

2010 PROPERTY TAX CASES

And Attorney General's Opinions

Last updated: August 2, 2010

Cases

Strauss v. Belt

2010 WL 2867341 (Tex. App. – Austin, July 23, 2010, no pet hist.) (to be published)

Issues: excess proceeds following tax sale

Strauss sold real property to Gitlin in 1985. Taxing units eventually sued Strauss and Gitlin for delinquent taxes on the property for the years 1984 through 2001. The trial court entered judgment for the taxing units and ordered the property sold. Less than two weeks before the sale, Gitlin sold the property to Belt using a quitclaim deed. The tax sale occurred as scheduled and resulted in \$20,000 in excess proceeds. Belt claimed the excess proceeds, and the trial court awarded them to him. Strauss appealed.

Strauss argued that the deal between Gitlin and belt should be considered as a transfer of excess proceeds. It was invalid because it did not comply with the requirements of §34.04(f) of the Tax Code. That provision allows an assignment of excess proceeds only after they have been deposited with the court and requires the assignor to sign a sworn statement to the effect that he understands what he is doing. The court of appeals, however, ruled that the transaction was a sale of the property itself, not the transfer of a right to excess proceeds. The requirements of §34.04(f) did not apply. Strauss also argued that Belt had waived his claim to excess proceeds when he made no effort to pay the delinquent taxes or postpone the tax sale after buying the property or to redeem it after the tax sale. The court disagreed and found no waiver by Belt.

The court of appeals noted that the legislature amended the law in 2009 to address cases like this one. Now, in most cases, a person like Belt who buys a property after a court has ordered a tax sale but before the sale has occurred cannot claim any excess proceeds from the sale. That amendment, however, came too late to apply to this case. Thus, the court of appeals affirmed the judgment awarding the excess proceeds to Belt.

Bilinsco, Inc. v. Harris County Appraisal District

2010 WL 2873606, (Tex. App. – Houston [1st Dist.], July 22, 2010, no pet hist.) (to be published)

Issues: service of process

Bilinsco protested the appraisal of its property and then filed suit to appeal the ARB's order. Its petition was filed timely and named the appraisal district and the ARB as defendants. Bilinsco asked the court clerk to have both the district and the ARB served with the suit papers. The ARB was served, but the district was not. The ARB filed an

answer and exchanged discovery documents with Bilinsco. Ten months after the suit was filed, the district and the ARB asked the trial court to dismiss it because the district had not been served. A month after that, Bilinsco contacted the clerk and requested again that the district be served. The district was served and filed an answer objecting to the late service. The trial court dismissed the case, and Bilinsco appealed.

The court of appeals explained that if a plaintiff generally satisfies a statute of limitations by filing his suit on time. The law does not specify a time period within which a defendant must be served, but the plaintiff must be diligent and check with the clerk to make sure that service has occurred. If the plaintiff is diligent, then service on the defendant will be considered timely even if it occurs after the filing deadline. In this case, however, Bilinsco was not diligent about having the district served.

Bilinsco argued that the same lawyers represent both the district and the ARB and that the ARB's discovery responses included the district's name in the style (title) of the case. The ARB's answer and responses said they were being filed by the "Defendant" without specifying that "Defendant" meant the ARB. Bilinsco claimed that it was misled into believing that the district had waived its right to be served. The court pointed out that the answer had specified that "Defendant" meant the ARB and that the discovery responses had identified the ARB but not the district as a party. Even if the discovery responses were misleading, the ARB filed them more than seven months after the suit was filed. If it had been diligent, Bilinsco would have already had the district served by then. Bilinsco did not have an excuse for its failure to have the district served, and the district was not estopped to complain about the lack of service. The court of appeals affirmed the dismissal of the case.

Houston Independent School District v. Morris

2008 WL 2874463 (Tex. App. – Houston [1st Dist.], July 22, 2010, no pet hist.) (to be published)

Issues: exhaustion of remedies; defenses to delinquent-tax suit

Taxing units sued Morris for delinquent taxes on one property that he owned and four properties that he did not own. Morris paid all of the taxes and filed a counterclaim against the taxing units for a refund of the taxes on the properties that he did not own. The taxing units promptly dismissed their own claims leaving only Morris's counterclaims in the case. They then asked the trial court to dismiss Morris's claims of non-ownership because he had not raised them in a protest before the ARB. When the court refused to dismiss the Morris's claims, the taxing units appealed.

The court of appeals reversed the trial court and dismissed Morris's claims. The court explained that a claim of non-ownership is a ground for a protest to the ARB and that a person must ordinarily raise such a claim before the ARB before he can raise it in court. Section 42.09 of the Tax Code allows a person sued for delinquent taxes to defend himself by showing that he did not own the property. In this case, however, Morris was no longer asserting his claim of non-ownership defensively. The taxing units had already dismissed their claims against him so there were no claims against which he

could assert a defense. Morris was seeking affirmative relief against the taxing units, and he could not do so without having first raised his claim of non-ownership before the ARB. Morris's claim that he had paid the taxes under duress was of no consequence.

AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal District

2010 WL 2869764 (Tex. App. – Waco, July 21, 2010, no pet. hist.)(not reported)

Issues: CHDO exemption

Arbors sought community housing development organization (CHDO) exemptions for two apartment complexes. The appraisal district denied the exemptions, and, after an unsuccessful protest before the ARB, Arbors filed suit. The trial court entered a summary judgment for the district after finding that there was no evidence to show that Arbors satisfied several of the requirements for the exemption. Arbors appealed.

The court of appeals focused on just one of the requirements for an organization seeking a CHDO exemption. Section 11.182(g) of the Tax Code requires the organization to have an annual audit and to provide copies to the appraisal district and to the Texas Department of Housing and Community Affairs. Arbors offered no evidence that it had ever provided copies of audits to the TDHCA. In the absence of any evidence to show that Arbors had satisfied this requirement, the court of appeals affirmed the summary judgment for the district.

