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2019 PROPERTY TAX CASES

And Attorney General's Opinions

Last updated: December 7, 2020

Cases

El Paso County v. El Paso County Emergence Services District No. 1
2020 WL 91208 (Tex. App. – El Paso, January 8, 2020, no pet.) (to be published)

Issues: Governmental immunity; adopting tax rate

A special subchapter in the Health and Safety Code applies to only emergency services districts in El Paso County. Under the law, an ESD proposes a budget and a tax rate, but they don't take effect unless that are approved by the commissioners' court. In 2016 an ESD proposed a tax rate that was not approved by the commissioner's court. Under §26.05 of the Tax Code, the ESD was treated as a taxing unit that failed to adopt a tax rate on time. That meant that its taxes were based on its effective rate. The EST filed suit to challenge the special law and sought a declaratory judgment. The county asserted various defenses, including mootness and governmental immunity. When the trial court refused to dismiss the case, the county appealed.

The court of appeals reversed the trial court's ruling and dismissed the case. The court of appeals first explained that even though the time had passed for doing anything about the 2016 tax rate, the case should not be dismissed as moot. What happened to the ESD was capable of repetition, but there would never be time to litigate a claim before it became moot. Therefore, it fell under an exception to the mootness rule.

The court next discussed governmental immunity. A party suing a governmental body must show that the body's immunity has been waived. The ESD, however did not plead or prove any waiver of the County's immunity. The statute governing declaratory judgements (Chapter 37 of the Civil Practice and Remedies Code) does not waive governmental immunity.

Additionally, the ESD lacked standing to assert that the special law was somehow unconstitutional because a local government does not have constitutional rights. A local government may sometimes challenge a law that it is responsible for implementing, but in this case, the county, not the ESD was the government responsible for implementing the law.

Texas Tax Solutions, LLC v. City of El Paso
593 S.W.3d 903 (Tex. App. – El Paso, December 30, 2019, no pet.)

Issues: transferred tax lien

Texas Tax Solutions (TTS) and the taxing units went to court with competing claims to enforce tax liens on real property that had once belonged to Gage. TTS claimed that it had given Gage a property-tax loan under §32.06 of the Tax Code and acquired the liens from the taxing units. TTS admitted, however, that it had been defrauded. Gage was dead at the time of the loan, and someone else (maybe one of her heirs) had applied for the loan in her name. TTS made that admission in its pleadings and in the trial. The taxing units argued that, as a result of the fraud, the lien transfer was void and that they still held the liens. TTS argued that the taxing units could not make that argument because they had not pleaded the affirmative defense of fraud. The trial court ruled for the taxing units, and TTS appealed.

The court of appeals affirmed the trial court's ruling. The higher court explained that, ordinarily, a party who claims that a transaction is void as a result of fraud should plead that claim as an affirmative defense in order to give the other side notice. In this case, however, TTS itself raised the issue of fraud. It certainly had notice of the issue. The taxing units didn't need to plead it. Further, TTS was bound by its unequivocally admissions that the fraud occurred. It could not complain that the taxing units had failed to provide sufficient proof of the fraud. Because the fraudulent loan documents did not satisfy §32.06, the tax-lien transfer to TTS was void, and the taxing units still had the liens.

Mount Vernon United Methodist Church v. Harris County
2019 WL 6869333 (Tex. App. – Houston [1st Dist.], December 17, 2019, pet. denied) (not reported)

Issues: Excess proceeds following tax sale

Real property belonging to Peace Community Development Corporation was sold at a tax sale pursuant to the trial court's judgment. The sale resulted in about $33,000 in excess proceeds. Just before the two-year period for claiming the excess proceeds expired, the church petitioned the court for the money. The church claimed to have acquired Peace's right to the excess proceeds. The written assignment attached to its petition stated that Peace was assigning the right to the excess proceeds in exchange for "$1.00 and other good and valuable consideration." No other party claimed the money. The trial court denied the church's petition, and the church appealed.

The first question considered by the court of appeals was whether the trial court's order was appealable at all. The court noted that under §34.04 of the Tax Code, a party can

appeal an order awarding excess proceeds. But what about an order denying a claim for excess proceeds? The court explained that a post-judgement order from a trial court may be appealable if it is a "mandatory injunction that resolves property rights." In this case, the time for claiming the excess proceeds had passed, and no one else had claimed them. The trial court's order denying the church's petition was, in effect, a final order that meant that the taxing units would receive the excess proceeds. Under those particular facts, reasoned the court of appeals, the trial court's order was appealable.

The court of appeals, however, affirmed the trial court's order denying the church's claim. Section 34.04 allows a claim for excess proceeds to be assigned, but the assignee must pay at least eighty percent of the amount of the excess proceeds, and that assignor must swear in writing that he has received at least eighty percent of that amount. In this case, the church paid Peace far less than the amount of the excess proceeds. The assignment was invalid, and the church didn't have a valid claim to the money.

Bundren v. Collin Central Appraisal District
2019 WL 6649053 (Tex. App. – Dallas, December 6, 2019, no pet.) (not reported)

Issues: Exhausting administrative remedies

Bundren filed a protest concerning the cancelation of the homestead exemption on his property. His written protest said that any correspondence concerning the protest should be sent to his office address. The ARB scheduled a hearing and sent the notice to Bundren's office. Bundren requested that the hearing be postponed, and the ARB granted his request. It mailed a new notice with a new hearing date to his office. Bundren did not appear for the hearing, and the ARB dismissed his protest. Bundren did not seek any further relief from the ARB. Instead, he sued the appraisal district and the ARB and sought to litigate the exemption dispute. He claimed that he had not received the second hearing notice. The defendants filed a motion to dismiss the case based on Bundren's failure to exhaust the administrative remedies available from the ARB. The trial court dismissed the case, and Bundren appealed.

The court of appeals affirmed the trial court's dismissal of the case. The court of appeals explained that a protesting property owner is required to appear for his ARB hearing. If the ARB had failed to notify Bundren of the new date for his hearing, he could have complained to the ARB, but he didn't do that. So, the ARB correctly dismissed his protest, and the trial court correctly dismissed his lawsuit.

Spring Branch Independent School District v. Southwest Precision Printers, L.P.
2019 WL 6000322 (Tex. App. – Houston [14th Dist.], November 14, 2019, no pet.) (not reported)

Issues: Tax liability when a business is sold

Taxing units sued Page International for delinquent taxes on its bpp. Page International soon went into bankruptcy. The taxing units learned that Page International had entered

a contract to sell business assets to Southwest Precision Printers (SPP). The taxing units added SPP as a defendant in the suit and dropped Page International. They sought to collect the money from SPP under §31.081 of the Tax Code. That section requires a person who buys a business or business assets to withhold from the payment enough money to pay all the taxes, penalties, interest, etc. on the bpp until the seller provides proof that everything has been paid. A buyer who does not withhold the money becomes personally liable for the taxes to the extent of the value of the purchase price. Someone who buys a business's name and goodwill is considered a purchaser of the business. When the case came to trial, the trial judge examined the contract between Page International and SPP. She concluded that the transaction did not trigger §31.081 and entered judgment for SPP. The taxing units appealed.

