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2024 PROPERTY TAX CASES
And Attorney General's Opinions

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Cases

Rocksprings Val Verde Wind, LLC v. Casanova
2024 WL 5248451 (Tex. App. – San Antonio, December 31, 2024, no pet. hist.) (not reported)
Issues: Expert testimony; intangible property

The appraisal district appraised Rocksprings's wind farm at $176M in 2018. In response to a protest, the ARB cut the value to $101M. The appraisal district took the dispute on to court. At the jury trial, the district presented the expert testimony of an appraiser named DeLacy. He believed that the wind farm was worth $200M based on the cost and income methods of appraisal. Rocksprings's expert, Grafe, testified to a value of $67M. The two appraisers differed on how to handle the income that the wind farm generated from the sale of federal income tax credits. (The property generated far more in tax credits than it could actually use, and it sold the unused credits to other companies.) They also differed on how to handle the income from contracts through which electricity was sold to certain major consumers. (Purchasers like Wal-Mart paid based on private purchase agreements rather than paying the fluctuating market price.) The jury believed DeLacy and set the value at $197M. Rocksprings appealed.

The court of appeals reversed the trial court's judgement based on the jury's findings. The higher court thought that DeLacy had included the value of intangible property in his appraisal. Therefore, his testimony was not reliable, and it did not support the jury's verdict. The court's opinion quotes DeLacy's testimony about role of intangible income in the appraisal of tangible property. According to the court, the tax credits and the private purchase agreements were intangibles which DeLacy had erroneously included in his appraisal. The court of appeals reversed the trial court's judgment for the district and sent the case back to the trial court for a new trial.

MAP Resources, Inc. v. Mitchell
20245 WL 5248433 (Tex. App. – El Paso, December 30, 2024, no pet. hist.) (to be published)

Issues: Service of process; collateral attacks on judgments

In 1998, taxing units filed a huge delinquent tax suit involving more than 1,600 mineral interests and about 500 defendants. Many of the defendants were served by posting notice at the courthouse. The trial court entered judgment for the taxing units and ordered that the properties be sold. One owner whose mineral interest was sold was Elizabeth Mitchell. She had been served by posting and did not appear for the trial. Her property was sold to a company that later resold it to Map Resources. She died in 2009. In 2015, her heirs sued to claim the property. The case worked its way up to the Texas Supreme court, which ruled that serving Mitchell by posting was not good enough, it did not provide due process as required by the U.S. Constitution. The high Cout further ruled that the one-year statute of limitations for a challenge to a tax sale did not apply to Mitchell's heirs because "state statutory requirements must give way to constitutional protections." The Supreme Court sent the case back to the trial court for further proceedings.

On remand, the trial court entered summary judgment for the Mitchell heirs. Map Resources then appealed to the court of appeals. The intermediate court reversed the trial court's judgment and discussed several issues.

First the court of appeals ruled that the Mitchell heirs did have standing to bring the suit. The violation of Elizabeth Mitchell's Due-Process rights did affect her heirs, and they had the right to sue. Second, the court ruled that laches *might* apply to bar the heirs' suit; that depended on the facts. (Laches is an equitable principle that may bar a suit when too much water has passed under the bridge since the relevant events occurred.) The trial court's record left unresolved questions of fact, so a summary judgment was improper. Third, the court ruled that the heirs were required to post the deposit described by §34.08 of the Tax Code. That provision requires someone suing to challenge a tax sale to post a deposit to cover the taxes and related amounts. The record was unclear concerning the amount that the heirs were required to pay, and Map Resources had changed its position concerning the required amount. So, again, unresolved questions precluded a summary judgment for either party. The court of appeals also explained that the Supreme Court's ruling had determined that Elizabeth Mitchell had not been properly served in the original delinquent-tax case. The lower courts could not reconsider that matter, and Map Resources was not entitled to conduct additional discovery. The court of appeals sent the case back to the trial court for further proceedings.

Bush v. Yarborough Oil & Gas, LP
2024 WL 5248434 (Tex. App. – El Paso, December 30, 2024, no pet. hist.) (to be published)

Issues: Tax sales

In 1937, Piercy conveyed to Vaughn a one-half interest in the minerals under her land. The deed was properly recorded. Taxing units never appraised or taxed Vaughn's mineral interest. In 1948, the taxing units sued Piercy for delinquent taxes on her land. The court

entered judgment for the taxing units. The sheriff conducted a tax sale, and the taxing units acquired the land. Over the course of many years, Vaughn's mineral interest and the land conveyed in the tax sale both changed hands several times. In 2017, the property began producing oil and gas. Suddenly, everybody became concerned about who owned the minerals. The successors to Vaughn and the successors to the taxing units sued each other. The trial court entered a summary judgement in favor of Vaughn's successors. The one-half mineral interest once owned by Vaughan had not been affected by the tax sale, and it now belonged to his successors. The successors to the taxing units appealed.

The court of appeals affirmed the judgment for Vaughn's successors. Although the relevant facts occurred long before the adoption of the Tax Code, the court considered the Code in addition to the statutes in effect in 1948. The court noted that Vaughn had not been a party to the 1948 delinquent tax suit. The judgment and other records from that case referred to Piercy and no one else. The sheriff's deed mentioned only Piercy's interest. So did the deed that the taxing units used to convey the property to someone else. The court of appeals reviewed statutory and case law from the period and concluded that nothing in the law would have conveyed more than Piercy's property as described in the judgment and sheriff's deed.

The court of appeals went on to explain that because the tax sale had not included Vaughn's interest, his successors did not have to challenge the sale's validity. A suit to determine the scope of an old judgement is different from a suit to challenge the validity of the judgment. Vaughn's successors were not bound by the one-year statute of limitations set out in §33.54 of the Tax Code. Because no taxes had been assessed on the one-half mineral interest, they did not have to make a tax payment in order to assert their claims.

Harris Central Appraisal District v. Zheng
2024 WL 5160507 (Tex. App. – Houston [1st Dist.], December 19, 2024, no pet. hist.) (to be published)

Issues: Timeliness of appeal

Following an unsuccessful 2020 protest, Zheng sued the appraisal district. He admitted that his suit was filed more than sixty days after he received the notice of the ARB's order. Although the suit was not filed within the time allowed by §42.21 of the Tax Code, Zheng claimed it was timely as the result of an order from the Texas Supreme Court issued in response to the COVID-19 pandemic. While the suit was pending, Zheng amended his pleadings to include claims contesting the 2021 and 2022 appraisals of his property. Each of those amendments was filed within sixty days after Zheng received notice of the relevant year's ARB order. The district filed a plea to the jurisdiction asking the trial court to dismiss the entire case. When the trial court refused, the district filed an interlocutory appeal.

The court of appeals dismissed Zheng's claims for 2020. The higher court explained that the sixty-day period for filing an appeal is jurisdictional; if the property owner doesn't file

suit within that period, the trial court doesn't even have jurisdiction to consider his/her claims. The Supreme Court's 2020 order allowed other courts to extend some filing deadlines, but that order could not create jurisdiction where it would not have existed otherwise. So, the trial court never had jurisdiction over Zheng's 2020 claims.

The court of appeals, however, explained that Zheng's amended pleadings for 2021 and 2022 were timely based on the ARB's orders for those years. In each year, Zheng could have filed a new suit instead of amending his existing suit, and the trial court would have had jurisdiction over those new suits. According to the court, the legislature intended for each year to stand on its own. The untimely filing of the original 2020 suit did prevent the trial court from acquiring jurisdiction over the timely claims filed for 2021 and 2022. The court of appeals sent the case back to the trial court for further consideration of Zheng's 2021 and 2022 claims.

Harris Central Appraisal District v. Houston Pipe Line Co. LP
2024 WL 5048984 (Tex. App. – Houston 1st Dist.], December 10, 2024, no pet. hist.) (to be published)

Issues: Timeliness of appeal; delivering ARB orders

The ARB ruled on Houston Pipe Line's (HPL) 2022 protest and mailed notice of its order to the company's tax consultant using certified mail. HPL filed suit to appeal the order five months later. The suit also named the ARB and alleged that the ARB had not delivered notice of its August 29, 2022, order. HPL claimed that its suit was timely because the period for filing had never begun or ended. The ARB and HPL reached an agreement under which the ARB sent HPL another copy of the August 29 order and HPL dropped the ARB from the suit. HPL thought that having the ARB send the order again would make HPL's suit timely. The appraisal district then filed a plea to the jurisdiction claiming that the suit was not timely because it had not been filed within 60 days of the original delivery of the ARB's order.

