PROPERTY TAX UPDATE

TEXAS COURTS OF APPEALS

SECTION 25.25(C)(3) MAY NOT BE USED TO CORRECT ERRORS AS TO WHICH TAXING JURISDICTIONS A PROPERTY IS LOCATED. TAXES DO NOT BECOME DELINQUENT UNTIL 125 DAYS AFTER A TAXPAYER FIRST BECOMES AWARE THAT TAXES WERE DUE.

SPX Corp. v. Altinger, 14-19-00057-CV, 2020 WL 6791065 (Tex. App.—Houston [14th Dist.] Nov. 19, 2020, no pet. h.).

In tax years 2010 – 2013, a company owned taxable business personal property in Houston. The Chief Appraiser became aware that the appraisal district had misidentified the taxing units applicable to the company's physical location. The Chief Appraiser sought to correct this error under section 25.25(c)(3), claiming that the property did not exist "at the location described in the appraisal roll." The Chief Appraiser mailed a copy of the section 25.25(c)(3) motion to the taxpayer's agent, who misplaced the letter. As a result, the company did not protest or otherwise challenge the motion to correct error, and the appraisal review board corrected the identities of the taxing jurisdictions. Upon learning of this action, the agent filed a protest for lack of notice. The appraisal review board denied the protest because the taxpayer failed to timely pay the property taxes based on the new taxing jurisdictions, and the taxpayer failed to protest the section 25.25(c)(3) motion. The court found that the taxpayer had timely paid the taxes because section 41.44(c)(3) "[extended] [the deadline for tax payment] to the 125th day after the property owner claims to have first received written notice of the taxes in question."

On appeal, the appraisal district claimed the trial court lacked jurisdiction because the company failed to exhaust its administrative remedies under the Chief Appraiser's section 25.25(c)(3) motion to correct the location of the company's property. The court of appeals disagreed, reasoning that "the filing of a motion to correct a property's location under section 25.25(c)(3), without more, is not an action subject to protest." The appraisal district further argued that section 25.25(c)(3) allowed it to correct erroneous listing of taxing jurisdictions. The appellate court disagreed, finding "location means the property's physical location." The court stated, "to receive a section 25.25(c)(3) correction, the appraisal roll must erroneously reflect that a particular form of property exists at a specific location, and, in fact, no such property exists at that location." The appraisal district attempted to argue that "location" for purposes of section 25.25(c)(3) meant the property's taxable situs, but the court rejected the argument, explaining that section 25.25(c)(3) does not authorize a party to challenge "the extent to which business personal property located in a particular jurisdiction is taxable in that jurisdiction." Because the Chief Appraiser's motion did not seek to change the physical location of the property, but instead sought to change the appraisal roll's identification of the taxing units in which the property was taxed, the court rejected the plea to the jurisdiction.

APPRAISAL DISTRICT MUST CONSIDER THE ENTIRETY OF AN AGRICULUTRAL OPERATION IN DETERMINING WHETHER PROPERTY QUALIFIES FOR OPEN-SPACE USE DESIGNATION.

Hood County Appraisal Dist. v. Mandy Ann Mgmt. Ltd., 02-19-00294-CV, 2020 WL 6601595 (Tex. App.—Fort Worth Nov. 12, 2020, no pet. h.) (mem. op.).

A company owned approximately 680 acres of land in Hood County. The appraisal district sent notices to the company determining that a change of use occurred on the northern 240 acres of the tract because that area was being operated as a rock quarry. In response, the owner claimed that it had historically used all 680 acres for grazing livestock, and that the cattle continued to graze the entire 680-acre tract, including the area where the quarry was situated. A jury unanimously found in favor of the landowner and agreed that the 240-acre tract qualified as open-space land. The appraisal district appealed the jury's verdict, arguing there was insufficient evidence to support the jury's decision. The crux of the appraisal district's argument focused on the northern 240 acres, emphasizing the commercial nature of the rock quarry operation and ignored the remainder of the entire 680-tract. The owner argued that agricultural activity on the entire 240-acre property should not be considered in isolation and that, when viewed in its entirety, all of the 680 acres should qualify for the open-space designation. The jury heard from neighboring landowners who testified that livestock, specifically cows, frequently roamed on the subject property. The jury heard evidence regarding the "holistic view" as to how the entire 680-acre tract was used for livestock purposes. The Court of Appeals weighed all of the evidence and found in favor of the taxpayer, noting that "The [appraisal district], in contrast, tried to focus the jury's attention exclusively on the 239.51 acres in the northwest quarry where the quarry was located," despite legal authority and instructions to consider the "entire agricultural operation as a unit" if a property owner ranched several tracts as a unit. In conclusion, the court found that appraisal districts may not fixate on a portion of a multi-tract unit of land used for agricultural or livestock purposes, and may not may not disqualify discrete parcels of farm or ranchland on the basis that a particular parcel of property, in isolation, is not used primarily for livestock or agricultural purposes. Instead, the appraisal district is required to consider the entirety of an agricultural operation of the unit.