The court of appeals affirmed the trial court's judgment. The higher court did its own review of the contract. One part of the contract said that SPP was getting all rights to Page International's brand, marks, and logos. But another part of the contract said that SPP was getting the "purchased assets" included in a list and nothing more. The list did not include Page International's name or goodwill. No part of the purchase price was assigned to the name or to goodwill. The contract was not ambiguous, and it did not transfer Page International's name or goodwill to SPP. Section 31.081 did not apply to the transaction, and SPP was not liable for the taxes.

Kinder Morgan SACROC, LP v. Scurry County
589 S.W.3d 889 (Tex. App. – Eastland, November 7, 2019, no pet. hist.)

Issues: Dismissal under the Texas Citizens Participation Act

Taxing units filed challenges with the ARB alleging that the appraisal district had under-appraised Kinder Morgan's minerals or omitted them completely for several years. When the ARB denied the challenges, the taxing units filed suit against Kinder Morgan on August 23, 2018. On November 13, 2018, the taxing units filed amended pleadings alleging more specifically that the errors on the appraisal rolls were caused by Kinder Morgan's fraud. The amended pleadings did not add new claims or new parties to the suit.

On December 17, 1018, Kinder Morgan filed a motion invoking the Texas Citizens Participation Act (Chapter 27 of the Civil Practice and Remedies Code). That statute provides for the quick dismissal of frivolous lawsuits filed to harass people exercising their constitutional rights. Kinder Morgan claimed that it was exercising its rights when it provided information to the appraisal district in connection with the appraisal of its minerals. But a defendant seeking invoke the TCPA must file a motion within sixty days after being served with the improper "legal action." The taxing units pointed out that Kinder Morgan's motion was filed almost four months after it had first been served with the suit. Kinder Morgan responded that the taxing units' amended pleadings filed on November 13 constituted a new legal action and gave it an additional sixty days in which to file its motion for dismissal. Alternatively, if its motion was filed late, it had "good cause"

for the late filing. The trial court sided with the taxing units denied Kinder Morgan's motion. Kinder Morgan appealed.

The court of appeals affirmed the trial court's ruling for the taxing units. The court reasoned that the legal action began in August with the filing of the original suit. The original pleadings were sufficient to give Kinder Morgan "fair notice" of the taxing units' claims and what they wanted the trial court to do. The amended pleadings filed in November did not add new claims or new parties. They did not change the essential nature of the case. So, Kinder Morgan's sixty-day window for filing a motion to dismiss opened when it was first served with the original suit and closed sixty days later. Kinder Morgan's motion was filed too late. The court of appeals went on to say that Kinder Morgan could have filed its motion earlier, so it did not have good cause for filing late.

White Deer Independent School District v. Martin
596 S.W.3d 855 Tex. App. – Amarillo, November 5, 2019, pet. denied)

State of Texas v. Dumas Independent School District
2019 WL 6723394 (Tex. App. – Amarillo, November 12, 2019, pet. denied) (not reported)

Issues: Local-option homestead exemptions

In 2015, the legislature increased the mandatory exemption applicable to school taxes from $15,000 to $25,000. The bill and the related constitutional amendment prohibited a school district from reducing or eliminating any local-option homestead exemption (LOHA) already in place. That prohibition applied to the tax years 2015 through 2019. The trustees of the White Deer ISD met in June of 2015 and voted to reduce the district's percentage homestead exemption. That happened before the new legislation took effect with the approval of a constitutional amendment in November of 2015. The district calculated its 2015 taxes using the smaller exemption. In subsequent years, the trustees voted to keep the reduced exemption. Martin, a homeowner sued the district, its trustees, and its superintendent. The State of Texas intervened to challenge the trustees' decision. The trial court entered a summary judgement that favored Martin and the state on most points, and the district appealed.

The court of appeals generally affirmed the trial court's ruling. The higher court found that the legislation applied to the 2015 tax year, beginning January 1, 2015. The district had no authority to reduce its LOHE, and the trustees' attempt to do so was void. The court rejected most defenses offered by the district. The state was a proper party to the suit with standing to enforce its laws. The district was not immune from the suit. Governmental immunity did not protest them because their action was taken without any legal authority and was therefore *ultra vires*. The legislation's retroactivity did not violate any constitutional rights of the district because the 2015 taxes "had yet to come to complete fruition" (i.e., the delinquency date) when the new laws took effect in November of that year. The court of appeals went so far as to say that Martin was entitled to summery judgement against the trustees because their votes on the exemption matter conflicted with the law and were *ultra vires*. Martin, however, had failed to prove the

amount of tax refunds to which she was entitled, and the Court of appeals sent the case back to the trial court for further consideration of that amount.

The *Dumas ISD* case involved the same issues. The one-page opinion from the court of appeals just incorporates the opinion from the *White Deer ISD* case.

Rubio v. Harris County
2019 WL 5615564 (Tex. App. – Houston [14th Dist.], October 31, 2019, no pet.) (not reported)

Issues: Excess proceeds following tax sale

Taxing units sued Mendoza for delinquent taxes. The trial court entered a judgement in favor of the taxing units. Pursuant to the judgment, the constable sold the property, and the sale produced excess proceeds. Mendoza never claimed the excess proceeds. Three years after the sale, the taxing units filed a motion with the trial court asking that the money be released to them. It was then that Rubio intervened in the case claiming that she, not Mendoza, had been the owner of the property when it was sold. She wanted the taxing units to pay her the total price paid for the property. The taxing units' claim was considered by a master in chancery who recommended that the excess proceeds be released to them. Rubio appealed the master's decision to the trial judge, but, on May 10, the judge signed an order awarding the excess proceeds to the taxing units. On July 10, the judge signed an "Order Denying Reconsideration." That order purported to deny a motion for reconsideration from Rubio and to affirm the master's recommendation. Rubio attempted to appeal the trial judge's decision and filed her notice of appeal on July 10.

The question considered by the court of appeals was whether Rubio's notice of appeal was timely. Ordinarily, the deadline for filing a notice of appeal is thirty days after the signing of a judgment, but there is a fifteen-day grace period after that, a total of forty-five days. If the dissatisfied party files a motion for a new trial, the period for filing a notice of appeal is extended to ninety days. The court of appeals noted that Rubio filed her notice more than forty-five days after the trial judge's May 10 order. The record from the trial court did not include any motion for new trial. The trial judge's July 10 order referred to a "Motion for Reconsideration," but no such motion appeared in the record. Rubio's deadline was forty-five days after the May 10 order, and she missed it. She argued that the trial judge's July 10 order restarted the clock on her notice of appeal, but the court of appeals rejected that argument. The July 10 order did not change what was in the May 10 order and it was superfluous and did not restart the clock.

In Re Corpus Christi Liquefaction, LLC
2019 WL 5483307 (Tex., October 25, 2019)

Issues: Special suit concerning conflicting tax claims

This is another chapter in the ongoing dispute between Nueces County and San Patricio County concerning which of them can tax docks and related property connected to San

Patricio County but extending out into Corpus Christi Bay. In 2017, the legislature enacted §72.010 of the Local Government Code, which, in some instances, allows an affected property owner to file an original action in the Texas Supreme Court. CCL attempted to file such an action, but the Supreme court decided that it could not hear the case.