Bolling v. Farmers Branch Independent School District

2010 WL 2542285 (Tex. App. – Dallas, June 26, 2010, no pet hist.) (to be published)

Issues: sufficiency of appellate brief

The trial court entered a judgment against Bolling in a delinquent-tax case, and Bolling appealed. Instead of hiring a lawyer, Bolling wrote his own appellate brief. The brief generally complained that the taxing units had not provided discovery information that Bolling wanted but it did not identify any particular order from the trial court that it alleged to be erroneous. It claimed that Bolling could not be taxed because he had no "commercial nexus" and because he had not agreed to be taxed. He cited some books about wills and trusts and some federal law having nothing to do with Texas property taxes. The court of appeals gave Bolling a chance to amend his brief, but he failed to make it any more comprehensible. The court dismissed the appeal as a result of Bolling's failure to identify particular questions of law to be decided, make clear legal arguments and cite relevant legal authorities. The court noted that even a party without a lawyer must comply with the requirements for briefs.

Bryan Independent School District v. Cune

2010 WL 2541841 (Tex. App. – Houston [14th Dist.], June 24, 2010, no pet hist.)(not reported)

Issues: excess proceeds following tax sale

Taxing units sued Jenkins for delinquent taxes on real property. When he failed to answer the suit, the court ordered the property sold. The sheriff's sale resulted in excess proceeds. The district clerk sent notices of the excess proceeds to the attorney *ad litem* appointed to represent Jenkins and to Jenkins himself at the address reflected in the court's records. No one attempted to claim the excess proceeds until almost five years after the sale. Then, Cune filed a motion claiming to be the assignee of Jenkins's rights. The taxing units objected to Cune's claim on the basis that it was not filed within the two years following the sale as required by §34.04 of the Tax Code. Cune responded that Jenkins had never received the clerk's notice of the excess proceeds. The trial court awarded the excess proceeds to Cune on the grounds that the delinquent tax claims had already been paid. The taxing units appealed.

The court of appeals reversed the trial court's order. The higher court explained that under §§34.03 and 34.04, a claim for excess proceeds *must* be filed within the two years following a tax sale. Because no timely claim was filed, the clerk should have distributed the money to the taxing units. It did not matter whether Jenkins received the clerk's notice. Even if he did not, the two-year deadline did not violate his right to due process. It did not matter that the taxing units had already had their tax claims paid in full. Further, it did not matter that the taxing units had not filed their own claims. The clerk was supposed to pay them automatically when no one filed a claim during the two-year period. Cune had no right to the money.

In re Jefferson County Appraisal District

2010 WL 2347030 (Tex. App. – Beaumont, June 10, 2010, no pet hist.) (to be published)

Issues: discovery of trial preparation

Total sued the appraisal district to contest the appraised value of a refinery. While deposing an appraiser designated by the district as a testifying expert, Total's lawyers learned that the district's lawyers had hired a jury consultant and conducted a practice trial to help them prepare for the actual trial. The expert answered the deposition questions about his experience in the practice trial. Total then sought to make the district provide it with much more information about the consultant and the practice trial. Total demanded that the district present the consultant for his own deposition. When the district refused, Total sought an order from the trial court. The court ordered the district to provide the requested information and to produce the consultant for deposition. The district then applied to the court of appeals for a writ of mandamus to overrule the trial court's order.

The court of appeals ruled that the district did not have to provide the requested information or produce the consultant for deposition. The court based its ruling on the "work-product privilege" that generally protects a lawyer's ability to analyze a case and prepare for trial without having to disclose all his thoughts and strategies to the other side. The privilege extends to consultants who assist the lawyer. Total had no right to discover information about the consultant who was hired to help the district's lawyers determine the most effective way to persuade a jury. The information might be

discoverable if the consultant's opinions had been reviewed by a testifying expert, but the district's testifying appraiser had not read or heard the consultant's advice or opinions. Total had the right to ask the appraiser about his own experience with the practice trial, but it had no right further to information about the work of the district's lawyers and their consultant.

Harris County Appraisal District v. Wilkinson

2010 WL 2220582 (Tex. App. – Houston [1st Dist.], June 3, 2010, no pet hist.) (to be published)

Issues: homestead exemption

The Wilkinsons owned a home and received a homestead exemption in Montgomery County from 1999 through 2003. They owned a storage facility in Harris County where a mobile home was located. In December of 2003, they bought a large house in Harris County, but it needed some work before they could move in. At about the same time, they moved into the mobile home. In late January of 2004, they moved into their new house. They claimed that the mobile home was their residence homestead as of January 1, 2004 because they slept there, held a new year's party there and received a bank statement there. Mr. Wilkinson got a driver's license showing the mobile home's address. The appraisal district, however, denied their exemption application. They protested the district's decision, and then took their claims to court. The trial court ruled that the Wilkinsons were entitled to the homestead exemption for the mobile home because it was their principal residence as of January 1, 2004. The district appealed.

The court of appeals explained that a person's *principal* residence is his main or primary residence that he occupies on a regular basis. In this case, the Willinsons intended the mobile home to be only a temporary residence while they waited for the work to be completed on their new house. In the court's words, "A transient stay in a mobile home pending a move from one primary residence to another does not transform the temporary residence into a 'principal residence.'" The court of appeals reversed the trial court and ruled that the mobile home did not qualify for the homestead exemption.

Editor's comment: Although the court's opinion does not mention this fact, it is clear that the Wilkinsons wanted to establish a very low school-tax freeze on the mobile home and then transfer it to their new house. The court's opinion may help end this kind of abuse of tax freezes.