The district provided a declaration from a manager detailing how the ARB's order and related notice were prepared and mailed by certified mail on August 29 to the tax consultant. Attached were copies of an internal log maintained by the ARB and a screenshot from the USPS website showing that the order was delivered on August 29. HPL provided a declaration from the tax consultant describing his company's procedures for dealing with incoming mail. He said that there was no record of the company receiving the ARB order and that the company had never failed to record and handle such a notice when it was received. Both sides made objections to the other's evidence, but the trial court never ruled on the objections. The trial court denied the district's plea to the jurisdiction, and the district filed an interlocutory appeal.

The court of appeals affirmed the trial court's decision. The higher court explained the district's plea couldn't be granted because the evidence left an unresolved issue of material fact, i.e., when the tax consultant first received notice of the ARB's order. The district argued that the trial court should have sustained its objections that the declaration

of the tax consultant was based on hearsay rather than personal knowledge. The court of appeals refused to consider that argument because the district had not objected to the trial court refusing to rule on the objections to the declaration. The higher court did consider whether the declaration was conclusory but decided that it wasn't. The tax consultant provided sufficient factual support for his conclusion that his office had not received the ARB's order when it was originally delivered.

Editor's Comment: Section 1.07 of the Tax Code says that a notice sent by first class mail is presumed delivered when it is deposited in the mail, but the presumption is rebuttable. Other courts have applied the same rule to notices sent by certified mail, but this court of appeals questioned that ruling. Because there was evidence on both sides of this delivery issue, any presumption that might have arisen was rebutted and it disappeared. Curiously, the court's opinion did not mention the fact that the district's evidence showed the ARB's August 29 order being prepared, mailed, and received all on the same day.

Herrera v. Mata
2024 WL 4996713 (Tex., December 6, 2024)

Issues: Governmental immunity; collecting delinquent taxes.

In 2019, an irrigation district notified some property owners that they owed "delinquent taxes" from 1998 and prior years. The owners responded by citing §33.05 of the Tax Code, which requires a tax collector to remove taxes from the delinquent tax rolls if the taxes are more than twenty years old. The district countered that the amounts it claimed were not property taxes subject to §33.05, Instead, they were assessments levied under §58.509 of the Water Code and could be collected at any time. The owners sued the district's officials, claiming declaratory and injunctive relief. The officials filed a plea to the jurisdiction claiming that they were immune from the suit. The trial court dismissed the case, and the court of appeals affirmed the trial court's decision. The Texas Supreme Court then agreed to hear the case.

The Supreme Court considered only a very narrow question. The Court assumed that the property owners' claims were true and considered whether the district officials were immune from the suit. The Court explained that a local-government official can be sued on a claim that the official acted without any legal authority or that he/she failed to perform a "purely ministerial act," one that is absolutely required by law and that doesn't involve the official's discretion. The owners had alleged that the amounts in dispute were taxes subject to the twenty-year limitation. The courts could not rule as a matter of law that the owners were wrong. The owners had plead some alternative claims, but they could do that without sacrificing their central claim under §33.05. So, the district officials were not immune from the claims. The Supreme Court send the case back to the trial court for further consideration.

The Compressor cases

Editor's comment: The three case summaries that follow are all related, and they all involve the same issues. Rather than listing them with other cases in strict chronological order, we have decided to group them together here.

J-W Power Co. v. Irion County Appraisal District
2024 WL 4982488 (Tex. App. – Austin, December 5, 2024, no pet. hist.) (to be published)

Issues: Corrections to appraisal rolls

This opinion harkens back to the pipeline compressor controversy that began years ago. The Texas Supreme Court surprised everyone in 2018 when it ruled that the Tax Code's method for appraising leased heavy equipment *was* constitutional. At that time, heavy equipment owners had filed many unsuccessful protests against appraisal districts who had insisted on appraising their property at its market value. But the owners had not appealed the adverse rulings from ARBs. As a result of the Supreme Court's ruling, the owners tried filing motions to correct appraisal rolls under §25.25 of the Tax Code raising the same claims that ARBs had previously rejected. Lower courts ruled that the owners could not reprise the same rejected claims, but the Supreme Court overruled them. So, the lower courts were left to consider the merits of the §25.25 motions. In this case, the trial court entered a summary judgment in favor of the appraisal district, and J-W Power appealed once again.

The court of appeals affirmed the summary judgment for the district. The higher court explained that there had not been any multiple appraisals of the compressors in question. The compressors located in Irion County had been appraised there. J-W Power had filed declarations and monthly statements with the appraisal district in Ector where it claimed that the compressors were really taxable, but no taxes on the compressors were ever assessed in Ector County. J-W Power filing forms in Ector County did not mean that its compressors were actually *appraised* there.

The court of appeals also explained that the compressors did exist in Irion County. Even if J-W Power was correct that the law made the compressors legally taxable in Ector County, there was no question that they actually existed in Irion County. There was no basis for deleting them from the appraisal rolls in Irion County as property that did not exist at the locations shown on those rolls.

J-W Power Co. v. Sterling County Appraisal District
2024 WL 4982490 (Tex. App. – Austin, December 5, 2024, no pet. hist.) (to be published)

Issues: Corrections to appraisal rolls

This opinion involves the same issue decided in *J-W Power Co. v. Irion County Appraisal District,* discussed above. The only difference is the counties involved. The Austin Court of Appeals decided both cases and its opinions are almost identical.

J-W Power Co. v. Jack County Appraisal District

2024 WL 5162690 (Tex. App. – Fort Worth, December 19, 2024, no pet. hist.) (not reported)

Issues: Corrections to appraisal rolls

This case is only slightly different from the two *J-W Power* cases described above. In this case, J-W Power was contesting the appraisal of its 86 compressors located in Jack County. It argued that the compressors were also appraised as part of its heavy-equipment inventory in Palo Pinto County. The Palo Pinto CAD did have a heavy-equipment inventory account on its rolls for J-W Power in the relevant years. That account had been created in response to an order from a court in Palo Pinto County. The court order identified particularly the compressors that were included in the inventory account. Fourteen of those were physically located in Jack County, where they had also been appraised by the Jack CAD. Other evidence also showed that J-W Power reported the 14 compressors to the Palo Pinto CAD and paid taxes on them in Palo Pinto County. The Fort Worth Court of Appeals ruled that J-W Power had shown that those 14 compressors had been the subject of multiple appraisals because they were on the rolls in two counties. The court ordered that the 14 compressors be removed from the Jack CAD's appraisal rolls. J-W Power's other 72 compressors were not the subject of multiple appraisals. The Fort Worth Court of Appeals agreed with the Austin Court that a compressor that physically existed in the place described on an appraisal roll could not be said to have not existed in the form or at the location described in the roll.

Runels v. Tax Loans USA Ltd.
2024 WL 4994307 (Tex. App. – Amarillo, December 5, 2024, no pet. hist.) (not reported)

Issues: Transferred tax liens

This is the second appeal involving this case. The first appeal is discussed in our summaries of 2023 cases.

Property owned by several relatives (including Runels) was subject to delinquent taxes for 2013 and prior years. One of the relatives, Tony, took out a property-tax loan from Tax Loans USA. The tax office transferred the tax liens to Tax Loans USA. Tony made the payments for a while and then died. Nobody made the payments after that. Tax Loans USA sued the owners, including Runels. The taxing units joined the suit to pursue their taxes for 2014 and later years. The trial court entered a summary judgment for the plaintiffs, but it was reversed on appeal and sent back to the trial court. The trial court entered another summary judgment for the plaintiffs and Runels appealed again.

Runnels argued that if a property owner has two or more owners, they must all agree to a property-tax loan and to the transfer of tax liens. The court of appeals rejected that argument. The court reasoned that a loan and a transfer of tax liens do not require the participation of all property owners. This transaction was legal and binding even though Tony acted alone to get the loan. In its new opinion, however, the higher court made a clarification. The new opinion explained that Tony could have authorized the transfer of

tax liens only to the extent that those liens applied to his own interest in the property. The tax liens transferred to Tax Loans USA applied to only Tony's interest in the property, not to anyone else's interests.

The trial court's summary judgement assumed that Tax Loans USA held liens on 100% of the interests in the property. The court of appeals reversed the trial court and sent the case back so the lower court could determine what Tax Loans USA could recover based on its liens on only a partial interest in the property.