The high Court explained that it was not the appropriate court to decide disputed factual issues about CCL's dock. It also explained that deciding where CCL's dock was taxable was not an urgent necessity. The dispute concerning this particular dock only dated back to 2017. The Nueces County Appraisal District had appraised the dock at $0 in 2018 and 2019. The dock was subject to a tax abatement agreement in Nueces County. CCL was not being subjected to high multiple taxes year after year. There would be time for the dispute to be resolved by lower courts in cases that had already been filed. The Supreme Court dismissed the case but recognized that CCL could refile it if circumstances changed.

Mikulin v. Harris County
2019 WL 4936042 (Tex. App. – Houston [1st Dist.], October 8, 2019, no pet.) (not reported)

Issues: Tax payments

Taxing units sued Mikulin for delinquent taxes. He responded with a theory that money isn't real, so he couldn't be taxed in United States Dollars. He challenged the jurisdiction of the trial court to even hear the case. The court, however ruled against him and entered a judgment for the taxing units. Mikulin appealed.

The court of appeals affirmed the judgment for the taxing units. The higher court explained that the trial court had jurisdiction to hear delinquent tax suits under §33.41 of the Tax Code. The court of appeals went on to explain that U.S. coins and currency (including Federal Reserve notes) are legal tender for all debts, including taxes. The trial court correctly ordered Mikulin to pay his taxes in U.S. dollars.

Johnson v. Boehnke
2019 WL 4458797 (Tex. App. – Austin, September 18, 2019, no pet.) (not reported)

Issues: Suits against public employees

The appraisal district denied an agricultural appraisal for Johnson's land. After an unsuccessful protest before the ARB, he sued the district. He later amended his pleadings to name several individual employees of the district and to seek damages from them. He sued them in both their official capacities and their individual capacities and accused them of fraud and other torts. The employees filed a plea to the jurisdiction and asked the trial court to dismiss the claims against them. The trial court ruled for them and dismissed those claims. The claims against the district were still pending. Under the circumstances, however, the Civil Practice and Remedies Code allowed for an interlocutory appeal of the

trial court's dismissal of the claims against the employees, and Johnson filed such an appeal.

The court of appeals affirmed the trial court's order. The court of appeals explained that Johnson's claims against the employees were subject to a provision in the Texas Tort Claims Act (Chapter 101 of the Civil Practice and Remedies Code). The fact that Johnson had first sued the district meant that he could not later add claims against the district's employees. He had irrevocably elected to sue the district and not its employees. The trial court had no jurisdiction to consider the claims against the employees in their official capacities.

The court of appeals also explained that the dismissal of Johnson's claims against the employees in their individual capacities could not be addressed in an interlocutory appeal. The court dismissed Johnson's appeal insofar as it concerned his claims against the employees in their individual capacities.

Dunson v. Jacobson
2019 WL 4122606 (Tex. App. – Fort Worth, August 29, 2019, no pet.) (not reported)

Issues: Governmental immunity; agents representing property owners

Dunson was a tax consultant who ran his own tax consulting firm. Sometimes, however, he would show up for ARB hearings and claim that he was representing a property owner who had named a different tax consulting firm as the owner's agent. He claimed the authority to represent any property owner who had named any agent. The appraisal district and the ARB refused to allow him to do that. Their policies for 2015 stated that if a property owner named a tax consulting firm as the owner's agent, some officer or employee of that firm should show up, not someone from a different firm. Allowing Dunson to represent a property owner who had named a different agent was, in effect, allowing two agents to represent the same property at the same time. Section 1.111(d) of the Tax Code says that a property owner can have only agent at a time for a particular property. In 2016, they modified their policy to allow a person to appear on behalf of a firm if the firm provided a written statement identifying the person as someone authorized to act on behalf of the firm's clients. Dunson sued the district, the ARB and its Chairperson claiming that their policy violated his rights. The Defendants raised various defenses, including governmental immunity. On the motion of the defendants, the trial court dismissed the case, and Dunson appealed.

The court of appeals affirmed the dismissal of the case. The higher court explained that governmental entities and officials are ordinarily immune from suit. There are a couple of exceptions to this rule. A statute may waive immunity and allow suits against a governmental entity or official. The Declaratory Judgements Act (Chapter 37, Texas Government Code) allows someone to sue the state or a local government with a claim that a statute or ordinance is unconstitutional or invalid. Dunson, however, was not challenging a statute or an ordinance; he was challenging a policy. The Act does not allow a suit to challenge a policy.

Another exception to the rule of governmental immunity allows a suit against an official who acts without any legal authority. In this case, however, the ARB and its Chairperson had the authority to determine protests and to establish procedural rules for hearings. They had the authority to interpret the Tax Code's provisions concerning the appointment of agents. The defendants' policies did not contradict the Code.

Galvan v. Midland Central Appraisal District
2019 WL 3955886 (Tex. App. – Eastland, August 22, 2019, no pet.) (not reported)

Issues: Excess funds following tax sale

The trial court entered judgment against Galvan for delinquent taxes and ordered the sale of his property. The sale occurred on March 3, 2015 and resulted in about $10,000 in excess proceeds. The court clerk sent Galvan written notice explaining that he had two years from the date of the sale in which to claim the excess proceeds. On April 19, 2017, Galvan filed a petition seeking the excess proceeds. Soon thereafter, the appraisal district, acting as the collector for the taxing units, filed its own request for the excess proceeds. The district claimed that it was entitled to the money because Galvan had not claimed it within the two years following the sale. Galvan claimed that the clerk's notice of the excess proceeds did not cite the current version of the relevant statute. The trial court ruled for the district and against Galvan. Galvan appealed.

The court of appeals affirmed the trial court's ruling. The court of appeals explained that §§34.03 and 34.04 of the Tax Code require a court clerk to deliver notice of excess proceeds to a person who lost his property in a tax sale. The notice should include the complete text of §34.04. In this case, the clerk sent the notice, but the version of §34.04 sent to Galvan was not current. It explained the need to claim excess proceeds within two years, but it did not include the words, "and the Title IV-D agency," which were added to §34.04 in 2011. The clerk's notice did not satisfy the law perfectly. The court, however, explained that perfection was nor required. The notice satisfied the law, "with reasonable strictness," and that was enough. Further, the notice was not required to state the date of the tax sale. Galvan was subject to the requirement that he claim the excess proceeds within two years. He lost the money when he failed to do so.

College Retail, LLC v. Jefferson Central Appraisal District
589 S.W.3d 856 (Tex. App. – Corpus Christi-Edinburg, August 22, 2019, no pet.)

Issues: Protest by lessee; exhaustion of remedies

College Retail owned a commercial building, which it leased to Conn's. College Retail filed a protest in 2017 alleging excessive and unequal appraisal of the building. Soon thereafter, Conn's filed its own protest on the same grounds. Under §41.413 of the Tax Code, a lessee may file a protest under some circumstances, but not if the property owner files a protest. College Retail withdrew its protest so that Conn's protest could proceed. The ARB denied Conn's protest. Then, College Retail, not Conn's, filed an appeal in the

trial court. The appraisal district responded with a plea to the jurisdiction pointing out that College retail had withdrawn its protest and that the ARB had never heard or acted on that protest. After the sixty-day statute of limitations had passed, College Retail filed an amended pleading "for its tenant." The trial court dismissed the case and the plaintiff(s) appealed.

