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2018 PROPERTY TAX CASES
And Attorney General's Opinions

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Cases

Morath v. La Feria Independent School District
2018 WL 6729850 (Tex. App. – Austin, December 21, 2018, no pet. hist.) (to be published)

Issues: School finance

Non-wealthy school districts sued the state to challenge the way that the TEA handles local-option percentage homestead exemptions when it determines the wealth of school districts and implements the Robin-Hood system. In 2017, the TEA decided that it would recognize percentage exemptions adopted by wealthy school districts regardless of whether the legislature had adopted a special appropriation and regardless of whether there was a surplus in the Foundation School Program (FSP). The non-wealthy school districts claimed that the new policy would reduce the state money that they received. The state denied that claim and argued that the school districts had no right to sue. The trial court ruled for the school districts, and the state appealed.

The court of appeals reversed the trial court's order and dismissed the case. The court of appeals reasoned that the school districts did not have standing to sue because they could not show that they were harmed by the TEA's policy. The evidence showed that the FSP was fully funded for the current school year and that it would give the school districts all that they were due. Any claim about future years was too speculative for the court to consider because of the many unpredictable factors that affect funding of the FSP. Additionally, it would be impossible to predict how many wealthy school districts might adopt percentage exemptions in future years or how large those exemptions might be. It would be impossible to predict whether there might be budget surpluses in future years or whether any surpluses might be distributed to school districts. Any actual harm to the school districts would be contingent and speculative.

Fenlon v. Harris County
2018 WL 6684855 (Tex. App. – Houston [1st Dist.], December 20, 2018, no pet. hist.) (to be published)

Issues: Tax lien transfers; liability for tax

James took out a loan to pay delinquent 2003-2007 taxes on her property. She gave the lender a note and a deed of trust, which authorized the lender to pay her taxes. Neither document identified the year(s) to which it applied. She also signed affidavits authorizing the lender to pay the 2003-2007 taxes, which it then paid in exchange for transfers of the tax liens. The certifications from the tax office along with the other relevant documents were properly recorded. The lender later paid delinquent 2008-2009 taxes on the property but without getting an affidavit from James or an additional certification from the tax office. Nobody paid taxes after 2009. James died in 2012, and the lender and the taxing units both sued her heirs to enforce their tax liens. While the suit was pending, Fenlon bought the property from the heirs. The lender and the taxing units added him as a defendant in the suit but did not specify that he was being sued in rem. The case came to trial in 2016, The lender relied on records including the documents signed by James and a "Transferred Tax Lien Payoff Statement," which detailed the amounts that it claimed. It also produced a receipt showing payment of the 2008-2009 taxes and evidence of its attorney's fees. Fenlon did not object to the lender's evidence. Here merely said that, in his opinion, the amount should be much less. He argued that any judgment against him should be in rem only. The trial court's judgment awarded the lender all that it asked for and did not specify that it was in rem only. Fenlon appealed.

Lyda Swinerton Builders, Inc v. Cathay Bank
2018 WL 6614136 (Tex. App. – Houston [14th Dist.], December 18, 2018, no pet. hist.) (to be published)

Issues: Transfer of tax lien

This complicated case involved a bank and a builder arguing over the priorities of their liens on a real property. The bank was lending money to the property owner for a development project and took a deed of trust on the property. The builder filed mechanic's liens against the property. As the owner sank into the financial abyss, the bank took some of the money it had committed to loan the owner and paid delinquent taxes on the property. Neither the bank nor the owner followed the rules in §§32.06 and 32.065 of the Tax Code governing property-tax loans. When the owner went bankrupt, the bank and the builder were left with only their liens as a way to recover some of their losses. The bank claimed that it held top-priority tax liens by virtue of having paid delinquent taxes on the property. It argued that it had acquired the tax liens through the equitable principle of subrogation. Essentially, subrogation means that if a party with an interest in a property pays another party's debt secured by the property, the party making the payment takes the creditor's lien. When the bank foreclosed, the builder's liens were extinguished. The builder claimed that the bank did not acquire the tax liens because it didn't follow the Code's rules for property-tax loans. The builder further argued that its mechanic's liens were superior to the bank's deed of trust and that they survived the bank's foreclosure.

In an earlier appeal, the court of appeals ruled that subrogation ***might*** apply, but the answer would depend on the specific facts and the balance of the equities involved. The court of appeals sent the case back to the trial court for further proceedings. The trial court then concluded that subrogation should not apply because it would unfairly prejudice the builder.

Both parties appealed, and the bank argued that the trial court should have considered more than just whether the builder was prejudiced. The court of appeals agreed. The opinion explains that the trial court should have considered other issues such as whether the builder would be unjustly enriched if subrogation were not allowed. Once again, the court of appeals sent the case back to the trial court for further proceedings.

In Re Kinder Morgan Production Co., LLC
2018 WL 6599192 (Tex. App. – Dallas, December 17, 2018, no. pet. hist.) (not reported)

Issues: Taxing unit challenging appraisals

The appraisal district used Thomas Y. Pickett to appraise minerals. A school district believed that Pickett was under-appraising minerals belonging to Kinder Morgan. Instead of filing a challenge with the ARB, however, the school district sued Kinder Morgan, Pickett, and the appraisal district and alleged that Pickett had been negligent. The school district sought to use the discovery process to get access to extensive information about the appraisal of the minerals. The defendants resisted, but the trial court ordered them to comply with the school's discovery requests. Pickett and the other defendants asked the court of appeals to intervene through mandamus proceedings.

The court of appeals ruled for the defendants. The higher court explained that a taxing unit that is dissatisfied with an appraisal district's appraisals must follow the challenge procedures described in the Tax Code. Because the school filed suit without first taking its claims before the ARB, the trial court had no jurisdiction to even consider the case. That meant that the trial court's discovery order was void. The court of appeals sent the case back to the trial court in order for the lower court to withdraw its order and dismiss the case.

Harris County Appraisal District v. PXP Aircraft, LLC
2018 WL 6219612 (Tex. App. – Houston [1st. Dist.], November 29, 2018, no pet. hist.) (to be published)

Issues: Notice of protest; interstate allocation of value

In January of 2015, the appraisal district sent PXP a notice reminding PXP of its duty to render its aircraft. PXP filed a request for the automatic extension of the rendition deadline, and the deadline was extended until May 15. PXP filed its rendition on May 14. At the same time, PXP filed its application for allocation of the aircrafts' values. But

that application was filed well after the May 1 deadline for filing allocation applications. The district accepted the application because it was filed before the ARB approved the appraisal records. The district noted that the late application would trigger the penalty described in §21.10 of the Tax Code, i.e., ten percent of the owner's tax savings resulting from the allocation. PXP filed a form asking the district to waive a "rendition penalty," but the district refused because the penalty in question was not a rendition penalty and because the Code does not allow an appraisal district to waive a penalty associated with a late allocation application. PXP filed a protest what was denied by the ARB. PXP then sued the district. The trial court entered a summary judgment for PXP. The summary judgment stated that the penalty was erroneous and that PXP was entitled to have it waived. The district appealed.

The court of appeals first considered whether the ARB even had the authority to hear PXP's protest. Was the notice of protest sufficient to challenge the late-application penalty? The notice of protest complained of an "unwarranted penalty" that "should be voided/waived." The court of appeals thought that the notice of protest was adequate, largely because the late-application penalty was the only penalty being assessed against PXP. The fact that the notice of protest was not more specific did not make it entirely ineffective.