Barker v. Pine Tree I.S.D.
2024 WL 4906331 (Tex. App. – Tyler, November 27, 2024, no pet hist.) (not reported)

Issues: Delinquent tax suits

Barker owed delinquent 2022 taxes on his property. Taxing units sued him. He soon paid the taxes in full together with penalties and interest, but he didn't pay the court costs or title-research fees, together about $740. The case actually went to trial, and the trial court entered a judgment against Barker for the costs and fees. Barker appealed.

The court of appeals affirmed the judgment against Barker. He argued that the trial court could not award the costs and fees because he had already paid the taxes. The higher court explained that under Rule 131 of the Texas Rules of Civil Procedure, the successful party to a lawsuit is entitled to recover its costs. Section 33.48 of the Tax Code gives a taxing unit the right to recover title-research fees incurred in the context of a delinquent-tax suit. A taxing unit is entitled to recover those amounts even if taxes are paid before a trial court enters a judgement for the taxes. The taxing unit does not need a judgment for taxes in order to recover its costs and title-research fees. The evidence before the trial court (including bills and receipts showing that Barker had owed delinquent taxes, the district clerk's bill of costs, and an affidavit from the taxing units' lawyer setting out the title-research cost of $275) was sufficient to prove the amounts owed. Barker argued without evidence that $275 was unreasonable, but the court of appeals noted that the amount seemed reasonable compared to title-research fees mentioned in other court opinions in delinquent-tax cases.

Barker also argued that the taxing units' pleadings should have more specifically stated the amounts of taxes, penalties, and interest claimed. The court of appeals explained that, under the circumstances, Barker was not harmed by the trial court refusing to order more specific pleadings. There were also a few other issues raised by Barker that the court of appeals did not address because he had not properly briefed those issues or because they would not make any difference in the outcome of the lawsuit.

Harris County Appraisal District v. 11490 Westheimer Road, LLC
2024 WL 4886003 (Tex. App. – Houston [14th Dist.], November 26, 2024, no pet. hist.) (not reported)

Issues: Payment of taxes during appeal

Following a partially successful protest, Westheimer sued the appraisal district, trying to further reduce the appraised value of its office building. The tax office, however, did not receive any tax payment until several months after the delinquency date. The appraisal district filed a plea to the jurisdiction asking the trial court to dismiss the case. Westheimer responded that it had mailed a check before the delinquency date. When the trial court refused to dismiss the case, the district filed an interlocutory appeal.

The court of appeals agreed that the case should not be dismissed. An affidavit filed in the trial court by Westheimer was at least sufficient to raise a question of fact about the payment and prevent the dismissal of the case. The district argued that the affidavit was conclusory, but the court of appeals disagreed. The affidavit came from a financial analyst with the company that managed the building. She provided details about how she prepared a check, had it signed, addressed the envelope, applied postage, and took it to a particular post office, where she handed it to a postal clerk on January 31. When she later learned that the check had not reached the tax office, she cancelled the check and paid the taxes electronically. The affidavit included copies of the signed check and the envelope with first-class postage applied. In the absence of any contrary evidence from the district, the affidavit was sufficient to prevent the dismissal of the case. Because the trial court could reasonably conclude that Westheimer's payment had been properly mailed before the delinquency date, Westheimer was entitled to maintain its suit against the district.

Estate of Brown v. County of Freestone
2024 WL 4701231 (Tex. App. – Tyler, November 6, 2024, no. pet. hist.) (not reported)

Issues: Evidence of delinquent taxes; incarcerated property owners

Taxing units sued multiple defendants to collect fifteen years of delinquent taxes. The original property owner had died, and several people had interests in the property, including Robinson. He was served with the suit papers despite his being in prison. The taxing units couldn't locate all of the owners, so some defendants were served by publication and were represented by an attorney ad litem. Robinson didn't attend the trial because, again, he was in prison. The taxing units offered copies of their delinquent tax records and the testimony of an employee of the taxing units' law firm. She testified about her research into the ownership of the property and about her efforts to locate all the defendants. The attorney ad litem agreed that citation by publication was justified. The trial court entered judgment for the taxing units, and Robinson appealed.

The court of appeals affirmed the judgment for the taxing units. Robinson argued that the trial court should have issued a bench warrant to that he could have attended the trial. The court of appeals explained that he had not even requested a bench warrant from the trial court, let alone provided evidence in support of such a claim. The higher court also explained that under §33.47 of the Tax Code, the taxing units' evidence was sufficient to prove everything that they needed to prove in the absence of any defense.

Oncor Electric Delivery Co. NTU LLC v. Young Central Appraisal District
2024 WL 4455676 (Tex. App. – Fort Worth, October 10, 2024, no pet.) (not reported)

Issues: Appealability of ARB action; agreement resolving protest

This case is virtually identical to *Oncor Electric Delivery Company NTU LLP v. Wilbarger County Appraisal District*, which is summarized below. The Fort Worth Court of Appeals followed the ruling of the Texas Supreme Court in the Wilbarger County case.

In Re Bexar Appraisal District
2024 WL 4277876 (Tex. App, -- San Antonio, September 25, 2024, original proc.) (not reported.

Issues: Issues in judicial appeal; writs of mandamus

TMP protested the 2022 appraised value of its property alleging that the appraised value was higher than market value and that the appraised value was unequal compared to the values of other properties. The ARB lowered the value, but TMP was not satisfied. It sued the appraisal district, but the suit alleged only that the appraised value was unequal compared with other values. About ten months after TMP filed its suit, the appraisal district filed counterclaims asserting that the ARB's value was too low. The district raised claims about the property's market value. TPM claimed that the district's counterclaims were improper and filed too late. The trial court dismissed the district's counterclaims. Instead of waiting for the trial court to conduct a trial and issue a final judgment, the district sought a writ of mandamus from the court of appeals.

The court of appeals ruled that a writ of mandamus was not appropriate. More importantly, however, the higher court ruled that a writ of mandamus was not necessary. The court explained that in an appeal from an ARB's order, the trial court can consider all of the issues that were raised before the ARB. Because market value had been an issue at the ARB hearing, it was also an issue before the trial court, even though TMP had pleaded only an unequal-appraisal claim. The district could introduce evidence related to market value and argue that the trial court should set a value higher than the ARB's value. The trial court could grant relief to either side and could increase or decrease the value set by the ARB. The trial court could do that even without the district filing any counterclaims. The district may have lost the battle, but it won the war.

St. Andrews Investments Co., LLC v. Estate of Valdez
2024 WL 4151924 (Tex. App. – Eastland, September 12, 2024, no pet.) (not reported)

Issues: Redemption following tax sale.

A home that had belonged to Sturgeon was sold to Valdez in a tax sale to satisfy taxes for 2011 through 2016. After Sturgeon died, his right of redemption was acquired by St Andrews. Valdez also died, and his estate held the property. St. Andrews attempted to redeem the property from the estate. The two parties had very different opinions about

what the redemption price should be. St. Andrews claimed that the price should be about $36,000, but the estate demanded $68,400. The estate sued St Andrews, seeing a declaratory judgement to the effect that St. Andrews could not redeem the property at all, and if it could, the price should be $68,400. After a trial, the trial court ruled that St Andrews could redeem the property for a price of $68,400. St. Andrews appealed.

The court of appeals generally affirmed the judgment but reduced the redemption price slightly. The higher court explained that the right of redemption did not die along with Sturgeon. That right survived, and it was held by St. Andrews. The court of appeals next discussed several components of the redemption price. The court explained that the price should not include taxes for the years 2011 through 2016. Those taxes were paid from the proceeds of the tax sale, not from any separate payment by the estate. Taking those taxes out of the redemption price reduced it by about $4,100. The estate, however, could recover for the taxes that it had paid for later years.

Under §34.21 of the Tax Coode, the estate could also recover costs that it had incurred to maintain and preserve the property, even if it incurred those costs after St. Andrews gave notice of its intent to redeem. The estate could recover for maintenance, repairs, etc., even if they were not required by a city ordinance or building code. The recoverable costs included a new air conditioner installed to replace one that no longer worked. They also included plumbing work, painting, removal of debris, and fixing holes in the floors. The evidence was factually and legally sufficient to support a finding that those costs were reasonably necessary to maintain the property as a functioning, habitable, and safe residence.

St. Andrews also claimed that the trial court should have awarded it attorneys' fees under the Declaratory Judgement Act (§37.009 of the Civil Practice and Remedies Code). The court of appeals, however, explained that it was within the trial court's discretion to not award attorney's fees.