The court of appeals reversed the trial court's order and reinstated the case. The higher court reasoned that a protest was filed by a party that had a right to file it, i.e., Conn's. The ARB heard Conn's protest and issued an appealable order. Somebody filed an appeal before the limitations period expired. That was good enough. The court based its opinion on §42.061 of the Code, which says that an appeal should not be dismissed merely because the petition does not correctly identify the plaintiff. It is enough that a petition is filed timely and that it identifies a property that was the subject of a protest determined by the ARB. The failure to name the correct plaintiff can be cured with an amendment, but the trial court has jurisdiction to hear it.

Sunnova AP5 Conduit LLC v. Hunt County Appraisal District
2019 WL 3886654 (Tex. App. – Dallas, August 19, 2019, pet. denied) (to be published)

Issues: Solar device exemption

Sunnova leased solar-energy equipment to the owner of real property. Sunnova continued to own the equipment. It claimed an exemption for the equipment under §11.27 of the Tax Code, but the appraisal district denied the exemption. Following an unsuccessful protest, Sunnova sued the district. The trial court entered summary judgment for the district, and Sunnova appealed.

The court of appeals affirmed the summary judgment and ruled that the equipment was taxable as a matter of law. Section 11.27 states, "A person is entitled to an exemption . . . of the amount of appraised value of his property that arises from the installation or construction of a solar . . . energy device that is primarily for production and distribution of energy for on-site use." The court explained that the exemption was intended to benefit the real property owner whose property is enhanced by solar power equipment. It applies to the value added to the real property by the installation of the equipment. Citing the Comptroller's Texas Property Tax Exemptions publication, the court concluded that the exemption does not apply to "the discrete value of the solar device without regard to the increase in value on which the device is installed."

In re Jay Management Company, LLC
2019 WL 3720102 (Tex. App. – Beaumont, August 8, 2019, original proceeding) (not reported)

Issues: Discovery in appeal

Izen owned the surface of a tract of land that was leased for oil and gas production. The operator, Jay Management, had pipelines, tanks and other equipment on some of the

surface. The appraisal district reduced the appraised value of the surface by 20% as a result of the equipment, but Izen wanted a greater reduction. Following an unsuccessful protest, Izen sued the district. He sought to use the discovery process to depose a representative of Jay Management and to obtain extensive information about Jay Management's operations and finances. Jay management objected, but the trial court ordered it to comply with Izen's requests. Jay Management sought a writ of mandamus from the court of appeals.

The higher court ruled for Jay Management and conditionally granted the writ of mandamus. It explained that Izen's discovery efforts constituted a "vastly overbroad fishing expedition." The location of Jay Management's equipment on the land was potentially relevant to the value of the surface, but evidence of the equipment's location was readily available without the discovery that Izen sought from Jay Management.

Palma v. Harris County Appraisal Review Board
2019 WL 3484214 (Tex. App. – Houston [1st Dist.], August 1, 2019, no pet.) (not reported)

Issues: Parties to an appeal

Palma filed protests complaining that his real property was overvalued and that it did not have situs in the county. The ARB held a hearing. It reduced the value of his property slightly but denied the protest on situs grounds. Palma appealed, but he sued only the ARB, not the appraisal district. The ARB filed a motion asking the trial court to dismiss the case. Palma filed a motion asking for leave to amend his pleadings and cite different parts of the Tax Code. He never actually filed any amended pleadings. The trial court dismissed the case with prejudice. Palma appealed, claiming that the trial court erred by denying his motion.

The court of appeals affirmed the dismissal of the case. The court explained that Palma's appeal was governed by §42.21 of the Tax Code. That provision says that an appeal must be filed against the appraisal district and not against the ARB. Palma has clearly sued the wrong party. His motion did not even address that mistake or seek to substitute the district for the ARB. The amendment that he proposed filing would not have solved the problem. So, the trial court did not abuse its discretion by not granting Palma's motion.

Odyssey 2020 Academy, Inc. v. Galveston Central Appraisal District
585 S.W.3d 530 (Tex. App. – Houston [14th Dist.], July 23, 2019, no pet. hist.) (Supreme Court will hear oral arguments in February of 2021)

Issues: Public property exemption

Odyssey operated an open-enrollment charter school on premises leased from a private business. The lease called for Odyssey to pay the taxes on the property. Odyssey claimed that the property was public property used for public purposes and that it should be exempt under §11.11 of the Tax Code. Odyssey relied on §12.128 of the Education Code,

which states that property purchased or leased by a charter school with public funds, "is considered to be public property for all purposes under state law" and "is property of the state held in trust by the charter holder." The appraisal district denied the exemption, and the ARB denied Odyssey's protest. Odyssey sued. When the trial court entered summary judgment for the district, Odyssey appealed.

The court of appeals affirmed the judgment for the district. The higher court rejected Odyssey's argument based on the Education Code. The court explained that the property was not publicly owned. The private landlord held the legal title. A statute could not simply declare something contrary to the facts. "[N]either the legislature by statute, nor the parties, may make the state the owner . . . by saying that it is the owner." The court went on to explain that §12.128 deals with circumstances in which a charter is revoked by the state. It does not confer any tax exemption.

Title Resources Guaranty Company v. The Lighthouse Church & Ministries
589 S.W.3d 226 (Tex. App. – Houston [1st. Dist.], July 23, 2019, no pet.)

Issues: Liability for tax following loss of exemption

The church bought land and received an exemption for the years 2012-2014 on the grounds that the land was held for the future construction of a place of worship. In May of 2014, however, the church sold the land to SLS. The appraisal district discovered the sale and determined that the land should be taxed for the three years in question pursuant to §11.201 of the Tax Code, which applies when a church sells land that it was holding for a future place of worship. The Code says that a lien attaches to the land to secure the taxes, but it does not say whether the seller or the buyer is responsible for them. The appraisal district notified both the church and SLS of its action. SLS's title insurer paid the taxes to prevent the taxing units from foreclosing. It then sued the church to recover the amount that it had paid. The trial court entered summary judgment for the church, and the insurer appealed.

The court of appeals reversed the trial court and ruled that the case could not be resolved by summary judgment because it involved disputed facts. The court of appeals explained that the contract between the church and SLS would determine which of them was responsible for the taxes. Language in their sales contract indicated that the buyer would be responsible for the taxes, but language in a related "escrow withholding agreement" indicated that the seller would be responsible. The court explained that standard principles of contract interpretation did not resolve the ambiguity in the agreements. The case would have to tried and the parties would have to provide additional evidence of their intentions. The court of appeals sent the case back to the trial court for further proceedings.