Hotel Corp. International v. Harris County Appraisal District

2010 WL 2195461 (Tex. App. – Houston [14th Dist.], June 3, 2010, no pet hist.)(not reported)

Issues: exhaustion of remedies; payment of taxes pending appeal

Hotel Corp. protested the 2006 appraisals of its real and personal property, but failed to appear at the ARB's hearings. Sometime later, Hotel Corp. filed motions under §25.25(d) of the Tax Code asking the ARB to correct the values. It appeared for the

hearing on its personal-property, and the ARB reduced that value. It did not appear for the hearing on its real-property. Hotel Corp. then sued the appraisal district and the ARB demanding that both values be lowered and that the ARB conduct more hearings. It did not pay any taxes until months after they became delinquent on February 1, 2007. At the request of the defendants, the trial court dismissed the case, and Hotel Corp. appealed.

The court of appeals upheld the trial court's dismissal of the case. It explained that because Hotel Corp. failed to pay taxes on time, it forfeited whatever rights it might have otherwise had to appeal the ARB's actions or to have the ARB conduct additional hearings. Section 41.15 applies to a situation in which a property owner is entitled to a hearing but the ARB will not hold the hearing. It allows a property owner to sue and allows a court to order the ARB to hold a hearing. It does not apply where the ARB attempts to hold hearings but the property owner does not appear. Further, when the ARB attempts to give a property owner a hearing (even a flawed hearing), §41.15 does not provide an alternative to an appeal of the ARB's determination. The property owner can only file an appeal under Chapter 42, and he must comply with Chapter 42's statute of limitations and its requirement for a conditional payment of taxes.

F-Star Socorro, L.P. v. El Paso Central Appraisal District

2010 WL 2142443 (Tex. App. – El Paso, May 28, 2010, no pet hist.) (to be published)

Issues: exhaustion of remedies; findings of fact and conclusions of law

Several taxing units agreed to grant 50% tax abatements on F-Star's new commercial development. F-Star then leased the property to Thompson through a lease calling for Thompson to pay the taxes on the property. F-Star misunderstood the nature of tax abatements and apparently thought that: 1) the appraisal district should appraise the property at its full value; 2) Thompson should pay taxes on the full, unabated value; and 3) the taxing units should share the taxes with F-Star. When the appraisal district applied the abatement correctly and exempted 50% of the property's value, F-Star sued it without first filing a protest with the ARB. At the request of the appraisal district, the trial court dismissed the case. The court ignored F-Star's request for findings of fact and conclusions of law. F-Star appealed.

The court of appeals upheld the trial court's dismissal of the case because F-Star had not exhausted the remedies available from the ARB. F-Star's claim, i.e., that the appraisal district had wrongly exempted some of the property's value, had to be raised before the ARB before it could be raised in court. Under §§41.41 and 42.09 of the Tax Code, any action by an appraisal district must be protested if it applies to a property owner and affects the owner adversely. Further, the trial court had no duty to make findings and conclusions because it dismissed the case as a matter of law. There were no disputed factual issues and the trial court did hear evidence or decide any factual issues.

Unified Housing of Parkside Crossing, LLC v. Appraisal Review Board of Williamson County

2010 WL 2133955 (Tex. App. – Austin, May 26, 2010, no pet hist.) (not reported)

Issues: exhaustion of remedies

In 2005, United protested the appraisal district's denial of an exemption for United's property. In the notice of protest, United's lawyer listed several dates when he would be unavailable and asked that the ARB not schedule its hearing on one of those dates. The ARB sent the lawyer a notice stating that the hearing was scheduled on one of those black-out dates. According to the lawyer, he telephoned the ARB and someone told him that the hearing would be rescheduled if he faxed in a written request. He sent the written request, but the ARB did not reschedule the hearing. A representative called the lawyer to tell him that the hearing would not be rescheduled. Neither the lawyer nor anyone else appeared at the hearing on behalf of United, and the ARB dismissed the protest. In 2008, United sued the ARB alleging that it had been improperly denied a hearing on its 2005 protest. The ARB asked the trial court to dismiss the case because it was filed too late and because United had not exhausted its remedies before the ARB. The court dismissed the case, and United appealed.

The court of appeals affirmed the dismissal of the case. Although United had pleaded a claim under §41.45 of the Tax Code to compel the ARB to hold another hearing and had not sought to appeal an ARB order under Chapter 42, the same statute of limitations applied. The suit was barred because United did not file within the forty-five days after it received notice of the ARB's dismissal of its protest. (see §42.21, which now provides a sixty-day period for the filing of an appeal). Additionally, United failed to exhaust the remedies available from the ARB. By not sending a representative or even an affidavit to the protest hearing, United denied the ARB a meaningful opportunity to consider the protest. The trial court had no jurisdiction to consider a matter that had not been considered by the ARB.

Estate of Dorothy Springer v. Dallas County

2010 WL 1909597 (Tex. App. – Dallas, May 12, 2010, no pet hist.)(not reported)

Issues: evidence in delinquent-tax suit; service of process; parties to delinquent-tax suit

Several taxing units sued Springer's estate for delinquent taxes on real property. Gore filed an answer as the executor of the estate. The school district was not a party, and the city was dismissed as a party during the course of the case. The trial court entered judgment for the other taxing units. Six months later, they asked the court to vacate its judgment and reopen the case so that the city and the school district could be included. The court agreed, and the city and school district intervened. When the court conducted a new hearing, Gore did not show up. The taxing units offered their delinquent-tax records as evidence. Those records showed that the property was owned by someone named King. The court nevertheless entered a default judgment in favor of all the taxing units and against the estate. The estate appealed.

On appeal, the estate made several arguments. It argued that it had not been properly served with the original petition filed by the taxing units. The court of appeals explained

that the estate had waived that claim when Gore filed an answer on its behalf. The estate argued that it had not been sent copies of some of the pleadings and motions filed by the taxing units. The record, however, showed that the copies had been mailed to Gore at the two addresses that he had used on the estate's own pleadings. The estate complained about the way the trial court had vacated its first judgment in order to allow the city and school district to intervene. The court of appeals explained that §33.56 of the Tax Code allows a taxing unit that is a party to a case to file a motion asking a trial court to vacate a judgment so that necessary parties can be included. There is no time limit on the filing of such a motion. The city and the school district were necessary parties under §33.44, and the trial court properly vacated its first judgment in order to allow them to intervene.