Hunt County Appraisal District v. Lake Tawakoni Wind Point Park Corp.
2024 WL 4585608 (Tex. App. – Texarkana, September 10, 2024, no pet. hist.) (not reported)

Issues: Taxable leaseholds

The Sabine River Authority (Sabine) was a governmental entity that owned a recreational park where people stayed with their RVs and travel trailers. The appraisal district considered Sabine's interest in the park to be exempt as public property used for public purposes. The park was actually operated by a private company (LT) under a twenty-year contract with Sabine. In 2022, the appraisal district began appraising "improvements" associated with the park in LT's name. In response to LT's protest, the district said that it was really appraising LT's leasehold in the park under §25.07 of the Tax Code. When its protest was unsuccessful, LT sued the district. The issue before the court was whether LT had a taxable leasehold in exempt property or whether it had a nontaxable permit. The

trial court granted LT's motion for summary judgment and denied the district's motion. The district appealed.

The court of appeals affirmed the summary judgment for LT. The higher court concluded that LT had only a permit to use the park. The court noted that the contract between Sabine and LT referred to a "Commercial Limited Use Permit." LT could use the park only as an a "Recreational RV Park." LT was required to maintain the park and could not make alterations without Sabine's consent. LT's use of the park was not exclusive; Sabine could use the park or let a third party use it for purposes that did not interfere with LT's business. The court concluded that "Sabine did not intend to transfer possession to LT." Adding insult to injury, the court's opinion says that the district was not even really trying to appraise a leasehold. Instead, it was appraising the buildings, boat docks and other improvements. The court sustained the exemption.

Campbell v. Travis Central Appraisal District
2024 WL 3973900 (Tex. App. – Austin, August 29, 2024, no pet. hist) (not reported)

Issues: Homestead cap

In 2019, Campbell began renovating and substantially expanding his home. When the appraisal district appraised the property for 2020, the appraiser concluded that most but not all of the work had been done before January 1, 2020. The appraiser adjusted the homestead value cap to account for the value of partially finished new improvements. Cambell didn't protest the 2020 appraisal. In 2021 the district calculated the cap and added more new-improvement value to account for work done after January 1, 2020. Campbell protested alleging that all the work had been finished in 2019 and that there were no new improvements added in 2020. When the ARB ruled against him, Campbell sued the appraisal district. Following a non-jury trial, the trial court ruled against Campbell. The court found that there were new improvements added to the house in 2020 and that the district had correctly determined the new-improvement value for that year. Campbell appealed.

The court of appeals affirmed the trial court's judgment for the district. The court of appeals found that the evidence was legally and factually sufficient to support the judgement. Campbell had the burden of proof, but he failed to prove that the new improvements were all finished before January 1, 2020. The court cited evidence including: a conversation that the appraiser had with the contractor in late 2019; change orders from Campbell in late 2019; a January 2020 photo showing ongoing renovation; and a certificate of occupancy issued in 2020.

Editor's Comment: The court of appeals generally approved the way that the district had dealt with Campbell's renovation. The 2020 appraisal should have reflected the market value added to the house by work done in 2019, and the 2021 appraisal should have reflected the market value added in 2020.

Moreno v. Harris County Tax Assessor Collector

2024 WL 3975239 (Tex. App. – Houston [14th Dist.], August 29, 2024, no pet. hist.) (not reported)

Issues: Dealer inventory appraisal

The county sued Mareno because he had failed to file several monthly Dealer's Motor Vehicle Inventory Tax Statements. Moreno claimed that he wasn't a motor vehicle dealer. The definition of a "dealer" found in §23.121(a)(3))(D) of the Tax Code includes an exception, and Moreno claimed that he fell under the exception. The exception, however, has four requirements. Moreno met only two of them. He had not filed the documents required for the exception. Thus, he was a dealer and subject to penalties for failing to file Dealer's Motor Vehicle Inventory Tax Statements.

North v. Harris Central Appraisal District
2024 WL 3976853 (S.D. Tex. August 27, 2024)

Issues: Federal courts

North persuaded the appraisal district to take his name off a property, but he wanted the district to remove the property from the roll altogether. His dispute with the district led to his being removed from the district's office by security officers. He sued the district pro se in federal court asserting a myriad of complaints. The district urged the court to dismiss the suit on the grounds that North had failed to state a claim upon which the court could actually grant him some relief. The court agreed with the district and dismissed the case.

The judge's opinion explains that a court cannot grant relief in response to claims based on "God Given Rights" or the Declaration of Independence. Federal *criminal* laws do not provide a basis for a *civil* lawsuit. A federal law called the Tax Injunction Act generally prevents a federal court from interfering in state and local tax matters. If North wanted to dispute local property-tax appraisals or assessments, he could do so before the ARB or in state courts. A federal civil-rights statute, 42 USC §1983 may allow a local government to be sued based on its official policies but not based on the actions of the government's employees. North failed to state any valid claims under federal law. The federal court would not consider any claims based on state law.

Kamy Investments, LLC v. Denton County Appraisal Review Board
2024 WL 3611451 (Tex. App. – Fort Worth, August 1, 2024, no pet.) (not reported)

Issues: Governmental immunity

Kamy failed to appear for ARB hearings concerning 2022 protests on its various properties. Kamy then filed multiple requests with the Comptroller seeking limited binding arbitrations. The ARB and Kamy agreed that the ARB would schedule new hearings and Kamy would withdraw its arbitration requests. But Kamy didn't withdraw its requests. Instead, it went through with the arbitrations and lost most of them. Months later, Kamy sued the ARB claiming that it had a contractual right to new hearings on the basis of the

agreement. The ARB filed a plea to the jurisdiction claiming that it was immune from the suit. The trial court dismissed the case, and Kamy appealed.

The court of appeals affirmed the trial court's order and ruled that the ARB was immune. The higher court explained that the ARB, as a governmental unit is immune from suit unless that immunity has been waived somehow. The court rejected several of Kamy's theories about how the ARB's immunity might have been waived. The Tort Claims Act did not allow the suit against the ARB because no tort was involved. The limited-binding-arbitration law, §41A.015 of the Tax Code, did not allow the suit. Section 41.45(f) allows a property owner to sue an ARB on a claim that the ARB wrongfully refused to hear the owner's protest. In this case, however, the ARB had attempted to conduct hearings, but Kamy had not appeared. Even when a suit is allowed by §41.45(f), the suit must be filed within sixty days after the property owner knows that the ARB will not hear his/her protest. Kamy's suit was filed too late.

Further, a governmental entity may not be sued over a settlement agreement unless it could be sued over the underlying claim that was settled. Thus, the agreement between the ARB and Kamy did not create a right to sue the ARB where no such right had existed before. Chapter 271 of the Local Government Code sometimes allows a governmental entity to be sued over a contract for goods or services, but the agreement between Kamy and the ARB did not involve goods or services. There was no waiver of the ARB's immunity.

Bacsik v. Tax Rescue II, LLC
2024 WL 3365228 (Tex. App. – Fort Worth, July 11, 2014, pet. denied) (not reported)

Issues: Agreements affecting lawsuits; delinquent tax foreclosures

Tax Rescue held a transferred tax lien on property owned by Bacsik. Bacsik wasn't making his payments. They sued each other with Tax Rescue seeking a foreclosure of its tax lien and Bacsik seeking to prevent foreclosure and invalidate the lien. In the course of the lawsuit, the parties reached an agreement under Rule 11 of the Texas Rules of Civil Procedure. Rule 11 generally allows the parties to a lawsuit to make enforceable agreements, large or small, about their case. These parties agreed that Bacsik would borrow money from a third party and pay off Tax Rescue. If Bacsik failed to do so before the agreed deadline, the court would enter a judgment in favor of Tax Rescue. Bacsik failed to honor the agreement. In a hearing which Bacsik did not attend, the trial court entered the judgment against him. Bacsik appealed.

The court of appeals affirmed the judgment in favor of Tax Rescue. The higher court ruled that the Rule 11 agreement was valid and enforceable. A party to a Rule 11 agreement may back out before the court enters judgment, but Bacsik had never notified the trial court that he was withdrawing. The trial court correctly entered judgement based on the Rule 11 agreement.

