

POPP, GRAY & HUTCHESON, LLP

The Property Tax Firm of Texas

LEGISLATIVE WRAP-UP

Popp, Gray & Hutcheson is pleased to report a very successful legislative session for property taxpayers. Jim Popp and Missy Ramirez spent many hours at the Capitol monitoring legislation, meeting with legislators and testifying at committee hearings. Along with the PGH lobby team from Hillco Partners, Vilma Luna and Clint Smith, Mr. Popp and Mrs. Ramirez were instrumental in the passage of several important property tax bills and the limitation of any negative legislation for taxpayers.

The following is an update of the recently concluded legislative session. The session focused primarily on important technical changes resulting in improvement to the property tax system. There were 289 property tax related bills filed, and 57 were passed and sent to the governor. By comparison, in 2009 there were 354 property tax bills introduced with 54 passing, and in 2007, there were 310 introduced with 65 passing.

Many of the hot issues of previous sessions received little attention this year. Appraisal caps as a method of limiting property taxes had been a hot topic in previous sessions. It appears the Legislature may now understand that, as many studies have indicated, appraisal caps are an ineffective and damaging approach to property tax limitation. When appraisal cap bills were heard in Senate Finance, only one person testified in favor, and there was no legislative movement of these bills.

Similarly, there has been much discussion in previous session of strengthening the truth in taxation provision or providing revenue limitations on taxing units. These bills also received little attention from legislators.

Interest appears to have faded on several other previously hot topics such as popular election of chief appraisers or board of directors and changing the composition and selection of ARB members.

Overall, it was a very favorable session for taxpayers. The highlights of the session for taxpayers are as follows:



- Made attorney fees recoverable for a taxpayer in a State Office of Administrative Hearings appeal proceeding;
- Enhanced the credibility of Appraisal Review Boards by limiting who may provide ARB's continuing education courses, who may comment on the courses and who may serve as their attorney;
- Provided a new notice and protest process for the imposition of a rendition penalty;
- Prevented the dismissal of a protest or lawsuit filed in the incorrect owners name;
- Attorneys hired by a third party are now required to give notice of their engagement to the property owner.

The only bill of significance that passed that could be detrimental to taxpayers changed the interest rate on a refund following a lawsuit from eight percent to prime plus two percent. This is tempered by the fact that almost all appraisal districts require waiver of interest as part of the settlement of the lawsuit.

PROTEST AND APPEALS

HB 1887 by Villarreal

(Effective on Governor's Signature)

(Portion of bill see OMNIBUS below for entire bill)

Allows correction of the appraisal roll under Section 25.25 if a person shows non-ownership of the property.

Changes the lawsuit filing deadline for a Section 25.25 lawsuit from 45 to 60 days.

Provides that a taxpayer must pay under protest the amount not in dispute for a motion pending under Section 25.25 or a 41.411. The ARB shall determine compliance with the payment requirements and the taxpayer may appeal the ARB decision to district court.

Prevents dismissal of a protest if it is filed in the name of the owner, a person identified in the appraisal records, an affiliate of the owner, or a misnomer that is not misleading.

Allows a property owner or a lessee that filed the protest to intervene in a lawsuit to prevent dismissal of the lawsuit because it was filed in an incorrect name.

Requires an ARB order to contain both the initial value and the final value.

Requires the court to order mediation upon motion of a party.

Provides that a no-evidence motion for summary judgment may be defended by introduction of evidence presented at the appraisal review board in the form of affidavit or testimony.

Provides that an expert witness may prepare an opinion of value on a chemical or utility property based on its characterization as personal rather than real property.

Requires attorney hired by a third party, such as a tax consultant, to provide notice to the property owner of the engagement, including an explanation of the attorney's ethical obligation to the property owner, a description of the duties the third party will perform in the lawsuit, and an explanation that the attorney will receive compensation from the third party and that the property owner's consent is required to receive compensation from the third party.

Requires that a separate request form be filed for each appeal for purposes of a refund request after an appeal.

HB 2203 by Otto (Effective on Governor's Signature)

Collin, Denton, Fort Bend, Montgomery and Nueces counties are added to the SOAH property tax appeal pilot program. The program previously applied to Harris, Tarrant, El Paso, Travis, Bexar and Cameron counties. The initial fee for SOAH is changed to \$1500 from \$300. SOAH had been having difficulty collecting fees from losing taxpayers and the purpose here was to remedy their problem. The award of attorney fees to a prevailing taxpayer under Section 42.29 of the Tax Code is authorized. The pilot expiration date is changed from January 1, 2013 to January 1, 2014.

HB 2220 by Davis (Effective on Governor's Signature)

A taxpayer that files a motion under Section 25.25 or 41.411 must comply with the payment under protest provisions contained in new Section 25.26 and 41.4115 which are similar to the Section 42.08 payment requirements. A taxpayer may protest failure to comply with these payment requirements to the ARB.