The estate also argued that the delinquent-tax records did not constitute sufficient evidence to support a judgment against the estate. The court of appeals agreed. It reasoned that when delinquent-tax records do not show the property to be owned by the defendant in the case, they do not support a judgment against that defendant. Ordinarily, under §33.47, delinquent-tax records provide all the proof necessary for a judgment, but not when they do not identify the defendant as the owner of the property. The court of appeals reversed the trial court's judgment and sent the case back to the lower court for a new trial.

Editor's Comment: If taxing units discover that their records show the wrong person as the owner of a property, they should notify the appraisal district. Under §25.25, the appraisal district can correct the records. When the taxing units sue the actual owner, their records will correctly show him as the owner.

Brandywood Housing, Ltd. v. Harris County Appraisal District

2010 WL 1752334 (Tex. App. – Houston [14th Dist.], May 4, 2010, no pet hist.)(not reported)

Issues: low-income housing exemption

Brandywood owned an apartment complex that provided housing to low and moderate-income residents. Brandywood applied to the appraisal district for an exemption for the complex under §11.1825 of the Tax Code. Its applications concerned the 2004 and 2005 tax years. The applications were still pending in mid 2006 when the appraisal district asked Brandywood to provide evidence that the taxing units that taxed the complex had approved the exemption. In very populous counties (those with 1.4 million or more people), a low-income housing exemption is a local-option exemption that must be approved by taxing units. Brandywood did not produce any evidence of approval by the taxing units, and the appraisal district denied the applications. After an unsuccessful protest before the ARB, Brandywood filed suit. The trial court entered a summary judgment for the district, and Brandywood appealed.

On appeal, Brandywood argued that the appraisal district had waived the requirement that a low-income housing exemption be approved by the taxing units. It claimed that the waiver occurred when the district did not raise the issue until mid 2006. The court of

appeals rejected Brandywood's argument and found no legal deadline for the district to have raised the question of whether the taxing units had approved the exemption. The district had never shown any clear intent to not enforce the requirement of taxing-unit approval. The court of appeals did not decide whether an appraisal district even *could* waive a legal requirement intended to benefit taxing units. The court affirmed the trial court's judgment for the district.

KM-Timbercreek, LLC v. Harris County Appraisal District

2010 WL 1729401 (Tex. App. – Houston [1st Dist.], April 29, 2010 no pet. hist.) (not reported)

Issues: who can file a protest or appeal

In 2008, the appraisal district appraised a property in the name of Yorktown. Yorktown protested the appraisal of the property, and then filed suit to appeal the ARB's order. Yorktown named itself in the lawsuit "as the property owner." Then, the appraisal district realized that Yorktown did not actually own the property. It had sold the property to Timbercreek in 2006. Yorktown amended its pleadings to add Timbercreek as a plaintiff. The appraisal district asked the trial court to dismiss the case because Yorktown did not own the property and because Timbercreek had not filed a protest. The trial court refused to dismiss the case, and the appraisal district appealed.

The court of appeals reversed the trial court's decision and dismissed the case. The court explained that because Yorktown had ceased to own the property prior to 2008, it had no standing to contest the 2008 appraisal in a protest or lawsuit. The plaintiffs tried arguing that §42.21 of the Tax Code allows the pleadings in a pending suit to be amended to "correct or change the name of a party." The court of appeals rejected that argument and explained that §42.21 does not allow a property owner like Timbercreek to appear as a plaintiff in an appeal when it never filed a protest with the ARB. The plaintiffs also tried arguing that Yorktown was not really a separate entity, that it was really just a "common name" for Timbercreek and that the Rules of Civil Procedure allow a party to substitute its formal name for its common name during the course of a suit. The record, however, contained no evidence that Timbercreek had ever done business under the name of Yorktown. They were separate companies.

Harris County Appraisal District v. Shen

2010 WL 1729397 (Tex. App. – Houston [1st Dist.], April 29, 2010, no pet hist.)(not reported)

Issues: who can file a protest or appeal

In 2007, the appraisal district appraised a property in the name of Shen. Shen protested the appraisal of the property, and the ARB reduced the appraised value. Shen then filed suit to appeal the ARB's order and seek an even lower appraised value. Shen named himself in the lawsuit "as the property owners." The district then discovered that the properties had been sold by Shen to Norberwick sometime prior to January 1, 2007. The district asked the trial court to dismiss the case because the plaintiff, Shen did not

own the property. Before the trial court could act on the appraisal district's request, Shen amended its pleadings to add Norberwick as a plaintiff. The district again urged the trial court to dismiss the case. The trial court refused to dismiss the case, and the appraisal district appealed.

The court of appeals reversed the trial court's decision and dismissed the case. The court explained that because Shen did not own the property in 2007, he had no standing to contest the 2007 appraisal in a protest or lawsuit. The plaintiffs tried arguing that §42.21 of the Tax Code allows the pleadings in a pending suit to be amended to "correct or change the name of a party." The court of appeals rejected that argument and explained that §42.21 does not allow a property owner like Norberwick to appear as a plaintiff in an appeal when it never filed a protest with the ARB. The plaintiffs also tried arguing that Shen was not really a separate entity, that he was really just a "common name" for Norberwick and that the Rules of Civil Procedure allow a party to substitute its formal name for its common name during the course of a suit. The record, however, contained no evidence that Norberwick had ever done business under the name of Shen. Norberwick was a limited partnership, and Shen was a separate and distinct, flesh-and-blood human being.