Valadez v. El Paso Central Appraisal District

2024 WL 3226154 (Tex. App. – El Paso, June 28, 2024, no pet.) (not reported)

Issues: Judicial appeals

Following an unsuccessful motion to correct appraisal rolls, Valadez sued the appraisal district. His lawyer filed the suit electronically and within the sixty-day period set out in §41.21 of the Tax Code. The district clerk's computer flagged the suit because the petition and the attachments were not filed separately. The clerk's office told the lawyer to file the suit again but did not give him a deadline for doing so. About a month passed before the lawyer tried again and filed the suit correctly. By that time, however, the sixty-day statutory filing period had passed. The district argued that the suit was filed too late and asked the trial court to dismiss it. The court dismissed the case, and Valadez appealed.

The court of appeals reversed the dismissal of the case. The higher court explained that Rule 21(f) of the Texas Rules of Civil Procedure allows a clerk to require a party to correct and refile a document that does not satisfy the rules. The clerk may impose a deadline for filing the corrected document. If the party meets the clerk's deadline, the corrected document is treated as though it was filed at the time that the original flawed document was filed. In this case, however, the clerk didn't set any deadline for Valadez's lawyer to file a corrected document. Under those circumstances, there was no deadline. Valadez's corrected pleading related back to the date on which his lawyer filed the original flawed pleading. The evidence was sufficient to support the trial court's finding that the original pleading was filed timely. Therefore, the corrected pleading was timely, and the trial court should not have dismissed the case. The court of appeals sent the case back to the tril court.

Texas Disposal Systems Landfill, Inc. v. Travis Central Appraisal District
694 S.W.3d 752 (Tex., June 21, 2024)

Issues: Judicial appeals; unequal appraisals

Landfill filed a protest alleging the incorrect and unequal appraisal of its property. Right before the ARB hearing, Landfill withdrew its incorrect-value claim. It relied solely on its unequal-appraisal claim. The ARB reduced the appraised value substantially. The appraisal district then filed suit to appeal the ARB's order. The district alleged that the value set by the ARB was incorrect and unequal compared to other values. Landfill filed a plea to the jurisdiction arguing that the district could not allege an incorrect appraisal in the appeal because Landfill had withdrawn its incorrect-value claim before the ARB. The trial court granted the plea to the jurisdiction and dismissed the case. The district appealed.

The court of appeals reversed the trial court's order and reinstated the case. The intermediate court ruled that the district could appeal on the grounds of market value. The district had nothing to complain about with respect to the appraised value until the ARB lowered that value. Then, the district's only option was to take the matter to court. The Supreme court decided to consider the case.

The Supreme Court agreed that the trial court had jurisdiction over the appraisal district's lawsuit, but the high Court's reasoning differed substantially from that of the court of appeals. The Supreme Court ruled that the appraisal district could not prevail on a claim that was not considered by the ARB. The ARB considered only an unequal-appraisal claim, so the trial court could not grant relief to the district on the basis of an incorrect-value claim. The high Court sent the case back to the trial Court for further consideration.

One justice issued a dissenting opinion saying that the district should be able to raise an incorrect-value claim in court even if that claim was not decided by the ARB. The dissenting justice also disagreed about whether the failure to satisfy a statutory requirement was jurisdictional.

Editor's Comment: In recent years, the Supreme Court has been focusing extensively on questions concerning whether statutory requirements are jurisdictional. In many instances, this is a distinction without a difference. It is the distinction between a court saying, "We *cannot* even consider your claim" and a court saying, "We *can* consider your claim, but you lose." Still the Court celebrates this distinction with the enthusiasm of a puppy with a new chew toy. The justices generally favor saying, "A court *can* consider your claim, but you lose."

Also noteworthy is the Court's ambivalent discussion of whether a property's market value is relevant to an unequal-appraisal claim. Earlier opinions from Texas courts have implied that market value has little relevance in a case involving the direct comparison of appraised values (rather than a comparison of appraisal ratios). Some courts have restricted an appraisal district's ability to even discover evidence of market value. There is some language in this new opinion indicating greater relevance of market value to an unequal-appraisal claim.

Oncor Electric Delivery Company NTU LLP v. Wilbarger County Appraisal District
691 S.W.3d 890 (Tex., June 21, 2024)

Issues: Appealability of ARB action; agreement resolving protest

In 2019, an electric utility called Sharyland owned property including two types of electrical lines, one type more valuable than the other. Sharyland reported quantities of the two types of lines to the appraisal districts in several West Texas counties. It protested the districts' appraisals but then entered agreements with the districts concerning the total value of its lines. Sharyland sold the lines to Oncor. Oncor filed motions under §25.25(c) of the Tax Code to correct the 2019 appraisal rolls claiming that Sharland had reported the wrong quantities of the two types of lines. Sharyland had allegedly reported too much of the more valuable line and too little of the less valuable line, so the total value was less than the value to which Sharyland had agreed. The ARBs determined that they could not hear the motions because the matter had already been resolved by agreements. Oncor then sued the districts and the ARBs. Both responded with pleas to the trial court's jurisdiction. After a hearing, the trial courts dismissed the case. Oncor appealed.

The appeals produced different results from different courts of appeals. The Amarillo Court of appeals, considering the case from Wilbarger County, ruled against Oncor. The Austin Court of Appels, considering the case from Mills County, ruled for Oncor. The Texas Supreme Court agreed to consider the two cases.

The high Court ruled in favor of Oncor, but its ruling was very narrow and avoided many sensitive issues. The Court ruled that the trial courts did have jurisdiction over Oncor's appeals. The agreements with the appraisal districts might mean that Oncore would ultimately lose its cases, but they did not mean that the trial courts could not even consider the cases. The Court's opinion is unclear in many respects. Some parts indicate that the ARB's never had the authority to consider Oncor's motions, but other parts indicate that the ARB's should have considered the motions but *denied* them based on the agreements. The trial courts should have considered Oncor's suits even if the ARBs could not consider Oncor's motions. A court faced with an agreement between an appraisal district and a property owner could at least interpret the agreement and determine its validity. In the Court's words, "[A]though limitations on an ARB's authority to review or reject a Section 1.111(e) agreement may restrict the scope of a court's review, they do not defeat its jurisdiction." The Court sent the cases back to the trial courts for further proceedings.

The Supreme Court's opinion is probably most notable for the issues that it did ***not*** decide. Those issues include: 1) whether a property owner can escape an agreement by showing that the parties were mistaken about something when they made it; 2) whether Oncor could sue the ARBs; and 3) whether the errors alleged by Oncor could be corrected under §25.25(c) or (d).

Johnson v. Bastrop Central Appraisal District
2024 WL 3073766 (Tex. App. – Austin, June 21, 2024, no pet.) (not reported)

Issues: Vexatious litigants; limited binding arbitration

Johnson had a long history of filing lawsuits against the appraisal district and people associated with it. Following an unsuccessful protest, he filed another suit claiming that his land qualified for 1-d-1 appraisal in 2022. The district filed a motion asking the trial court to declare Johnson a vexatious litigant and to require a surety bond in order for him to continue with the suit. The court granted the district's motion. Instead of filing a bond, however, Johnson filed a plea to the jurisdiction seeking the dismissal of his own lawsuit. His theory was a little strange. He claimed that he had filed for limited binding arbitration following his ARB hearing, and that limited binding arbitration somehow deprived the ARB of the authority to determine his protest. Thus, there was no valid order of the ARB and nothing for him to appeal to the trial court. The trial court never ruled on Johnson's plea to the jurisdiction. The court dismissed the case in response to the district's motion because Johnson had never filed the required bond. Johnson appealed.

The court of appeals reversed the trial court's ruling that Johnson was a vexatious litigant. The higher court explained that the district bore the burden of proving that Johnson had no reasonable probability of prevailing in his suit. The court was not satisfied with the evidence offered by the district to show that Johnson's land did not have the required history of agricultural use. The evidence showed that Johnson had used his land for raising and training horses for polocrosse or sale or for feeding them fodder. According to the court's opinion, however, the evidence was not sufficient to prove that agriculture was not the principal use of the land.

The court of appeals also addressed and rejected Johnson's theory about limited binding arbitration. The court explained that the ARB's order determining Johnson's protest was final and appealable even though he had filed for limited binding arbitration. The ARB had the duty to issue the order notwithstanding the arbitration, and Johnson had the right to appeal it to the trial court. The court of appeals sent the case back to the trial court for further proceedings.