In Re Cyr
2019 WL 3213053 (Bankr. W.D. Tex., July 16, 2019)

Issues: Homestead owned by trust

This is not a property tax case, but the bankruptcy judge writing this opinion made some comments on a Tax Code provision when contrasting it with another statute. Cyr transferred his homestead into a trust created to satisfy §11.13(j) of the Tax Code. Under the Tax Code, a "qualifying trust," for purposes of a homestead exemption, is one that allows the beneficiary to live in a residence, "rent free and without charge." The document creating Cyr's trust used the exact language of the Tax Code. When Cyr later sought the protection of the bankruptcy court, he claimed that the same trust document made his property exempt from inclusion in the bankruptcy estate under §41.0021 of the Property Code. That section applies when a trust allows a beneficiary to occupy a property "at no cost." The judge explained that the two statutes have different meaning. Although Cry's trust qualified under the Tax Code, it did not qualify under the Property Code. The language in the Tax Code, "rent free and without charge," encompasses only rent and expenses and costs related to the payment of rent. The phrase, "at no cost" in the Property Code is broader. The trust's property qualified for a homestead exemption, but it was not protected in bankruptcy.

Eastland County Appraisal District v. Peninsula Pipelines (North Texas), LLC
594 S.W.3d 383 (Tex. App. – Eastland, June 13, 2019, no pet.)

Issues: Jurisdiction over appeals

Peninsula owned a pipeline extending through nine counties. It protested the appraisals of segments of the pipeline in the different counties. Unhappy with some of the ARB orders, Peninsula filed a petition in the district court in Eastland County naming the Eastland CAD as the defendant. A few hours later, it filed another petition with the same cause number in the same court. The new petition named the Brown CAD as the only defendant. Peninsula then filed four more petitions, one at a time, each naming only one appraisal district. The Eastland and Brown CADs concluded that each new petition had the effect of dismissing the claims against any district not named as a defendant in that petition. They filed a plea to the jurisdiction claiming that they had been dismissed. When the trial court turned them down, they attempted an interlocutory appeal.

The court of appeals dismissed the appeal. The higher court explained that a party may file an interlocutory appeal from a trial court's order determining a jurisdictional question. But the claims raised by the Eastland and Brown CADs did not raise jurisdictional questions. A district court has jurisdiction over a timely filed petition for review of an ARB order. In this case, the trial court had jurisdiction over the claims in each petition when that petition was filed. It did not lose that jurisdiction when subsequent petitions were filed. There was no basis for an interlocutory appeal. The court of appeals noted that Peninsula's practice of filing serial petitions against different CADs might preclude the entry of a judgment in its favor, but that practice did not deprive the trial court of jurisdiction.

Lindsey v. Montgomery Central Appraisal District
2019 WL 2039874 (Tex. App. – Beaumont, May 9, 2019, no pet.) (not reported)

Issues: Exhaustion of administrative remedies; pleadings in appeals

Lindsey protested the appraisal of residential property, claiming that the appraisal district's appraisal was excessive and unequal. At the ARB hearing, she apparently did not present any evidence that addressed the appraisal ratio of her property or any other property. Dissatisfied with the ARB's order, Lindsey sued the district to appeal the ARB's order. Her original petition was vague and made general assertions that the district had followed an "illegal plan and scheme" and had "arbitrarily and capriciously" appraised her property excessively and unequally. The district filed special exceptions and demanded more specific pleadings from Lindsey. The trial court ordered Lindsey to replead. Her amended pleading alleged that the district had appraised her property "unequally and disproportionately as compared to other properties." She mentioned §42.26(a)(1) and (2) of the Tax Code, which describe comparisons of appraisal ratios of different properties. The district then sought the dismissal of her case. It claimed that she could not seek relief based on a comparison of appraisal ratios because she had not presented evidence related to appraisal ratios at her ARB hearing. The district also argued that Lindsey could not proceed under §42.26(a)(3), concerning the direct comparison of appraised values, because she had not mentioned that subsection in her amended pleading. The trial court ruled for the district and dismissed the case. Lindsey appealed.

The court of appeals reversed the trial court's order and reinstated Lindsey's case. The higher court reasoned that a trial court has jurisdiction over a property owner's appeal if the property was the subject of an ARB order, the petition was filed timely, and the petition identifies the property. It was enough that Lindsey filed a protest alleging unequal appraisal and then filed an appeal alleging unequal appraisal. She did not have to specify which particular unequal-appraisal standard(s) she was invoking. When conducting a trial de novo, a trial court would not be concerned with what evidence was presented to the ARB. Lindsey's pleadings were sufficient to invoke the trial court's jurisdiction over her unequal-appraisal claim regardless of which unequal-appraisal standard she wanted to use.

Sims v. Dallas County
2019 WL 2004054 (Tex. App. – Dallas, May 7, 2019, pet. denied) (not reported)

Issues: Delinquent tax suits

Taxing units sued Juanita and Lawrence Sims (deceased) together with their heirs, including Sandra Sims. Sandra agreed in an affidavit to accept service of process and to waive the issuance of a citation. She did not file an answer or appear for trial. The trial court issued judgment for the taxing units. Sandra filed a restricted appeal under Rule 30 of the Texas Rules of Appellate Procedure, an option available under certain circumstances for a party who did not participate in the trial or file any post-judgment motions. An appellant must show error on the face of the trial court's record.

The court of appeals dispensed with Sandra's claims in short order. She complained that Juanita and Lawrence had not been served. The court of appeals noted that an attorney ad litem had filed an answer on their behalf, thus mooting any defects in service. Sandra waived any problems with service on herself when she agreed to accept service. She also argued that the evidence was insufficient to show the identities on Juanita and Lawrence's heirs. But the evidence used to identify the heirs was an uncontradicted affidavit from Sandra herself. That was sufficient. The court of appeals affirmed the trial court's judgment for the taxing units.

Sorrell v. Estate of Carlton
2019 WL 1967135 (Tex. May 3, 2019)

Issues: Redemption following tax sale

Taxing units sued Carlton for delinquent taxes, and the trial court entered a judgment in their favor. Carlton died soon after that. Sorrell bought the property at the tax sale with a bid of $68,000. Carlton's widow became the executor of his estate. Under §34.21 of the Tax Code, the period for redeeming the property was 180 days ending August 27, 2012. On July 31, the widow wrote to Sorrell explaining her intent to redeem the property and promising to send the money and related documents in the near future. But the widow died unexpectedly a few days later. Her mother took over as the executor of Carlton's estate on August 21. That same day, she sent Sorrell a check for $85,028, representing his purchase price, an extra 25%, and the amount Sorrell paid for recording his deed. A letter accompanying the check said that if Sorrell was claiming any other amounts, he should report them to her immediately and she would pay them. Sorrell responded ten days later, four days after the redemption deadline had passed. He rejected the executor's attempt to redeem the property because her payment did not include taxes and insurance that he had paid on the property. The correct redemption amount should have been $96,721, and the estate had underpaid by $11,692.

The estate sued Sorrell, claiming that it has substantially complied with the rendition statute. The trial court and the court of appeals ruled for the estate. Then the Texas Supreme Court agreed to consider the case. The high court ruled for the estate, citing a long-standing policy of favoring the right to redeem property sold for taxes. A former owner of property who makes a timely payment may substantially comply with §34.21, and substantial compliance is enough. Substantial compliance must be judged case by case, and it involves both facts and law. A court considering the question should determine whether the redeeming party satisfied the statute's "essential requirements." It should consider all the circumstances including the amount left unpaid, the redeemer's good faith and diligence, and any factors that might have hindered him/her. A higher court will overrule a trial court's decision only if the trial court abused its discretion. In light of the facts and circumstances of this case, the trial court's decision to allow the redemption was reasonable.

