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

2015 PROPERTY TAX CASES
And Attorney General's Opinions

Last updated: January 4, 2017

Cases

Miller v. Royal ISD
2015 WL 9311429 (Tex. App. – Houston [14th Dist.], December 22, 2015, pet. denied) (not reported)

Issues: Parties to delinquent-tax suit

Taxing units filed a delinquent-tax suit against the owners of a tract of land. The taxing units also named a lienholder, J2C as a defendant but specified that J2C was being sued *in rem* only. After a short trial, the trial court entered judgment for the taxiing units and specified that the judgment was *in rem* only insofar as it applied to J2C. The judgment did not declare J2C to be an owner of the land or to be personally liable for the taxes. J2C appealed, but the other defendants did not. It claimed that there was no evidence to show that it was an owner of the land.

The court of appeals affirmed the trial court's judgment, and basically asked J2C, "What part of *in rem* do you not understand?" The court explained that a suit filed to foreclose a tax lien must include any lienholders as defendants. The trial court did not find that J2C was an owner of the property or that it was liable for the taxes. The *in rem* judgement meant only that J2C's lien would be extinguished when the tax liens were foreclosed. There was no error in the trial court's judgment.

Harris County Appraisal District v. Integrity Title Co.
483 S.W.3d 62 (Tex. App. – Houston [1st Dist.], December 15, 2015, pet. denied)

Information: Availability of information

The appraisal district had a contract with PropertyInfo, a private company. PropertyInfo collected information from the deed records of the county clerk, information such as the dates and document numbers from deeds filed with the clerk. It then provided the information to the district. Integrity filed a public information request with the district seeking all the deed dates and document numbers. The district requested the Attorney General's opinion on whether it had to release the information. The AG ruled that the district did not have to release the information. Integrity then filed suit against the district, and the court ordered the district to release the information. The district appealed.

The court of appeals affirmed the trial court's ruling for Integrity. The district argued that the Public Information Act did not give the trial court jurisdiction to review the AG's opinion that the requested information did not have to be released. The court of appeals concluded that a trial court has jurisdiction to consider whether information is subject to disclosure under the Act regardless of whether the AG has issued an opinion on the question. A court is not bound to follow an AG's opinion. The court of appeals went on to explain that the exceptions listed in the Act should be interpreted narrowly. The information requested by Integrity was not covered by the MLS exception (§551.149 of the Act) because it was not generated by a private entity. PropertyInfo merely gathered public information from the county clerk's office and provided it to the district. The district also failed to show that the information was covered by the trade secrets exception (§552.110 of the Act). The district asserted that releasing the information would cause "substantial competitive harm" to PropertyInfo, but it did not support that claim with any evidence or any specific explanation. The court explained that the AG probably reached the wrong conclusion because the district had not provided him with enough information.

In the Interest of C.L.W.
2015 WL 8388185 (Tex. App. – San Antonio, December 9, 2015, no pet.) (not reported)

Issues: Service of process; recovery of attorney's fees

This family-law case includes a ruling about service of process likely to be of interest to taxing units and their lawyers and a ruling about attorney's fees, likely to be of interest to appraisal district's and their lawyers. Mr. and Mrs. W were divorced in 2011. In 2012, Mrs. W petitioned the court to cut off Mr. W's access to their children. A process server tried but failed to serve Mr. W at a house on Woodlawn Ave. Mrs. W then filed a motion for alternative service, and attached an affidavit from the process server. The affidavit explained that the process server had been to the Woodlawn house on three separate days. Each time, she had seen Mr. W's pickup parked in the driveway. One time, somebody peeked through the blinds but did not come to the door. One time, a woman explained that Mr. W was not "home," said that he had recently been served in another case and promised to give him the process server's card. The court allowed alternative service, and the process server affixed the papers to the door of the Woodlawn house. Mr. W did not appear for the hearing at which the court entered a default judgment terminating his access to the children and ordering him to pay Mrs. W $3,500 to cover her attorney's fees and $207 to cover her court costs. Later, Mr. W filed a restricted appeal to challenge the judgement claiming that he did not know about the hearing and that the trial court should not have allowed the alternative service. He also challenged the award of attorney's fees and court costs.

The court of appeals affirmed the alternative service. The court explained that under Rule 106 of the Texas Rules of Civil Procedure, a person can be served at his usual place of business, his usual place of abode or another place where he can probably be found. The process server's affidavit was sufficient to show that the Woodlawn house was a proper place to try serving Mr. W. When he could not be found there, alternative service was justified. The court of appeals, however, overturned the award of attorney's fees to Mrs. W. Her lawyer had simply asked the trial judge for $3,500 without offering any evidence to show that the amount was reasonable. The court affirmed the award of court costs because the amount was supported by the court clerk's bill of costs.

Zapata v. Clear Creek Independent School District
2015 WL 7737626 (tex. App. – Houston [1st Dist.], December 1, 2015, no pet.) (not reported)

Issues: Vacating delinquent-tax judgment; mootness

In a delinquent-tax case, the trial court entered judgment for the taxing units, and the property owner's appealed. Before the court of appeals could consider the appeal, the taxing units filed a motion asking the trial court to vacate its judgment under **§**33.56 of the Tax Code. The taxing units' motion claimed that they had failed to serve a necessary party. The trial court granted the motion and vacated its judgment. The parties then jointly asked the court of appeals to dismiss the appeal. The court explained that the appeal became moot when the trial court vacated its judgment. Because it was moot, the appeal should be dismissed.

NHH-Canal Street Apartments, Inc. v. Harris County Appraisal District
2015 WL 7306541 (Tex. App. – Houston [14th Dist.], November 19, 2015, no pet.) (not reported)

Issues: Charitable exemptions; ARB as party to appeal

NHH-Canal Street was a nonprofit organization that owned an apartment complex. It leased apartments to low-income and disabled people. The rents were low, and NHH received charitable contributions to help it make ends meet. Every tenant was required to pay rent, and NHH screened prospective tenants to be sure that they could afford to pay. It also provided services such as counseling and educational programs for tenants. NHH sought a charitable exemption for the complex under §11.18 of the Tax Code, but the appraisal district denied the exemption. After an unsuccessful protest before the ARB, NHH took its claims to court, suing both the district and the ARB. The trial court entered a summary judgment for the defendants, and NHH appealed.

The court of appeals explained that the case would turn on language found in §11.18(d)(2), which exempts the property of a qualifying nonprofit organization that:

> provid[es] support or relief to orphans, delinquent, dependent, or handicapped children in need of residential care, abused or battered spouses or children in need of temporary shelter, ***the impoverished***, or victims of natural disaster ***without regard to the beneficiaries' ability to pay***.

First, the court concluded that, in light of NHH's total operations, the organization did provide benefits to the impoverished without regard to the beneficiaries' ability to pay. The court apparently based this conclusion on the fact that tenants were not required to pay the full costs of what they received. Second, the court reasoned that the language, "without regard to the beneficiaries' ability to pay" applied to only organizations that provided benefits to victims of natural disasters, not to organizations that provided benefits to the impoverished. NHH was not required to provide its housing or other benefits without regard to the beneficiaries' ability to pay. It was therefore entitled to the exemption. The court of appeals ordered that NHH receive the exemption.

The court noted that the amendment to §42.21(b), which prohibits a property owner from making an ARB a party to an appeal, took effect in 2011. Because NHH filed its appeal in 2010, the ARB could still be named as a party.

Editor's Comment: This opinion is full of errors, but one in particular deserves comment. Texas courts have explained many times that exemption laws should be interpreted strictly and that all doubts should be resolved against granting exemptions. Courts sometimes pay lip service that rule and then proceed to disregard it. In this case, however, the court applied an extremely liberal interpretation of the statute and never even mentioned the rule of strict interpretation.

Estate of Smith v. Ector County Appraisal District
480 S.W.3d 796 (Tex. App. – Eastland, November 12, 2015, pet. denied)

Issues: Burden of proof in appeals

Smith's estate protested the 2012 appraised value of its apartment complex claiming that the appraised value was unequal compared to the values of comparable properties. When the ARB denied the protest, the estate sued the appraisal district. Thee estate filed a no-evidence motion for summary judgment claiming that the district had the burden to prove that the complex was appraised equally and that it had no evidence to meet that burden of proof. The district filed its own no-evidence motion for summary judgment against the estate and claimed that the estate had the burden of proving that the complex was appraised unequally. Instead of presenting any evidence, each side just argued that the other side had the burden of proof. The trial court entered a summary judgment for the district, and the estate appealed.

The court of appeals affirmed the summary judgment for the district. The court noted that when an unequal-appraisal claim is raised before the ARB, the appraisal district has the burden of proof under §41.43 of the Tax Code. But that statutory rule did not apply when an unequal-appraisal claim was presented to a court. That meant that a court should follow the generally accepted rule that the party seeking affirmative relief on a claim has the burden to prove that claim. In this case, it was the estate who was seeking affirmative relief in the form of a reduced appraised value. That meant that the estate had the burden of proof. When the estate failed to offer any evidence to support its claim, the trial court correctly granted the no-evidence summary judgment for the district.

Stiefer v. Moers
2015 WL 6950104 (Tex. App. – Houston [14th Dist.], November 10, 2015, pet. denied) (not reported)

Issues: Official Immunity

This case is a sequel to *Moers v. Harris County Appraisal District*, summarized below. Moers's applications for 1-d-1 appraisals were denied by the appraisal district in 2013 and 2014. After unsuccessful protests before the ARB, Moers filed suit against the district and its chief appraiser. His real complaint was with the chief appraiser's degree-of-intensity standards. Moers sought 1-d-1 appraisals for his property but also pleaded constitutional claims and sought injunctions and a declaratory judgment. The chief appraiser claimed that he was immune from the suit and asked to be dismissed. When the trial court refused to dismiss him, the chief appraiser appealed.

The court of appeals reversed the trial court's decision and dismissed the chief appraiser. The court explained that the chief appraiser was immune unless his immunity had somehow been waived. Moers claimed that the chief appraiser's standards violated the Constitution and the Tax Code, but Moers was really seeking changes in the appraisals of his property. That kind of claim is governed by the Tax Code's protest and appeal procedures, and those procedures do not allow a suit against a chief appraiser. The Declaratory Judgements Act does not provide an alternative to the Tax Code or waive a chief appraiser's immunity. A public official can be sued prospectively to prevent him from taking ultra vires actions, i.e., actions that he has no legal authority to take under any circumstances. The chief appraiser's standards were not ultra vires because he had the legal authority to adopt degree-of-intensity standards and to rule on 1-d-1 applications. The fact that Moers disagreed with the chief appraiser's decisions did not waive the chief appraiser's immunity. Section 41.45(f) of the Code sometimes allows a property owner to sue an ARB for alleged due-process violations, but it never allows a suit against a chief appraiser. Even if Moers could show that the Texas Constitution entitled him to the 1-d-1 appraisal, that would not allow him to sue the chief appraiser. He would still have to follow the Code's procedures.