SB 1404 by Hinojosa (Effective on Governor's Signature)

Changes deadline for a lawsuit under Section 25.25 from 45 to 60 days.

SB 1441 by Ellis (Effective 9/1/11)

Provides for the correction, under section 25.25, of an erroneous owner.

SB 1341 by Seliger (Effective on Governor's Signature)

A taxing unit may not be made a party to a lawsuit under Chapter 42. Notice of a Section 42.08 compliance hearing must be mailed to each collector. A taxing unit may intervene in a lawsuit for the limited purpose of determination compliance with Section 42.08.

APPRAISAL DISTRICT OPERATIONS

HB 1887 by Villarreal (Effective on Governor's Signature)
(Portion of bill see OMNIBUS below for entire bill)

Clarifies existing law that persons not required to be registered as tax consultants such as lawyers, realtors and brokers have clear authority to receive ARB notices without the filing of fiduciary authorizations. Lawyers do not have to file fiduciary authorizations but this created some practical difficulty in receiving notices.

Provides that the chief appraiser, employees of another appraisal district, a member of the board of directors or an ARB member are prohibited from providing ARB education courses. Previously, the course could not be provided by the appraisal districts. The Comptroller is responsible for providing ARB education courses or contracting with service providers to provide ARB education courses.

Prohibits communication by a chief appraiser, an employee of the appraisal district, a district board member, an officer or employee of a taxing unit, or a lawyer representing the appraisal district from commenting on, or discussing with, the ARB an education course offered to the ARB.

Authorizes an ARB to retain a licensed appraiser to advise them on appraisal methodology.

Prohibits a person related to a member of the board of directors from serving on the ARB.

Adds members of the board of directors, property tax consultants or attorneys representing taxpayers to those prohibited from ex parte communications with an ARB. The chief appraiser and other employees of the district were previously prohibited from ex parte communication with the ARB.

Prohibits a person from serving as an attorney to an ARB if the person represents the appraisal district, a taxpayer or a taxing unit. An exception is provided for the county attorney. Provides an exception to the ARB hiring of an attorney that represents an appraisal district to allow the attorney to seek the dismissal of a lawsuit improperly filed against the ARB.

HB 896 by Howard (Effective on Governor's Signature)

Allows the board of directors to appoint auxiliary ARB members to hear protests but the auxiliary members has no voting rights.

HB 1179 by Flynn (Effective on Governor's Signature)

Changes are made to the registration requirements of appraisal district appraisers and assessors and collectors.

HB 2387 by Menendez (Effective on Governor's Signature)

Provides that an appraisal district may not employ a general counsel. The board of directors may employ a general counsel to the district to serve at the will of the board.

SB 1546 by Patrick (Effective 9/1/11)

Provides that a person designated as an agent who misses a protest hearing is entitled to a new hearing upon a showing of good cause. Previously, this applied only to an owner who had not designated an agent under Section 1.111.

SB 682 by Huffman (Effective on Governor's Signature)

Allows appraisal districts access to criminal records for the purpose of review of appraisal review board candidates.

SB 1130 by Hegar (Effective on Governor's Signature)

Information provided to an appraisal district concerning sales information provided by persons other than the owner, including MLS information, was previously made confidential. This created a lack of sales information in some counties. Previously, the provision did not apply to counties of less than 20,000. This was raised to counties of less than 50,000.

RENDITION

HB 533 by Villarreal (Effective on Governor's Signature)

Requires that the chief appraiser must provide notice of the rendition penalty. The property owner then may protest the imposition of the penalty. Previously, the penalty could appear for the first time on the tax bill without notice to the property owner. The penalty becomes final if not protested or upon final determination of a court.

Provides that a property owner does not have to render property subject to valuation under Section 23.24. Section 23.24 provides that if the valuation method for real property takes into consideration the value of personal property, the personal property is not subject to additional taxation.

EXEMPTIONS**HB 252 by Hilderbran** *(Effective in part 9/1/11 and 1/1/12)*

Provides that an applicant for a residence homestead cannot claim a residence homestead in another state and in Texas at the same time. The application for exemption must include a copy of a driver's license or a state issued identification and a vehicle registration or utility bill.

HB 645 by Orr *(Effective 9/1/11)*

Provides that an organization applying for a charitable exemption may provide federal tax identification rather than a driver's license number, personal identification certificate number or social security number as is currently required.

HB 2280 by Eiland *(Effective on Governor's Signature)*

Requires that one member of the TCEQ pollution control exemption advisory committee must be from a school district or junior college that had or has such an exemption.