Allen v. Crown Pine Timber 1, L.P.
2024 WL 3055706 (Tex. App. – Beaumont, June 20, 2024, no pet. hist.) (not reported)

Issues: Challenging tax sales

In 1894, Texas, by land patent, conveyed about 4,000 acres to Delgado. The land was very close to another large patent called the League patent. In 1907, Bristley convinced the state that there was 134 acres of vacant unclaimed land between the Delgado and League patents. The state sold that 134 acres to Bristley. By 2016, Crown owned the 4,000 that had been conveyed to Delgado. The owners who had acquired Bristley's 134 acres hadn't paid their taxes. Taxing units sued them, and the suit resulted in a tax sale. Allen bought the 134 acres. About three years later, Crown sued Allen. Crown claimed that the 134 acres was its land, part of the 4,000 acres originally conveyed to Delgado in 1894. There never had been any vacant land between the Delgado and League patents. The two patents were contiguous with nothing in between. The 1907 conveyance to Bristley was void.

The case primarily concerned the accuracy of the various surveys involved. Allen, however, also claimed that Crown could not dispute his ownership of the 134 acres because he had purchased it in a tax sale, and Crown did not file its suit within the Tax Code's limitations period for challenging tax sales. According to §33.54, that period is either one or two years from the filing of the sheriff's deed, depending on the type of property. The trial court entered a summary judgement for Crown, and Allen appealed.

The court of appeals explained that a tax-sale purchaser does not receive anything more than what the delinquent taxpayer owned. Here, the delinquent taxpayers traced their alleged title back to Bristley. Because the conveyance to Bristley was void, the delinquent taxpayers never owned anything, and neither did Allen. Crown could sue Allen without having to comply with the statute of limitations and without having to first make any tax payment. The court of appeals affirmed the summary judgment for Crown.

Bexar Appraisal District v. Johnson
691 S.W.3d 844 (Tex., June 11, 2024)

Issues: Disabled veteran's homestead exemption

Gregory and Yvondia Johnson were disabled veterans, married to each other but separated and living in different homes. The homes were both owned by the Johnsons jointly. The residence occupied by each spouse was his/her principal residence. Their disabilities were so severe that each of them could qualify for the 100% homestead exemption described in §11.131 of the Tax Code. Gregory was receiving the exemption on his residence when Yvondia applied for the exemption on her residence. The appraisal district denied the exemption on the theory that two spouses could not receive the same exemption on two different properties. Following an unsuccessful protest, she sued the district. The trial court entered a summary for the district. The court of appeals reversed the trial court and ruled for Yvondia. Then the Texas Supreme Court agreed to consider the case.

The high Court upheld the court of appeals and ruled that Yvondia could receive the exemption. The Court explained that several types of homestead exemptions are set out in §11.13, e.g., general school-tax exemptions and over-65 exemptions. That section includes prohibitions against property owners "double-dipping" the exemptions. Section 11.131, however, does not include the same prohibitions against double-dipping. It bestows a 100% homestead exemption on an individual disabled veteran without regard to whether he/she is married or part of a family. There was no dispute that Yvondia's residence qualified as her homestead or that she was a severely disabled veteran. There was no reason to deny her the exemption. The Supreme Court's ruling was limited to the disabled veterans' homestead exemption and did not address other types of homestead exemptions.

Two of the Supreme Court's justices dissented. They would have denied Yvondia the exemption. Generally, they reasoned that the Tax Code incorporates a traditional understanding that a family can receive only one homestead exemption of a particular type.

J-W Power Co. v. Sterling County Appraisal District
691 S.W.3d 466 (Tex., June 7, 2024)

Issues: Correcting appraisal rolls

This is a lingering remnant of the compressor cases. The Tax Code directs appraisal districts to appraise leased heavy equipment (including pipeline compressors) at values far below actual market value. When that provision was enacted, appraisal districts resisted, arguing that the Texas Constitution required them to appraise property at market value. The dispute resulted in hundreds of lawsuits. In 2018, the Texas Supreme Court shocked everyone by ruling that the Constitution did not require appraisals based on

market value. *EXLP Leasing, LLC v. Galveston Central Appraisal District,* 554 S.W.3d 572 (Tex. 2018). The Court upheld the Tax Code's provisions (§§23.1241 and 23.1242). The Court further interpreted the Code to make compressors taxable at the owner's location, not where the compressors were actually located. Some property owners, including J-W Power began trying to claim the benefit retroactively for past years.

J-W Power filed protests concerning its compressors located in Sterling County for several years prior to 2018. The ARB ruled against it, but J-W Power did not appeal. Then after the Supreme Court's ruling in *EXLP Leasing*, J-W Power tried to contest the 2013-2016 appraisals retroactively by filing motions with the ARB under §25.25(c). It claimed that its compressors were subjected to multiple appraisals and that they had not existed in Sterling County. The ARB denied the motions, and J-W Power sued the district. The district asserted the defense of *res judicata*; it argued that the question of whether the property should be appraised as heavy-equipment inventory had already been finally decided by the ARB in the earlier protests and could not be raised again. The trial court entered summary judgment for the district, and J-W Power appealed.

The court of appeals affirmed the summary judgment for the district. J-W Power's motion under §25.25(c) was the same claim asserted in the earlier protests. J-W Power cited §25.25(l), which states that a property owner may file a §25.25(c) motion even if the owner previously filed a protest relating to the value of the property. The court explained that the protests had not been protests about market value. They had specifically raised J-W-Power's claim about heavy-equipment inventory. Section 25.25(l) did not allow J-W Power to raise the same claim again in a motion. When the ARB determined the protests, J-W Power had a ripe claim that it should have appealed.

The Texas Supreme Court then decided to hear the case. The high Court reversed the court of appeals. The Court reasoned that despite the language of §25.25(l) a property owner could raise a non-value claim in a protest, have that claim decided by the ARB, and then raise the identical claim in a §25.25(c) motion. The Court left open the question of whether the principle of res judicata might ever apply to an ARB order. The Court sent the case back to the court of appeals for further consideration.

Editor's Comment: The legislature expressly said that a property owner who had raised a value claim in a protest before an ARB could later raise a *different* claim in a §25.25(c) motion. For example, a property owner might file a protest alleging that the appraised value of his/her property was unequal compared to the values of comparable properties. That would not prevent the owner from later filing a §25.25(c) motion alleging that the property appeared on the appraisal roll more than once. The Supreme Court now substitutes its own rule, a rule that a property owner who files a protest on ***any*** grounds can later assert the identical claim in a §25.25(c) motion.

Gill v. Hill
688 S.W.3d 863 (Tex., April 26, 2024)

Issues: Challenging tax sales

In 1999, pursuant to a court's default judgment, mineral interests were sold to Hill in a tax sale. The sheriff's deed was promptly recorded. Twenty years later, Gill sued to challenge the tax sale. Gill claimed that the defendant in the delinquent-tax sale suit had not been properly served with the suit papers. Hill responded that the suit had been filed too late in violation of §33.54(a) of the Tax Code. That statute requires that a suit challenging a tax sale be filed within one year after the sheriff's deed is recorded. Gill argued that constitutional due-process requirements trumped the statute of limitations. Hill filed a motion for summary accompanied by a copy of the sheriff's deed showing when it was recorded. Gill offered no evidence at all. The trial court entered a summary judgment for Hill, and Gill appealed.

The court of appeals affirmed the summary judgment in favor of Hill. The higher court acknowledged that the failure to serve a defendant in a delinquent-tax suit can result in a void judgment and a void tax sale. If Gill had responded to Hill's motion with evidence that the defendant had not been served, he could have avoided the summary judgment. When Hill presented evidence that Gill's suit was filed more than one year after the sheriff's deed was recorded, the burden fell on Gill to present some evidence of a due-process violation, some reason that the statute of limitations did not apply. In the absence of any such evidence from Gill, the trial court was correct when it entered the summary judgement.

One judge dissented. She argued that Hill bore the burden of proving that the service of process in the delinquent-tax suit was proper. Because Hill failed to offer any evidence that the service was proper, he was not entitled to the summary judgement.

Brazoria Civic Club v. Brazoria County Appraisal District
694 S.W.3d 854 (Tex. App. – Houston [14th Dist.], April 25, 2024, no pet.)

Issues: Challenging tax sales; exhaustion of remedies

The Club received a charitable exemption for its property for several years, but the appraisal district cancelled the exemption for 2016. Taxes were assessed but not paid for several years. In late 2019 taxing units filed a delinquent-tax suit. The Club was cited by posting. In July of 2020, a lawyer for the Club wrote to the district, admitted that she knew about the delinquent-tax suit and filed an exemption application. But the Club still didn't answer the suit. The trial court entered a default judgment against the Club in December of 2020. The property was sold at a tax sale in August of 2021. In early 2022, the Club filed another exemption application referring all the way back to 2016. The district then notified the Club that both applications were denied.