Hudson v. Dallas County
2015 WL 5999332 (Tex. App. – Amarillo, October 14, 2015, pet. denied) (not reported)

Issues: Defenses to delinquent-tax suit

Taxing units sued Hudson for delinquent taxes on bpp appraised in the name of Old School Night Club. At trial, the taxing units offered copies of their delinquent-tax records and a copy of an assumed name certificate on file with the county showing that Hudson was the sole proprietor of Old School Night Club. Hudson offered no evidence. The trial court entered judgment for the taxing units, and Hudson appealed.

On appeal, Hudson claimed that the appraised value of his property was too high. The court of appeals noted that Hudson had not offered any evidence in the trial court but did not really explain the rule that a property owner may not raise valuation issues in a delinquent-tax suit. Hudson also claimed that the bpp actually belonged to the owner of the real property where it was located. The court of appeals noted that Hudson had not raised that claim in the trial court and explained that he could not raise it for the first time on appeal. The court of appeals affirmed the trial court's judgment for the taxing units.

EXLP Leasing, LLC v. Ward County Appraisal District
476 S.W.3d 752 (Tex. App. – El Paso, September 23, 2015, no. pet. hist.)

Issues: Heavy equipment inventory; situs

This is one of four related opinions released simultaneously by the El Paso Court of Appeals. EXLP owned natural gas compressors located in Ward County. EXLP leased the compressors to related companies, which then leased them to third-party customers. EXLP claimed that the compressors should be appraised as heavy-equipment inventory under §23.1241 of the Tax Code and that they were taxable in Midland County, where EXLP had a storage yard. EXLP claimed a value of $26,527. The WCAD appraised the compressors at values which it determined through the conventional method of estimating what they would sell for in a transaction between a willing seller and a willing buyer, a value of $4,651,200. It argued that the statute violated Art. VIII, §1 of the Texas Constitution, which requires that taxes be equal and uniform and that taxes be based on market value. After an unsuccessful protest, EXLP took its claims to court. The trial court ruled that the compressors qualified as heavy equipment under the statute but that the statute was unconstitutional and that the compressors were taxable in Ward County. Both sides appealed.

The court of appeals agreed with the trial court that the compressors were heavy equipment under §23.1241. They were "self-powered" because they had their own internal engines. The court next addressed the constitutionality of §23.1241 and concluded that the statute was constitutional. The legislature may classify property differently in arriving at its market value as long as the classifications are not unreasonable, arbitrary or capricious. An owner of inventory does not "capture the maximum economic value" of the inventory until it generates revenue through its sale or rental. Estimating the inventory's value based upon its 12-month trailing revenue was "eminently reasonable." The court analogized the §23.1241 method to appraising property using an income approach and said that the value is the present worth of the future payments expected over an item's remaining service life. (It ignored the fact that valuing something at one month's rental income is very different from the income approach that it described.) It went on to explain that the Constitution's equal-and-uniform-tax clause only prohibits different taxation of properties within the same class. Because §23.1241 equally to all heavy-equipment dealers, it was not unconstitutional.

Finally, the court ruled for the district on the issue of situs. Under the ordinary situs rules set out in §21.02, the compressors were taxable in Ward County where they were located for more than a temporary period. Section 23.1241 was not a situs statute, and it did not change those ordinary rules. The court of appeals reversed the trial court on the core issue of §23.1241's constitutionality but affirmed the trial court on the other issues.

EXLP Leasing, LLC v. Loving County Appraisal District
478 S.W.3d 790 (Tex. App. – El Paso, September 23, 2015, no. pet. hist.)

Valerus Compression Services, LP v. Reeves County Appraisal District
478 S.W.3d 20 (Tex. App. – El Paso, September 23, 2015, no. pet. hist.)

Issues: Heavy equipment inventory; situs

These cases are very similar to *EXLP Leasing, LLC v. Ward County Appraisal District* discussed above. The principal difference is that in these cases, the El Paso Court of Appeals did not have to address the question of whether the leased compressors met the definition of heavy equipment under §23.1241 of the Tax Code. The trial courts had ruled that the compressors did meet that definition, and the appraisal district did not raise the issue on appeal. The court of appeals reached the same conclusions concerning the constitutionality of §23.1241 and the taxable situs of the compressors.

One other distinction may be noteworthy. In the *Valerus Compression Services* case the company that owned the compressors leased them to third parties, not to related companies. If the leases were arm's-length transactions, they might be more relevant to the values of the compressors. The court, however, did not comment on that distinction.

Midcon Compression, L.L.C. v. Reeves County Appraisal District
478 S.W.3d 804 (Tex. App. – El Paso, September 23, 2015, no pet. hist.)

Issues: Heavy equipment inventory; situs; attorneys' fees

This case is very similar to the compressor cases discussed above. The El Paso Court of Appeals reached the reached the same conclusions concerning the constitutionality of §23.1241 and the taxable situs of the compressors. In this case, however, the property owner claimed that it was entitled to recover its attorneys' fees and court costs from the appraisal district. The court disagreed. The court explained that §42.29 of the Tac Code allows a court to award attorneys' fees to a property owner if the owner proves that the appraised value of his property exceeded the value required by law. This case, however, was less about value than about whether the appraisal district could appraise the compressors at all. The trial court did not make any determination that the district's value was excessive, nor did it determine the correct value for the compressors. Normally, court costs are awarded to the prevailing party. But in this case, the property owner prevailed on one issue and the district prevailed on one issue. Under those circumstances, it was fair to require each party to pay its own court costs.

In re Vitro Asset Corp.
539 B.R. 108 (N.D. Tex., September 23, 2015)

Issues: Bankruptcy claims

Two related corporations, Vitro Asset (VA) and Vitro Packaging (VP) were both in Chapter 11 bankruptcy. The school assessed 2012 taxes in the amount of $434,710 on VP's property. In April of 2013, the school filed a proof of claim for the base taxes plus $133,650 in penalties, interest and fees (a total of $598,360), but mistakenly named VA as the debtor. VP soon paid the $434,710, which the school applied to the taxes and the p&i pro rata. The school filed an amended proof of claim after the filing deadline, this time naming VP as the debtor. The amended document claimed only $434,710. Section 3.5 of the debtors' reorganization plan said that any secured creditor claiming post-petition interest, attorney's fees or costs would have to file a request with the bankruptcy court within thirty days of the plan's effective date. The school did not object to the plan, which was approved by the court. The school did not file the request described in §3.5. Instead it made other efforts to collect the p&i. The bankruptcy court ruled that all of the school's claims were discharged and that there was nothing for it to collect. The school appealed to the district court.

The district court affirmed the ruling for the debtors. The court explained that post-petition claims may not be included in a proof of claim. The only amount properly included in the school's proof of claim was the $434,710 in base taxes. The debtors' payment should have been applied entirely to those base taxes, and it paid those taxes in full. Any additional amounts claimed by the school, including penalties, fell under §3.5. A secured creditor has the option of not participating in a bankruptcy and instead foreclosing his lien outside bankruptcy. But if the creditor participates in the bankruptcy and the reorganization plan deals with the property subject to the lien, the creditor is bound by the plan. In this case, the school participated in the bankruptcy by filing proofs of claim, even though one named the wrong debtor and the other was filed late. The plan stated that it included all of the debtors' property, including the taxed property. The school was bound by the plan and the bankruptcy court's order approving the plan. Because it failed to make a timely request under §3.5, its claims for p&i together with its lien were discharged. The principle of res judicata prevented the school from relitigating an issue that had already been decided.

American Homeowner Preservation Fund, LP v. Pirkle
475 S.W.3d 507 (Tex. App. – Fort Worth, September 3, 2015, pet. denied)

Issues: Challenging a tax sale

In 2009, SF3 acquired a mortgage from AMF and recorded the transfer. A year later, taxing units filed suit for delinquent taxes on the property, but their lawyers failed to discover the transfer of the mortgage. SF3 was not notified of the suit or named as a party. The court entered judgment for the taxing units in April of 2012. Pirkle bought the property at the tax sale and recorded his deed on August 27, 2012. On October 31, SF3 transferred all of its rights and interests to American. Neither SF3 nor American acted to challenge the tax sale under §34.08 of the Tax Code. In early 2013, American notified Pirkle that it claimed to hold a mortgage on the property and began foreclosure proceedings. Pirkle filed suit against American. The trial court entered a partial summary judgement to the effect that Pirkle owned the property and the mortgage had been extinguished by the tax sale. American then brought the taxing units into the case, challenging the tax sale and claiming that the taxing units had taken private property unconstitutionally. The trial court dismissed American's claims against the taxing units and entered a final judgment denying American any relief and awarding attorneys' fees to Pirkle. American appealed.

The court of appeals affirmed the judgment for Pirkle and the taxing units. The court explained that under §§34.08 and 33.54, a party seeking to challenge a tax sale must file suit within one year after the purchaser records his deed or the purchaser will have full title to the property precluding all other claims. An exception to this rule applies when taxing units fail to notify a lienholder about a delinquent tax suit and tax sale. SF3 could have challenged the delinquent-tax judgement and the tax sale on due-process grounds, even without following §§34.08 and 33.54. American, however, did not step into the shoes of SF3 and acquire that same right. The court explained that numerous public policies would be violated by allowing American to ignore the Code's procedures even though it knew about the tax sale when it acquired the mortgage and even though it still had time to follow those procedures.

The court went on to explain that American's takings claim was governed by the Private Real Property Rights Preservation Act. But a claim under that Act must be filed within 180 days after the claimant knows or should know about the alleged taking. American had actual knowledge of the tax sale in early 2013 when it first contacted Pirkle, but it didn't file its takings claim against the taxing units until more than a year after that. The trial court correctly dismissed those claims because they were filed too late.

Allen v. Smith County Appraisal District
2015 WL 5157509 (Tex. App. – Tyler, September 2, 2015, no pet.) (not reported)

Issues: Service of process

Allen filed a motion to correct the appraisal roll, but it was denied by the ARB. She received notice of the ARB's order on March 14, 2014. She had sixty days, or until May 13, to file suit to appeal the ARB's order. Her lawyer filed suit on April 28 but did not request or pay for service on the appraisal district. He requested and paid for service on August 6, and the district was served on August 11. When the district answered the suit, it claimed that Allen and her lawyer had violated the sixty-day statute of limitations. The trial court entered a summary judgment for the district and Allen appealed.