HB 3133 by Rodriguez *(Effective 9/1/11)*

Clarifies that the exemption for organizations that build low income housing is not lost on a technicality, and provides that the property should be valued based on its restricted use relating to limitations on marketability. Currently, Habitat for Humanity affiliates receive a property tax exemption on land they have acquired and are using to build affordable housing. Some Habitat for Humanity affiliates have created community development housing organizations (CHDO) to take advantage of certain federal funds. However, there was some question as to whether this results in loss of exemption.

SB 201 by Uresti *(Effective 1/1/12)*

Provides that a person who qualifies for a totally disabled veteran's residence homestead exemption after January 1 may receive the exemption for a portion of the year. If a totally disabled residence homestead exemption is lost during the year, the taxes are based on the number of days the person qualified.

SB 516 by Patrick: SJR 14 *(Effective on Governor's Signature)*

Provides that a surviving spouse of a totally disabled veteran is entitled to the disabled veteran homestead exemption upon the death of the disabled veteran spouse.

SB 1120 by Seliger *(Effective on Governor's Signature)*

Provides that property of a municipal power agency located outside the boundaries of the municipality that created the agency is not exempt from taxation.

APPRAISAL AND SPECIAL APPRAISAL**HB 361 by Otto** *(Effective 9/1/11)*

Removes the requirement that one member of the agriculture advisory board be a representative of the county agricultural stabilization service.

HB 2476 by Harless *(Effective 1/1/12)*

Changes the method for determining the market value of heavy equipment inventory for rent or lease.

HB 3727 by Hilderbran *(Effective 2012 tax year)*

Provides that the market value of a "temporary production aircraft" is set at ten percent of the aircraft's list price.

SB 449 by Watson: SJR 15 Estes *(Effective on Governor's Signature and passage of constitutional amendment)*

Provides that agricultural use for purposes of open space valuation includes water stewardship. The applicable category of land for purposes of water stewardship treatment is the category in place before the water stewardship began. Includes standards for water stewardship. Land is not eligible for water stewardship valuation if located within a city. Land is also not eligible if it is developed to an extent that it would no longer qualify for open space or timber valuation except based on water stewardship.

SB 1385 by Lucio *(Effective 9/1/11)*

Provides authority, not previously present, for a chief appraiser to waive certain penalties of dealer's inventory of motor vehicles, outboard vessels or heavy equipment if the penalty was due to a reasonable cause.

SB 1505 by Uresti *(Effective 1/1/12)*

Changes the methodology for valuing oil and gas property.

COLLECTIONS**HB 499 by Rodriquez** *(Effective on Governor's Signature)*

Provides that taxes that become delinquent on a supplemental tax bill sent after the resolution of a lawsuit may incur the additional attorney fee collection penalty provided in Section 33.08.

HB 843 by Geren *(Effective 9/1/11)*

Authorizes an assessor to deliver a tax bill by electronic means upon request of a taxpayer.

HB 930 by Darby *(Effective on Governor's Signature)*

Changes are made to the tax warrant requirements.

HB 1090 by Gonzalez *(Effective 9/1/11)*

Changes the interest rate on lawsuit refunds from eight percent to two percent plus prime not to exceed eight percent.

HB 1118 by Ritter *(Effective on Governor's Signature)*

Provides that property purchased by a taxing unit at a tax sale may be resold for its current appraised value or for a greater amount and the sale will be free and clear of any post judgment taxes so long as each taxing unit entitled to receive proceeds approves the sale.

HB 2104 by Jackson *(Effective 9/1/11)*

Provides that the minimum amount of bond required of a tax collector is set at \$2500. Previously, there was no minimum but there was a maximum of \$100,000. A county of greater than 1.5 million may now set a bond at greater than \$100,000.

HB 2169 by Aycock *(Effective on Governor's Signature)*

Provides that taxing units are specifically authorized to rescind tax payment discounts that they have previously adopted. There was some question as to whether they had this authority.

HB 2338 by Paxton *(Effective 9/1/11)*

Requires a county that maintains a website to post tax rate information and truth in taxation information for all of the taxing units in the county.

SB 432 by Jackson *(Effective 9/1/11)*

Reduces the delinquent tax penalty of an installment payment of property in a disaster area to six percent from twelve percent.

SB 551 by Williams *(Effective 9/1/11)*

Provides that interest is not due on an omitted property improvement if the appraisal district had constructive notice of the improvement, the land was taxed in the prior year and the taxpayer pays within 120 days after the tax bill is sent. A tax bill on an improvement that escaped taxation must state that no interest is due on the bill if paid within 120 days.

SB 582 by Harris *(Effective 9/1/11)*

Changes service of process procedures in a delinquent tax suit against a limited liability corporation which has forfeited its right to transact business.

SB 762 by Corona *(Effective 9/1/11)*

Provides additional procedures for the transfer of a property tax lien.

OMNIBUS

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(Portions contained in previous sections)

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