The court of appeals moved on to consider whether the penalty was proper. The court explained that the late-application penalty is distinct from a rendition penalty. Each penalty has its own rules. The late application penalty was triggered because PXP filed its allocation application after May 1 but before the ARB approved the appraisal records. The only way a property owned could avoid the penalty would be to prove to the district that it had good cause for filing the application late. But, PXP never tried to invoke the good-cause exception, and the district never said that it was extending PXP's deadline. The Code does not allow any waiver of a late-application penalty. Even if the district had failed to send PXP notice of the penalty as required by §21.10(c), that failure would not result in a waiver. The court of appeals reversed the trial court's summary judgment and sent the case back to the trial court for consideration of the exact amount of the penalty.

Ward County Appraisal District v. EES Leasing LLC
2018 WL 6004939 (Tex., November 16, 2018)

Reeves County Appraisal District v. Midcon Compression, L.L.C.
2018 WL 6004942 (Tex., November 16, 2018)

Reeves County Appraisal District v. Valerus Compression Services
2018 WL 6004944 (Tex., November 16, 2018)

Loving County Appraisal District v. EXLP Leasing, LLC
2018 WL 6005068 (Tex., November 16, 2018)

Issues: Heavy equipment inventory; taxable situs

These four cases all involve leased pipeline compressors. They were moving through the courts when the Texas Supreme Court decided *EXLP Leasing, LLC v. Galveston Central Appraisal District*, which is discussed below. The high Court's *EXLP* opinion serves as a precedent for these cases. In these four short opinions, the Court states that §§23.1241 and 23.1242 of the Tax Code are constitutional even though they result in compressors being appraised far below their actual market value. Further, the compressors were taxable "where the dealers maintained their inventories" rather than where they were actually located.

Walls v. Harris County
2018 WL 5661318 (Tex. App. – Houston [1st Dist.], November 1, 2018, no pet. hist.) (not reported)

Issues: Delinquent tax suits

Walls owned real property called the Almeda property. In 2005, taxing units sued him for delinquent taxes on the property, but the trial court ruled for Walls, finding that he had paid all the taxes. The appraisal district later determined that there had been omitted improvements on the Almeda property. The omitted improvements were listed in a separate account. When Walls didn't pay the 2002-2006 taxes on the omitted improvements or the 2007 or 2009 taxes on Almeda property itself, the taxing units sued him again. Walls filed a counterclaim asserting that the omitted-property taxes were precluded by the earlier judgment. The court ruled against Walls on that point but dismissed the taxing units' claims for want of prosecution. In 2016, the taxing units sued Walls a third time. This time, they sought 2007, 2009, 2013 and 2016 taxes on the Almeda property, but did not include any claim concerning the omitted improvements. In connection with a motion for summary judgment, they introduced certified copies of their delinquent-tax records. Walls claimed that he had paid the 2013 taxes and made various arguments concerning the omitted improvements and tax years prior to 2007. He filed his own motion for summary judgment. The trial court entered summary judgment for the taxing units and did not expressly rule on Walls's motion. Walls appealed.

The court of appeals affirmed the trial court's summary judgment for the taxing units. The higher court explained that the delinquent-tax records were sufficient to support judgement for taxing units and shift the burden of proof to Walls, requiring him to produce evidence negating the taxing units' claims. He failed to do that. The omitted-property taxes were not even involved in the third suit. Neither were the tax years that had been dealt with in the first suit. Walls showed that he had paid about half of the 2013, but the taxing units were nevertheless entitled to the unpaid portion of the 2013 taxes as shown by their records. Although the trial court had not expressly ruled on

Walls's motion for summary judgment, it had impliedly denied that motion when it granted the taxing units' motion.

Jeanes v. Dallas County
2018 WL 5725326 (Tex. App. – Dallas, October 31, 2018, no pet. hist.) (not reported)

Issues: Delinquent tax suits; service of process

Sierra was a general partnership that owned real property subject to delinquent taxes. Jeanes was a partner. Taxing units first filed suit alleging that Jeanes (doing business as Sierra) was the owner but reversing his middle and last names. Jeanes filed an answer pointing out the errors. The taxing units later amended their pleadings, naming Sierra as a general partnership and naming Jeanes (with his names in the correct order) as a general partner. The citation incorrectly identified Sierra as a limited partnership. The papers were properly served on Jeanes. The defendants did not appear for trial, and the district court entered a default judgment against them on July 19, 2017. Jeanes filed a motion for new trial on August 18, 2018. He never requested a hearing, and the motion was overruled by operation of law on October 2, 2017. That meant that he had until October 17, 2017 to file a notice of appeal in the trial court, but he missed that deadline. Rule 10.5(b) of the Rules of Appellate Procedure allows a party to file a notice of appeal up to fifteen days late if the party also files a motion for extension of time in the court of appeals. Jeanes filed a late notice of appeal on behalf of Sierra and himself within the fifteen days, but he filed the motion in the court of appeals two days late. The court nevertheless granted that motion. On appeal, Jeanes and Sierra argued that the district court had erred by not granting the motion for new trial, and the taxing units argue that the court of appeals should not have accepted or granted the motion for extension of time to file the notice of appeal.

The court of appeals first ruled that it could grant the motion for extension of time. The court reasoned that the notice of appeal filed within the fifteen-day period served as an implied motion for extension of time. The court of appeals next ruled that the trial court had not abused its discretion in not granting the defendant's motion for new trial. Sierra was properly served with the suit papers. The citation's misidentification of Sierra as a limited partnership was insignificant because there was no confusion about different entities. That meant that the defendants had to show three things in order to be entitled to a new trial: 1) their default was not intentional or the result of conscious indifference; 2) a meritorious defense; and 3) a new trial would not cause delay or undue prejudice. The defendants offered nothing to prove those points. The court of appeals affirmed the judgment for the taxing units.

Valerus Field Solutions, LP v. Matagorda County Appraisal District
2018 WL 4924752 (Tex. App. – Corpus Christi-Edinburg, October 11, 20018, no pet. hist.) (not reported)

Issues: Agreement resolving protest

AXIP owned business personal property on January 1, 2014. Shortly thereafter, it sold the bpp to Valerus. AXIP rendered the bpp, claiming that its total value was $57.8M and that the included inventory was worth $56.5M. The appraisal district appraised the inventory at the value rendered by AXIP, but it placed a total value of $60.1M on the bpp. AXIP filed a protest claiming that some of its inventory should have been given a freeport exemption. The district and AXIP signed a settlement and waiver fixing the total value at $60.1M. In January of 2015, Valerus file a motion asking the ARB to correct the 2014 appraisal roll under §25.25(d) of the Tax Code. Valerus claimed that the value of the inventory was actually only $17.8M. The ARB concluded that the settlement deprived it of jurisdiction to consider Valerus's motion, and it denied the motion. Valerus then filed suit against the district to appeal the ARB's order. The trial court agreed with the ARB and entered a summary judgment against Valerus. Valerus appealed.

The court of appeals affirmed the judgment for the district. Valerus argued that the settlement of AXIP's *exemption* protest should not preclude it from later filing a motion concerning *value*. The court rejected that argument, reasoning that the settlement necessarily involved the value of the inventory. "The written and signed agreement established the appraised value and bars Valerus from filing a motion to change the appraisal roll. Valerus also argued that the agreement was based on a "mutual or unilateral mistake" and that is was void. Again, the court disagreed. The court explained that an agreement made under §11.111 of the Tax Code is not an ordinary contract and that a mistake by one or both parties does not make it void or voidable.