The court of appeals explained that in order to satisfy a statute of limitations, a plaintiff must file her suit on time *and* exercise due diligence in having the defendant served. If the defendant is served after the limitations period expires and if he raises the defense of limitations, the plaintiff must show the efforts that she made to have the defendant served and explain every lapse and delay in her efforts. In this case, Allen's lawyer claimed that he was confused by a new electronic system for filing court documents. He thought that he had requested service. But he filed the suit in late April and did not check until mid-July to see whether the district had been served. Even when he learned that the district had not been served, he did not request service until August 6. He should have checked on service before the limitations period expired on May 13. The evidence established that Allen and her lawyer had failed to exercise due diligence. The court of appeals affirmed the summary judgment for the district.

EXLP Leasing, LLC v. Galveston Central Appraisal District
475 S.W.3d 421 (Tex. App. – Houston [14th Dist.], August 25, 2015, no. pet. hist.)

Issues: Heavy equipment inventory; situs

EXLP owned natural gas compressors located in Galveston County. EXLP leased the compressors to its subsidiary entities, which then leased them to third-party customers. EXLP claimed that the compressors should be appraised as heavy-equipment inventory under §23.1241 of the Tax Code and that they were taxable in Washington County, where EXLP had a storage yard. The GCAD appraised the compressors at their market values. It argued that the statute violated Art. VIII, §1 of the Texas Constitution, which requires that taxes be equal and uniform and that taxes be based on market value. After an unsuccessful protest, EXLP took its claims to court. Both sides filed motions for summary judgment. The trial court ruled that the compressors qualified as heavy equipment under the statute but that the statute was unconstitutional and that the compressors were taxable in Galveston County. EXLP appealed.

The court affirmed part of the trial court's summary judgment and reversed the other part. The higher court agreed that the compressors were taxable in Galveston County. Under the ordinary situs rules set out in §21.02, the compressors were taxable in the place where they were located for more than a temporary period. Section 23.1241 was not a situs statute, and it did not change those ordinary rules.

The court of appeals, however, concluded that the summary judgment evidence was insufficient to establish that §23.1241 was unconstitutional. The GCAD proved that values under §23.1241 were generally lower than values determined through other methods, but it did not prove that the lower values were arbitrary, capricious or unreasonable. It failed to prove that no generally accepted method of appraisal could support the values determined under §23.1241. The CGAD's evidence also failed at address issues such as the effects of related-company leases and the turnover rate for leased inventory. The court also explained that EXLP had failed to prove that §23.1241 was constitutional. The question of the statute's constitutionality had not been resolved, and the court of appeals sent it back to the trial court for further consideration.

City of Dallas v. City of Corsicana

2015 WL 4985935 (Tex. App. – Dallas, August 20, 2015 original proceeding) (not reported)

Issues: Governmental Immunity; tax abatements

Home depot had a tax abatement agreement for its distribution center in Corsicana. It then accepted a tax abatement in Dallas and moved its operations there. The move was in breach of the agreement with Corsicana, but Home Depot settled their dispute concerning damages for the breach. Corsicana proceeded to file a pre-suit against Dallas under Rule 202 of the Texas Rules of Civil Procedure alleging that Dallas tortuously interfered with the contractual relationship between Corsicana and Home Depot. A Rule 202 pre-suit may permit a party to conduct depositions to investigate whether grounds exist for it to file a regular lawsuit. The pre-suit was filed in a county court at law in Navarro County. Dallas argued that it would be immune from a regular suit for tortious interference, so it should also be immune from the pre-suit. The county court at law sided with Corsicana; it refused to dismiss the pre-suit and ordered that Corsicana's lawyers could depose Dallas and discover documents in connection with the deposition. Dallas appealed.

The court of appeals affirmed the trial court's order. The court explained that a governmental entity is immune from tort claims that concern its *governmental* functions, i.e., functions that exercise its governmental authority and that serve the public at large. But the entity is not immune from tort claims that concern its *proprietary* functions, i.e., functions performed in its private capacity for the benefit of only those within its boundaries. Recruiting businesses is a proprietary function. It does not require governmental authority, and even private parties can do it. Thus, Dallas would not be immune from torts committed in its efforts to recruit businesses. Corsicana had the right to investigate its potential claims by deposing Dallas.

The case then went to the Texas Supreme Court. The Court noted that the county court at law had jurisdiction over only cases with $200,000 or less in controversy. It wasn't clear just how much Corsicana was seeking to recover, but the amount could easily exceed the trial court's jurisdictional limit. For that reason , the Supreme Court referred the case back to the county court at law so that the lower court could pin down the amount in controversy.

Katy Venture, Ltd. V. Cremona Bistró Corp.
2015 WL 4497983 (Tex. 2015)

Issues: Service of process

This isn't a delinquent-tax case, but it may be of interest to tax collectors and their lawyers who serve delinquent property owners in lawsuits. Cremona sued its former landlord, Katy and tried to get Katy's registered agent served with the suit papers. Katy had moved without changing the address it had on file with the Secretary of State. Cremona tried to serve Katy's registered agent at the old address both by certified mail and using a process server, but the agent could not be found at the old address. Cremona then served the Secretary of State as an agent for Katy. Katy failed to answer the lawsuit, and the court entered a default judgment in favor of Cremona. Cremona then certified to the court clerk that the address in the Secretary of State's files was Katy's "last known mailing address." The clerk mailed a notice of the default judgment to that old address, but it never reached Katy. Katy later learned about the judgment and filed an equitable bill of review against Cremona in an effort to challenge the default judgment. Katy presented evidence that Cremona knew about its new address and that representatives of the parties had actually met at its new location. The trial court in that case, entered summary judgment for Cremona, and Katy appealed.

The court of appeals affirmed the summary judgment for Cremona. It ruled that Cremona had used reasonable diligence in trying to serve Katy in the original suit. Neither Cremona, the court clerk nor the process server had any obligation to search for Katy's agent at any location other than the registered office. The undisputed fact that Katy had moved from its registered office without notifying the Secretary of State was enough to establish that its negligence had contributed to its failure to receive service and the clerk's notice. Katy then petitioned the Texas Supreme Court to consider its case, and the Court agreed.

The Supreme Court reversed the lower courts. The high Court explained that if Cremona had certified Katy's old address as its "last known" address while knowing about Katy's new address, Cremona had mislead the clerk. Katy was negligent in failing to notify the Secretary of State about its new address, but that negligence did not necessarily contribute to its failure to receive the clerk's notice. Even if Katy had updated the Secretary of State, Cremona might nevertheless have certified the old address to the clerk. There was a question of fact about whether Katy's negligence had contributed to its failure to receive the clerk's notice. The trial court should not have granted summary judgment for Cremona. The Supreme Court sent the case back to the trial court for further consideration.

Moers v. Harris County Appraisal District
469 S.W.3d 655 (Tex. App. – Houston [1st Dist.], June 30, 2015, pet. denied)

Issues: Agricultural appraisal; sovereign immunity; suit against ARB

Moers raised sheep on two non-contiguous tracts of land. The appraisal district denied his applications for open-space (1-d-1) agricultural appraisals in the years 2010-2012. Standards adopted by the chief appraiser required that improved pasture land be capable of supporting at least four animal units (24 sheep). Moers always had fewer than 24 sheep. The ARB apparently refused to hear Moers's 2010 protest and denied his 2011 protest. He filed suit against the district, the ARB and the chief appraiser. He added claims for 2012 even though he had not filed a protest for that year. The trial court dismissed the claims against the chief appraiser, dismissed the claims for 2012 with prejudice, ordered the ARB to hold a hearing on the 2010 protest and entered a summary judgement that Moers's land did not qualify for 1-d-1 appraisal. The court did not award Moers any court costs. Moers appealed.

The court of appeals affirmed the summary judgment. The court explained that under §23.51 of the Tax Code and the Comptroller's Ag Manual, agricultural land must be used "to the degree of intensity generally accepted in the area." A chief appraiser is responsible for setting standards for degrees of intensity. A property owner trying to challenge the chief appraiser's standards must show that they: 1) contravene specific language in the Code; 2) run counter to the Code's general objectives; or 3) impose burdens or conditions in excess of the Code's requirements. In this case, the chief appraiser's standards did none of those things. Even if those standards were strict compared to practices actually followed in Harris County, that would not invalidate them because a chief appraiser does not have to base his standards solely on his home county. He can base those standards on a larger area. Section 23.522 of the Code, which allows a property owner to keep the 1-d-1 appraisal on his land during a draught, did not apply because Moers's land did not qualify for 1-d-1 appraisal even before the draught of 2009-2012. Further, Moers provided no evidence that the draught forced him to extend the normal time that the land remained out of agricultural production.

The court of appeals also affirmed the dismissal of the chief appraiser from the case. A chief appraiser is ordinarily immune from suit. He can be sued for actions that are ultra vires (i.e., actions that are wholly outside his legal authority) but not because someone disagrees with the way that he exercises his authority. The chief appraiser clearly had the authority to adopt the standards that Moers disliked. And Moers could not seek a declaratory judgment against the *district* because the chief appraiser in particular, not the district in general was responsible for adopting 1-d-1 appraisal standards.

The court of appeals affirmed the dismissal of the 2012 claims because Moers filed them before he had presented them to the ARB. Those claims, however, should have been dismissed *without* prejudice so that Moers could refile them after going to the ARB. Moers was not entitled to recover any of his court costs even though the trial court ordered the ARB to hold a hearing for 2010. When a court orders an ARB to hold a hearing, the court *may* award the property owner his court costs under §41.45(f), but it does not have to do so.

City of Conroe v. TPProperty, LLC
1025 WL 3898018 (Tex. App. – Beaumont, June 25, 2015, no pet.) (not reported)

Issues: Governmental immunity; tax abatements; exhaustion of remedies

In 2007, the city entered two agreements with French Quarter concerning a hotel that had been closed for several years. Under the abatement agreement, the city would abate taxes on the hotel in exchange for French Quarter renovating and reopening it. Under the HOT agreement, the city would let French Quarter hold onto some of the hotel occupancy taxes that it collected from guests and spend the money promoting the hotel and tourism in general. During the period from 2009 through 2011, taxes were abated on the hotel while French Quarter proceeded to renovate it. But, late in 2011, French Quarter defaulted on its mortgage, and the hotel was foreclosed and purchased by TPProperty. French Quarter also assigned all or its rights under the two agreements to TPProperty. The city and TPProperty disagreed about whether TPProperty was honoring the agreements and providing all of the information required by the agreements. In April of 2012, the city council declared that the agreements were in default, and the next month the council terminated the agreements. TPProperty sued the city and the city filed counterclaims for the abated taxes and the hotel taxes that TPP had withheld. It was not until June of 2013 that the appraisal district sent TPProperty notice that its abatement exemption was being cancelled for the years 2009-2013. TTProperty filed a protest that was apparently never heard by the ARB. The city filed a plea to the jurisdiction with the trial court claiming that it was immune from the suit. When the court refused to dismiss the case, the city appealed.

