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## **2019 PROPERTY TAX CASES**

### **And Attorney General's Opinions**

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### **Cases**

#### ***Gutierrez v. City of Laredo***

2019 WL 691443 (Tex. App. – San Antonio, February 20, 2019, no pet hist) (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***

2019 WL 508963 (Tex. App. – Texarkana, February 11, 2019, no pet. hist.) (to be published)

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 [14<sup>th</sup> Dist.], February 7, 2019, no pet hist.) (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 breach 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**