Milbank 521 Sam Houston I, LLC v. Harris County Appraisal District

2010 WL 1729396 (Tex. App. – Houston [1st Dist.], April 29, 2010, no pet hist.)(not reported)

Issues: who can file a protest or appeal

In 2008, the appraisal district appraised several real properties in the name of Atrium. Atrium protested the appraisals of the properties, and the ARB reduced the appraised values. Atrium then filed suit to appeal the ARB's orders and to seek an even lower appraised value. Atrium named itself in the lawsuit "as the Property Owners and the Property Owners." The district then discovered that the properties had been sold by Atrium to Milbank in 2007. The district asked the trial court to dismiss the case because the plaintiff, Atrium did not own the properties. Before the trial court could act on the appraisal district's request, Atrium amended its pleadings to add Milbank as a plaintiff. The district again urged the trial court to dismiss the case. The trial court granted the district's request, and the plaintiffs appealed.

The court of appeals upheld the dismissal of the case. The court explained that because Atrium did not own the properties in 2008, it had no standing to contest the 2008 appraisals in a protest or lawsuit. The plaintiffs tried arguing that §42.21 of the Tax Code allows the pleadings in a pending suit to be amended to "correct or change the name of a party." The court of appeals rejected that argument and explained that §42.21 does not allow a property owner like Milbank to appear as a plaintiff in an appeal when it never filed a protest with the ARB. The plaintiffs also tried arguing that Atrium was not really a separate entity, that it was really just a "common name" for Milbank and that the Rules of Civil Procedure allow a party to substitute its formal name for its common name during the course of a suit. The record, however, contained no evidence that

Milbank had ever done business under the name of Atrium. They were separate companies.

RRB Land Investments, Ltd. v. Harris County Appraisal District

2010 WL 1729390 (Tex. App. – Houston [1st Dist.], April 29, 2010, no pet hist.)(not reported)

Issues: who can file a protest or appeal

In 2008, the appraisal district appraised real property in the name of Cypresswood. Cypresswood protested the appraisal of the property, and the ARB reduced the appraised value. Cypresswood then filed suit to appeal the ARB's order and seek an even lower appraised value. Cypresswood named itself in the lawsuit "as the Property Owners and the Property Owners." The district then discovered that the properties had been sold by Cypresswood to RRB in 2006. The district asked the trial court to dismiss the case because the plaintiff, Cypresswood did not own the property. Before the trial court could act on the appraisal district's request, Cypresswood amended its pleadings to add RRB as a plaintiff. The district again urged the trial court to dismiss the case. The trial court granted the district's request, and the plaintiffs appealed.

The court of appeals upheld the dismissal of the case. The court explained that because Cypresswood did not own the property in 2008, it had no standing to contest the 2008 appraisal in a protest or lawsuit. The plaintiffs tried arguing that §42.21 of the Tax Code allows the pleadings in a pending suit to be amended to "correct or change the name of a party." The court of appeals rejected that argument and explained that §42.21 does not allow a property owner like RRB to appear as a plaintiff in an appeal when it never filed a protest with the ARB. The plaintiffs also tried arguing that Cypresswood was not really a separate entity, that it was really just a "common name" for RRB and that the Rules of Civil Procedure allow a party to substitute its formal name for its common name during the course of a suit. The record, however, contained no evidence that RRB had ever done business under the name of Cypresswood. They were separate companies.

Dallas Central Appraisal District v. 717 S. Good Latimer Ltd.

2010 WL 1729343 (Tex. App. – Dallas, April 29, 2010, no pet hist.)(not reported)

Issues: tax payment while appeal is pending

Good Latimer protested the 2008 appraisal of its property and then filed suit to appeal the ARB's order. February 1, 2009, the delinquency date for 2008 taxes, came and went without Good Latimer having paid anything at all. In May of 2009, Good Latimer filed a pauper's affidavit claiming that it was unable to pay any 2008 taxes on the property. The appraisal district asked the trial court to dismiss the case on the basis of Good Latimer's failure to pay. Good Latimer asked the court to rule that it had substantially complied with the payment requirement of §42.08 of the Tax Code. The trial court ruled for Good Latimer, and the appraisal district appealed.

The court of appeals explained that §42.08 ordinarily requires a property owner to pay at least some of the taxes on his property. If he does not, the trial court should dismiss

his appeal. The statute, however, also allows a property owner to file a pauper's affidavit. If the trial court finds that requiring the property owner to pay (or dismissing his case) would unreasonably restrain his right of access to the court, the court can allow the case to proceed without a payment. The court of appeals also noted that a property owner need only "substantially comply" with §42.08. That means that he must perform the "essential requirements" of the statute. Section 42.08 allows the filing of a pauper's affidavit and does not expressly require that it be filed before the delinquency date. The court of appeals concluded that Good Latimer had substantially complied with §42.08 and affirmed the trial court's ruling for Good Latimer.

Editor's Comment: Because §42.08 allows the filing of a pauper's affidavit as a substitute for a tax payment, it is reasonable to infer that the legislature intended the same deadline to apply to both. The court rejected this inference, and its opinion provides no guidance about when a property owner may file a pauper's affidavit. Further, suppose that a corporate property owner has the money to pay taxes in January, but it does not pay. In April, it distributes all its money to its shareholders and has none left for paying taxes. Can the property owner claim pauper's status based on events that occur after the delinquency date? This opinion raises troubling questions.

Lee v. Dykes

312 S.W.3d 191 (Tex. App. – Houston [14th Dist], April 27, 2010, no pet hist.)

Issues: evidence of market value

This is not a property tax case, but does concern how one proves the market value of a property. When Mr. Dykes and Ms. Lee broke off their engagement, he sued her to recover the market value of her engagement ring. In an effort to prove the ring's value, Dykes testified that he had paid \$26,000 for it seventeen months prior to the break-up. The jury found that the ring was worth \$13,000 at the time of the break-up. Lee appealed.

