

THE PROPERTY TAX PROTEST PROCESS

A summary of the appeal procedures under the Texas Property Tax Code

Presented by:

Jason C. Marshall

THE MARSHALL FIRM PC

302 N. Market

Suite 510

Dallas TX 75202

214.742.4800

jmarshall@marshall-firm.com

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JASON C. MARSHALL
THE MARSHALL FIRM PC

I. Introduction

The present system for appealing property tax determinations is the result of decades of common law and statutory refinement. While generally favorable to the property owner, the system requires attention to many specific procedural details in order to avoid unwanted dismissal.

II. Background

An understanding of the operation of the administrative and judicial review system under the Property Tax Code requires a brief historical perspective. Since the inception of the Republic of Texas, property taxes have played a key role in the funding of this state's government.ⁱ At common law, local governmental entities levied *ad valorem* taxes based upon the established tax rate multiplied by the value of real property as determined by the local assessor for each taxing entity. Success in appeals of these determinations was limited, at best.

Texas' general laws provided that upon determination of a taxable value of property by a taxing entity, an owner had the opportunity to appeal to an administrative body established by each taxing unit. Of course, this required an appeal to each entity separately, and resulted in inconsistent taxable value determinations. This frustrating, and sometimes hopeless process would change with the creation of the centralized appraisal district.ⁱⁱ

III. The Appraisal District

As part of a comprehensive overhaul of the property tax system in 1979, intended in part to grant taxpayer relief, a new political subdivision of the state was created: the centralized appraisal district.ⁱⁱⁱ This new governmental entity would take on as its primary task the determination of an appraised value for every property within its boundaries and creation of a "tax roll" for the collective use by the taxing entities within its boundaries. This legislative initiative separated the appraisal function from the collection function, which remained with the taxing units. (It also removed the valuation function from elected officials.) Likewise, property owners would now enjoy a single tax roll value that would form the basis for all tax bills. Perhaps more importantly, a single avenue for relief from excessive and unfair valuation was created.

IV. The Appraisal Review Board

The 1981 tax law changes also created an independent administrative review panel to hear property owners' complaints regarding taxable value issues. This Appraisal Review Board ("ARB") is designed to serve as a distinct review body, but in practice is largely associated with the respective appraisal districts.^{iv} Usually comprised of citizens with a background in real estate and appraisal expertise, these panels are envisioned to provide an informal forum for resolution of taxpayer complaints regarding taxable value, and other issues under the domain of the appraisal district. The jurisdiction of the ARB is specifically triggered by the initiation of the protest process by a property owner or other qualified entity.

V. The Protest Process and Deadlines

The right and opportunity to protest and appeal any determination of the appraisal district is most often triggered by some notification or action by the district. As regards taxable value, receipt of the "Notice of Value" triggers a thirty day deadline to initiate a protest of the value identified in the Notice.^v (If no notice is delivered, the deadline is "before June 1.") Similarly, a notice sent to a taxpayer regarding the applicability of an exemption or any other determination of the appraisal district must be protested within thirty days.

A. What May Be protested?

Essentially any action, or non-action, of the appraisal district can be protested and appealed. The Tax Code contains a laundry list of items that may be protested including among others (1) a determination of the appraisal value, (2) an unequal appraisal, (3) denial of an exemption, (4) a determination that the owner is the owner and (5) "any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner."^{vi}

Property owners also have the opportunity, or obligation depending on the situation, to protest a failure to receive a required notice.^{vii}

B. Who May Protest?

The most obvious person or entity protesting an appraisal district action is the property owner as of January 1 of the tax year. However, persons acquiring property after January 1 may protest or continue to pursue a protest initiated prior to the transfer of property.^{viii} Also, if contractually obligated to reimburse an owner for property taxes, a lessor is entitled to protest the appraisal value of the leased property - - if the owner does not first file a protest.^{ix} An authorized agent designated by the property owner may also initiate and pursue a protest.^x

C. How Do You Protest?

The protest process is initiated by the filing of a written "Notice of Protest" by the property owner. While no particular form is required, the notice must identify the protesting property owner, the property and "apparent dissatisfaction with some determination of the appraisal office."^{xii} Forms for protesting various actions are promulgated by the Texas Comptroller and certain appraisal districts, and use of these forms is normally advisable. If using a form that requests identification of the specific nature of the protest from a provided list, it is advisable to select every option that might apply. (e.g. protest both "excessive valuation" and "unequal appraisal.")

VI. Late Protests and Motions to Correct

Failure to timely protest will normally deprive a property owner of the right to protest in that tax year. A late protest is allowed under rare circumstances and upon a showing of good cause.^{xiii} A late protest is also allowed if filed before the tax delinquency date and the subject of the protest is an excessive valuation that exceeds by at least one-third the correct appraisal value. A late-correction penalty of ten percent of the taxes applies to this late correction.^{xiii} Further, certain, limited, "motions to correct the appraisal roll" are authorized as late as five years after the subject tax year, but these corrections are limited to those arising solely from clerical errors, multiple appraisals or property that literally did not exist.^{xiv} The scope and application of these "roll correction" remedies have been limited by the courts in recent years.^{xv}

VII. The Protest Hearing

As a practical matter, the appraisal district will often times request that the property owner conduct at least one informal settlement conference with the district's staff prior to proceeding to an actual ARB hearing. If these discussions do not resolve the protest, then the ARB must provide at least 15 day notice of the hearing date and time.^{xvi}