Clarke v. Harris County
2018 WL 4868836 (Tex. App – Houston [14th Dist.], October 9, 2018, no pet. hist.) (not reported)

Issues: Delinquent tax suits

Taxing units sued Clarke for delinquent bpp taxes, and the trial court entered summary judgement in their favor in 2011. In 2013, the court entered a turnover order requiring Clarke to provide certain assets and records to the taxing units and appointed a receiver. Rather than comply with the turnover order, Clarke entered an agreement with the taxing units under which Clarke would pay the taxing units and they would release their judgment. But Clarke never paid. In April of 2017, the court entered a supplemental turnover order, and, in July of that year, the court ordered Clarke to provide information in response to post-judgement discovery and to pay the receiver's and the taxing units' attorney's fees in connection with that discovery. Clarke attempted to appeal.

The court of appeals generally ruled against Clarke. The higher court explained that it was too late for Clarke to appeal the 2011 judgment unless the judgment was void. Clarke claimed that he was not notified of the 2011 summary-judgment hearing. He claimed that the address that the taxing units used for his lawyer was wrong and that the taxing units had been notified to send notices to a particular address. But the trial court's record included no evidence to support his claims and no evidence of any misrepresentations by the taxing units. Thus, the court rejected Clarke's claim of a void judgment.

Neither could he appeal the April 2017 supplemental turnover order. He had thirty days after that order was entered in which to file a notice of appeal, but he failed to do so. Clarke could not appeal the July 2017 discovery order (except the award of attorney's fees) because it was not a final, appealable order. Clarke could not appeal the award of attorney's fees because he waived his complaint when he did not present it to the trial court. The court of appeals affirmed the award of attorney's fees and otherwise dismissed Clarke's appeal.

In Re Occidental Chemical Corp.
2018 WL 4939073 (Tex., September 10, 2018)

Issues: Boundaries between taxing units

For decades, San Patricio County and Nueces County have disagreed about where the line is between them. In 2003, a court ruled that the line was the northern shoreline of Corpus Christi Bay and ruled that "natural and artificial modifications to the shoreline of San Patricio County shall form a part of San Patricio County." That ruling, however, left room for disagreement concerning large piers that extend from the northern shoreline into the Bay. Beginning in 2008, both counties taxed those piers, forcing owners like Oxy to pay multiple taxes on the same property. Section 72.009 of the Local Government allows one county to sue another over a boundary dispute, and, in 2009, San Patricio County sued Nueces County to prevent it from taxing the piers. That suit was delayed for several years, principally due to a venue dispute. By mid-2018, however, the case was back on track with a district court set to rule on which county could tax the piers.

But there was another development. In 2017, the legislature enacted a special bill that created §72.010 of the Local Government Code and provided that a taxpayer facing competing tax claims from two taxing units could file a special suit in the Texas Supreme Court. The bill was limited to the Nueces County-San Patricio County boundary dispute, and it empowered the Supreme Court to determine the taxes owed to the competing taxing units. In July of 2018, Oxy filed such a suit concerning its piers. Nueces County objected to the new suit arguing that the Constitution prevented the legislature from directing such a suit to the Supreme Court. (It is very unusual for a

lawsuit to be filed in the Supreme Court. Normally a suit reaches the high Court only after lower courts have ruled on it.)

The Supreme Court first decided that Oxy's suit could be filed there. Under Art. V, §3, of the Texas Constitution, the legislature can direct that a suit be filed with the Supreme Court if three requirements are satisfied: 1) there are no disputes about facts; 2) certain types of court orders are proper for resolving the case; and 3) there is some "strong or special reason" for assigning the case to the high Court. The Court found that all of those requirements were satisfied. The prolonged double taxation of the piers raised an issue of "general public interest" and provided a "compelling reason" for assigning a suit to the Supreme Court. The Court also explained that §72.010 was not an unconstitutional retroactive law because it addressed procedural and jurisdictional questions rather than substantive rights.

The Court next decided that the piers were taxable by San Patricio County. It reasoned that San Patricio County would be the logical county to provide services such as firefighting to the piers because they were connected to the land of that county. Further, the right to construct piers extending from San Patricio County was tied to the ownership of land in that county.

Two justices dissented on the question of whether the legislature could assign the case to the Supreme Court. They argued that there was no "strong or special reason" for doing so because there was no broad public interest in the taxation of the piers and because the existing suit between the two counties was sufficient to resolve Oxy's problem.

Houston Copperwood Apts., L.P. v. Harris County Appraisal District
2018 WL 4496248 (Tex. App. – Houston [1st Dist.], September 20, 2018, no pet.) (not reported)

Issues: Delivery of notice

In 2007, Copperwood filed an appointment-of-agent form with the appraisal district. The form named PTA as Copperwood's agent and gave PTA's address on Corporate Drive in Irving. In 2010, PTA sent a letter to the district. The letter did not refer to Copperwood, but it gave a new address for PTA, an address on Walnut Lane. The district changed its records to reflect PTA's new address. In 2016, the district sent Copperwood's notice of appraised value to PTA's new address, where it was received. PTA represented Copperwood in a protest, and the ARB sent a copy of its order to PTA's Walnut Lane address, where it was received. Copperwood filed a lawsuit to appeal the ARB's order but filed the suit more than sixty days after PTA had received the order. The district asked the court to dismiss the case because it had been filed after the deadline set out in §42.21 of the Tax Code. Copperwood argued that the ARB

should have sent the order to the Corporate Drive address stated on the 2007 appointment-of-agent form. Because the order was not sent to that address, Copperwood claimed, the sixty-day for period for filing the suit had never started. The trial court ruled for the district and dismissed the case. Copperwood appealed.

The court of appeals upheld the trial court's dismissal of the case. The higher court explained that when an agent is authorized to receive notices on behalf of a property owner, the appraisal district and ARB should send those notices to the agent's address according to their most recent records. An agent does not have to use a particular form to notify the district or the ARB of its most recent address. PTA's 2010 letter was sufficient to provide notice of its new address even though the letter did not mention Copperwood in particular. The ARB acted properly when it sent its order to PTA using the address reflected in its most recent records. The period for filing suit began when PTA received the order and expired before Copperwood filed its suit. The trial court correctly dismissed the case.

Davis v. Angleton Independent School District
2018 WL 4326491 (Tex. App. – 14th Dist.], September 11, 2018, no pet. hist.) (not reported)

Issues: Delinquent tax suits

In 2011, taxing units sued Veronica Davis for delinquent 2007-2010 taxes on two properties, the West Columbia tract and the Angleton tract. She paid some of the taxes and conveyed the Angleton tract to her son, James. In 2014, the taxing units filed an amended petition that claimed only 2013 taxes on the West Columbia tract and omitted any claims concerning the Angleton track. By late 2014, Veronica had paid all the taxes on the West Columbia tract and the court dismissed the case, stating in the judgment that all the taxes had been paid. In 2016, the taxing units sued James for delinquent 2012-2014 taxes on the Angleton tract. The trial court's final judgment in the second suit held James liable for 2012 taxes together with penalties, interest, and costs including $200 for a title search. James appealed, claiming that the 2012 taxes had been adjudicated in the first suit against Veronica and that they should not have been included in the second suit.

The court of appeals affirmed the judgment against James. The court explained that when the taxing units amended their pleading in the first suit, they effectively dismissed all claims concerning the Angleton tract. Because those claims had been dismissed from the first suit, the judgment in that suit could not have adjudicated them. Similarly, an agreement filed in the first suit in which Veronica agreed to pay some taxes on the Angleton tract did not preclude the second suit against James.

James also argued that the final judgment against him was not certain with respect to the amount that he owed. The court of appeals rejected that argument noting that the judgement included a table in which all the amounts were specified. It referred to "statutory rates" for the calculation of penalties and interest that would accrue after the date of the judgment, and that was sufficiently "definite and certain". James argued that the judgement required him to pay both collection penalties under §33.07 of the Tax Code and the taxing units' attorneys fees, but the court concluded that the judgment did not include attorneys' fees. The court further noted that §33.48(a)(4) allows a taxing unit to recover costs of title research. Two hundred dollars for title research was not unreasonable. James raised other arguments, but the court did not consider them because he had failed to file a sufficient record or because he had waived those claims.