REAL PROPERTY LEASED BY A GOVERNMENTAL ENTITY DOES NOT QUALIFY FOR PROPERTY TAX EXEMPTION.

Dallas Cent. Appraisal Dist. v. City of Dallas, 05-19-00875-CV, 2020 WL 6334805 (Tex. App.—Dallas Oct. 29, 2020, no pet. h.), reh'g denied (Dec. 21, 2020) (mem. op.).

The City of Dallas filed a lawsuit appealing the appraisal district's order denying the City's request for a public property tax exemption for property leased by the City. The property was owned by a private entity but was used exclusively for a public purpose. The City argued it was entitled to an exemption pursuant to section 11.11 of the Texas Tax Code (which exempts property from taxation if it is owned by a political subdivision and used for a public purpose). The City owned the leasehold and used the property for a public purpose. The appraisal district

countered that exemptions are only allowed if a governmental entity owns the property at issue. The Dallas Court of Appeals agreed with the appraisal district and denied the City's request for exemption.

APPRAISAL DISTRICT MAY NOT PROCEED TO TRIAL AND OBTAIN A VALUATION DETERMINATION IN DISTRICT COURT IF THE PLAINTIFF TAXPAYER FAILS TO APPEAR FOR TRIAL.

Firststone Heights LLC v. Travis Cent. Appraisal Dist., 03-19-00108-CV, 2020 WL 6478414 (Tex. App.—Austin Oct. 28, 2020, no pet. h.) (mem. op.).

A property owner filed suit to contest the order of the Travis County Appraisal Review Board setting the value of its property. The owner failed to appear for trial; however, the appraisal district appeared, announced ready, and the trial court allowed the trial to proceed in the absence of the property owner. The court rendered judgment fixing the appraised value of the property based on the evidence and arguments presented by the appraisal district at trial. The owner filed an appeal from the trial court's judgment, arguing the proper remedy was dismissal of the case. The Austin Court of Appeals agreed with the property owner and held, "When a plaintiff fails to appear and prosecute his case, the trial court cannot try the plaintiff's cause of action, and the only remedy is to dismiss the same."

TRIAL COURTS HAVE JURISDICTION TO REVIEW APPRAISAL REVIEW BOARD ORDERS IF A TAXPAYER HAS EXHAUSTED ITS ADMINSTRATIVE REMEDIES BY APPEARING BEFORE THE REVIEW BOARD.

Fort Bend Cent. Appraisal Dist. v. McGee Chapel Baptist Church, 611 S.W.3d 443 (Tex. App.—Houston [14th Dist.] 2020, no pet.).

In 2016, an appraisal district notified a church that it was removing the church's religious property tax exemption for tax years 2012-2016. The church timely protested the district's decision. The district asserted it had sent notices to the church regarding the date of the exemption hearing. The church claimed it never received the notices. As a result, the church failed to appear for the appraisal review board hearing. Because the church failed to appear for the hearing, the appraisal review board did not issue a ruling on the protest.

Shortly thereafter, the church filed a protest with the appraisal review board claiming it did not receive notice of the exemption hearing as allowed under section 41.411(a) of the Texas Tax Code. The appraisal review board scheduled a hearing on the church's section 41.411 protest. The church appeared at the hearing, and the appraisal review board denied the church's section 41.411 protest.

The church filed suit seeking review of both determinations. The district filed a plea to the jurisdiction, arguing the church failed to exhaust its administrative remedies prior to filing suit. The Houston Court of Appeals held that the trial court possessed subject matter jurisdiction over the church's section 41.411 protest because the church had exhausted its administrative remedies by appearing at the hearing. However, the court of appeals concluded that the trial court lacked

subject matter jurisdiction over the church's exemption protest because the appraisal review board never issued a final order on the exemption protest, reasoning, "The ARB has not taken action on the merits of the exemption because McGee Chapel did not appear at the Exemption Protest Hearing and the ARB denied McGee Chapel's Section 41.411 protest without reaching the exemption issue. Because the ARB has yet to determine McGee Chapel's Exemption Protest, McGee Chapel has not exhausted its administrative remedies, and the issue is not ripe for judicial review under Chapter 42."