The court of appeals agreed with the city on some points and with TPProperty on others. The court first considered §271.152 of the Local Government Code, which allows a city to be sued over a contract for goods or services. These agreements, however, were not contracts for goods or services. The efforts of French Quarter and TPProperty to renovate and operate the hotel were for their own benefit; the city could hope for only indirect and attenuated benefits. The court next considered an exception to governmental immunity that allows a party sued by a governmental entity to file counterclaims that are germane to the entity's claims and that serve to reduce what the entity can recover from the party. In this case, both TPProperty's claims and the city's counterclaims concerned the same two agreements. If TTProperty could prove its claims, they would have the effect of reducing what the city could recover in taxes. Thus, the exception *did* apply and allowed TPProperty to file its suit against the city.

The city also claimed that TPProperty could not sue because it had not exhausted its administrative remedies before the ARB. The court explained that the denial of an exemption is ordinarily something that a property owner must protest to the ARB before it can raise the claim in a lawsuit. But the court found an exception to that rule based on the unusual timing of the events in this case. TPProperty and the city had sued each other before the appraisal district ever canceled the abatement exemption. Prior to the district's action, there was nothing that TPProperty could have protested. It did not have to exhaust administrative remedies. The city was not entitled to have the claims against it dismissed.

Gonzales v. Dallas County Appraisal District
2015 WL 3866530 (Tex. App. – Dallas, June 23, 2015, no pet.) (not reported)

Issues: Proper parties to appeal

1n 2009, Gonzales sold land to Lenola, a corporation in which she owned stock. In 2013, after an unsuccessful protest, Gonzales sued the appraisal district to contest the appraisal of the property she no longer owned. She also named the ARB as a defendant and even named Lyons Equities, Inc., the owner of a nearby property. She claimed that the property she previously sold to Lenola was hers and that the district had appraised it unequally compared to Lyons's property. She alleged that Lyons had used some kind of "undue influence" to get a lower appraisal. The parties asked the trial court to dismiss the case because Gonzales did not own the property. In response, she amended her pleadings, identifying herself in the style as "Gonzales Derivatively on behalf of Lenola." The body of the amended pleading still claimed that Gonzales owned the property and did not even mention Lenola. The trial court dismissed the case and even awarded attorneys' fees to Lyons. Gonzales appealed.

The court of appeals affirmed the dismissal of the case and the award of attorneys' fees to Lyons. Gonzales had to standing to file the suit because she did not own the property. She could not claim that Lenola was just an assumed name because it was a separate legal entity. The case could not be considered as a shareholder derivative suit because Gonzales never pleaded that and never even pleaded that she was a shareholder of Lenola.

The court went on to discuss Rule 91a of the Texas Rules of Civil Procedure, which provides a way for frivolous cases to be dismissed quickly. Gonzales's claims against Lyons had no basis in fact or law. She did not allege that Lyons had anything to do with Lenola's property being appraised lower than Lyons's property. If Lyons influenced the district at all, it only did so with respect to the appraisal of its own property. Rule 91a allowed the trial court to award attorneys' fees to Lyons even though it had no jurisdiction to consider Gonzales's claims against Lyons.

Walls v. Harris County
2015 WL 3896606 (Tex. App. – Houston [14th Dist.], June 23, 2015, no pet.) (not reported)

Issues: Taxing omitted improvements; res judicata

In 2005, taxing units sued Walls for delinquent taxes on a real property account identified with a number ending in 0015. The court entered a judgment for the taxing units in mid-2007. In late 2007, the appraisal district provided the tax office with information about a building that was located on Walls's land but that had been omitted from appraisal rolls in the years 2002-2006. The building was identified with an account number ending in 0016. The tax office sent Walls a bill, which he did not pay. In 2009, the taxing units sued Walls again, this time for delinquent 2007-2008 taxes on the land (account 0015) and for the delinquent 2002-2006 taxes on the building (account 0016). Walls claimed that the taxing units could not sue him for the taxes on the building. He cited the principle of res judicata, which generally prevents a party from raising claims in a lawsuit if those claims have already been decided in another lawsuit. The trial court entered a judgment for the taxing units, and Walls appealed.

The court of appeals affirmed the judgment for the taxing units. The court explained that, "land and improvements are separate entities of real property under the tax code, subject to independent taxation." The judgment in the first delinquent-tax suit could not have decided the taxing units' claims for taxes on the building because the appraisal district had not even notified the tax office about the building at the time that the judgment was entered. The district had the authority to pick up the omitted improvement and the taxing units were entitled to collect their taxes on it notwithstanding the judgment in the first case.

CAP Holdings, Inc. v. Loren
2015 WL 3852915 (5^{th} Cir., June 22, 2015)

Issues: Effect of RTC lien on tax sale

Let your mind travel back to the mid-1980s. The U.S. was selling missiles to Iran and supporting terrorists in Nicaragua. Carla was abusing the regulars at *Cheers*. And savings and loans were dropping like flies. At that time, the Resolution Trust Company acquired a deed of trust from a defunct S&L on 94 acres owned by Jefferson Group. In 1990, taxing units sued Jefferson Group to collect delinquent taxes on the property. The RTC, named as a defendant, answered the suit and participated in the trial. But the RTC forgot to mention a federal statute, 12 U.S.C. §1825(b)(2), which said that RTC property could not be foreclosed or sold without the agency's consent. The court ordered the property sold. In subsequent years, the land was developed as a residential subdivision. In 2013, CAP Holdings sued residents of the subdivision claiming that they did not really own their homes. It claimed that as the current holder of the deed of trust once held by the RTC, it was entitled to challenge the 1990 tax sale and that the sale was void because it violated §1825(b)(2). The residents claimed that CAP Holdings had filed its suit after the six-year federal statute of limitations had run. The trial court entered a summary judgment for the residents, and CAP Holdings appealed.

The court of appeals overturned the summary judgment. The court explained that if the RTC had not consented to the tax sale, that lack of consent would not just mean that the deed of trust survived the tax sale; it would mean that the sale was completely void. In order to benefit from the statute of limitations, the residents would have to show that they were in privity with Jefferson Group, i.e., they would have to be able to trace their titles back to Jefferson Group. If the tax sale was void, the residents might not be able to establish that privity. Those issues had not really been considered or decided by the trial court. The court of appeals, therefore, sent the case back down so that the lower court could decide whether: 1) the RTC had effectively consented to the tax sale; and 2) whether the residents were in privity with Jefferson Group.

In re Trevino
2015 WL 3883180 (Bkrtcy., S.D. Texas, June 19, 2015)

Issues: Bankruptcy

HSBC held a mortgage on the Trevinos' home when the Trevinos filed Chapter 13 bankruptcy in August of 2010. In November, he bankruptcy court confirmed a plan calling for the bankruptcy trustee to make the monthly mortgage payments and make up about $20,000 in arrearages over the term of the plan. The plan did not mention property taxes, but in January 0f 2011, the trustee filed a notice stating that she would pay those taxes. On April 13, 2011, HSBC wrote the Trevinos stating that the 2010 taxes were delinquent and that if they were not paid right away, HSBC would pay them and bill the Trevinos after the completion of the bankruptcy plan. The trustee began paying the taxes on April 21. In June, HSBC sent checks to pay the 2010 taxes. The trustee wrote HSBC explaining that it should not pay the taxes. She advised HSBC to consult the plan. The tax offices refunded HSBC's payments. HSBC tried paying the 2010 taxes again in early 2013, and again its payments were refunded. The next month, HSBC filed a notice with the court under Bankruptcy Rule 3002.1 claiming that it had paid the taxes and claiming a right to reimbursement. The trustee began paying HSBC. Later that year, HSBC transferred the mortgage to U.S. Bank, and the trustee began making payments to U.S. Bank. When the Trevinos figured out what had happened, they filed various claims against HSBC and U.S. Bank in the bankruptcy court. The banks moved to have those claims dismissed. In this voluminous opinion, the court discussed whether the Trevinos' various claims should be dismissed.

The court first concluded that the Trevinos' claims were timely because they were filed within one year after HSBC filed the Rule 3002.1 notice. Sometimes, a debtor may not be able to assert claims against a "holder in due course," i.e., a creditor who acquired the debtor's note from another creditor without notice that the note was in default. But, U.S. Bank knew that the Trevinos were behind on their payments when it acquired their note and mortgage. It was not a holder in due course.

The Trevinos had not adequately stated a claim for abuse of process or for sanctions under §105 of the Bankruptcy Code against HSBC because they has not alleged that HSBC acted in bad faith when it filed the Rule 3002.1 notice. HSBC's department that filed the notice was not in touch with the department that received the returned tax payments. The fact that HSBC's left hand did not know what its right hand was doing did not amount to bad faith. Additionally HSBC's error was caused in part by the Trevinos' failure to mention property taxes in their bankruptcy plan. U.S. Bank, however, continued to demand and receive the payments from the trustee knowing full well that HSBC had not paid the 2010 taxes. The Trevinos could proceed with their abuse-of-process claims against U.S. Bank.

The Trevinos could proceed with their claims against HSBC under the federal Fair Debt Collection Practices Act. Bankruptcy law did not prevent them from doing so. They could not pursue such claims against U.S. Bank because they did not allege that U.S. Bank made false claims in connection with the collection of a debt. Because federal bankruptcy law controlled, the Trevinos could not assert claims under the Texas Debt Collection Act.

The letters that HSBC sent to the Trevinos demanding payment of property taxes violated the automatic stay that applies in bankruptcy cases. The Trevinos could not pursue claims of negligent misrepresentation against HSBC because they never relied on the false statements in the 3002.1 notice. They could pursue breach-of-contract claims even though they, themselves were behind on their mortgage payments. Their breach of the contract was not a material breach.

Douglas v. City of Kemp
2015 WL 3561621 (Tex. App. – Dallas, June 9, 2015, no pet.) (not reported)

Issues: Governmental immunity; exhaustion of remedies; tax abatements

Douglas built a nursing facility in the city. When the city assessed taxes on the full market value of the facility, Douglass sued the city claiming that he and the city had entered a tax abatement agreement. He accused the city of breaching the agreement and threw in claims for a declaratory judgment and tort claims like negligent misrepresentation and fraudulent inducement. The city claimed that it was immune from the claims. The trial court dismissed the case on the grounds that the city's immunity left it with no jurisdiction to consider the case. Douglas appealed.