Panda Sherman Power, LLC v. Grayson Central Appraisal District
2018 WL 3737974 (Tex. App. – Dallas, August 7, 2018, no pet. hist.) (not reported)

Issues: Pollution control exemption

Panda applied to the Texas Commission on Environmental Quality for a determination that its heat recovery steam generators qualified for exemption as pollution-control property. The Commission's executive director denied the application with a "negative use" determination. Panda appealed that decision to the full commission, which affirmed the executive director's decision. Panda did not exercise its option to challenge the Commission's decision in court. Panda had filed an exemption application with the appraisal district, which denied the application in response to the Commission's decision. Panda filed an unsuccessful protest with the ARB and then filed suit against the district. The trial court entered a summary judgment for the district, and Panda appealed.

The court of appeals affirmed the ruling for the district. The court of appeals explained that under §11.31 of the Tax Code, a property owner seeking a pollution-control exemption must provide the appraisal district with a "positive use" determination from the TCEQ. Without that positive use determination, the district cannot grant the exemption. Panda's due-process rights were protected because it had the procedural right to protest the district's denial of the exemption and to appeal the ARB's ruling to the trial court. But neither the district, the ARB, nor the court could grant the exemption in the absence of a positive use determination from the TCEQ. The summary judgment was proper because there were no factual issues to be decided in a trial. If Panda had wanted to contest the TCEQ's decision, it should have sued the TCEQ.

Propel Financial Services, LLC v. Perez
2018 WL 3580935 (Tex. App. – Houston [1st Dist.], July 26, 2018, no pet.) (not reported)

This case is of minimal importance. Propel paid taxes on Perez's properties and acquired the tax liens on the properties. Perez defaulted on the loan and Propel sued to foreclose the liens. The trial court ordered foreclosure but refused to award it attorneys' fees or other costs or fees. Propel appealed, and the court of appeals ruled for Propel. Most of the higher court's opinion concerns the amount of Propel's attorneys' fees and the evidence showing that amount. But the court also ruled that Propel was entitled to recover various charges incurred after the loan was closed. Those charges included release of lien fees, late fees, and abstract fees. The trial court erred by not awarding those amounts to Propel.

Denton Central Appraisal District v. Gladden
554 S.W.3d 749 (Tex. App. – Fort Worth, July 5, 2018, no pet. hist.)

Issues: Residence homestead cap

Gladden bought a house in May of 2012 and moved in, making it his principal residence. The house was appraised for $203,000 in 2012, but Gladden paid $310,000. In 2013, Gladden applied for and received a residence homestead exemption for the property. The appraisal district appraised the house at $312,000. Gladden protested, claiming that the increase in appraised value from 2012 to 2013 should have been capped at ten-percent. When the ARB denied the protest, Gladden filed suit. The trial court entered a summary judgement for Gladden, but the district appealed.

The court of appeals reversed the trial court's judgment and entered summary judgment for the district. The court of appeals cited §23.23(c) of the Tax Code, which states that the cap on year-to-year increases in the appraised value of a residence homestead takes effect "on January 1 of the tax year following the first tax year the owner qualifies the property for" a residence homestead exemption. Gladden's house first qualified for a homestead exemption on January 1, 2013, so the first year in which the house qualified for the cap was 2014, not 2013. The Code "provides a one-year window for an appraisal district to bring the appraised value of a home that is appraised at under market value . . . better in line with the home's actual market value, which is likely closer to the purchase price paid for the under-appraised home."

In re Catherine Tower, LLC
553 S.W.3d 679 (Tex. App. – Austin, June 20, 2018, petition for writ of mandamus filed in Texas Supreme Court.)

Issues: Unequal appraisal

Following an unsuccessful protest, Catherine Tower (CT) filed suit against the appraisal district alleging the unequal appraisal of its apartment building. The appraisal district sought to discover an appraisal of the property, an appraisal in the possession of CT's

lender. CT agreed that the district could discover the portions of the appraisal identifying comparable sales and explaining the adjustments that the appraiser made to determine the market value of CT's property based on the comparable sales. But, CT objected to the district's efforts to discover the rest of the appraisal. CT argued that the rest of the appraisal was irrelevant to its unequal-appraisal claims. The trial court ruled that the district could discover all of the appraisal, and CT sought a writ of mandamus to overturn the trial court's ruling.

The court of appeals noted that CT was suing the district under §42.26(a)(3) of the Tax Code which concerns a claim that "the appraised value of [a] property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted." That claim does not hinge upon whether the appraisal district has correctly determined a property's market value. The market values of various properties might be relevant insofar as they shed light on the adjustments that should be made when the properties are compared. The district could discover specific information relevant to the selection of comparable properties and the application of appropriate adjustments, but it was not entitled to a "deep dive" into CT's financial and business information. The court of appeals ordered the trial court to withdraw its order in favor of the district.

In Re Terrill
2018 WL 3025399 (Bankr. N.D. Tex., June 15, 2018)

Issues: Homesteads

Mr. and Mrs. Terrill owned about 89 acres of rural land, on which was located their house and a barn. Most of the land was used for agriculture, but the Terrills received a residence homestead exemption on two acres. They were in bankruptcy, where a private creditor sought to force the sale of all but two acres of the property. Article XVI of the Texas Constitution protects homesteads from most non-tax creditors, and a rural homestead can be up to two hundred acres in size. The creditor argued, however, that because the Terrills had claimed a tax exemption on only two acres, the remainder of their property was fair game for creditors. The bankruptcy judge rejected the creditor's argument. The judge's opinion explains that the residence-homestead tax exemption is distinct from the protection afforded debtors by Art. XVI. The amount of a homeowner's land receiving a tax exemption does not limit the amount of land that the person can protect from non-tax creditors. A tax exemption may serve as an automatic designation of the exempt property as a homestead under §41.005 of the Property Code (for purposes of protection from non-tax creditors), but it does not prevent the owner from protecting the full amount of land allowed by the Constitution.

McKinney v. Wright
2018 WL 2976420 (Tex. App. – Fort Worth, June 14, 2018, no pet.) (not reported)

Issues: Special inventory taxes and penalties

McKinney was an auto dealer, but he operated on a small scale. For several years, he failed to pay his inventory taxes and failed to file his monthly motor vehicle inventory tax statements as required by §23.122 of the Tax Code. The TAC sued him for the back taxes and for all of the penalties resulting from his having failed to pay the taxes and file the statements. The trial court entered judgment against McKinney in the amount of: a) $1,900 in taxes: b) $223 in late-payment penalties; and c) $127,000 in penalties for not having filed the statements. McKinney objected to the amount of the failure-to-file penalties and appealed on those grounds.

McKinney argued that the penalties violated his constitutional right to due process of law and that they violated Article I, §13 of the Texas Constitution, which prohibits "excessive fines." The court of appeals rejected his arguments. The court noted that McKinney had gone several years without filing the statements despite being notified at least a dozen times by the tax office. The penalties did not violate due process because they were not "so severe and oppressive as to be wholly disproportionate to the offence and obviously unreasonable." The penalties did not violate the Texas Constitution because they were not so excessive as to "shock the sense of mankind." The court was not concerned that the penalties greatly exceeded the taxes involved because the penalties were not triggered by McKinney's failure to pay taxes.