Brazos Electric Power Cooperative, Inc. v. Texas Commission on Environmental Quality

2019 WL 1966835 (Tex., May 3, 2019)

Issues: Pollution control exemptions

Brazos operated power plants using heat recovery steam generators (HRSGs) and claimed that they should receive pollution-control exemptions. Section 11.31 of the Tax Code governs pollution-control exemptions and includes HRSGs on a list of properties that receive special treatment from the TCEQ the "k-list"). The statute also gives the TCEQ the authority to update the k-list and to remove a type of property based upon compelling evidence that the property does not provide pollution-control benefits. Brazos applied to the TCEQ to approve pollution-control exemptions for its HRSGs. The agency applied its standard analysis and issued a negative determination. Brazos sought judicial review of the TCEQ's determination, but it lost in the trial court and in the court of appeals. The Texas Supreme Court agreed to consider the case.

The high court reversed the lower courts and ruled that the TCEQ could not issue a negative determination for k-list property. The Court acknowledged that exemption laws should be strictly construed, and that the TCEQ's interpretation of the law was entitled to serious consideration. It reasoned, however, §11.31 left the agency with no discretion to completely deny an exemption for k-list property. The TCEQ has to approve the application, at least partially. If the agency wanted to deny exemptions for HRSGs completely, even based upon constitutional standards, it could have taken them off the k-list, but it had not done that. The Supreme Court sent the case back to the TCEQ for consideration of the extent of the exemption to be given to Brazos's HRSGs.

Sebastian Cotton & Grain, Ltd. V. Willacy County Appraisal District
581 S.W.3d 804 (Tex. App. – Corpus Christi-Edinburg, April 18, 2019, pet. denied)

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

This case has been bouncing around in the courts for almost ten years. This is the latest chapter in a very long story.

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.

Last year, the Texas Supreme Court ruled for the appraisal district. The high 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 Court also ruled that an agreement between an appraisal district and a property owner could not change an objective fact such as the ownership of property. Further, an agreement obtained through fraud would not be enforceable. The Supreme Court sent the case back to the lower courts for further consideration.

In the latest opinion, the court of appeals considered the question of which company actually owned the grain on January 1, 2016. The contract between them was essentially an option contract; it gave DeBruce the right but not the obligation to buy grain. The contract incorporated by reference the rules of the National Grain and Feed Association. Under those rules, title to grain did not pass until the grain was shipped to the buyer. The grain that was in Sebastian's possession on January 1 had not been shipped to DeBruce and was still Sebastian's property. DeBruce never paid for or took possession of most of the grain. The court of appeals declined to apply the principle that sometimes the owner of property is the party with equitable title, i.e., the right to compel the transfer of legal title. Sebastian was the owner.

The court next considered the purported agreement between Sebastian and the appraisal district. An agreement between an appraisal district and a property owner is final and unassailable under §1.111 of the Tax Code. Sebastian, however, obtained the district's agreement by claiming that it was ***not*** the owner of the grain. Citing the principle of quasi-estoppel, the court ruled that, "[i]t would unconscionable to allow Sebastian to now rely on its actual ownership to enforce that agreement when the very nature of the agreement was to establish that Sebastian was ***not*** the owner of the grain." The agreement did not prevent the district from correcting the appraisal roll to show Sebastian as the owner. The court of appeals affirmed an earlier judgment for the district.

Harris County Appraisal District v. Boyaki
2019 WL 1526431 (Tex. App. – Houston[14th Dist.], April 9, 2019, no pet.) (not reported)

Issues: Exhaustion of administrative remedies

Boyaki had a one-third interest in a residence that she shared with her father and her sister. The property received a homestead exemption during the years 2011 through 2015. Then the sister conveyed her interest to Boyaki. Boyaki and her father filed a new homestead exemption application with the appraisal district for 2016. The district apparently denied the application, because Boyaki filed a protest with the ARB concerning the exemption and the appraised value of the property. At the hearing, she and the district agreed on an appraised value. The ARB panel's recommendation reflected the agreed value but stated that the exemption issue was "N/A." The district then granted the exemption for 2016, but retroactively cancelled the exemptions that the property had received for 2011-2015. The father wrote the district a letter asking that the cancelled exemption be reinstated. The district sent Boyaki a letter dated December 1, 2016, stating that it was granting one-third of a homestead exemption for 2011-2015. She filed a protest on January 10, 2017. The ARB responded that the protest was filed more than thirty days after the date of its letter and that the ARB would not hear it. Boyaki then sued the District

on the exemption issue. She later amended her pleadings to assert value claims for the five years in question, and she requested a writ of mandamus concerning the exemption. The district asked the trial court to dismiss all her claims, but the trial judge refused. The district appealed.

The court of appeals partially affirmed the trial court's decision and partially reversed it. The court of appeals explained that Boyaki could not sue about the value of the property in the relevant five years because she had never protested the value before the ARB. On the other hand, the district had failed to conclusively prove that Boyaki's exemption protest was filed too late. Her protest was filed more than thirty days after the date of the district's letter, but the court thought that there should be proof of when the letter was "delivered." The court of appeals also dismissed Boyaki's claim for a writ of mandamus. The claim was premature while the appeal of the exemption was still pending. The court of appeals sent the case back to the trial court for further consideration of whether the suit was filed timely on Boyaki's exemption claim.

MEI Investments, L.P. v. Dallas County
2019 WL 1449779 (Tex. App. – Dallas, April 2, 2019, no pet.) (not reported)

MEI Investments, L.P. v. Dallas County
2019 WL 1449787 (Tex. App. – Dallas, April 2, 2019, no pet.) (not reported)

Issues: Delinquent tax suits; liability of bpp purchaser

Taxing units sued a business called Public Auto Sales, Inc. (DBA Public Autos, Ltd.) for 2014 delinquent taxes on bpp. Public Auto Early in 2015, Public Auto sold the business to MEI. When the 2015 taxes were not paid, the taxing units added them to the lawsuit and added MEI as a defendant. MEI apparently thought that it could avoid liability for the taxes by showing that it purchased the business after January 1, 2015. It filed a motion for summary judgment with an affidavit from its manager. The affidavit explained that MEI bought the business, including the name, goodwill, and bpp, from Public Auto Sales, Ltd. and included a copy of the purchase contract dated February 3, 2015. The trial court denied MEI's motion. The taxing units asserted that MEI was liable for the taxes because it had purchased the business without withholding money to cover the taxes as required by §31.081 of the Tax Code. At trial, the taxing units used the manager's affidavit to prove their point. They also introduced assumed-name certificates and other public records showing that Public Auto Sales, Inc. had been doing business at the location in question and using the names Public Auto Sales and Public Autos, Ltd. The trial court entered judgment for the taxing units, and MEI appealed.