The court of appeals ruled that the purchase price of the ring did not constitute sufficient evidence of its market value, even if Lee did not object to Dykes's testimony. There was no other evidence of the ring's value. Dykes did not even testify to his own opinion of the value at the time of the break-up. Because Dykes had failed to prove the ring's value, he was not entitled to any compensation for his loss. The court of appeals reversed the trial court's judgment for Dykes.

In re Village at Oakwell Farms, Ltd.

428 B.R. 372 (Bkrtcy. W.D. Tex., April 19, 2010)

Issues: deadline for contesting tax in bankruptcy

Oakwell protested the 2009 appraisal of its apartment complex. Oakwell did not appeal the ARB's order to a state court under Chapter 42 of the Tax Code. During the sixty-day period for filing an appeal, however, Oakwell filed a petition with the bankruptcy court. Sometime after the sixty-day period had passed, Oakwell, acting as a debtor in

possession, sought to contest the 2009 appraisal in the bankruptcy court under §505 of the Bankruptcy Code. The bankruptcy court had to decide which deadline applied and whether Oakwell could still contest the appraisal. Oakwell argued that §108 of the Bankruptcy Code gave it two years in which to contest the appraisal. The court, however, ruled that the controlling statute was §505(a)(2)(C). That section says that a bankruptcy court cannot consider the amount or legality of a property tax if the deadline has passed for contesting the tax under non-bankruptcy law. Because it was too late for Oakwell to file an appeal in state court under §42.21 of the Tax Code, it was also too late for Oakwell to contest the appraisal of its property in bankruptcy court. Oakwell's bankruptcy did not stop the sixty-day period from expiring.

Hunt v. CIT Group/Consumer Finance, Inc.

2010 WL 1508082 (Tex. App. – Austin, April 15, 2010, no pet. hist.)(not reported)

Issues: foreclosure of transferred tax lien; fraud

CIT held a deed of trust on a condominium owned by McKenzie. McKenzie failed to pay his 2004 taxes. Then, he agreed to allow Exodus to pay those taxes in exchange for his promissory note and a transferred tax-lien deed of trust on the condominium. Just a few months later, Exodus claimed that McKenzie wasn't paying on his note and directed the trustee to foreclose. The trustee deeded the property to Cornerstone. Exodus, Cornerstone and the trustee were acting in cahoots, and the foreclosure failed to meet many legal requirements. They failed to notify McKenzie by certified mail. They failed to notify CIT at all. They failed to post a notice at the courthouse or to file a notice with the county clerk. They did not conduct the foreclosure sale at the courthouse. Cornerstone then reconveyed the condominium to Cairns who gave only his note in exchange. Cairns made no payments on his note.

When CIT learned of the foreclosure, it attempted to redeem the condominium, but its request was refused. CIT then sued everybody (except McKenzie) for fraud and wrongful foreclosure. The trial court found the defendants guilty of fraud, voided the foreclosure and any liens claimed by the defendants and ordered the defendants to pay CIT's attorneys' fees. The trustee appealed. The other defendants attempted to appeal, but failed to file proper notices of appeal.

The court of appeals upheld the trial court's judgment for CIT. The court explained that CIT as the holder of a lien on the condominium was a proper party with standing to challenge the improper foreclosure. The issue was not the validity of a tax sale conducted on behalf of a taxing unit under Chapter 34 of the Tax Code. That would have required CIT to pay the taxes in question into the trial court's registry in order for it to challenge the sale. Instead, this was the foreclosure of a transferred tax lien under Chapter 32, and CIT was not required to make any payment to the court. The trustee made other claims on appeal (including a claim that "he who pays the property tax gets the property"), but he had either waived those claims or he failed to brief them properly. The court of appeals did not consider those other claims. The court went on to sanction the defendants for having filed a frivolous appeal.

Woodway Drive LLC v. Harris County Appraisal District

311 S.W.3d 649 (Tex. App. – Houston [14th Dist.], April 8 2010, no pet hist.) (2007 tax year)

Woodway Drive LLC v. Harris County Appraisal District

2010 WL 724174 (Tex. App. – Houston [14th Dist.], March 4, 2010, no pet hist.) (not reported) (2008 tax year)

Issues: who can file a protest or appeal

In 2007 and 2008, the appraisal district appraised a property in the name of First Reliance. First Reliance protested each year's appraisal of the property and then filed suits to appeal the ARB's orders. The appraisal district discovered that First Reliance did not actually own the property. First Reliance had sold the property to Woodway in 2006. First Reliance amended its pleadings to add Woodway as a plaintiff. The appraisal district asked the trial courts to dismiss the cases, and the trial courts granted that request. First Reliance and Woodway appealed.

The plaintiffs tried arguing that §42.21 of the Tax Code allows the pleadings in a pending suit to be amended to "correct or change the name of a party." The court of appeals rejected that argument and explained that the Code does not allow a new and different party (a party that had not filed a protest) to appear during the course of a pending suit. The plaintiffs also tried arguing that First Reliance was not really a separate entity, that it was really just a "common name" for Woodway and that the Rules of Civil Procedure allow a party to substitute its formal name for its common name during the course of a suit. The court of appeals rejected that argument. It explained that because First Reliance had ceased to own the property prior to 2007, it had no standing to contest the 2007 or 2008 appraisals in a protest or lawsuit. Woodway was the owner of the property, but it had not been involved in the protests. The record contained no evidence that Woodway had ever done business under the name of First Reliance. They were separate entities. The court of appeals upheld the trial courts' dismissals of the two cases.