McKinney also argued that the penalties violated Chapter 41 of the Civil Practice and Remedies Code, a so-called tort-reform measure that limits a plaintiff's ability to recover "exemplary damages." The court of appeals ruled, however, that the statute did not apply to a governmental entity seeking to enforce a statutory penalty. The court of appeals affirmed the trial court's judgment against McKinney.

United Independent School District v. U.S. Trailer Relocators, LLC
2018 WL 2943821 (Tex. App. – San Antonio, June 13, 2018, no pet.) (not reported)

Issues: Defenses to delinquent-tax suit

USTR began operating in 2011. It had trucks in the ISD in 2012 and 2013, but it did not file renditions. The appraisal district discovered USTR in 2014 and back-appraised its trucks for 2012 and 2013. USTR filed an unsuccessful protest but never filed suit to appeal the ARB's adverse ruling. In 2016, the ISD filed a delinquent-tax suit against USTR and asked the trial court to enforce UTSR's personal liability for the taxes and to order the foreclosure of the tax liens on the trucks. When the trial began, however, the ISD's lawyer announced that it was abandoning its personal liability claim against UTSR. The ISD introduced copies of its delinquent-tax records. UTSR introduced evidence that some of the trucks listed on the 2012 tax roll had actually been sold for scrap in 2011 and that some of the trucks on the 2013 tax roll had actually been sold for scrap in 2012. It also claimed that the remaining trucks were used in interstate commerce and that their value should be reduced to reflect their use outside Texas. UTSR had already paid the taxes that it claimed were due. The trial court accepted UTSR's arguments and ruled that it owed nothing to the ISD. The ISD appealed.

The court of appeals reversed the trial court's judgment and ruled for the ISD. The court of appeals explained that under §42.09 of the Tax Code, a defendant in a delinquent-tax case can raise non-ownership of the property as a defense to personal liability but not as a defense to a claim for foreclosure. Because the ISD was seeking only the foreclosure of its liens, USTR could not deny owning any trucks. Further, a defendant in a delinquent-tax case cannot contest the appraised value of the property, whether by seeking interstate allocation or otherwise. The trial court should not have allowed USTR to claim interstate allocation. The ISD was entitled to judgment based on its delinquent-tax records.

Davis v. Fayette County Appraisal District
2018 WL 2862809 (S.D. Tex., June 11, 2018)

Issues: Claims against tax collectors

Davis owned land for several years but didn't pay the taxes. He sold the land in January of 2012. The appraisal district sued him in March of 2012. A few months later the new owner paid the taxes. In April of 2016, Davis (now a prison inmate) sued the district, two of its employees and its law firm in federal court. He asserted a variety of state and federal claims related to the earlier delinquent-tax suit. The federal trial court dismissed his suit.

The judge's opinion explained that the statutes of limitations for Davis's claims had started running when the delinquent-tax suit was filed. His suit, filed more than four years later, was too late. The judge went on to explain that the federal and state laws regulating the collection of consumer debts did not apply to taxes. The district and its employees were protected by governmental immunity and could not be sued with tort claims. Davis claimed that the law firm had intentionally inflicted mental distress on him, but his claim was really one for fraud. There was no fraud because at the time the delinquent-tax suit was filed, the taxes were actually delinquent. Davis was personally liable for the taxes that were incurred while he owned the land, and his personal liability was not extinguished by the sale. Davis could not claim that the land was taken from him unconstitutionally because he sold it voluntarily.

United Independent School District v. Villarreal
2018 WL 2694822 (Tex. App. – San Antonio, June 6, 2018, no pet.) (not reported)

Issues: Defense to delinquent taxes

Taxing units sued Villarreal for delinquent taxes on a bpp account. Villarreal responded with an affirmative defense denying that he owned some of the items in the account. He convinced the trial court that he did not own those items, and the court ordered the taxing units to reduce the value of the account and to reduce their taxes. The taxing units could collect only the taxes on the items that Villarreal actually owned. The taxing units appealed.

The court of appeals reversed the trial court's judgment. The higher court explained that under §42.09 of the Tax Code, a defendant sued for delinquent taxes can affirmatively defend himself by showing that he did not own the property. The defendant can deny owning particular items of property even if multiple items have been appraised together in a single account. When that happens, the trial court should determine the amount owed by the defendant based on the items that he actually owned. The trial court, however, should enter an *in rem* judgement for the full amount of taxes assessed on the account. An *in rem* judgment orders the foreclosure and sale of property but does not state that any particular party is personally liable for the taxes. The court of appeals sent the case back to the trial court so that the latter could enter an *in rem* judgment for the taxing units.

Bosque Disposal Systems, LLC v. Parker County Appraisal District
2018 WL 23782810 (Tex., May 25, 2018)

Issues: Appraising property in component parts

Bosque owned land on which a saltwater disposal well was located. The well, used to dispose of waste water from oil and gas operations, included a well bore, down-hole tubing, surface pumps, pipes and tanks. Although there was no instrument that legally severed the well from the land, the appraisal district appraised the well separately. The well was appraised using an income approach, and the land we appraised using comparable sales. The appraised value of the well was much greater than the appraised value of the land. Bosque protested, claiming that the separate appraisals were a form of illegal double taxation. The ARB denied the protest, but the trial court effectively ruled that the well could not be taxed. The court of appeals reversed the trial court's judgment and ruled that the well could be appraised separately. The Texas Supreme Court agreed to consider the case.

The Supreme Court affirmed the court of appeals' judgment in favor of the district. The high Court reasoned that the well was a type of taxable real property. Some aspects of a real property can be appraised separately even though they are a part of the same surface tract and even though there has not been a legal severance. Section 25.02(a) of the Tax Code contemplates "separately taxable estates or interests in real property." The Court acknowledged that it would be difficult to come up with one simple rule about when aspects of a property can be appraised separately. The issue really has to be decided case by case considering the individual characteristics of a particular property. "Market value is the touchstone of appraisal," and the value that Bosque's well contributed to the property could not be ignored. The Tax Code does not prohibit using different appraisal methods to appraise different components of a property. The Court went on to reject Bosque's claim that the well was somehow intangible.

Although appraising components of a property separately is not improper as a matter of law, it might be possible for a property owner in a particular case to show that some value of its property had been included twice in an appraisal district's appraisals. For that reason, the Supreme Court sent the case back to the trial court. The lower court will

consider whether the district actually included the same value in its separate appraisals of Bosque's land and its well.

Bustos v. Bexar Appraisal District
2018 WL 2222615 (Tex. App. – San Antonio, May 16, 2018, pet. denied) (not reported)

Issues: Payment of taxes during appeal

Following an unsuccessful protest, Bustos filed suit against the appraisal district to contest the appraised value of his property. Bustos added a new year to the pending suit every year for seven years, but he never paid any taxes. The district moved to have the case dismissed. On the day of the hearing Bustos filed an oath of inability to pay. He admitted owing the taxes but asked the court to waive them because of "endemic fraud." The trial court dismissed the case, and Bustos appealed.

The court of appeals affirmed the dismissal of the case. The court explained that §42.08 of the Tax Code generally requires a property owner to pay at least some of the taxes assessed against his property. Because Bustos admitted owning property with some taxable value, his complete failure to pay did not satisfy the statute. The court also noted that Bustos had not filed a written statement of the amount of taxes that he proposed to pay. A property owner who files an oath of inability to pay has the burden of obtaining a hearing and proving that he cannot pay. Because Bustos failed to do so, his oath of inability to pay was ineffective.