On appeal, MEI argued that the trial court should not have admitted the manager's affidavit into evidence. The court of appeals explained that affidavits are ordinarily not admissible evidence in trials because they are hearsay, but the Texas Rules of Evidence include an exception that applies when one party introduces an out-of-court statement from the opposing party. Such a statement is admissible and is not hearsay. MEI also tried to avoid liability by arguing that the seller's name on the contact (Public Auto Sales,

Ltd.) was different from the name in the tax records (Public Auto Sales, Inc. DBA Public Autos, Ltd.). The court found the distinction inconsequential. It was clear that MEI had purchased the assets of a business that was liable for taxes on the property in question. Under the statute, a buyer is considered to have purchased a business if he purchases the name of the business and its goodwill. MEI had not withheld any of the purchase price. Therefore, MEI became liable for the taxes. The evidence was sufficient to support the judgment against MEI.

Palma v. Luker
2019 WL 1330332 (S.D. Tex., March 25, 2019)

Issues: Federal courts

Palma filed unsuccessful protests with the ARB in two years and appealed the ARB orders to state district court. He advanced a curious theory that his property could not be taxed because it had been “ceded” to him by the state. He lost both cases. He then tried filing suit in federal court naming individual ARB members and the ARB’s lawyer as defendants. Basically, he sought to relitigate the state courts’ decisions, but he threw in claims to the effect that sections of the Tax Code were unconstitutional and that the ARB members were not properly trained. In response to a motion from the defendants, the federal district court dismissed the case.

The court’s brief, disdainful opinion explained that under the “Rooker-Feldman doctrine,” a federal court may not relitigate matters that have already been decided by state courts. Palma was merely trying to disguise his state-court claims to get into Federal court, but his revised claims were “inextricably intertwined” with the claims decided by the state courts. The opinion also cites the Tax Injunction Act, 28 U.S.C.A. §1341, which prohibits a federal district court from considering most state and local tax disputes.

Grimes County Appraisal District v. Harvey
573 S.W.3d 430 (Tex. App. – Houston [1st Dist.], March 21, 2019, no pet.)

Issues: Tax payment during appeal; ARB orders

Harvey claimed an open-space agricultural appraisal for his land and protested when the appraisal district appraised it at market value in 2016. For some unexplained reason, the ARB did not hear the protest before the delinquency date for 2016 taxes. When the ARB did meet to hear the protest, the district pointed out that Harvey had not paid any 2016 taxes at all. Harvey did not dispute that fact. The ARB dismissed the protest using the comptroller’s form, Order Determining Protest or Notice of Dismissal.” Harvey sued the district and the district moved for the case to be dismissed. When the trial court denied the motion, the district appealed.

The court of appeals reversed the trial court and dismissed the case. Harvey argued that because the ARB had not conducted a hearing, he should be excused from making any payment because he didn’t know how much to pay. The court of appeals dismissed that

argument noting that there was no dispute about the fact that Harvey owed something. Under §42.08 of the Tax Code, his failure to pay meant that his suit had to be dismissed. Harvey next tried arguing that the ARB had somehow excused his failure to pay by convening a hearing and issuing a notice of dismissal. Again, the court disagreed and explained that the ARB had clearly dismissed the Harvey's protest without determining its merits. Harvey's due-process rights were protected because he had the right to protest the appraisal and appeal an ARB determination. But he failed to take the steps necessary to preserve and use those rights.

Nueces County v. Sundial Owner's* [sic] *Association
2019 WL 1285301 (tex. App. – Corpus Christi-Edinburg, March 21, 2019, no pet.) (not reported)

Issues: Suit to compel tax refund

SOA paid 2013-2014 taxes on several condominiums. Later it demanded a refund of its payments, claiming that the notices of appraised value, although sent to SOA's address, had misstated the owner's name. According to SOA, that misidentification of the owner led to its "erroneous" payment. When the tax office refused its request, SOA sued the taxing units, demanding a refund under §31.11(k) of the Tax Code. The taxing units asked the trial court to dismiss the case. When the court refused, they appealed.

The court of appeals ruled that the case should not be dismissed. The court of appeals noted that §31.11(k) waives taxing units' governmental immunity and allows a taxpayer to sue for a refund. That provision was added to the Code in 2013 and became effective in June of that year. It was applicable to SOA's claims. The taxing units argued that SOA's suit was barred because there were delinquent taxes on the condominiums for 2015 and 2016, but the court ruled that payments for those later years were not required in connection with SOA's suit for refunds of taxes that it paid for 2013-2014. The taxing units argued that SOA should not receive a refund of taxes paid voluntarily. The court explained that that argument was addressed to the merits of SOA's claim, not to whether the courts had jurisdiction to consider that claim. It was not a grounds for simply dismissing SOA's suit. Section 31.11(k) waives governmental immunity for a suit, even if the suit is ultimately not successful. The taxing units next claimed that SOA should have filed a failure-to-deliver-notice protest under §41.411. Again, the court of appeals disagreed. It concluded that SOA did not have to file a §41.411 protest. It could raise the notice issue in a suit for a tax refund. SOA not raise any alleged error by the appraisal district in that suit, but it could argue that it paid the taxes erroneously. The court sent the case back to the trial court for further proceedings.

Russell v. Dallas County
2019 WL 911713 (Tex. App. – Dallas, February 25, 2019, pet. denied) (not reported)

Issues: Delinquent tax lawsuits

Taxing units sued Russell and others for delinquent 1997-2006 taxes. Russell, acting pro se, filed an answer denying that he had owned the property prior to 2006. Twelve days before trial, the taxing units filed amended pleadings seeking to foreclose various non-tax liens including demolition liens. Two days before trial, Russell attempted to file amended pleadings including a counterclaim. This time he denied owning the property prior to 2017. He did not request leave from the court to file his amended pleadings and did not seek a continuance of the trial. At trial, the court excluded Russell's amended pleadings and entered judgment for the taxing units. The judgment was in rem as to Russell, i.e., he was nor adjudged to be personally responsible for the taxes. Russell appealed.

The court of appeals upheld the trial court's judgment and the decision not to accept Russell's amendment. The higher court explained that under Rule 63 of the Texas Rules of Civil Procedure, a party may not amend his pleadings within seven days of a scheduled trial unless he obtains leave from the trial court. The fact that the Thanksgiving holiday came shortly before the trial did not change that. The trial judge could have reasonably concluded that Russell's attempt to assert a counterclaim and raise new defenses two days before trial was surprising and prejudicial to the taxing units. Russell's due process rights were not violated because he had the opportunity to offer evidence at the trial, but he chose not to do so. Further he waived any due-process argument by failing to raise it in the trial court.

Gutierrez v. City of Laredo
2019 WL 691443 (Tex. App. – San Antonio, February 20, 2019, pet. denied) (not reported)

Issues: Exhausting remedies

The appraisal district determined that improvements had been omitted from its appraisal of Gutierrez's real property. The district picked up the omitted improvements and notified Gutierrez. She filed a protest but filed it too late. The ARB did not consider it. The taxing units assessed taxes on the omitted improvements, but Gutierrez did not pay. The taxing units sued her, and she tried claiming that the improvements had not really been omitted. The trial court entered summary judgment for the taxing units, and Gutierrez appealed.

The court of appeals affirmed the judgment for the taxing units. The court of appeals explained that Gutierrez should have filed a protest with the ARB concerning the district's back-appraisal of the improvements. That protest should have been filed within thirty days after the district delivered notice to Gutierrez. She could not challenge the district's action in a delinquent-tax lawsuit. Gutierrez argued that some courts have allowed property owners to bypass ARBs and take their claims directly to court if the issue to be decided was purely an issue of law. The court responded by pointing out that Gutierrez's claims involved factual issues that should have been raised before the ARB.