TIMELY PAYMENT OF TAXES DOES NOT GRANT AN OWNER AN INDEFINITE WINDOW OF TIME TO PROTEST APPRAISAL OF BUSINESS PERSONAL PROPERTY. OWNERS ARE REQUIRED TO FILE SECTION 25.25(D) MOTIONS TO CORRECT AND SECTION 41.411 LACK OF NOTICE PROTESTS PRIOR TO THE GENERAL FEBRUARY 1 DELINQUENCY DEADLINE, REGARDLESS OF WHETHER THE TAXES ACTUALLY BECOME DELINQUENT.

Harris County Appraisal Dist. v. IQ Life Sci. Corp., 612 S.W.3d 93 (Tex. App.—Houston [14th Dist.] 2020, no pet.)

A company owned business personal property in Harris County for three tax years. The company did not protest the appraised value of the business personal property for any of the tax years at issue, prior to the February 1 delinquency date of each year after the tax year. Instead, the company paid the exact amount shown on its property tax bills before the February 1 deadline. Years later, the company sought to protest the appraised value of its personal property pursuant to section 25.25(d), arguing it was entitled to correct the appraisal roll. It cited section 41.411, asserting Harris County Appraisal District failed to send notices of the appraised values of its personal property. The company filed suit in district court after the appraisal review board denied its protest. The appraisal district filed a plea to the jurisdiction, arguing the court lacked subject matter jurisdiction to hear Plaintiff's lawsuit because the company failed to timely exhaust its administrative remedies by protesting the appraised values or filing a section 25.25(d) motion prior to the February 1 delinquency date for each respective tax year. In essence, the appraisal district argued Plaintiff waited too long to protest the appraised value of its personal property, and the court lacked jurisdiction to hear the claim. The trial court denied the appraisal district's plea to jurisdiction. On appeal, the company argued that no deadline existed for it to file its section 25.25(d) motion because it had timely paid the taxes owed each year, therefore the statutory deadline – requiring a motion to be filed prior to the delinquency date – was never triggered. The 14th Court of Appeals rejected this argument, reasoning that "any motion made pursuant to section 25.25(d) must be filed before the date the yearly taxes on the subject land become delinquent." The court further explained that "construing section 25.25(d) so that it allows motions for substantive corrections to property taxes to be filed years, even decades after the appraisal rolls have become fixed, would lead to absurd results and is directly contrary to the legislature's intent." Regarding the company's section 41.411 lack of notice protest, the district argued the company's protest was untimely. In response, the company argued there was no deadline to file its protest because it never received the appraisal notices. Alternatively, the company argued its protest was timely because: (1) the statute at issue requires a property owner to file a protest "prior to the date the taxes on the property to which the notice applies become delinquent," and (2) the company timely paid the taxes for each year at issue, and therefore the

taxes never became delinquent. The court rejected these arguments and held that section 41.44(c) and section 41.44(c-3) deadlines described the general February 1 delinquency date that immediately follows each tax year, and that it applies to both the date for filing protests and for payment of taxes.

A TRIAL COURT ABUSES ITS DISCRETION IF IT REQUIRES A TAXPAYER TO PRODUCE EVIDENCE IN DISCOVERY PERTAINING TO THE MARKET VALUE OF A PROPERTY IN A SUIT WHERE THE TAXPAYER HAS ONLY RAISED AN UNEQUAL APPRAISAL CLAIM.

In re APTWT, LLC, 612 S.W.3d 85 (Tex. App.—Houston [14th Dist.] 2020, no pet.).

The owner of an apartment complex filed suit against an appraisal district, claiming unequal appraisal. The appraisal district sought discovery and filed a motion to compel the property owner to produce various documents related to the purchase of the apartment complex, including all appraisals, sales documents, and closing statements arising out of the owner's purchase. The owner filed an interlocutory challenge, claiming that the trial court had abused its discretion by asking for documents irrelevant to the suit. The court of appeals reversed the trial court's order finding that the trial court abused its discretion because, in an unequal appraisal suit, the scope of discovery was limited to matters relevant to the owner's unequal appraisal claim. The court concluded, "evidence of market value of the subject property is not necessarily relevant in such an action."

HEIRS OF DECEASED TAXPAYER MAY NOT COLLATERALLY ATTACK A DELINQUENT TAX JUDGMENT ON THE GROUNDS THAT PUBLIC RECORDS EXISTED AT THE TIME OF JUDGMENT, DEMONSTRATING THAT PUBLICATION BY NOTIFICAITON WAS NOT APPROPRIRATE.

Mitchell v. Map Res., Inc., 08-17-00155-CV, 2020 WL 5793135 (Tex. App.—El Paso Sept. 29, 2020, no pet.).