Iraheta v. Linebarger Goggan Blair& Sampsom, L.L.P.
2018 WL 2143554 (5th Cir., May 9, 2018)

Issues: Governmental immunity; delinquent tax collection

Iraheta was an active-duty member of the armed forces who owned five properties in Harris County. The County sued him for delinquent taxes in 2007 but promptly nonsuited the case. Years later, Iraheta sued the County and its law firm in federal court advancing a number of claims based on federal and state laws and related to the original delinquent-tax suit. The trial court ruled against Iraheta, dismissing some of his claims and determining others by summary judgment. Iraheta appealed.

The court of appeals affirmed the trial court's orders. The higher court first explained that local governments are generally immune from lawsuits. The same applies to government officials acting in their official capacities and to lawyers representing taxing units. The Texas Tort Claims Act waives that immunity in some instances, but not for actions related to the assessment and collection of taxes. That immunity does not violate the United States Constitution.

The Tax Code contains some special rules for the benefit of military personnel. An active-duty member may pay delinquent taxes without penalties and interest under the circumstances described in §31.02(b). Subsection (d) states that if the member eligible

for waiver of p&i provides notice to the county TAC or the appraisal district, taxing units may not file delinquent-tax suits. If a suit is filed, it must be abated. That law, however, does not give a service member any right to sue a taxing unit or its lawyers. The sole remedy for a delinquent-tax suit filed in violation of the statute is the abatement of that suit.

The federal Servicemembers Civil Relief Act also provides some protection to members with respect to properties "occupied for dwelling, professional, business, or agricultural purposes." The property must be occupied both "before the servicemember's entry into military service" and "during the time the tax or assessment remains unpaid." Iraheta claimed that two of his properties were protected by the SCRA, but the County's summary-judgment evidence showed that one property was unimproved land that Iraheta had sold during the period when he was not paying his taxes. The other property was a residence that Iraheta had left and converted to a rental before he might have been able to claim any benefit under the SCRA.

Famsa, Inc. v. Bexar Appraisal District
2018 WL 2121083 (Tex. App. – San Antonio, May 9, 2018, no pet.) (not reported)

Issue: Binding arbitration

Famsa appealed an ARB order by taking its appraisal complaint to binding arbitration. The arbitrator upheld the ARB's order, and Famsa decided that it not want to be bound by the binding arbitration after all. It is possible to appeal an arbitrator's decision to a court, but it isn't easy. Famsa alleged in court that the arbitrator had incorrectly placed the burden of proof. The trial court entered a summary judgment for the appraisal district appealed.

The court of appeals explained that under the Texas Arbitration Act, a party challenging an arbitrator's decision must show: that the arbitrator was biased or corrupt; that the arbitrator was guilty of willful misbehavior; or that the arbitrator exceeded his/her authority. A court will not disturb an arbitrator's decision merely because the arbitrator made a mistake. Even if the arbitrator had made a mistake in placing the burden of proof on Famsa, that decision would not justify overturning his order. The court of appeals affirmed the summary judgment for the district.

Willacy County Appraisal District v. Sebastian Cotton & Grain, Ltd.
2018 WL 1974485 (Tex., April 27, 2018)

Issues: Correcting Appraisal rolls; agreements between property owners and appraisal districts

Sebastian owned grain-storage facilities. In 2009, it rendered grain, which the appraisal district listed in Sebastian's name. Late that year, Sebastian filed a motion with the ARB under §25.25(c) of the Tax Code claiming that it did not own most of the grain because the grain had been sold to DeBruce prior to January 1, 2009. In a telephone call, the

district agreed to change the appraisal roll under §25.25(b) and list DeBruce as the owner. DeBruce then filed a protest claiming that, under its contracts with Sebastian, it did not take ownership of the grain until after January 1. The district again corrected the roll under §25.25(b) to once again show Sebastian as the grain's owner. Sebastian then protested the district's action. The ARB denied Sebastian's protest, and Sebastian sued the district.

Sebastian argued that the district had no authority to put the grain back into its name because §25.25(b) does not allow an appraisal district to make changes that "increase the amount of tax liability." Sebastian's tax liability was increased when the district put the grain back under its name. It also argued that the district was bound by its earlier agreement to list the grain in DeBruce's name. The district responded that the agreement was obtained by fraud on Sebastian's part. The trial court ruled for the district, but the court of appeals ruled for Sebastian. The Texas Supreme Court then agreed to consider the case.

The high court ruled for the district on the key legal issues. The court explained that §25.25(b) allows an appraisal district to change the name of a property's owner on an appraisal roll as long as it does not raise the value or otherwise increase the total amount of tax liability. The real owner of a property is liable for the taxes regardless of what the appraisal roll says. The district can change the roll to reflect that reality. The court next ruled that an appraisal district is generally bound by agreements with property owners, even, oral, unverifiable agreements. But, Sebastian was claiming that it was *not the owner* of the grain, and, without realizing it, was claiming that it could not enter a binding agreement with the district. Further, the ownership of a property is an objective fact that cannot be changed by an appraisal district's agreement, and an agreement obtained by fraud is not binding on a district.

Sebastian also claimed attorneys' fees on the grounds that it was appealing an ARB order issued under §25.25. It was incorrect, however, because the ARB proceeding had been Sebastian's *protest*, not a motion under §25.25. The protest had not involved any issue that would allow Sebastian to claim attorneys' fee for an appeal. The Supreme Court referred the case back to the court of appeals for consideration of other issues such as who actually owned the grain, whether Sebastian and the district actually had an agreement, and whether Sebastian had committed fraud.

Tarrant Appraisal District v. Tarrant Regional Water District
547 S.W.3d 917 (Tex. App. – Fort Worth, April 19, 2018 (no pet.)

Issues: Public property exemption

The water district (TRWD) owned a tract of land overlooking the Trinity River. It leased approximately two acres of the land to River Shack, a for-profit company that opened a restaurant there. The appraisal district concluded that the restaurant did not qualify for a public-property exemption. After an unsuccessful protest before the ARB, the TRWD

sued the district. The trial court entered a summary judgment exempting the restaurant, and the appraisal district appealed.

The Fort Worth Court of Appeals affirmed the trial court. The higher court stated that ordinarily constitutional provisions and statutes creating tax exemptions are construed strictly against granting the exemption. But when the property owner is a water district those provisions should be construed in its favor. The court then turned to Art. VIII, §2 of the Constitution and §11.11 of the Tax Code and concluded that those provisions exempted the restaurant. Neither of those laws required that property be used *exclusively* for public purposes in order to be exempt. In the court's opinion, a property with *some* use for public purposes could qualify. Property is used for public purposes if "it is used primarily for the health, comfort, and welfare of the public." The TRWD's organic statute authorized it to develop "recreational facilities" and to "promote economic development." Those were public purposes. The court also noted that the lease between the TRWD and River Shack said that the property was "intended for the use and enjoyment of the general public."

Editor's Comment: The Fort Worth Court of Appeals' opinion is a dramatic departure from earlier opinions, including the court's own opinions. The earlier opinions held that a publicly-owned property leased to a private business for its own business purposes could not receive an exemption even if the property were used to some extent for public purposes. The court overturned one of its own opinions that has been followed by other courts for more than thirty years.

Cuanto Antes Mejor, L.L.C. v EOG Resources
2018 WL 1733174 (Tex. App. – San Antonio, April 11, 2018, pet. denied) (not reported)

Issues: Challenging tax sales

In 1916, a 51-acre tract was partitioned by partition deed into a 45-acre tract and a six-acre tract. Almost ninety years later, Dora, through inheritance, owned an undivided interest in the 45-acre tract. In 2003, taxing units sued her for delinquent taxes. The 2005 judgment ordered that Dora's interest be sold and described the property as, "Tract 8, being 7 acres, more or less, J. Nesbit Survey, Abstract 219, Karnes County, Texas." When the property was sold, the sheriff's deed included the same description. After two subsequent transfers, that interest was owned by Cuanto Antes Mejor (CAM). In 2015, Dora executed a quitclaim deed to EOS. EOS claimed that it owned the property because the delinquent-tax judgment and sheriff's deed contained insufficient descriptions of the property. CAM and EOS filed suit against each other. CAM claimed that EOS could not challenge the tax sale because it had not filed suit within the one-year limitations period prescribed by §33.54 of the Tax Code and because it had not made the deposit required by §34.08. The trial court ruled that EOG was the owner of the property, and CAM appealed.