Hamilton v. County of Bastrop

2010 WL 1253584 (Tex. App. – Austin, April 1, 2010, mand. denied.)(not reported)

Issues: excess proceeds following tax sale

The county sued Gibson for delinquent taxes. Pursuant to the court's order, the sheriff sold Gibson's property. The sale resulted in excess proceeds. Gibson died two months later, and his relatives inherited his property including his right to claim excess proceeds. Hamilton made agreements with several of Gibson's heirs to buy their rights to claim excess proceeds and paid them \$2,000. He then filed a claim with the court for over \$10,000 in excess proceeds. While these events were occurring, the legislature was amending §34.04 of the Tax Code to prohibit such deeply discounted sales of rights to excess proceeds. Under the amended statute, a purchaser must pay a seller at least 80% of the seller's claim amount. The amendment took effect just a few days

before the trial court considered Hamilton's claim. The county opposed Hamilton's claims. The court applied the new law and awarded Hamilton only \$2,500 in excess proceeds, the maximum claim that Hamilton could have purchased for \$2,000. Hamilton appealed.

On appeal, Hamilton argued that the amendment to §34.04 should not be applied to claims that were pending at the time that the act took effect. The court of appeals explained, however, that the language of the bill made it clear that the legislature *did* intend for it to apply to pending claims regardless of when they arose or when they were filed. Hamilton claimed that the amendment was a retroactive law that deprived him of vested, contractual rights in violation of the Texas Constitution. The court of appeals responded that Hamilton had no vested rights at the time the amendment took effect. He had some of Gibson's rights to claim excess proceeds, but other parties such as a taxing unit or a lienholder might have asserted claims with higher priorities and taken the excess proceeds. His rights were not vested until the trial court determined the matter. Hamilton also argued that the county had no standing to oppose his claim. The court of appeals explained that §34.04 makes the county a party to the case in which Hamilton was claiming excess proceeds and gives the county the right to oppose his motion. The court of appeals ruled against Hamilton and affirmed the trial court's judgment.

Editor's Comment: I believe this story comes from Roger Price's book, *The Great Roob Revolution*. Some vultures heard the sounds of a distant battle. "Let's go!" they said. "Wars have always provided lavish feasts for vultures." They flew off in the direction of the noise and were vaporized in a tactical nuclear explosion. The moral: *In a few years, things change*.

Lambertz v. Robinson

2010 WL 1077858 (Tex. App. – Houston [14th Dist.], March 25, 2010, no pet. hist.)(not reported)

Issues: contesting alleged ARB errors

Lambertz protested the appraisal of his property, and, following a hearing, the ARB denied his protest. Lambertz filed suit to appeal the ARB's order, but he also sued the chief appraiser and the ARB's chairman. He claimed that the ARB had denied him the right to introduce evidence at his hearing and otherwise "mistreated" him. The appraisal district had allegedly failed to train and supervise the ARB properly. Lambertz filed claims under federal civil-rights statutes alleging violations of his constitutional right to due process of law. The trial court dismissed those claims, and Lambertz appealed.

The court of appeals affirmed the trial court's order. The court explained that Lambertz's due-process rights were protected by the Tax Code's protest and appeal provisions. Lambertz had an opportunity to have his claims heard by the ARB, and any errors that the ARB might have made could be corrected when the trial court conducted a trial de novo. Lambertz was limited to pursuing a normal appeal under the Tax Code's procedures and had no basis for filing federal civil-rights claims.

Sweed v. City of El Paso

2010 WL 1055897 (Tex. App. – El Paso, March 24, 2010, no pet. hist.) (to be published)

Issues: demolition of property following tax sale

The city sued Sweed for delinquent taxes on his improved real property. The court entered judgment for the city and ordered the property sold. When there were no bidders at the tax sale, the property was struck off to the city. Nine months later, the city demolished the building on the property. Sweed sued the city claiming that the demolition of the building was an unconstitutional taking of his property. At the city's request, the trial court dismissed the case. Sweed appealed.

The court of appeals affirmed the trial court's dismissal of the case. Sweed had no standing to complain about the demolition of the building. He lost the property in the tax sale and made no effort to redeem it during the six-month redemption period. By the time the city demolished the building, Sweed no longer had any interest in the property. The city was the sole owner of the property and had every right to demolish its own building.

Travis Central Appraisal District v. Wells Fargo Bank Minnesota, N.A.

2010 WL 983924 (Tex. App. – Austin, March 19, 2010, no pet hist.)(not reported)

Issues: appraisal district's duty to make changes ordered by court

Wells Fargo owned a closed landfill, which was now the site of an apartment complex. It applied to the TCEQ for a determination that the property qualified for a pollution-control exemption. The TCEQ approved two stormwater retention ponds and some equipment for extracting, containing and measuring gases arising from the buried garbage. This equipment was apparently incorporated into the ground floor of the apartment complex. Wells Fargo applied to the appraisal district for the exemption. The appraisal district exempted the ponds, but did not otherwise change its appraisal of the property. After an unsuccessful protest before the ARB, Wells Fargo sued the district claiming that it was entitled to a broader exemption. The trial court rejected the district's argument that it had already applied the exemption properly and issued a vague judgment directing the district to follow the TCEQ's ruling. The district filed an unsuccessful motion for a new trial but did not appeal and did not change its appraisal of the property or broaden the exemption. Wells Fargo went back to the trial court complaining that the district had ignored the court's order and seeking enforcement of the order. The court determined that the entire ground floor of the complex should be exempted and ordered the district to pay Wells Fargo \$97,459 representing the taxes Wells Fargo had paid on the ground floor. The court also ordered the district to pay \$7,500 of Wells Fargo's attorneys' fees.

The court of appeals upheld the trial court's actions. According to the court of appeals, the district should have understood from the trial court's judgment that the manner in which the district had initially applied the exemption was not acceptable and that it had to grant some additional exemption to the property. In its motion for a new

trial, the district acknowledged that the trial court had ordered a broader exemption. If the district disagreed with the judgment, it should have filed an appeal. Because it did not appeal, the district could not argue later that its original appraisal was right all along. The trial court had the authority to enforce its judgment, and its order directing the district to pay roughly \$105,000 was not an abuse of discretion.