In 1999, taxing authorities sued to foreclose tax liens on mineral interests. The authorities claimed they could not locate and personally serve all of the defendants. As a result, they cited several defendants by publication, i.e. the taxing authorities "served" the defendants by publishing notice of the lawsuit. The attorney for the taxing units testified in support of serving the defendants by publication, claiming the defendants were unknown and could not be located after a diligent inquiry. The tax delinquency case proceeded to non-jury trial, and the court issued a judgment foreclosing the defendants' interests. Shortly thereafter, those interests were sold at a sheriff's sale.

Fifteen years later, heirs of one of the defendant's filed suit against the purchasers of the mineral interests to set aside the tax judgment. The heirs claimed the 1999 tax judgment was void as to their relative because "there was a complete failure of service of citation" on the deceased defendant and as a result she was thereby due process. The heirs argued that citation by publication was deficient because the ancestor was alive and her address could have been easily discovered by searching public records, including various warranty deeds of record. In short, the

plaintiffs argued the taxing authorities could have easily ascertained the address of their relative and served her in person, which plaintiffs argued due process required. On appeal, the El Paso Court of Appeals determined that the district court had jurisdiction over the defendant in the 1999 tax suit by service by publication. The court ruled the heirs could not collaterally attack the 1999 judgment with extrinsic evidence but could only attack based on the testimony and evidence presented to the court.

NO TAX SITUS EXISTS IN A COUNTY FOR TRUCKS THAT SPEND ONLY A FEW HOURS TO A FEW DAYS IN A COUNTY. THE FACT THAT A PARENT CORPORATION OWNS A FACILITY IN A COUNTY DOES NOT PROVIDE GROUNDS FOR SITUS OF PROPERTY OWNED BY ITS SUBSIDIARY.

Dallas Central Appraisal District v. National Carriers, Inc., No. 05-18-01520-CV, 2020 WL 2124178 (Tex. App.–Dallas, May 5, 2020, no pet.).

A trucking company based in Kansas owned a facility in Dallas County which it used to recruit new drivers, provide orientation and safety information for truck drivers, provide administration and perform some light maintenance for trucks. One of its subsidiaries, also based in Kansas, owned trucks that drove irregular routes across the United States. Individual trucks stopped in Dallas County for a few hours up to a few days. The appraisal district claimed it had the right to tax the portion of the truck fleet that moved through Texas in Dallas County because those trucks cumulatively were located in Dallas County "with such a permanence that it became part of the general mass of property within the boundaries of the taxing authority." In support of its position, the appraisal district relied upon a case involving crude oil stored in tanks while awaiting transportation within the state. The court found the analogy to be "inapt" because individual trucks are distinguishable from an "undifferentiated mass of oil [that is] continuously present in [a] county." Given the lack of any permanent presence of any of the individual trucks, the county could not claim tax situs for them. Further, the court ruled that parent entities and their subsidiaries are separate persons, so the fact that a parent entity owned property in a county is irrelevant as to whether the property of its subsidiary had taxable situs in the county.

THE FAILURE TO RAISE TIMELY FILING OF AN OPEN SPACE LAND VALUATION APPLICATION BEFORE AN APPRAISAL REVIEW BOARD PRECLUDED AN APPEAL TO DISTRICT COURT.

Z Bar A Ranch, LP v. Tax Appraisal District of Bell County, No. 03-18-00517-CV, 2020 WL 1932908 (Tex. App.–Austin, April 22, 2020, no pet.)

This case involves much conflicting testimony by the taxpayers both at the appraisal review board and at trial. The court of appeals in reviewing the case found that the taxpayers testified before the appraisal review board that they had not filed a timely open space land valuation for the property after its acquisition. (The property had a long-standing history of open space valuation but new owners are required to apply for the valuation. Appraisal districts are not required to send new owners an application or to remind them to file an application). On appeal in district court, they changed their testimony to state that they had filed an application on a timely basis and that the testimony before the appraisal review board was in error. They relied

upon the *de novo* trial provisions of the Tax Code for their ability to do so. The court noted that the taxpayers before the appraisal review board only argued that the open space land valuation should have been carried over from the prior owner and the failure of the appraisal district to notify them of its removal deprived them of their rights. The court noted the testimony of one of the owners at the hearing where he stated that "we" had not filed an application. Based upon the record, the appellate court found that the taxpayers had failed to exhaust their administrative remedies by raising the issue of a timely filing of an open space land application with the district and the district's denial of it without notice. In doing so, the court found that the trial court lacked jurisdiction to try the case.

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