the years in question. In response to Hydrogeo's discovery, the taxing units provided tax statements based on their delinquent-tax rolls. Those statements still showed the interests being owned by the former owners. The taxing units did not provide Hydrogeo with updated statements showing the current amounts due and showing Hydrogeo as the owner. At trial, however, the taxing units offered the updated statements, and Hydrogeo objected. The trial court overruled the objection and accepted the updated statements. The trial court entered judgement for the taxing units based on the updated statements. The judgment stated that it was *in rem* only with respect to Hydrogeo. Hydrogeo appealed.

The court of appeals affirmed the judgment for the taxing units. The court explained that the taxing units should have updated their discovery responses. But a party can introduce evidence even though it failed to provide that evidence in discovery if the evidence will not unfairly surprise or prejudice another party. Hydrogeo knew that the taxing units were seeking everything that was due on the interests up until the date of judgment. Hydrogeo admitted being the current owner of the interests. It could not claim to have been unfairly surprised by the updated statements. The trial court did not err when it admitted the updated statements into evidence.

The court of appeals next explained that under §33.47, when the taxing units' updated statements were admitted, they constituted prima facie proof of everything the taxing units needed to prove. The taxing units did not need to prove that Hydrogeo owned the interests on January 1 of the relevant years in order to take an *in rem* judgement against Hydrogeo. Hydrogeo's denial that it had owned the interests in those years did undermine the taxing units' prima facie case. Hydrogeo also argued that because some boilerplate language in the taxing units' pleadings referred to personal property, they were improperly trying to enforce their liens against personal property. The court of

appeals responded by noting that the judgment did not order any foreclosure against personal property. There was nothing in the record to support Hydrogeo's claims.

Attorney General's Opinions

Opinion No. KP-0101
July 6, 2016

Issues: County equalization tax for schools

Prior to 1995, Chapter 18 of the Education Code allowed a county equalization tax for schools. Basically, a county school board would impose a tax on all property in the county and distribute the money to the various school districts in the county pro rata based on their student populations. If a school district crossed county lines, it received money based solely on the number of its students living in the county where the tax was assessed, but it could spend the money in a way that benefitted all of its students. Chapter 18 was repealed in 1995, but it was allowed to continue in effect in counties where it was already being used. The Rusk County District Attorney asked the Attorney General whether a county equalization tax might violate some of the same constitutional rules that were violated by county education districts back in the 1990's.

The AG found no problem with the county equalization tax. CED taxes were unconstitutional *state* property taxes because the state controlled the levy of those taxes, the tax rate and the disbursement of the revenue. A CED had no meaningful discretion with respect to the taxes. County equalization taxes did not have the same problem. The state did not require county equalization taxes or control the tax rates. The county school board had discretion concerning those matters.

Opinion No. KP-0092
May 27, 2016

Issues: Tax collection by appraisal district

This opinion concerns a contract under which an appraisal district assessed and collected taxes for a county. The district deposited the money it collected into an interest-bearing bank account and then transferred the money to the county at least two times each month. The AG concluded that the interest paid into the district's bank account belonged to the county. But an inter-local contract between a taxing unit and an appraisal district *could* provide that the district would keep the interest on collected taxes as part of its compensation for assessment and collection services. The AG declined to decide the circumstances under which a county tax assessor-collector might be held liable for funds held in the custody of an appraisal district. The answer to that question would depend on the particular facts involved.

Opinion No. KP-0081

May 3, 2016

Issues: Deferral of homestead taxes

The AG was asked several questions concerning the affidavits that property owners over sixty-five and disabled property owners may file with appraisal districts under §33.06 of the Tax Code to defer the collection of taxes on their homesteads. He explained that an appraisal district does not have to accept such an affidavit at face value. The district may investigate and determine for itself whether the requirements for deferral are satisfied.

If a property is used partly for residence homestead purposes and partly for other purposes, those other purposes may or may not be compatible with the homestead purposes. For example, the Fort Worth Court of Appeals once ruled that land could qualify as part of a homestead even though it also qualified as open-space agricultural land. If the uses are compatible, a property would qualify for deferral even if it were used partially for non-homestead purposes. But if the uses were incompatible, the appraisal district could disallow deferral for the whole property. A property owner might be able to have his property surveyed and subdivided onto two properties in order for one of those properties to qualify for deferral, but the appraisal district could not require the owner to do that.

Opinion No. KP-0072
March 17, 2016

Issues: Homestead exemption

Last year the Texas Constitution was amended to increase the general homestead exemption applicable to school taxes to $25,000. The implementing legislation, Senate Bill 1, also prohibited a school district, city or county that had a percentage homestead exemption in place in 2014 from repealing or reducing that exemption before the end of 2019. But S.B. 1 did not take effect until the constitutional amendment was approved by the voters on November 3, 2015. The A.G. was asked whether a taxing unit could repeal or reduce its percentage exemption before S.B. 1 took effect.

He concluded that any attempt by a taxing unit to repeal or reduce its percentage exemption would have been voided retroactively when S.B. 1 took effect. Although the Texas Constitution generally prohibits retroactive laws, a law can have retroactive effect if it serves a “compelling public interest” and if it does not have a significant detrimental impact on a party’s settled expectations. Further any impact on a school district would be minimal because it would be partially offset by changes in the amount of state aid that the district would receive.

Opinion No. KP-0066
February 16, 2016

Issues: Public property exemption

The Attorney general was asked about two student housing developments being constructed by private companies on land leased from the Texas A&M System. One lease provided that the improvements would be owned by the private company during the term of the lease, then become property of the System. But the System would have an option to purchase the company's right title and interest during the term of the lease. The AG explained that the improvements would be exempt if the System had equitable title during the term of the lease. Equitable title is defined as the present right to compel legal title. But, the AG declined to provide a more definite answer.

The other project would be used to provide housing to both Texas A&M students and students of Blinn College. The AG reasoned that a court would probably focus on §11.11(e) of the Tax Code, which exempts property "held or dedicated for the support, maintenance, or benefit of an institution of higher education." Exempt property can be used to provide residential housing for students of an institution higher education, even if they are not students of the particular institution that owns the property. Because Texas A&M and Blinn College are both institutions of higher education, the property could be used to house students from both.

The AG also pointed out that exempt student housing could lose its exemption if its use changed.