The ARB hearing process is, by design, informal. The hearings are open to the public and testimony is given under oath.^{xvii} A protesting party may appear by affidavit - - but one should not expect a favorable result unless making the effort to appear. A person may also appear by a designated tax agent or attorney.^{xviii}

The appraisal district is required to adopt hearing procedures and provide a copy of those procedures at least ten days prior to the hearing.^{xix} Further, the property owner is entitled to inspect any evidence that the appraisal district plans to introduce - - and if this information was requested by the protesting party and not provided by the district at least fourteen days in advance of the hearing, that evidence may not be used at the hearing.^{xx}

The ARB has the power of subpoena, but it is rarely used.^{xxi} In larger districts, the ARB may be comprised of smaller panels of not fewer than three members, who hear individual cases that are later submitted for approval to the full board.^{xxii}

Upon hearing a protest the ARB must render its decision by written order, which must be delivered to the property owner by certified mail.^{xxiii}

VIII. Appeal to District Court

If dissatisfied with the Order of the ARB, the primary avenue for relief is to file an appeal in state district court.^{xxiv} (As noted in the "Recent Legislation" section, *infra*, there is also an option to appeal to binding arbitration for properties with a value of less than one million dollars.) While called an appeal in the Tax Code, it is by operation a completely new protest, since the appeal is by trial *de novo*.^{xxv} In fact, the court may not admit into evidence the fact of prior action by the ARB, except to establish jurisdiction.^{xxvi}

The Petition for appealing the ARB Order must be filed within 45 days of receipt of the notice of that order.^{xxvii} If not timely filed, there is no jurisdiction for the appeal. Importantly, the obligation to pay taxes continues to exist, even if an appeal is pending. Finally, failure to pay taxes at least equal to the amount not in dispute may result in dismissal of an appeal.^{xxviii}

Attorneys fees may be awarded to a prevailing property owner in an excessive valuation or unequal appraisal appeal.^{xxix} The amount of the attorneys fees is capped according to a formula in the Tax Code that attempts to keep awards in line with the magnitude of the tax savings.^{xxx} The appraisal district is not entitled to recover attorneys fees under the Tax Code. Upon prevailing, a property owner is entitled to a refund of any overpaid taxes, with interest.^{xxxi} Appeal from a determination of the district court is as provided in civil suits in general.^{xxxii}

IX. Recent Legislation

The following is a summary of recent legislation passed by the 2005 Legislature (79th Session) that relates to property tax protests and appeals:

HB 182: Allows binding arbitration as an alternative to district court appeal. Available for real property with a value less than \$1,000,000.00. Establishes procedures for this alternative appeal. (A companion bill in the Senate was also passed: SB 1351.)

SB 541: Appraisal districts may not post a photograph, sketch or floor plan of an improvement to real property on the internet.

While legislation requiring mandatory sales price disclosure was introduced, it did not pass in the most recent legislative session.

Attachment: Important Property Tax Protest Dates

ⁱ San Antonio established the first free public school system in the State in 1853. The Texas Constitution first adopted in 1869 provided specific authority for local property taxation.

ⁱⁱ A very good, yet brief, explanation of the history of the appraisal district can be found at:

<http://www.dallascad.org/AboutUs/History.aspx>

ⁱⁱⁱ The Texas Property Tax Code was enacted by the 66th Legislature in 1979 by Senate Bill 621, effective Jan. 1, 1980.

^{iv} Most Appraisal Review Board hearings are held at the same location as the Appraisal District, and often times the day-to-day operation of the ARB is handled by appraisal district staff members.

^v TEX. TAX CODE § 41.44.

^{vi} TEX. TAX CODE § 41.411.

^{vii} TEX. TAX CODE § 41.411.

^{viii} TEX. TAX CODE § 41.412.

^{ix} TEX. TAX CODE § 41.413.

^x TEX. TAX CODE § 1.111

^{xi} TEX. TAX CODE § 41.44.

^{xii} TEX. TAX CODE § 41.44(b).

^{xiii} TEX. TAX CODE § 25.25(d).

^{xiv} TEX. TAX CODE § 25.25(c).

^{xv} See, *Kellair Aviation Co. v Travis Central Appraisal District*, 99 S.W. 3d 704 (Tex.App.—Austin 2003, pet. denied.)

^{xvi} TEX. TAX CODE § 41.46.

^{xvii} TEX. TAX CODE § 41.67.

^{xviii} TEX. TAX CODE § 41.66(c).

^{xix} TEX. TAX CODE § 41.66(a).

^{xx} TEX. TAX CODE § 41.67(d).

^{xxi} TEX. TAX CODE § 41.61

^{xxii} TEX. TAX CODE § 41.44(d).

^{xxiii} TEX. TAX CODE § 41.47.

^{xxiv} TEX. TAX CODE § 42.21.

^{xxv} TEX. TAX CODE § 42.23(a).

^{xxvi} TEX. TAX CODE § 42.23(b).

^{xxvii} TEX. TAX CODE § 42.21(a).

^{xxviii} TEX. TAX CODE § 42.08.

^{xxix} TEX. TAX CODE § 42.29.

^{xxx} TEX. TAX CODE § 42.29.

^{xxxi} TEX. TAX CODE § 42.23.

^{xxxii} TEX. TAX CODE § 42.26.