The court of appeals reasoned that if the delinquent-tax judgement contained an insufficient description of the property, the judgement was *void* and could be challenged

at any time, even if the party challenging it did not satisfy the Tax Code's requirements. "A property description is sufficient if the [deed] furnishes within itself, or by reference to some other existing writing, the means or data by which the particular land to be conveyed may be identified with reasonable certainty." The court explained that even a very vague description such as "my property" can be sufficient if the grantor owned only one property. In this case, the delinquent-tax judgment and the Sheriff's deed clearly identified Dora as the owner whose interest was being sold. An affidavit from a lawyer who had done a title search expressed his expert opinion that the only property that Dora had owned in the county was her undivided interest in the 45-acre tract. Thus, the delinquent-tax judgement and sheriff's deed were sufficient to convey that interest. The court of appeals reversed the trial court's judgment for EOS and ruled that CAM was the owner of the property.

Maverick County v. Felan
551 S.W.3d 229 (Tex. App – San Antonio, April 11, 2018, no pet. hist.)

Issues: Governmental immunity; truth in taxation

In 2016, the tax assessor-collector calculated the county's effective and rollback tax rates. The commissioners' court adopted a tax rate that exactly equaled the rollback rate. The TAC then discovered that she had made a mistake in calculating the rollback rate. She had failed to factor in the county's sales-tax revenues. The commissioner's court then voted to rescind the adopted tax rate. The deadline for adopting a tax rate passed. By the operation of §26.05(c) of the Tax Code, the county's effective tax rate became its actual tax rate. The commissioners voted to ratify that rate. Several months later, a taxpayer named Felan sued the county. She claimed that the county's tax rate exceeded its rollback rate properly calculated and asked the trial court to order a rollback election. The county responded that Felan knew about the TAC's calculation errors before the commissioners adopted a rate and that she should have sued under §26.04(g) before the rate was adopted. A timely suit under Section 26.04(g) would have allowed a court to block the adoption of a tax rate. Felan's suit should be dismissed because she did not file the right lawsuit at the right time. When the trial court refused to dismiss the case, the county appealed.

The court of appeals ruled for the county and dismissed the case. The court explained that 26.04(g) provides the exclusive remedy available when the person calculating a taxing unit's effective and rollback tax rates does so incorrectly. A taxpayer trying to challenge the mistake must file suit before the taxing unit's governing body adopts a tax rate. In this case, Felan had waited more than three months after she discovered the error and well after the commissioners had ratified the tax rate before she filed suit.

Munn v. Smith County Appraisal District
2018 WL 1616384 (Tex. App. – Tyler, April 4, 2018, pet. denied) (to be published)

Issues: Payment of taxes during appeal

Munn protested the appraisal district's denial of an agricultural appraisal for his land. When the ARB denied his protest, he sued the appraisal district. The district asked the trial court to dismiss the case because Munn had not paid any taxes on his land. Munn failed to appear for the hearing on the district's motion, and the court dismissed the suit. Munn then filed various motions asking the court to reconsider the dismissal and claiming that he was unable to make any tax payment. He argued that the taxing units had not been given notice of the hearing. His motions were effectively overruled when the trial court took no action on them, and Munn appealed.

The court of appeals explained that §42.08 of the Tax Code requires a property owner who has sued an appraisal district to make some tax payment before the taxes become delinquent. Munn didn't pay anything. The court also discussed §42.08(e). It says that when a trial court sets a hearing on a dispute about a property owner's payment or nonpayment, the "movant" must give the tax collectors for the taxing units written notice of the hearing at least forty-five days in advance. The court concluded that the "movant" is the property owner. It was Munn's duty to notify the tax collectors, and he could not complain about his own failure to do so. The court of appeals affirmed the trial court's dismissal of Munn's suit.

Cameron County v. Valley Sandia, Ltd. Co.
2018 WL 1542428 (Tex. App. – Corpus Christi-Edinberg, March 29, 2018, no pet.) (not reported)

Issues: Payment during delinquent-tax suit

The county sued Valley Sandia for delinquent taxes on ten lots. While the suit was pending, Valley Sandia attempted to pay the taxes on five of the lots along with related penalties, interest, court costs, etc. Valley Sandia wanted to be able to sell the five lots free and clear of the tax liens. The county, however, refused to accept the payment and demanded that Valley Sandia pay the amounts due on all the lots. Valley Sandia filed an emergency motion asking the trial court to order the county to accept the payment and to enter a payment plan for the taxes on the other five lots. The county did not respond to the motion. The trial court granted Valley Sandia's motion and also ordered the county to: 1) waive penalties, interest and some attorneys' fees; and 2) release its tax liens. The county appealed.

The court of appeals affirmed the trial court's order. There really isn't much to be learned from the higher court's opinion. The opinion is contradictory about important facts. In one place it says that the lots were "subdivided for taxing purposes," but in other places, it indicates that the lots were appraised together under one account. The opinion does not analyze the law so much as criticize the county's briefing. The court repeatedly states that the county failed to explain its positions or adequately brief its arguments.

United States v. Fisch
2018 WL 1541780 (S.D. Tex., March 28, 2018)

Issues: Property forfeited for drug crimes

Fisch was convicted of drug-related crimes, and under 21 U.S.C.A. §853, his interest in certain real property was forfeited to the federal government. Fisch's wife, Berkman also owned an interest in the property. Taxing units claimed taxes on the property for 2013 and subsequent years. The crimes occurred between 2006 and 2010. The government filed a lis pendens in 2011, and the order of forfeiture was signed in 2015. The court ordered that the property be sold and that the proceeds go first to pay the taxes. Berkman objected and argued that under 21 U.S.C. 853(c) the forfeiture related back to the time the crimes were committed. She argued that the property had actually been owned by the federal government during the relevant tax years and that the taxing units could not have acquired tax liens during those years.

The court rejected Berkman's argument. It explained that Berkman's interest in the property was not forfeited. The court concluded that the taxing units did have interests in the property and that their interests were superior to Berkman's interest. Berkman would have to pay (from the sale proceeds) the portion of taxes relative to her interest in the property.

Palma v. Harris County Appraisal District
2018 WL 1473792 (Tex. App. – March 27, 2018, pet. denied) (not reported)

Issues: Taxable situs

Palma was the beneficiary of a trust that owned a residence. After an unsuccessful protest of the 2015 appraisal, he sued the appraisal district. Palma claimed that because the property was residential, it was not taxable in Harris County. The district filed a motion for summary judgment accompanied by its account information and maps showing that the property was located within the territorial boundaries of Harris County and other taxing units. Palma responded by claiming that because the property did not generate income, it was not taxable. The trial court entered summary judgment for the district and Palma appealed.

The court of appeals affirmed the summary judgment for the district. The higher court explained that the district's summary-judgement evidence was sufficient to prove that the property was real property located in Harris County.

