

# POPP | HUTCHESON PLLC

## *The Property Tax Firm*

Industrial Newsletter

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## Legislative Alert

### EXPERT OPINION

by Jim Popp and Missy Ramirez

All Texas taxpayers have a vital and effective tool in protesting their property values. The Equal and Uniform statute allows taxpayers to appeal property values when an appraisal district unfairly appraises their property at a value higher than that of similar, and in many cases directly competitive, properties. This remedy emanates from protections afforded by the Texas Constitution dating back to 1845, which mandate that "all taxation shall be equal and uniform."

While equal and uniform taxation is assured by the Texas Constitution for all taxpayers, commercial and residential alike, application of the remedy to commercial property owners is under fire. Last year, opponents introduced two bills in the Texas Legislature in attempt to exclude commercial property owners from equal and uniform relief. Fortunately, taxpayers succeeded in defeating the efforts.

Now, the attack has been renewed with increased vigor in anticipation of the upcoming legislative session. Appraisal districts and taxing units are urging, through legislative means and the media, that larger taxpayers are abusing the Equal and Uniform statute. Specifically, they insist the statute allows commercial and industrial taxpayers to take advantage of the remedy to achieve unreasonable reductions through litigation. These critics maintain that the resulting reductions in commercial property values shift the tax burden to residential property owners. In addition, opponents allege that use of the Equal and Uniform remedy creates the so-called "spiral down" effect, allowing subsequent taxpayers to obtain a lower value dependent on previously settled values, thereby resulting in a "spiraling down" of values in a comparable class.

Reality, however, contradicts these representations. Claims that there has been a shift in the tax burden because of an abuse of the Equal and Uniform statute are unsupported. Over the last ten years, the relative distribution of total value between residential and commercial property has remained almost constant, with the value of single family residences as a percentage of the total falling from 49.2% to 47.8%. And any perceived "shift" in residential values can be attributed to the market flattening from 2003 to 2012, decreasing the effect of the residential value cap by allowing appraised values to catch up to market values. Likewise, the value lost as a result of the homestead exemption in the same time period decreased from about 11% to about 8%.

Similarly, arguments that litigation has resulted in unwarranted or detrimental value reductions ignore the overall picture. Decreases in property values resulting from litigation are negligible compared to both the state's total taxable value and value lost as a result of property tax exemptions. Reductions in commercial property values

through litigation represent only 0.6% of the statewide appraisal roll. Likewise, only 3% of all value lost as a result of exemptions (residential homestead, agricultural use, Freeport, etc), incentives, and litigation is attributable to lawsuit reductions (or \$13.75 billion out of \$450 billion).

As to the "spiral down" effect, there would be no continual reduction in values if all properties in a sample were appraised at market value and appropriately adjusted. When properties in a representative sample, appropriately adjusted, are still below market value, a reduction to the higher valued property is appropriate, whether because of the Equal and Uniform statute or simple fairness. Any valuation effecting this perceived "spiral down" results from the appraisal district's own failure to value property at market, to maintain uniformity among appraisals, and to make appropriate adjustments. The resulting disparities in property appraisals violate the constitutional mandate that taxation be equal and uniform.

In addition to misstating the facts, opponents fail to recognize the threat elimination of the statute would pose to all taxpayers. Appraisal districts would be able to escape scrutiny for unfairly appraising comparable properties, raising some to market value while maintaining lower values on others. Similarly, appraisers could engage in "sales chasing," or valuing a property at a sales price but refusing to raise values of comparable properties. Denying taxpayers the ability to point out mistakes made by the appraisal district harms all taxpayers by allowing those errors and countless others to go unchecked. As a result, the elimination of the remedy would likely increase property taxes for both residential and commercial taxpayers. This likewise would enable taxing units to keep tax rates at the same level and to mislead taxpayers into believing their taxes are not increasing while property values rise.

Undeniably, the Equal and Uniform remedy serves as an essential tool in holding appraisers and appraisal districts accountable for their appraisals and values. Its application serves to create a transparent and fair appraisal process. While opponents cry foul without demonstrative evidence of actual harm, they ignore that elimination of the Equal and Uniform remedy would not only violate the constitution but would harm all taxpayers without correcting ill perceived wrongs.

## Popp Hutcheson Announces

Popp Hutcheson's Jim Popp will speak at the upcoming IPT Property Tax Symposium in November. Jim's panel will cover reforming and improving the property tax system and how to develop a legislative program. IPT's Property Tax Symposium will be held November 9 - 12, 2014 at the Marriott Harbor Beach Resort and Spa in Fort Lauderdale, FL.