The court of appeals agreed that the city was immune. The court discussed the Texas Tort Claims Act (Chapter 101 of the Civil Practice and Remedies Code), which allows the state or a local government to be sued on some types of tort claims. The Act, however, expressly preserves governmental immunity "in connection with the assessment or collection of taxes by a governmental unit." A local government may be sued over something that it does, not in its governmental capacity, but in a proprietary capacity. But when a government is assessing and collecting taxes, it is operating in its governmental capacity. Douglas could not sue for a declaratory judgement because he had not exhausted administrative remedies by filing a protest with the ARB.

The city was also immune from Douglas's breach-of-agreement claim. Under §271.151 of the Local Government Code, a local government can be sued for breach of a written contract for goods or services. Douglas, however, did not plead or prove that the alleged abatement agreement was written or that it involved goods or services. The court of appeals affirmed the dismissal of the case.

Smith v. City of Wichita Falls
2015 WL 3523045 (Tex. App. – Fort Worth, June 4, 2015, no pet.) (not reported)

Issues: Liability for taxes

Taxing units sued Smith for many years of delinquent taxes on real property. Smith represented himself in the case. He claimed that he was not an owner of the property and that the appraisal district and taxing units had failed to send him notices and bills concerning taxes on the property. In the trial, the taxing units presented copies of their delinquent-tax records authenticated by an affidavit from a tax-office employee. They also offered a certified copy of a 1992 deed in which Elizabeth Walters conveyed the property to Smith and three other people. Smith attempted to introduce some documents, but he failed to authenticate them. One of those documents purportedly showed that Elizabeth Walters had conveyed the property by quitclaim deed to a Charles Anderson in 1998. Smith had attempted to subpoena some witnesses, but the subpoenas were defective and the witnesses did not appear. The trial court entered judgment for the taxing units, and Smith appealed.

The court of appeals affirmed the trial court's judgment. The court explained that under §33.47 of the Tax Code, a taxing unit can use certified copies of its delinquent tax rolls to establish a prima facie case against a defendant in a delinquent-tax case. That evidence creates a presumption that government employees performed all of their legal duties in connection with the taxes, including delivering necessary notices. Smith offered no evidence to the contrary. Although he tried to introduce evidence concerning the ownership of the property, the trial court properly excluded the evidence because it was not authenticated. He failed to rebut the presumption that arose from the taxing units' evidence. The court did note that because Elizabeth Walters conveyed the property to Smith and the other people in 1992, she had no interest left to convey to Anderson in 1998. The record was sufficient to establish that Smith was an owner of the property during the relevant years. As an owner, he was liable for the delinquent taxes. Smith attempted to raise some other issues that the court of appeals did not consider because Smith had not briefed them adequately.

EXLP Leasing, LLC v. Webb County Appraisal District
2015 WL 3505107 (Tex. App. – San Antonio, June 3, 2015, pet. denied) (to be published)

Issues: Payment of taxes during appeal

EXLP owned pipeline compressors in Webb County. In 2012, it protested the appraisal of the compressors in Webb County claiming that the compressors were taxable as heavy equipment inventory and that they were taxable in Victoria County, where EXLP had an office. When the ARB denied the protest, EXLP took its claims to court. It didn't pay any 2012 taxes in Webb County, and the appraisal district moved to have the case dismissed under §42.08 of the Tax Code. The district claimed that EXLP should have paid some taxes in Webb County, even though it could not say how much. The trial court dismissed the case, and EXLP appealed.

The court of appeals reversed the trial court and reinstated the case. The court of appeals explained that §42.08 requires a property owner to pay at least the smallest of three amounts: 1) the taxes on the value of the property that is not in dispute; 2) the full tax assessment; or 3) the taxes for the preceding year. Because EXLP disputed all taxes assessed in Webb County, the undisputed tax amount was zero. That meant that EXLP did not have to pay any taxes at all in order to pursue its Webb County lawsuit. The court acknowledged that EXLP had failed to state what it planned to pay when it first filed its suit as required by §42.08(b-1). EXLP's failure, however, was not a jurisdictional defect; it did not justify the trial court's dismissal of the case.

Johnson v. Harris County
2015 WL 3485913 (Tex. App. – Houston [1st Dist.], June 2, 2015, pet. dismissed) (not reported)

Issues: Challenging a tax sale; invited error (being careful what you wish for)

The county sued Johnson for delinquent taxes on real property but failed to have him served with the suit papers. In 2011, the trial court entered a default judgment against Johnson and ordered the sale of the property. Wali purchased the property for $55,800, and the sale resulted in $7,125 in excess proceeds. In 2013, Johnson filed a new suit (called a bill of review) challenging the default judgment in the first case on the grounds that he had not been served. He asked the trial court to vacate the judgement, set aside the sale to Wali and reopen the first case. The court ruled that the default judgment was void. The county and Wali then moved the court to void the tax sale and order the refund of Wali's purchase money. The court granted the motion and reopened the first case. Its order erroneously said that it was a final disposition of the case. Wali, then petitioned for the release of the excess proceeds, and, in July of 2014, the court ordered that the proceeds be released to him. Johnson appealed the trial court's orders.

The court of appeals affirmed the trial court. The higher court explained that under the "invited error doctrine," a litigant cannot complain when a court does what he asked it to do. The court further explained that under §33.56 of the Tax Code, a taxing unit may petition a court to vacate a delinquent-tax judgment. It may do so even after a tax sale if the purchaser agrees. In this case, Wali agreed and joined in the county's motion.

A trial court normally loses jurisdiction over a case thirty days after the case is finally decided. But this case was not finally decided by the trial court's 2013 order reopening the first case; after that order there was no longer even a decision about whether Johnson owed the delinquent taxes. The trial court, therefore, still had jurisdiction to order that the excess proceeds be released to Wali. The 2013 order itself was sufficient to establish Wali's right to the excess proceeds. The 2014 order really just enforced the 2013 order. Johnson also claimed that Wali's petition for the release of the excess proceeds was filed after the statute of limitations had run. Presumably, this argument referred to §34.04, which requires a petition for excess proceeds to be filed within two years following a tax sale. But the county waived the limitations defense by not asserting it in defense to Wali's petition.

DZM, Inc. v. Garren
467 S.W.3d 700 (Tex. App. – Houston [14th Dist.], May 28, 2015 no pet.)

Issues: Evidence of value

This is not a property-tax case, but it does concern the quality of evidence presented to prove the market value of property. Garren leased personal property including poker tables and televisions to a “social club” located in a shopping center. When the social club stopped paying rent to its landlord, DZM, the landlord changed the locks. Neither the tenant nor Garren could get inside to remove the personal property. Garren sued DZM for conversion and demanded money equal to the market value of the property at the time that DZM changed the locks. Garren testified that the market value of the property was equal to what he had paid for it in the past, $30,568. The jury awarded $12,500, and DZM appealed, claiming that the evidence was not legally sufficient to support the jury’s verdict.

The court of appeals ruled for DZM and concluded that Garren’s testimony was not sufficient to support the verdict. The court explained that the owner of property is generally considered qualified to testify to his opinion of the property’s value, even if the owner has no expertise as an appraiser. Like any opinion testimony, however, the owner’s opinion must be: 1) rationally based on the witness’s perception; and 2) helpful to a clear understanding of the witness’s testimony or the determination of a fact issue. In the court’s words:

> Because property-owner testimony is the functional equivalent of expert testimony, it must be judged by the same standards. Thus, as with expert testimony, an owner’s property valuation may not be based solely on the owner’s *ipse dixit* [Latin for “because I say so”]. An owner may not simply echo the phrase “fair market value” and state a number to substantiate the owner’s claim; the property owner must provide the factual basis on which the opinion rests. . . . But, the valuation must be substantiated; a naked assertion of “fair market value” is not sufficient. Even if unchallenged, the property owner’s testimony must support the verdict, and conclusory or speculative statements do not. In addition, under this court’s precedent, evidence of the amount paid in the past to purchase property, by itself, is legally insufficient to support a finding as to the property’s market value at a later date. (citations omitted)

Garren did not testify about facts that supported his opinion. The court of appeals reversed the trial court’s judgment and ruled that Garren was not entitled to recover anything for the loss of his property.

Roal Global Corp. v. City of Dallas
2015 WL 2407827 (Tex. App. – Dallas, May 21, 2015, no pet.) (not reported)

Issues: Governmental immunity

Roal Global bought property at a tax sale. The city then demanded that Roal Global pay some additional taxes on the property, taxes that arose before the tax sale. Roal Global sued the city and other taxing units. It sought a declaratory judgment to the effect that the city has misapplied the money that it paid at the tax sale and that it did not owe the additional taxes. The city responded that it was immune from the suit. The trial court agreed with the city and dismissed the claims against the city. Roal Global appealed.

The court of appeals affirmed the dismissal of Roal Global's claims against the city. The court explained that the Declaratory Judgments Act waives a local government's immunity and allows the local government to be sued, but only in certain circumstances. The Act does not waive a local government's immunity with respect to a suit seeking a declaration of the plaintiff's rights under a statute or a declaration that government actors violated the law. Roal Global was seeking a declaration of its rights under §34.03 of the Tax Code, and the city was immune from the suit. The court of appeals noted that Roal Global's suit against the other taxing units was still pending in the trial court and explained that Roal Global could try adding claims against governmental officials instead of claims against local governments.

Arthur v. Uvalde County Appraisal District
2015 WL 2405343 (Tex. App. – San Antonio, May 20, 2015, pet. denied) (not reported)

Issues: Exhaustion of remedies; agreements resolving protests

The appraisal district, acting as tax collector, sued Arthur for delinquent 2010 and 2011 taxes on several real properties. In response, Arthur claimed that he had reached a settlement agreement with the district under §1.111 of the Tax Code and that the district had agreed to change the 2010 and 2011 values of his properties. He pleaded a counterclaim against the district for breach of that agreement. Arthur paid the assessed taxes on his properties in order to clear the title of tax liens, and the district dismissed its delinquent-tax claims. The district filed a plea to the trial court's jurisdiction and a no-evidence motion for summary judgment, both claiming that Arthur should have taken his breach-of-agreement claim to the ARB before raising it in court. Arthur filed a motion for summary judgment on his counterclaim. The district responded that there was no enforceable agreement because the person who negotiated on Arthur's behalf was not authorized to do so. The trial court granted the district's motion and denied Arthur's motion. Arthur appealed.

The court of appeals first addressed the district's claims that Arthur had to go to the ARB before he could raise his counterclaim in court. The court explained that if a property owner's claim is one of the grounds of protest described in §41.41, the owner must raise the claim before the ARB. Section 41.41's grounds do not expressly include a claim that an appraisal district breached an agreement, but they do include claims about "any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner." The court nevertheless concluded that a breach-of-agreement claim did not fall under §41.41 and that Arthur could raise that claim in court without first going to the ARB. The trial court erred by granting the district's plea to the jurisdiction. The trial court also erred by granting the district's no-evidence motion for summary judgement because such a motion may not be used to raise a jurisdictional challenge. The court of appeals reversed those decisions.