In March of 2022, the Club filed its own lawsuit against the district and the taxing units. It sought to undo the judgment in the delinquent-tax suit and obtain an exemption for the property. The Club claimed that it had not been notified about the cancellation of the exemption, the delinquent-tax suit, or the tax sale. The district responded with a plea to the jurisdiction. The trial court dismissed the Club's suit, and the club appealed.

While the appeal was pending, the taxing units filed a motion in the delinquent-tax suit asking the court to set aside the judgment and the tax sales. With the consent of the tax-sale purchasers, the trial court set aside the judgment and voided the tax sales. The district then filed a motion to dismiss the appeal in the Club's suit on the grounds that the trial court's actions in the delinquent-tax suit mooted the appeal in the Club's suit.

The court of appeals decided that the actions in the delinquent-tax suit mooted most but not all of the Club's suit. In a nutshell, the court decided that the Club's appeal was moot to the extent that it sought relief that had already been granted in the delinquent- tax suit. Under §33.56 of the Tax Code, the trial court had the authority to set aside its judgment in the delinquent-tax suit and void the tax sales even though that court's plenary power over the case had ended. The appeal was not moot to the extent that it concerned issues not addressed in the delinquent-tax suit.

The court of appeals went on to explain that the trial court did not have jurisdiction over the Club's suit because the Club had not timely pursued and exhausted the Tax Code's remedies for a property owner complaining about the denial or cancellation of an exemption. Under §§41,41 and 41.411, the Club could have protested the cancellation of the exemption and the alleged failure of the district to send a required notice, but the Club hadn't done that. A property owner must raise those claims in a protest before the ARB before it can raise them in court. The Club argued that a federal civil-rights statute, 42 U.S.C. §1983, creates an exception to that rule, but the court of appeals pointed out that the Club has not raised a §1983 claim. (The court noted that the Club could have pursued a protest without paying any taxes because the Club alleges that the property had no taxable value.) The court of appeals affirmed the trial court's dismissal of the Club's suit to the extent that the appeal was not moot.

Solaris Oilfield Site Services Oper LLC v. Brown County Appraisal District
688 S.W.3d 918 (Tex. App. – Eastland, April 18, 2024, no pet.)

Issues: Heavy equipment

Solaris owns storage silos and related equipment used to store and move sand for hydraulic fracturing. Solaris sets up base trailers including compressors and generators at a wellsite. The silos are delivered by special transport trailers and set up atop the base trailers. The base trailers and silos stay in place, but the transport trailers leave after the silos are set up. Solaris claimed that the silos were leased heavy equipment subject to taxation at arbitrary low values rather than market value. The appraisal district rejected Solaris's claim and appraised the silos at their market value. Following an unsuccessful protest, Solaris sued the district. The trial court entered a summary judgment for the district and Solaris appealed.

The court of appeals reversed the trial court and entered judgment for Solaris. The higher court's opinion looked at §23.1241 of the Tax Code, the law creating a special appraisal method for inventories of heavy equipment. The definition of "heavy equipment"

specifically excludes “motor vehicles.” The district treated the silos, the transport trailers that deliver them, and the base trailers that support the silos and move sand as an integrated motor vehicle. The court, however, insisted that the silos were separate, not part of a trailer but a “load” carried and supported by trailers. The collection of items could be treated as an integrated system for some purposes and as separate components for other purposes. The silos, integrated with the base-trailer generators were “self-powered” as required by the statutory definition of “heavy equipment”, but the silos could nevertheless be treated as separate non-vehicles. “The statutory taxation scheme before us does not forbid the trailers that are used to haul and support the silo system equipment from being taxed as motor vehicles and the remaining silo system equipment from qualifying as heavy equipment under Section 23.1241.”

Sadeghian v Denton Central Appraisal District
2024 WL 1318252 (Tex. App. – Fort Worth, March 28, 2024, no pet.) (not reported)

Issues: Judicial appeals; limited binding arbitration

Sadeghian protested the 2022 appraisals of his property. He received the ARB’s order on September 20, 2022, and decided to appeal. He filled his suit against the appraisal district within the sixty-day limitations period set out in §42.21 of the Tax Code. But he did not request a citation until May 8, 2023. The district was not served with the suit papers until May 9, 2023. The district raised the statute of limitations as a defense, and the trial court entered a summary judgement in the district’s favor. Sadeghian appealed.

The court of appeals affirmed the summary judgment for the district. The higher court explained that a plaintiff must not only file his/her suit within the limitations period, but the plaintiff must also diligently pursue service of process on the defendant. If service occurs after the limitations period has expired, the plaintiff must be able to show that he/she was diligent up until the time that the defendant was served. The plaintiff must explain “every lapse in effort or period of delay.” Sadeghian’s only excuse for the delayed service was that after his ARB hearing, he had pursued a limited binding arbitration against the district and the ARB. The court responded that a limited binding arbitration does not affect the limitations period for a judicial appeal or excuse a property owner’s lack of diligence in securing service. The filing of a judicial appeal moots the limited binding arbitration. The court went on to note that Sadeghian had not even followed §41A.051, which governs limited binding arbitrations. He had not sent his demand notice within five business days following the ARB’s hearing, nor had he sent a copy to the district’s taxpayer liaison officer.

Lee v. Hood County Appraisal District,
2024 WL 1100783 (Tex. App. – Fort Worth, March 14, 2024, pet. denied) (not reported)

Issues: Judicial appeals

Lee operated a landscaping business through an LLC. He consistently refused to render the bpp or provide any information about it to the appraisal district. In 2021, the district valued the bpp in the name of the LLC at $200,000. Following an unsuccessful protest, the LLC sued the district. During a deposition, Lee claimed that the LLC did not own the property; he owned it personally. The district transferred the bpp account from the LLC to Lee. The 2021 suit was then dismissed for lack of jurisdiction (presumably because the LLC had no standing to file a suit about property that it did not own). In 2022, the district appraised $200,000 of bpp in Lee's name. Lee protested, then sued. He disputed the appraised value and claimed that the property was exempt because it was not used for business. He also tried to bring in the same claims for 2021. The trial court dismissed the 2021 claims and entered a no-evidence summary judgment for the district with respect to 2022. Lee appealed.

The court of appeals affirmed the summary judgment. The higher court explained that Lee could not contest the 2021 appraisal because his 2022 suit was filed much too late. Under §42.21 of the Tax Code, his suit should have been filed within sixty days after Lee knew of the ARB's 2021 order. As for 2022, Lee bore the burden of proving that the appraisal district's value was wrong. That meant providing evidence of the actual value, and Lee had no such evidence. The court of appeals did not decide Lee's exemption claim because he had not briefed it properly. The court noted, however, that personal property is taxable if it is used for business, even if the business is not profitable and even if the owner of the bpp is not the one that uses it.

Parkwood 121 Village LP v. Collin Central Appraisal District
2024 WL 748397 (Tex. App. – Dallas, February 23, 2024, no pet.) (not reported)

Issues: Agreements between appraisal districts and property owners; agricultural appraisals

Parkwood owner qualified 1-d-1 land. In late 2014, it notified the appraisal district that it planned to end the agricultural use of the land and begin commercial development. Parkwood and the district signed an "Agreement of Use Change" agreeing to the account numbers, years, acreages and effective change of use date, December 29, 2014. The agreement also said that the parties "acknowledge and agree that all complaints or formal protests with respect to the change of use determination . . . have been settled to their satisfaction, and hereby waive any further complaint and/or withdraw any protest, and waive any right to any further relief in this matter." The district made a change-of-use determination that resulted in additional taxes being assessed for 2014. Parkwood sued the district claiming that no additional taxes should be assessed for 2014. The district responded that the agreement waived Parkwood's right to sue. The trial court entered summary judgment for the district, and Parkwood appealed.

The court of appeals reversed the summary judgment for the district. The higher court determined that the agreement was not sufficient to preclude Parkwood's suit. The agreement did not state that Parkwood was agreeing to a particular value for any year. In the court's words, "There is no foundation in the plain language of the parties' agreement

that would limit Parkwood's ability to challenge the District's valuation of the property in any year; it only reflects the parties' agreement on the year in which the change of use occurred." The court of appeals sent the case back to the trial court for further proceedings.