Kilgore Independent School District v. Axberg
572 S.W.3d 244 (Tex. App. – Texarkana, February 11, 2019, pet. denied)

Issues: Homestead exemptions

In 2015, the legislature was in a big hurry to increase the school-tax homestead exemption from $15,000 to $25,000 and to apply the increase to that year. The bill to increase the exemption was passed and signed by the governor in June. The increase, however, required a constitutional amendment, and that couldn't happen until the voters had an opportunity to approve it in the November election. The bill included a provision to prevent school districts from diminishing its effect by ending or reducing any optional percentage homestead exemptions that they were granting. The proposed constitutional amendment, SJR 1, which was approved by the voters in November, gave the legislature the authority to prevent a school district from repealing or reducing a percentage exemption. The amendment stated that it took "effect for the year beginning January 1, 2015." The enabling bill said that it took effect on the date that the constitutional amendment took effect. The Kilgore ISD, however, reasoned that it could repeal its percentage homestead exemption if the board of trustees acted between the date on which the bill was enacted and the November election. The board acted, and the district assessed its 2015 taxes without the percentage exemption. Several homeowners in the district, including Axberg sued the district. Then the state joined the suit, also claiming that the district had no authority to repeal the exemption. The trial court entered summary judgments for the state and the taxpayers, and the district appealed.

The court of appeals affirmed the judgment for the state. The higher court explained that, when it was approved by the voters, the constitutional amendment operated retroactively from January 1, 2015 and prevented the district's repeal of the exemption. Constitutional amendments can operate retroactively when that is what the legislature intends and when no vested rights are impaired. Here, the legislature did intend the amendment to be retroactive. The district had no vested right to repeal the exemption. The bill, by its own terms, took effect at the same time as the amendment, so it was also retroactive. Together, the bill and the amendment prevented the district from repealing the exemption any time in 2015.

The court of appeals reversed the trial court's summary judgment for the taxpayers for technical reasons. The taxpayers had not provided evidence that they owned homesteads in the district or that they had paid the 2015 taxes assessed by the district.

Harris County v. Falcon Hunter, LLC
2019 WL 470400 (Tex. App. – Houston [14th Dist.], February 7, 2019, no pet.) (not reported)

Issues: Delinquent-tax penalties and interest; governmental immunity

Falcon Hunter paid delinquent 2012 taxes in April of 2013 and paid about $18,000 in additional penalties, interest and fees. Three years later, Falcon hunter demanded that the tax office return the additional amounts on the grounds that the tax office had misdelivered its 2012 tax bill. When the tax office did not refund the money, Falcon Hunter filed suit. The taxing units responded that they were immune from the suit, that the trial

court lacked jurisdiction to consider it, and that it should be dismissed. When the trial court refused to dismiss the case, the taxing unit's appealed.

The court of appeals reversed the trial court's order and dismissed the case. The court of appeals explained that local governments are immune from lawsuits unless their immunity is waived in a clear and unambiguous statute. Section 31.11 of the Tax Code allows a taxpayer to sue a tax collector to secure the return of an overpayment or erroneous payment of *taxes*, but not to recover penalties, interest or other payments. The statute that addresses waivers of penalties and interest when tax bills are not delivered is §33.011. But Falcon Hunter had not pleaded that it had made a request for waiver within 180 days of the delinquency date as required by §33.011. Further, §33.011 does not waive the immunity of taxing units or tax collectors. Thus, there was no statutory waiver of the taxing units' immunity.

Son v. Wells Fargo Bank
2019 WL 317251 (W.D. Texas, January 24, 2019)

Issues: Deferred homestead taxes

Wells Fargo held a deed of trust on Son's homestead. Son turned 65 and filed an affidavit to defer collection of her taxes. Wells Fargo paid the taxes and claimed the amount paid as an escrow shortage. After several years of that, Son stopped paying her Mortgage, and Wells Fargo took steps to foreclose. Son sued Wells Fargo in federal court alleging, among other things that the payment of taxes was a breech of contract. Wells Fargo sought dismissal on the grounds that Son had not even stated a claim upon which the court could grant relief. The trial court agreed. The judge's opinion explained that the deed-of-trust agreement required Son to pay her taxes timely. That obligation was necessary to protect Wells Fargo from tax liens that would be superior to its deed of trust. When Son failed to pay, Wells Fargo had the right to pay the taxes and then collect from Son. Son alleged that Wells Fargo was trying to make her default on the deed of trust so that it could foreclose. The judge's opinion, however, explained that Wells Fargo's motivations for enforcing its contractual rights were irrelevant.

Attorney General's Opinions

Opinion No. KP-0238
February 22, 2019

Issues: County Tax Assessor-Collectors; nepotism

A county TAC was planning to retire before the end of her term. The county commissioners were considering whom to appoint to fill the vacant office. One person

under consideration had a sister-in-law who worked in the TAC's office and had worked there for several years. The AG was asked whether nepotism laws would be violated if the commissioners appointed the person whose sister-in-law worked in the office.
The AG explained that the governing law was §573.062 of the Government Code. Generally, a TAC should not employee her sister-in-law, but there is an exception in the law if the employee has been working in the TC's office continuously for one year immediately before the TAC takes office. "To the extent the sister-in-law has at least one year of continuous employment in her position in the tax office prior to the individual's appointment to tax assessor-collector, the sister-in-law's continued service satisfies the requirement under section 573.062, and her continued employment does not violate chapter 573 of the Government Code."

Opinion No. KP-0239
February 22, 2019

Issues: Penalties and interest on delinquent taxes

For years, the appraisal district had assessed and collected all taxes in the county. But in 2017, the county began assessing and collecting its own taxes. This caused some confusion, and many taxpayers paid their county taxes after February 1, 2018. Some taxpayers claimed that they had not received bills from the county. The AG was asked whether the county could refund the penalties and interest. He noted that under some circumstances, §33.011 of the Tax Code requires or allows a taxing unit to waive or refund penalties and interest. The taxpayer must request the waiver before the 181st day after the delinquency date. The taxpayers in this instance had not made their requests before the 181st day following February 1, 2018. The delinquency date, however, might have been postponed. If the county had names and addresses for the taxpayers but failed to send them bills or sent their bills late, the delinquency date might have been sometime after February 1. Section 31.04 says that if a tax bill is sent after January 10, the delinquency date is postponed. If these tax bills were not sent or were sent late, the taxes might not have been delinquent after all, or the taxpayers' requests for waivers of penalties and interest might have been filed before the 181st day after delinquency. The AG did not have information about when the tax bills were mailed, so he could not make a final determination.

The AG was also asked whether the county could just pay money to the taxpayers out of the county's general fund to compensate them for the penalties and interest that they had paid. He responded that if the tax bills were mailed timely and if there were no basis for waiving the penalties and interest, the county could not use its general fund to reimburse the taxpayers. Such a payment would violate Art, III, §52(a) of the Texas Constitution, which prohibits a county from granting public money "in aid of, or to any individual."