The court of appeals went on to rule that Arthur's agent was properly authorized when she negotiated the agreement with the district. Section 1.111 and the Comptroller's rule 9.3044 normally require a property owner to appoint an agent using a written form, but the rule contains an exception for an agent who is an employee of the property owner and is authorized by the owner to represent him. Arthur's agent was his employee, she was authorized to represent him, and the district entered an agreement with her without questioning her authority. She did not need an appointment-of-agent form. The court, however, was not willing to grant Arthur's motion for summary judgment because his evidence did not conclusively establish the specific values upon which Arthur and the district had agreed, nor did it establish what his corrected tax liability should have been. The court of appeals sent the case back to the trial court for further consideration of Arthur's counterclaim.

Pleasant Hill Community Development Corp. v. Appraisal Review Board of Harris County
2015 WL 2342588 (Tex. App. – Houston [14th Dist.], May 14, 2015, pet. denied) (not reported)

Issues: Exhaustion of remedies

Pleasant Hill owned an apartment complex that received an exemption under §11.18 of the Tax Code, the exemption for community housing development corporations. The appraisal district sent Pleasant Hill a notice that it was canceling the exemption retroactively for the years 2006-2009. The notice was sent by certified mail and received by Pleasant Hill on November 6, 2009. It explained that Pleasant Hill could protest the district's decision by filing a notice of protest with the ARB within thirty days. Pleasant Hill threw it away. In January of 2012, Pleasant Hill's lawyer sent a letter to the district and the ARB protesting the district's failure to exempt the property in the years 2006-2011. The ARB dismissed the protest on June 28, 2012 and sent a notice to Pleasant Hill's tax consultant. Pleasant Hill filed suit against the district and the ARB on December 7, 2012 and demanded that the ARB hold a hearing on its protest. In October of 2013, Pleasant Hill filed a second protest complaining that the ARB had not held a hearing on its first protest. The ARB took no action on the second protest. The defendants moved for the dismissal of the lawsuit, and the trial court dismissed it in November of 2013. Pleasant Hill appealed.

The court of appeals affirmed the dismissal of the case. The court explained that Pleasant Hill had thirty days in which to file its protest after the district sent the notice that the exemption was being cancelled. When it missed that deadline, it forfeited its right a hearing on its protest. Under §41.45(f), a court can order an ARB to hold a hearing on a protest, but only if the property owner is legally entitled to the hearing. A court will not order an ARB to hold a hearing on a protest that was filed too late. Pleasant Hill also raised a vague claim that §41.45(f) was unconstitutional under the Due-Process clause, but the court rejected that claim. It pointed out that a court has the authority to consider evidence and determine facts relevant to whether the court has jurisdiction over a case. The court explained that when an ARB does not hold a hearing on a protest, the property owner has sixty days in which to sue the ARB; filing a second protest is not an option. Pleasant Hill failed to file its suit against the ARB within sixty days after the board notified it that its protests were dismissed.

ETC Marketing, Ltd. v. Harris County Appraisal District
476 S.W.3d 501 (Tex. App. – Houston [1st Dist.], May 5, 2015, pet. granted)

Issues: Property in interstate commerce

ETC was a marketing firm that bought gas at the Katy Hub, a Texas marketplace and distribution center for natural gas. ETC did not know how much of the gas had been produced in Texas. It turned the gas over to an affiliated intrastate pipeline company called HPL. Their agreement called for HPL to store the gas and eventually transfer it to other locations. This allowed ETC to buy gas in the summer when it was relatively cheap and resell the gas at a profit in the winter. HPL's only pipeline and storage facilities were in Texas, but its pipeline connected to other pipelines that crossed state lines. Both ETC and HPL had offices and employees in Texas and in Harris County. On January 1, 2010, ETC admittedly had 33 billion cubic feet of natural gas in storage in a facility in Harris County. The gas was comingled with gas belonging to other companies. ETC's business plan called for it to sell the gas to out-of-state buyers, but it was free to sell the gas to anybody. The appraisal district appraised the gas and ETC protested, claiming that the gas could not be taxed because it was in interstate commerce. The ARB denied ETC's protest and a trial court entered a summary judgment for the district. ETC appealed.

The court of appeals affirmed the summary judgment for the district and ruled that the gas was taxable in Harris County. The court explained that the so-called dormant Commerce Clause of the U.S. Constitution may sometimes prohibit taxation that interferes with interstate commerce. Cases like this one involve two questions. First, the court must determine whether the property is in interstate commerce. If it isn't, the property is taxable. If it is, the court must determine the second question, i.e., whether the taxes on the property satisfy a four-part test created by the U.S. Supreme Court and called the *Complete Auto* test. In this instance, the court decided to skip to the second question. It decided that even if ETC's gas were in interstate commerce it would be taxable under the *Complete Auto* test. First, the facts of the case established that ETC had a physical presence in Texas and that a substantial nexus existed between Texas and ETC's storage of the gas. Second, the taxes were fairly apportioned because ETC would not face multiple taxation of its gas, even if every state had the same tax laws as Texas. ETC admitted having 33 billion cubic feet of gas stored entirely in Texas. Third, the taxes did not discriminate against interstate commerce. Taxes were uniformly applied to property regardless of whether it was in interstate commerce. Fourth, the taxes were fairly related to the services provides by state and local governments. ETC's gas benefitted from services like police and fire protection and from other advantages of a civilized society. One dissenting judge stated her radical position that all gas in a "nationwide gas transportation system" was immune from taxation.

TVMAX Holdings, Inc. v. Spring Independent School District
2015 WL 1967596 (Tex. App. – Houston [1st Dist.], April 30, 2015, no pet.) (not reported)

Issues: Correction of appraisal rolls; service of process; liability for taxes

Taxing units sued TVMAX for delinquent taxes on personal property for the years 2010-2011. In 2012, Broadband bought TVMAX. In early 2013, the taxing units amended their pleadings to name Broadband as a defendant and to add claims for 2012. The papers were sent to a Travis County constable to be served on Broadband's registered agent. The constable's return of service was filed with the court. Broadband did not file an answer. In late February, 2013, TVMAX filed motions with the ARB seeking changes in the 2010, 2011 and 2012 appraisal rolls to correct multiple appraisals and appraisals of property that did not exist. In September, just before the case was set for trial, TVMAX requested that the trial court abate the case until the ARB ruled on TVMAX's motions. The court denied the request, and the case went to trial. The court entered judgment against both TVMAX and Broadband for all the delinquent taxes. The defendants appealed.

On appeal, Broadband claimed that it had not been served with the suit papers. The court of appeals explained that the constable's return showed service on Broadband's agent, contained all of the necessary details and was on filed with the trial court well before the court entered a default judgment against Broadband. Broadband would have been entitled to a new trial if it had presented the trial court with evidence to show: 1) that its failure to answer was not intentional or the result of conscious indifference; 2) that it had a meritorious defense to the taxing units' claims; and 3) that a new trial would not prejudice the taxing units. But, Broadband never presented that evidence to the trial court. TVMAX was not entitled to have the case abated. Because, it had not made any tax payments for any of the years in question, it had forfeited the right to have the ARB consider its motions. There was no reason for the trial court to wait for the ARB to decide TVMAX's motions when the ARB was not going to do so.

The trial court correctly adjudged both defendants to be liable for the taxes, and there was no reason to prorate the tax liability among them. TVMAX was liable under §32.07 of the Tax Code because it owned the property on January 1 of each year. Broadband was liable because it failed to withhold some of the purchase price that it paid for TVMAX until it received proof that TVMAX's bpp taxes had been paid. Thus, it became liable for the taxes under §31.081. The court of appeals affirmed the trial court's judgment for the taxing units.

Texas Student Housing Authority v. Brazos County Appraisal District
460 S.W.3d 137 (Tex., April 24, 2015)

Issues: Public property exemption

The Texas Student Housing Authority (TSHA) is a higher education facility authority created under Chapter 53 of the Education Code. It operated a dormitory-like residential facility with rooms primarily occupied by Texas A&M students. During the summers, however, some of the rooms were used by other types of people attending events at or near Texas A&M. Those events included a children's hockey camp conducted by a private nonprofit organization and a cheerleading camp conducted by a private for-profit company. For four years, 2005 through 2008, the appraisal district denied exemptions for the facility on the grounds that it was not used exclusively to house students. Following unsuccessful protests, the TSHA sought the exemption in a lawsuit. The trial court denied the exemptions and the TSHA appealed. The court of appeals affirmed the trial court's judgment reasoning that the facility could not be exempt because it was being used to house non-students. Then the Texas Supreme Court decided to take up the case.

The Supreme Court reversed the lower courts and granted the exemption. The Court noted that the Education Code requires a higher education facility authority to use its property *exclusively* for housing students of an institution of higher education, such as Texas A&M. Section 53.46, however, does not condition the tax exemption on the use of a property for any particular purpose. It simply states that the property of an authority *is exempt, period*. If an authority used its property in a way not permitted by law, some "injured party with standing" might sue to force the authority to stop the unauthorized use, but the appraisal district could not deny the tax exemption for the property. The exemption is unconditional.

Editor's Comment: Interestingly, the Supreme Court ignored the question of whether the Texas Constitution would allow an exemption for the TSHA facility. Article XI, §9 of the Texas Constitution requires that property be used exclusively for public purposes in order to receive a public-property exemption. Even if the exemption in the Education Code is unconditional, the exemption in the Constitution certainly *is* conditional. The Court interpreted the statute in a way that makes it unconstitutionally broad.

Delk v. Val Verde County
2015 WL 1875881 (Tex. App. – San Antonio, April 22, 2015, no pet.) (not reported)

Issues: Excess proceeds following tax sale.

In 2004, taxing units sued Robert Delk for delinquent taxes on real property. Robert filed an answer but did not appear for the trial. The trial court entered judgment for the taxing units, ordered the property sold and sent a notice to Robert. In 2007, the sheriff sold the property, and the sale resulted in $10,120 in excess proceeds being deposited with the court clerk. In 2008, the clerk sent Robert a notice of the excess proceeds, but it was returned as undeliverable. In March of 2012, the clerk sent Robert a second notice, and that notice found its way into the hands of Dorothy Delk. (The court of appeals' opinion doesn't say, but apparently Robert was deceased by the time of the second notice, and Dorothy was his heir.) Dorothy's lawyer called the court and admitted that she had received the notice, but she made no effort to claim the excess proceeds. In February of

2014 the taxing units filed a petition with the court claiming the excess proceeds under §34.04(a) of the Tax Code and sent Dorothy a copy. The trial court did not grant the petition because it was filed more than two years after the tax sale. Then, in June of 2014, the taxing units filed another claim for the excess proceeds, this time under §34.04(b). That claim was not subject to the two-year deadline. The trial court awarded the money to the taxing units, and Dorothy appealed.