Wommack v. City of Lone Star
2024 WL 367601(Tex. App. – Texarkana, February 1, 2024, no pet.) (not reported)

Issues: Challenging tax rate adoption

The city council adopted the city's 2023 tax rate in August of 2023. Wommack, a city alderman, sued the city and various officials, including himself. He claimed that the council had adopted a tax rate and budget without the notice required by truth-in-taxation laws. The city filed an answer including a claim that Wommack was legally barred from obtaining the injunction that he sought. The trial judge dismissed the case immediately without holding any hearing. Womack appealed.

The court of appeals reversed the trial court's dismissal. The higher court said that the trial judge erred when she dismissed the case without a hearing. According to the court of appeals, the case was governed by Rule 91a of the Texas Rules of Civil Procedure, which allows a trial court to dismiss baseless claims. The opposing party, however, must specifically plead that it is seeking dismissal under Rule 91a, and the trial court must conduct a hearing. Neither of those things happened here. The court of appeals referred the case back to the trial court for further proceedings.

Sealy IDV Thompson 10, LLC v. Harris County Appraisal District
2024 WL 296531 (Tex. App. – Houston [1st Dist.], January 25, 2024, no pet.) (not reported)

Issues: Judicial appeals

Following an unsuccessful protest, Sealy sued the appraisal district in September of 2020 to appeal the ARB's order. The suit was filed on time, but the suit papers were not served on the district until August of 2021, an eleven-month delay. The district sought a summary judgment, and the trial court granted the motion. Sealy appealed.

The court of appeals affirmed the judgement for the district. The higher court explained that if a property owned files a suit within the sixty days allowed by the Tax Code, the appraisal district can be served after the sixty days have passed but only if the property owner exercises reasonable diligence in getting the district served. If the district raises an affirmative defense based on the statute of limitations, the property owner has the burden of proving that he/she made a diligent effort to get the district served. Sealy's evidence failed to show diligence on Sealy's part. In fact, Sealy let more than ten months pass without even checking on the service. Under the circumstances of the COVID-19 pandemic, Sealy might have sought an order giving it extra time for service, but it didn't do that. The court said, "When a defendant complains of lack of due diligence in service

of process, the plaintiff must explain what steps he took to obtain service, not explain why he did nothing."

Johnson v. Bastrop Central Appraisal District
2024 WL 269528 (Tex. App. – Corpus Christi – Edinburg, January 25, 2024, pet. denied) (not reported)

Issues: Agricultural appraisal

Johnson kept horses on about 20 acres of land. He trained horses for the game of Polocrosse, a thrilling combination of Polo and Lacrosse. He claimed that the land was native pasture that qualified as open space agricultural land. The appraisal district denied his application and gave as its reason that the land was not principally used for agriculture. Following an unsuccessful protest before the ARB, Johnson sued the district. The evidence presented to a jury showed that Johnson's land did not satisfy the district's standards for size or for intensity of agricultural use. The jury found that the land did not qualify. Johnson appealed.

The court of appeals affirmed the judgment for the district. Johnson argued that because the district had originally identified only principal use as its reason for denying the agricultural appraisal, it could not raise the land's size and lack of agricultural intensity in the trial. The court of appeals disagreed. Because the trial was a trial *de novo*, the appraisal district could present arguments and evidence that had not been presented to the ARB. The trial court had subject matter jurisdiction over all issues pertaining to whether Johnson's property qualified for open-space land appraisal. The court of appeals also recognized the appraisal district's authority to set degree-of-intensity standards. The evidence was sufficient to support the jury's verdict. The court also explained that it would not consider some of Johnson's arguments because he had not briefed them sufficiently.

Carley v. Saalwaechter, Inc.
2024 WL 187037 (Tex. App. – Beaumont, January 18, 2024, no pet.) (not reported)

Issues: Redemption following tax sale

Taxing units sued Carley for delinquent taxes. The trial court entered judgment for the taxing units and ordered the sale of the property, Carley's home. At the constable's sale in January of 2020, Saalwaechter, Inc. ("SI") bought the property for $75,000. In May of 2020, Carley contacted SI about redeeming the property. In July, SI responded that it had spent $133,783 on the property. In November, Carley tendered $101,650 to the tax office along with an affidavit. The affidavit claimed that Carley and SI were not able to agree about the redemption amount. Carley did not explain how she had calculated the amount of the tender. The tax office issued a "Redemption Receipt," which Carley promptly recorded in the deed records. She also attempted to retake physical possession of the property. SI sued Carley in order to challenge her purported redemption. Carley denied SI's allegations. In October of 2021, the trial court sanctioned Carley—the opinion doesn't explain exactly why—by striking her pleadings. Soon thereafter, the court called the case to trial, but Carley failed to appear. SI presented evidence showing that $101,650 was not the correct redemption amount, certainly not in November of 2020 when Carley tendered the money to the tax office. SI provided evidence of what it had spent on repairs and maintenance

and claimed that the correct redemption amount as on November 2020 was $165,462. The trial court ruled that Carley's tender was insufficient, that the redemption was invalid, and that SI was the owner of the property. The court also ordered Carley to pay SI's attorney's fees. Carley appealed.

The court of appeals affirmed the judgment for SI. The higher court first noted that Carley has not appealed the trial court's striking of her pleadings. That meant that she had admitted everything that SI had alleged against her. The court did not set out the exact calculation of the redemption amount but explained that even if the amount were calculated conservatively, Carley's tender of $101,650 was no more than 75% of the necessary amount. She had failed to substantially comply with the redemption law. The law allowed SI to sue Carley even though the tax office had accepted her tender. A district court has jurisdiction over such a suit.

The court of appeals commented briefly on Carley's affidavit filed with the tax office. The court said that such an affidavit does not have to explain how the former owner attempting redemption calculated the amount of his/her tender, nor does the former owner have to swear that the tendered amount is correct.

Attorney General's Opinions

Opinion No. KP-0471
August 8, 2024

Issues: Nepotism

The attorney general was asked what happens if a chief appraiser's sister becomes the county TAC in the same county where the chief appraiser serves (a county with fewer than 75,000 people). As the TAC, the sister would automatically be a nonvoting member of the appraisal district's board of directors. Would that violate applicable nepotism laws?

The attorney general discussed §573.041 of the Government Code, which generally prohibits nepotism in which a public official has a say in appointing or confirming a relative to a position paid with public funds. There are, however, two important reasons that the general rule would not apply to this situation. First, as a *nonvoting* member of the board, the sister wouldn't have any say in appointing or retaining the chief appraiser. Second, the law includes an exception for a paid officer or employee who has been on the job for at least thirty days before his/her relative joins the appointing board. In this case, the chief appraiser would have held his job for more than thirty days before his sister became the TAC. Even if she were to become a voting member of the board, the chief appraiser could continue with his job, but his sister would have to recuse herself if the board considered any question related to his employment.

The attorney general added that the Tax Code would not prohibit the chief appraiser from continuing in his position when his sister became the TAC.

Opinion No. KP-0470
July 3, 2024

Issues: Homestead tax ceiling

The school taxes on the homestead of a person who is over 65 or disabled are generally capped at the lower of two amounts. The first is the amount of school taxes assessed on the homestead in the first year that the homeowner qualified for the over-65 or disability exemption. But if the property first qualifies for the exemption after January 1 of that first year and the school taxes on the property are lower in the following year, then the ceiling is based on the second year's tax assessment. So, some of the beneficiaries of this law have tax ceilings based on the year in which their homesteads first qualified for over-65 or disability exemptions, and some have ceilings based on the year after that.

In 2021, the legislature ordered the compression of school tax rates. The legislature wanted the benefits of the compression to extend to homeowners with tax ceilings. Amendments to §11.26 required a downward adjustment of existing ceilings. The prescribed adjustments, however, were based on the taxes assessed on a homestead in the first year that the owner qualified for the over-65 or disability exemption. For example, a homeowner (let's call him Joe) turned 65 in late 2017, but his school taxes were lower in 2018. Joe had a tax ceiling based on his 2018 school taxes. But the compression law required a recalculation of the ceiling based on Joe's 2017 taxes.

The attorney general was asked how a tax assessor-collector should make sense of these two laws. He answered that the compression law controls over the lower-of-two-years law. The compression law says that it applies ***notwithstanding*** other laws. So, Joe's adjusted tax ceiling should be calculated using his 2017 school taxes even though his previous ceiling was based on his 2018 taxes.