La Flecha Holdings, Inc. v. Find A Home, LLC
2018 WL 1476350 (Tex. App. Houston [14th Dist.], March 27, 2018, pet. denied) (not reported)

Issues: Redemption following tax sale

Taxing units sued La Flecha when it failed to pay taxes on its property. The court ordered the property sold, and the sheriff sold it to FAH. A few months later, La Flecha

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

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

Back in the trial court, FAH filed another affidavit from its bookkeeper stating that SWE had paid the taxes at the instruction of FAH, on behalf of FAH and with funds of FAH. After the trial court again entered a second summary judgment tor FAH, La Flecha filed a second appeal. This time La Flecha claimed that FAH had not reported the $4,200 tax payment within ten days of La Flecha's inquiry about the redemption amount. The court of appeals affirmed the summary judgment. This time, the higher court explained that the bookkeeper's affidavit was sufficient to show that FAH had paid the taxes. Section 34.21 (i) requires a tax-sale purchaser to identify its "costs" associated with the purchased property within ten days in response to an inquiry from the former owner, but that rule does not apply to taxes paid by the purchaser. La Flecha had failed to redeem the property.

Viper S.W.D. LLC v. Jackson County Appraisal District
2018 WL 1325780 (Tex. App. – Corpus Christi-Edinberg, March 15, 2018, no pet.) (not reported)

Issues: Tax payment required for appeal; time for filing appeal

This opinion is unclear about several points, but we will try to make sense of it. Viper leased land where it operated a saltwater disposal well. Its bpp was appraised by Capital Appraisal Group beginning in 2008. Viper sued the appraisal district, challenging the appraised values for the bpp in 2008 and 2009, claiming that the property was not adequately described on the appraisal rolls and claiming that the appraisals included real property not owned by Viper. In mid-2015, just before the trial, it filed an amended petition adding the 2010 year. The district pointed out that Viper had not paid any taxes on the property, but the trial court refused to dismiss the suit on those grounds. After the trial, the trial court entered judgment for the district and viper appealed.

On appeal, the district argued that the case should have been dismissed as a result of Viper's failure to pay taxes. The court of appeals noted that under §42.08 of the Tax Code, a property owner has the option of paying the amount of taxes imposed on the property in the preceding tax year. Because the property was not taxed at all in 2007, Viper had the option of not paying anything for 2008. The higher court also allowed Viper to get away without paying anything for 2009, but it did not explain why. The court then proceeded to dismiss Viper's claims for 2010 because Viper had not added that year to its suit within sixty days after it received its ARB order.

The court of appeals found that the evidence on the substantive issues was sufficient to support the judgment. The court noted that a property description need only be sufficient to give a property owner notice of what property was included in a tax account. Capital's description satisfied that requirement. Testimony from Capital's appraiser supported the trial court's finding that only Viper's bpp had been included in the appraisal. The Court of Appeals affirmed the judgment for the district for the years 2008 and 2009.

EXLP Leasing, LLC v. Galveston Central Appraisal District
2018 WL 1122363 (Tex., March 2, 2018)

Issues: Heavy equipment appraisal

EXLP owned compressors used to push natural gas into and through pipelines. The compressors were leased to the companies that operated the pipelines. EXLP managed its business in the area from Washington County, but the compressors were located in Galveston County for years at a time. EXLP claimed that under §23.1241 of the Tax Code the compressors had to be appraised at one-twelfth of the rental income that they produced in a year. It also claimed that the compressors were taxable in Washington County. The appraisal district refused to apply §23.1241, asserting that the statute was unconstitutional because it yielded values that were far below the actual market values of the compressors. The district appraised the compressors in Galveston County and at their market values. After an unsuccessful protest, EXLP sued the district. The trial court entered a summary judgement for the district. On appeal, the court of appeals ruled that the compressors were taxable in Galveston County but that there was not enough evidence to support a summary judgment invalidating §23.1241. Both sides asked the Texas Supreme Court to consider the case, and the Court agreed.

The Supreme Court ruled for EXLP down the line. The Court noted Art. VIII, §1(b) of the Texas Constitution, which provides, "All real property and tangible personal property in this State . . . shall be taxed in proportion to its value, which shall be ascertained as may be provided by law." In previous opinions, issued over the course of many decades, Texas courts have interpreted this provision to require that property be taxed based upon its market value. But the Supreme Court changed that. It rejected the very notion that the Constitution requires taxation based upon market values. The term *value*, as used in Art. VIII, §1(b) doesn't mean market value; it means whatever the legislature

wants it to mean. It does not matter whether the valuation method prescribed by §23.1241 yields market value because market value is not required by the Constitution.

The Court also considered whether the statute violated the equal-and-uniform-taxation clause found in Art. VIII, §1(a) of the Constitution and concluded that it did not. Identical compressors doing the same job might be subjected to widely disparate taxes depending on whether they were owned by leasing companies or owned by the pipeline companies that actually used them. But the legislature can classify properties "so long as the classifications are not unreasonable, arbitrary or capricious. . . . Those who own compressors for their own use and those who own them to lease out are both compressor owners, but they are in different tax classes."

Next, the Court ruled that the compressors were taxable in Washington County despite their long-term physical presence in Galveston County and despite the fact that §23.1241 says nothing about the taxable situs of compressors or other heavy equipment. It reasoned that the statute focuses on the income from an inventory considered as a whole rather than individual units of equipment. The legislature, according to the Court, intended to "fix the situs for heavy equipment at the business location where the dealer maintains its inventory, not the myriad locations where units of the inventory are physically present at any given time." Because EXLP "assigned" the compressors to its Washington County location, that's where they were taxable.

Attorney General's Opinions

Opinion No. KP-0215
September 24, 2018

Issues: Percentage homestead

If a taxing unit such as a city adopts a percentage homestead exemption, that exemption comes with a $5,000 floor. That is, if the exemption as calculated for a particular homestead comes to less than $5,000, it is automatically rounded up to $5,000. Even the most modest home in the city would receive a $5,000 exemption. The A.G. was asked whether a home-rule city could establish a floor higher than $5,000.

He explained that the $5,000 floor comes from Art. VIII, §1-b of the Texas Constitution and §11.13(n) of the Tax Code. The Constitution would allow the legislature to reduce the floor, but neither the Constitution nor the Tax Code allows a taxing unit to establish a higher floor. A higher floor would create an exemption not allowed by the Constitution. To the extent that there is any conflict between a city's ordinances and the Tax Code and the

Constitution, the Constitution and Code control. If a taxing unit did try to establish a higher floor, the appraisal district would have a duty to reject the taxing unit's efforts and apply the $5,000 floor instead.

Opinion No. KP-0192
April 23, 2018

Issues: Reappraisal following disaster

In this opinion, the A.G. addresses some questions related to reappraisals following Hurricane Harvey. The first question concerned the reappraisal costs that an appraisal district may charge to taxing units. The A.G. said, "Appraisal districts may not capitalize on a disaster by requesting additional funds from taxing units for expenses the appraisal district would incur regardless of the disaster. To the extent that an appraisal district incurs additional costs resulting from a disaster reappraisal, it may require participating taxing units to fund those extraordinary expenses."

Another question concerned whether an appraisal district was required to send a notice of appraised value for a property reappraised following a disaster, even if the new value was lower than the January-1 value. The A.G. explained that any reappraisal of a property triggers an appraisal district's duty to send a notice of appraised value. There is no exception for a post-disaster reappraisal.

The A.G. then volunteered a curious comment. Section 418.016(e) of the Government Code allows the governor to waive or suspend statutory deadlines imposed on local governments in the wake of a disaster. For example, a taxing unit could be excused if a hurricane prevented its governing body from adopting a tax rate on time. The A.G.'s opinion seems to imply that a taxing unit could use the law to postpone the deadline for property owners filing protests. If that were true, a protest filed with an ARB might be considered timely as to some taxing units and untimely as to others.