The court of appeals affirmed the trial court's order awarding the excess proceeds to the taxing units. The court explained that under §34.04(a), a person has two years in which to claim excess proceeds, and the two years starts with the tax sale. Neither Robert nor Dorothy made any claim within two years following the 2007 tax sale. Even if Dorothy could make some due-process argument that the two years should start when she received notice of the excess proceeds, that argument would not help her. She had not claimed the money within two years of receiving the court's notice in 2012.

State of Texas v. Chana
464 S.W.3d 769 (Tex. App. – Houston [1st Dist.]. April 2, 2015, no pet.)

Issues: Admissibility of appraiser's testimony; use of ARB testimony

This is a condemnation case, and much of the court's opinion concerns issues not related to property taxes. But the opinion does address a couple of interesting points. The state was condemning two acres out of a 7.8 acre tract for the purpose of expanding a road. In a jury trial, the property owner presented an appraiser named Sikes to testify about the value of the land being taken. Sikes explained his theory that there was heavy demand for smaller tracts in this fast-growing commercial area near Katy. The highest and best use of the 7.8 acre tract was to divide it into three smaller commercial tracts. The trial court allowed Sikes to testify about ten comparable sales, all under three acres, even though the state objected that five of them were not really comparable. Sikes estimated a value of $9.50 per square foot for a hypothetical 2.4 acre tract comprising the eastern end of the larger tract and applied that value proportionally to the 2 acres being condemned, a value of $922,256. The state tried to introduce the record from an ARB hearing held just four months before the condemnation. The property owner's agent had testified to a value of $3.24 per square foot. The trial court would not admit the evidence. The jury agreed with Sikes and awarded the owner $922.256. The state appealed.

The court of appeals upheld the trial court's judgment. Sikes's testimony was not improper because he anticipated dividing the 7.8 acre tract into three smaller tracts. His approach was supported by his testimony that there was an active market for smaller tracts and that other larger tracts in the area were being broken up and sold as smaller tracts. Sikes had made legitimate use of the market approach to valuation. The court of appeals did not decide whether Sikes should have been able to testify about his five controversial sales. Even if they were not really comparable, there was enough other evidence to support Sikes's conclusions and the jury verdict. His testimony about those sales did not lead to an erroneous verdict. If the trial court erred by allowing Sikes to testify about those sales, the error was harmless.

Further, the trial court did not err by excluding the record from the ARB hearing. At the hearing, the agent had based his opinion on some sales but also on listing prices for comparable properties. A listing price is not competent evidence of a property's value. The record from the hearing therefore included both admissible and inadmissible evidence. Because the state offered the record as a whole, the trial court correctly refused to allow it. If the state had offered only the agent's statements about the sales and the value of the subject property and not the agent's statements about listing prices, the evidence would have been proper.

Galveston Central Appraisal District v. Valero Refining—Texas, L.P.
463 S.W.3d 177 (Tex. App.—Houston [14th Dist.], March 31, 2015, pet. granted)

Issues: Unequal appraisal; expert testimony; payment of taxes during appeal

Valero owned one of three refineries in Galveston County. In 2011, the appraisal district appraised component parts of the refinery under approximately twelve account numbers with a total value of just over $1 billion. After a partially successful protest, Valero took its unequal-appraisal claims to court. Its original pleadings identified five accounts including process units, pollution-control equipment, and tank facilities. The pleadings did not state what Valero proposed to do about paying its taxes, but it paid them on time and in full. As the trial began, Valero amended its pleadings to remove two accounts, including the pollution control equipment. Its experts compared the disputed parts of its refinery with comparable parts of the two other refineries. One of those refineries was substantially larger than Valero's and the other was substantially smaller. The experts adjusted the appraised values based on the refineries' "equivalent distillation capacities." EDC measures a refinery's capacity and complexity. The experts then took the median appraised value per EDC and applied the value to Valero's refinery. They performed their calculations once without considering the refineries' pollution-control equipment and once with that equipment included. When they included the pollution-control equipment, their conclusion of an equalized value was substantially higher. The experts could not explain why Valero had dropped the pollution-control equipment from its suit. They admitted that the equipment was necessary and that it would be included in the sale of a refinery. They performed an analysis that did not include the equipment just because that is what Valero asked them to do. Based upon their analysis that did not include the pollution control equipment, the jury lowered the value of the three accounts by almost $190 million. The appraisal district appealed the trial court's judgment based on the jury's verdict.

On appeal, the district argued that because Valero had included only some of the refinery accounts in its suit, the trial court no jurisdiction over the case. The court of appeals acknowledged that a property owner cannot select just one part of a property account, such as land or an improvement, and claim that only the appraised value of that part should be reduced based on unequal appraisals. But, Valero's pleadings claimed that the whole refinery had been appraised unequally, even though it singled out only three accounts as being the places where the inequality occurred. That was enough to invoke the trial court's jurisdiction. Similarly, the trial court's jurisdiction was not affected by Valero's failure to include with its original pleading a statement about its plans for paying taxes. Section 42.08 of the Tax Code requires such a statement only when a property owner proposes to make a partial payment instead of paying its taxes in full.

The court of appeals went on to conclude that Valero's evidence was not sufficient to support the jury's verdict. The court did not consider the validity of the method used by Valero's experts, and it thought that there was at least some evidence that the other refineries were comparable to Valero's. The differences between the refineries could be dealt with through adjustments. The court, however, criticized the experts for preparing an analysis that did not include the pollution-control equipment. The experts offered no valid reason for excluding the equipment. The fact that Valero itself had dropped the account from its suit did not give the experts a reason for failing to consider it. The fact that some of the equipment was exempted was irrelevant because an unequal-appraisal claim focuses on *appraised* values, not *taxable* values. Differences in the equipment at the three refineries could have been dealt with by adjustments. The court of appeals overturned the trial court's judgment and sent the case back to the lower court for a new trial.

Townsend v. Montgomery Central Appraisal District
2015 WL 971313 (Tex. App. – Houston [14 Dist.], March 3, 2015, no pet.) (not reported)

Issues: Applicability of Tax Code procedures; situs

Townsend had a long history of filing *pro se* suits against the appraisal district, its chief appraiser and the ARB. In 2011, following a protest, he sued them all and included the ARB's chairman as an additional defendant. He claimed that, for various reasons, his real property was not taxable at all, that it was not taxable in the county and that it should be exempted. On its own motion, the trial court sorted through his claims and dismissed those not related to Townsend's 2011 protest. The court also dismissed all defendants except the district. The district then filed a motion for summary judgment as to Townsend's 2011 appraisal claims. The trial court granted the motion and Townsend appealed.

The court of appeals affirmed the trial court's actions. It explained that the trial court had jurisdiction over the claims that Townsend had protested before the ARB, i.e., claims challenging the 2011 appraisal. A suit based on those claims could be filed only against the district, so the other defendants were correctly dismissed. The trial court correctly entered summary judgment on those claims. The district used an affidavit along with a photograph of Townsend's property and copies of its records to prove that the property was in the county and in the district, a fact that Townsend actually admitted in one of the documents he had filed. Townsend offered no evidence to show that his property qualified for an exemption or that it was otherwise non-taxable. The trial court lacked jurisdiction over Townsend's other claims. He could not sue for the removal of the chief appraiser or the ARB chairman because he was not one of the people with authority to remove them. He could not force the ARB to change the format of its orders because the orders satisfied all requirements of the Tax Code. He could not raise claims that had been resolved in past years or that should have been filed in past years.

Stephens County v. Eaton**,**
2015 WL 730096 (Tex. App. – Eastland, February 12, 2015, no pet.) (not reported)

Issues: Governmental immunity; attacking a tax sale

The county sued the Davises for delinquent taxes on ten acres of land. The Davises were served by publication and never answered the suit. After a default judgment was entered, the Eatons bought the property at the Sheriff's sale. More than two years later, the Eatons sued the county and its tax assessor collector and demanded that the sale be voided. The county and the tax assessor-collector claimed to be immune from the suit. When the trial court refused to dismiss the case, they appealed.

The court of appeals reversed the trial court's decision and dismissed the case. The court explained that as a political subdivision of the state, the county was immune unless there had been some waiver of that immunity. A suit against a county official in her official capacity is really a suit against the county and subject to the same immunity. Section 34.07 of the Tax Code includes a waiver of immunity and allows a tax-sale purchaser to challenge the sale, but the purchaser must file his suit within one year from the date of the sale. The Eatons filed too late to take advantage of §34.07. Therefore, there was no waiver of the defendants' immunity. The court went on to explain that the Eatons had no rights to assert with respect to the delinquent-tax suit because it did not concern them. The record did not show any violation of the Davises rights, and, even if it had, the Eatons could not complain about alleged violations of those rights. Any rights that the Eatons might have had could have been asserted in a timely suit under §34.07, but they filed their suit too late.

Town & Country Suites, L.C. v. Harris County Appraisal District
461 S.W.3d 208 (Tex. App. – Houston [1st Dist.], January 27, 2015, no pet.)

Issues: Wrong party filing protest and appeal

In 1997, T&C bought a property from three sellers, Sheehan, Gowan and Patterson. In 2012, someone using the name "Gowan Sheehan & Patterson" filed a protest concerning the property. After the ARB determined the protest, someone filed a lawsuit using the names "Sheehan Gowan" and "Patterson Gowan." Seven months later, the appraisal district asked the trial court to dismiss the case because it had not been filed by T&C, the actual owner. T&C then filed amended pleadings naming itself as the property owner and as the plaintiff. It claimed to have been mistaken about its own name because the appraisal district had listed Gowan Sheehan and Patterson as the owners of the property. The trial court dismissed the case because T&C had not appeared as a plaintiff until well after the statute of limitations had run. T&C appealed.

The court of appeals reversed the trial court's order and reinstated the case. The higher court based its decision on a 2013 amendment to §42.21(h) of the Tax Code. The amendment states that a suit "brought on behalf of a property owner" should not be dismissed "regardless of whether the petition correctly identifies the plaintiff as the owner," so long as the property was the subject of an ARB order and the suit was timely filed. The error should be corrected with an amended petition that correctly identifies the property owner. The court explained that the new law excuses even pleadings that *misidentify* the owner of a property, i.e., pleadings that do not just state the owner's name incorrectly but that actually state the name of some other person or entity instead of the owner. When a suit is filed by a plaintiff who is not the property owner nobody has to prove that the plaintiff intended to act on behalf of the actual owner. The district had the right to insist that the actual property owner be named as the plaintiff in the suit, but it did not have the right to have the suit dismissed. The court further concluded that the amendment was constitutional because the legislature has the authority to expand a court's jurisdiction.

