

Dost Thou Protest Too Much?

Options for Arguing Property Tax Appraisals

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*In the Spring a livelier iris changes on the burnish'd dove;
In the Spring a young man's fancy lightly turns to
thoughts of . . . property taxes?*

With apologies to Alfred Tennyson, “the seasons bring the flower again” in Texas too. Longer, warmer days mean the opening of swimming pools and ballparks. Prairies are covered with bluebonnets, Indian paintbrushes, primroses, and other wildflowers. Even the prickly pear gets in on the act. And, of course, springtime in Texas means it’s time for property tax appraisals.

On receiving a notice of appraised value, a property owner may become quite dismayed. As he sees the dollar amount on which the district says he should be taxed, “tears from the depth of some divine despair rise in the heart, and gather to the eyes.”

“I’ll protest!” he cries. “I’ll take it to court!” And certainly he has a right to do so. However, the property owner should be aware of the protest process and certain pitfalls, lest he ride headlong “into the jaws of Death.” One such pitfall is the requirement of exhaustion of remedies. If

The Takeaway

Texas' property tax system includes a number of options available to property owners unhappy with their property tax appraisal. However, taxpayers should be aware of pitfalls in the protest process.

a property owner does not exhaust his administrative remedies, he may not get his day in court.

A Brief Word About Texas’ Property Tax System

Real property and certain other property are taxed by local taxing entities such as counties, cities, school districts, and other special districts. Property taxes are ad valorem taxes, which means that tax liability is determined by applying the tax rates to the appraised value of the property, less certain exemptions. Each taxing entity sets its own tax rate, subject to certain limits, and taxes are collected by the county tax assessor-collector, commonly referred to as the “tax office.”*

Within each county, property appraisal is conducted by a separate office called the appraisal district (Potter and Randall Counties share an appraisal district). In each district, property appraisal is the final responsibility of the chief appraiser.

Each year, each central appraisal district conducts property tax appraisals. Pursuant to the Texas Tax Code, a notice of appraised value must be sent to the property owner if the appraised value increases, if an exemption is canceled or reduced, or if a property is added to the appraisal roll. The chief appraiser has until May 1 (April 1 for homesteads), or as soon as practicable thereafter, to mail the notice.

Protesting an Appraisal

If a property owner** disagrees with the appraisal, he may file a protest. The notice of protest must be filed within 30 days from the date the notice was delivered or by May 15, whichever is later. This deadline applies to disputes over the appraised value. “Rollback taxes” due to changes in land use must be protested within 30 days. Other protests have other deadlines, set forth in Texas Tax Code § 41.44. There is no required form for the notice, but the taxpayer should use Form 50-132, which is prescribed by the state comptroller’s office and is available at the appraisal district office.

It is important that the taxpayer pay the portion of the taxable value of the property that is not in dispute. Failure to do so forfeits the right to have the protest heard. The same is true throughout the process (Tex. Tax Code §§ 25.26, 41.4115, 41A.10, 42.08).

An informal meeting with an appraiser often occurs before the Appraisal Review Board (ARB) hears the protest. If the appraiser and the taxpayer are able to agree on a fair value, the process ends there. A warning: Taxpayers arriving at the appraisal district “flashing all their sabres bare” are less likely to succeed in obtaining an agreement. Bluster and threats rarely prove successful. Instead, taxpayers should be amiable, respectful, and prepared with the information an appraiser needs to change his opinion of the property’s value. For an excellent discussion of this process, read “Property Tax Value Protest: Successfully Negotiating With Assessors” by Texas Real Estate Research Center Research Economist Dr. Charles Gilliland. It is every bit as true now as it was in 1998 when it was written.

If the property owner and the appraiser are unable to reach an agreement, the protest will be heard by the ARB, an independent group of citizens appointed by the

board of directors of the appraisal district or, in some counties, by an administrative judge. Before the hearing, the property owner and the appraisal district must exchange copies of the evidence they intend to offer at the hearing. While the ARB hearing is not a court proceeding, it is an evidentiary hearing. Just like a court proceeding, the property owner should come prepared to present evidence of the value of the property (e.g., purchase price, rent rolls, recent appraisals, etc.). The property owner is asking the ARB to change the appraised value, and should be able to give them the information they need to support that decision.

What if Taxpayer Disagrees with ARB’s Decision?

Once the ARB hears the protest and reaches a decision, it must send a written order by certified mail. If the taxpayer is unhappy with the ARB’s decision, he may appeal (1) through the State Office of Administrative Hearings (SOAH), (2) through arbitration, or (3) to the state district court. Deadlines for the appeals are calculated from the date the written order is received.

For a SOAH hearing, the deadline is 30 days. For binding arbitration or the district court, the deadline is 60 days.

Arbitration is an alternative method of dispute resolution in which an impartial third party hears the case and issues a decision. SOAH hearings are available only when the ARB determination of value is greater than \$1 million and certain other criteria are met. Once a case goes to binding arbitration or a SOAH hearing, the decision is final and may not be appealed to the courts.

Similarly to the ARB protest and the arbitration process, a property owner appealing to the district court must pay the amount of taxes required by Texas Tax Code § 42.08, which is the lesser of (1) the amount of taxes due on the portion of the taxable value of the property that is not in dispute; (2) the amount of taxes due on the property under the order from which the appeal is taken; or (3) the amount of taxes imposed on the property in the preceding tax year. Failure to do so forfeits the property owner’s right to a final determination of the appeal.

Exceptions to Exhaustion of Remedies Doctrine

Failure to exhaust administrative remedies is jurisdictional. This means that the court cannot hear an appeal or grant any relief. It has no power to do so. The rationale behind the doctrine is simple: When the law

provides administrative avenues for parties to resolve disputes, they are required to use them before resorting to the courts.

There are exceptions to the exhaustion of remedies doctrine. Exhaustion of remedies is not required when an injunction is sought, and irreparable harm would result; when the appraisal district cannot grant the requested relief; when the issue presented is purely a legal question, rather than a factual one; when certain constitutional issues are involved; and when the appraisal district acts or purports to act outside its statutory powers. Again, taxpayers beware: Whether or not these exceptions apply are fact-specific inquiries. Take care to

attempt all available options before proceeding to court, or the taxpayer may find himself “wild with all regret.”

For further explanation of the remedies available to taxpayers, resources are available on the state comptroller’s office website. In particular, Publication 96-295 describes remedies available to taxpayers.

Nothing in *TG* should be considered legal advice. For advice on a particular situation, consult an attorney. ♣

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* It is a common misconception that the appraisal district and the tax office are one and the same. They are two separate offices. Don’t go to the tax office to protest an appraisal, and don’t go to the appraisal district to pay taxes. Likewise, neither of them houses the records dealing with titles to properties; those records are kept by the county clerk.

** A property owner may, of course, appeal the property’s value. If a lease contract requires a tenant to pay the property taxes, the tenant may make the appeal, but only if the property owner does not. If the lease requires the tenant to pay the property taxes, the property owner must send the tenant a copy of the notice of appraised value. Such a tenant may request that the appraisal district send the notice of appraised value directly to the tenant (Tex. Tax Code § 41.413).