Ocwen Loan Servicing LLC v. Gonzalez Financial Holdings, Inc.
2015 WL 224972 (S.D. Tex. January 15, 2015)

Issues: Property tax loans; foreclosure of tax liens

Rodarte owned property subject to Argent's deed of trust. In late 2006, Rodarte took out a property-tax loan from Gonzalez, and the tax liens were transferred to Gonzalez. In February of 2009, Argent transferred its deed of trust to Deutsche Bank, which promptly recorded the transfer documents. Because Rodarte had stopped making payments on the property-tax loan, Gonzalez conducted a non-judicial foreclosure of its tax liens in September of 2009. Gonzalez mailed a notice of the foreclosure to Argent, but not to Deutsche Bank. Moss bought the property at the foreclosure sale and promptly recorded his deed. By August of 2013, Deutsche Bank learned of the foreclosure sale and sued Gonzalez claiming that the lack of notice violated Deutsche Bank's due process rights and made the sale void. Gonzalez responded that the suit was filed too late because §33.54 of the Tax Code required Deutsche Bank to file suit within one year from the date that Moss recorded his deed. Sections 33.54 and 34.08 gave Moss full title to the property, precluding all other claims.

In this opinion, the federal district court judge concluded that the Tax Code's statute of limitations did not apply to Deutsche Bank's due-process claim. Notice is a fundamental requirement of due process. When the holder of a properly recorded lien stands to lose that lien through the foreclosure of a tax lien, the lienholder is entitled to notice of the foreclosure by mail or personal service. Deutsche Bank's deed of trust was recorded, and it would have been found in a title search. Gonzalez failed to give Deutsche Bank the notice to which it was entitled, and constructive notice by publication was no substitute. That meant that Gonzalez's foreclosure sale was void and subject to a collateral attack at any time. That also meant that Moss could not claim any protection as a bona fide purchaser. The judge voided the sale and reinstated Deutsche Bank's deed of trust.

Hunt County Appraisal District v. Horizons Ahead, LLC
2015 WL 124532 (Tex. App. – Texarkana, January 9, 2015, no pet.) (not reported)

Issues: Claiming interstate allocation; exhaustion of remedies

In 2012, Horizons filed a timely rendition of its airplane, but it failed to provide any information that might have supported an interstate allocation of the airplane's value. The appraisal district appraised the airplane at its rendered value of $1.1 million, and, in mid-July, sent Horizons a notice of appraised value. On August 2, Horizons sent the district a letter questioning the lack of interstate allocation. In December, Horizons sent the district copies of its flight logs and a motion under §25.25(d) of the Tax Code claiming that the 2012 value was more than one-third too high. The ARB held a hearing and determined that the roll should not be changed. Horizon then sued the district. After considering cross-motions for summary judgment, the trial court ordered that the airplane's appraised value be reduced to an allocated value. The district appealed.

The court of appeals first had to determine just what the ARB had heard and decided. The district argued that the ARB had heard the §25.25(d) motion and had decided only the airplane's value, not the issue of interstate allocation. Therefore, Horizons could not raise that issue in court. The court concluded, however, that the ARB had accepted Horizons August 2 letter as a protest raising the interstate-allocation issue and, more than six months later, the ARB had heard and decided that issue. Horizons had filed a timely appeal and could therefore raise the issue in its lawsuit. But Horizons had waived its claim to interstate allocation when it failed to provide any information concerning the interstate use of the airplane along with its rendition. Sections 22.24 of the Code and the Comptroller's Rule 9.4033 required Horizons to provide information to support its interstate-allocation claim along with the rendition of the airplane. Horizons was not entitled to interstate allocation for 2012. The court of appeals reversed the trial court's judgment and entered judgment for the district.

Editor's comment: In 2013, the legislature enacted §21.09 of the Code requiring a property owner to file an annual application for interstate allocation and to provide the information required by the application form. If this case were being decided under the current law, the result would be the same, but the court would base its opinion on §21.09 and the property owner's failure to file an application.

Valerus Compression Services v. Gregg County Appraisal District
457 S.W.3d 520 (Tex. App. – Tyler, January 7, 2015, no pet.)

Issues: Heavy equipment inventory; taxable situs

Following an unsuccessful protest, Valerus sued the appraisal district to contest the 2012 appraisal of its gas compressors and coolers. It claimed that the property, some of which was leased, constituted heavy equipment inventory to be appraised under §§23.1241 and 23.1242 of the Tax Code. It also claimed that, although the property was located in Gregg County, it should be taxed in Harris County. Considering cross motions for summary judgment, the trial court ruled that the property met the statutory definition of heavy equipment, but that the statutes were unconstitutional. The trial court also ruled that the property was taxable in Gregg County. Both sides appealed.

The court of appeals first considered the question of taxable situs. Valerus argued that the court should ignore §21.02, the general rule for determining which taxing units can tax personal property. It advanced its own theory of situs based on §23.1241 and the Comptroller's heavy equipment declaration form. Heavy equipment inventory should always be taxed at the dealer's principal place of business or principal yard. The court of appeals disagreed and explained that neither §23.1241 not the Comptroller's form created its own situs rules. Under §21.02 the property was taxable in Gregg County because it was there on January 1, 2012 and it had been there for more than a temporary period, some of it since 2005. The court of appeals affirmed the summary judgment for the district on the situs issue.

The court next considered whether the property met the statutory definition of heavy equipment, *i.e.*, "self-propelled, self-powered or pull-type equipment . . . that weighs at least 1,500 pounds and is intended to be used for agricultural, construction, industrial, maritime, mining, or forestry uses." The evidence showed that an item of equipment might be pulled a short distance across the ground by a large truck or even pulled onto a trailer to be moved longer distances. But the item was not "pull-type" equipment because it could not do its job while being pulled. Valerus failed to prove that the equipment was "self-powered," even though it had natural-gas engines with horse-power ratings. The evidence did not explain how the equipment worked or even state whether its engines were powered by internal-combustion. The court reversed the trial court's summary judgment in this issue and sent the case back to the trial court for further proceedings.

Attorney General's Opinions

Open Records Decision No. OR2015-16025
August 4, 2015

Issues: Confidentiality of mineral information

The Attorney General was asked whether the Madison County Appraisal District's preliminary mineral roll should be considered confidential and not produced in response to a request under the Public Information Act. The roll had been prepared for the district by Pritchard & Abbott based upon information obtained from property owners under promises of confidentiality. The AG explained that under §25.01 of the Tax Code, appraisals and related supporting data prepared for an appraisal district by a private firm are public records. He concluded, however, that names and addresses of mineral owners and their ownership interests were confidential at least if the information came from division orders and was obtained under promise of confidentiality. Other information on the preliminary mineral roll should be released. The opinion has generated quite a bit of confusion and controversy because it is not clear whether the AG might reach the same conclusion about information in finished appraisal records, appraisal rolls or even tax rolls.

Opinion No. KP-0028
July 13, 2015

Issues: Tax assessment by Type C municipality

The Attorney General was asked whether a Type C general-law municipality could assess property taxes. He explained that §302.001 of the Tax Code gives Type A and Type B general-law municipalities the authority to assess taxes, but it does not mention Type C municipalities. Section 51.051 of the Local Government Code, however, gives a Type C municipality the same authority as a Type A or Type B municipality, depending on population. A Type C municipality therefore has the authority to assess taxes.

Opinion No. KP-0026
July 13, 2015

Issues: TIF reinvestment zone board

A city had a provision in its charter requiring that all members of city boards be residents of the city. Another charter provision limited a person to two terms on a city board. The Attorney General was asked whether those provisions could apply to the board of a reinvestment zone created by the city for purposes of tax-increment financing under Chapter 311 of the Tax Code. The Attorney General explained that §311.009 sets out in some detail who can be a member of a reinvestment zone's board. It does not require that a member be a resident of the city or county that created the zone. The city could not impose requirements inconsistent with the statute. Thus the city's residence requirement would likely be void. Similarly, the statute does not impose any term limits on members of a zone's board. Term limits stated in the city charter were inconsistent with the statute, so they would also likely be void.

Opinion No. KP-0004
February 26, 2015

Issues: Tax increment financing

Over the course of more than thirty years, the Attorney General's office has issued several opinions concluding that Chapter 311 of the Tax Code and several other laws are unconstitutional to the extent that they allow a county to create a reinvestment zone and use tax-increment financing to pay for development in the zone. The AG has concluded that county-created TIF reinvestment zones violate the equal-and-uniform-taxation requirement of Art. VIII, §1 of the Texas Constitution. The AG's theory focuses not on how the taxes are calculated or assessed but on what happens to the money when it comes into the county. "[A]ll real property located within a county creating a zone is not taxed alike; 100% of the ad valorem taxes paid by property owners outside of the zone goes toward the general support of the county, and a percentage less than 100% of the ad valorem taxes paid by property owners inside the zone goes toward the general support of the county." Article VIII, §1-g of the Constitution allows a "city or town" to issue bonds and use tax-increment financing to pay them off, but it does not grant the same authority to a county. That provision *does* allow a county to participate in a TIF scheme created by a city or town. If a reinvestment zone is created by a county, Art. VIII, §1-g does not create any exception to the requirement of equal and uniform taxation.

The AG was asked to reconsider this position. More accurately, perhaps, the new AG was asked to reconsider the position taken by his predecessors. He declined to do so. This opinion sticks to the positon that other AGs have taken before.

Opinion No. KP-0001
January 20, 2015

Issues: Adoption of tax rate

New Attorney General Ken Paxton's very first opinion is one that concerns property taxes. Section 26.05 of the Tax Code and §44.004 of the Education Code generally require a school district to adopt its budget before it adopts its tax rate and to use the taxable values from the chief appraiser's certified appraisal roll in the process. There is an exception that allows a district to adopt its tax rate first and use the chief appraiser's certified estimate of taxable values. In Harris County, the appraisal district notified school districts that their certified appraisal rolls would be about a month late this year. Those districts asked the Attorney General whether they could use the certified estimates for purposes of adopting their tax rates, even though they planned to adopt their budgets before adopting their tax rates. Doing so would allow them to schedule tax ratification elections on the November uniform election date (when presumably turnout should be higher).

The AG said no. He explained that a school district may use certified estimates only if it is adopting its tax rate before adopting its budget. Neither the Tax Code nor the Election Code requires ratification elections to occur on uniform election dates. They say that an election should occur on a uniform date, but only if such a date happens to fall thirty to ninety days after a school district adopts its tax rate. If there is no uniform election date within that time period, then the district does not have to use a uniform date.