Holcombe v. Reeves County Appraisal District

310 S.W.3d 86 (Tex. App. – El Paso, March 17, 2010, no pet. hist.)

Issues: unequal appraisal; school tax freeze

Responding to Comptroller's value studies, the appraisal district raised values substantially in 2007 and 2008. After losing a protest before the ARB, Holcombe filed suit to contest the appraised value of his homestead property. In the trial, the chief appraiser and a realtor testified based on comparable sales that the appraised value was not excessive. The chief appraiser explained that the district had done broad reappraisals based on comparable sales, but it had not included low-end residences because there was no sales data relevant to those residences. Holcombe testified that he did not think that he could sell the property for the amount of its appraised value. The trial court upheld the appraised value, and Holcombe appealed.

On appeal, Holcombe argued that the district's failure to include the low-end residences in its reappraisal constituted some kind of illegal discrimination. The court of appeals explained that Holcombe had not raised this claim in the trial court and he could not raise it for the first time on appeal. Holcombe also argued that the district could not raise his appraised value from one year to the next because he was over 65 and his school taxes were frozen. The court of appeals declined to even consider this argument because Holcombe had not addressed it sufficiently in his briefs. The court of appeals did not consider either of Holcombe's arguments and affirmed the trial court's judgment for the district.

In re Vasquez

2010 WL 934210 (Bkrcty. S.D. Tex., March 10, 2010)

Issues: enforcing transferred tax debt in bankruptcy

Vasquez entered an agreement with RioProp under which RioProp paid Vasquez's delinquent taxes and the tax liens were transferred to RioProp. The agreement called for Vasquez to repay RioProp with interest at the rate of 16%. Vasquez then filed for Chapter 13 bankruptcy protection. RioProp filed a claim for the unpaid debt, and Vasquez objected. The bankruptcy court upheld RioProp's claim. The court explained that when a lender like RioProp receives a transferred tax lien from a taxing unit, it has the same rights as the taxing unit. The claim is still treated as a tax claim in bankruptcy. Interest on the debt is determined according to state law. Texas law allows interest as high as 18% on tax-lien transfers. Thus, the 16% interest rate originally agreed to by Vasquez was legal under Texas law and was a valid part of RioProp's claim in the bankruptcy court.

Scott Plaza Associates Ltd. v. Harris County Appraisal District

2010 WL 724189 (Tex. App. – Houston [14th Dist.], March 4, 2010, no pet hist.) (not reported)

Issues: who can file a protest or appeal

In 2007, the appraisal district appraised a property in the name of Steward. Steward protested the appraisal of the property, and the ARB reduced the value of the property. Steward then filed suit to appeal the ARB's order and sought a greater reduction of the property's value. The appraisal district realized that Steward did not actually own the property. Steward had sold the property to Scott in 2006. Steward amended its pleadings to add Scott as a plaintiff. The appraisal district asked the trial court to dismiss the case, and the trial court granted that request. Steward and Scott appealed.

The plaintiffs tried arguing that §42.21 of the Tax Code allows the pleadings in a pending suit to be amended to "correct or change the name of a party." The court of appeals rejected that argument and explained that the Code does not allow a new and different party (a party that had not filed a protest) to appear during the course of a pending suit. The plaintiffs also tried arguing that Steward was not really a separate entity, that it was really just a "common name" for Scott and that the Rules of Civil Procedure allow a party to substitute its formal name for its common name during the course of a suit. The court of appeals rejected that argument. It explained that because Steward had ceased to own the property prior to 2007, it had no standing to contest the 2007 appraisal in a protest or lawsuit. Scott was the owner of the property, but it had not been involved in the protest. The record contained no evidence that Scott had ever done business under the name of Steward. They were separate entities. The court of appeals upheld the trial court's dismissal of the case.

Brooks v. Burnet Central Appraisal District

306 S.W.3d 419 (Tex. App. – Austin, February 26, 2010, no pet. hist.)

Issues: statute of limitations in appeal of ARB order

Brooks protested the 2008 appraisal of his property. The ARB denied his protest and sent him notice of its order. He received the notice on September 20, 2008. On October 29, Brooks filed a timely suit against the appraisal district (and some improper parties such as taxing units) to appeal the ARB's order, but he did not arrange to have the suit papers served on the district. On December 19, he filed amended pleadings and finally had the appraisal district served. At the district's request, the trial court dismissed the case based on Brooks's failure to have the district served in a timely manner. Brooks appealed.

The court of appeals explained that under §42.21 of the Tax Code, a property owner filing suit to appeal an ARB's order must do so within 45 days after receiving notice of the order. (In 2009, this time period was expanded to 60 days.) The Code, however, does not establish a deadline for the property owner to have the suit papers served on

the appraisal district. Brooks satisfied the Code's statute of limitations when he filed his suit within 45 days after receiving notice of the ARB's order. His delay in having the district served did not deprive the trial court of the jurisdiction to consider his case or otherwise invalidate the case. The court of appeals reversed the trial court's dismissal of the case and referred the case back to the trial court. The court of appeals refused to consider some federal civil-rights claims that Brooks attempted to raise for the first time on appeal.

Parra Furniture & Appliance Center, Inc. v. Cameron Appraisal District

2010 WL 672882 (Tex. App. – Corpus Christi, February 25, 2010, no pet hist.) (not reported)

Issues: governmental immunity

Parra protested the 2006 appraisal of its property and appeared at a hearing before the ARB. Dissatisfied with the ARB's order, Parra filed suit to appeal the order and named the appraisal district and the ARB as defendants in its suit. Parra sought a trial de novo concerning the appraisal of its property, but it also asked the trial court to appoint a board of conservators to take over the appraisal district. Parra accused the district of violating the Tax Code's appraisal requirements and violating its constitutional rights to due process of law. The district and the ARB admitted that Parra was entitled to a trial de novo concerning the appraisal of its property, but claimed that they were protected from Parra's other claims by the principle of governmental immunity. The trial court dismissed those other claims, and Parra appealed.

The court of appeals affirmed the dismissal of Parra's other claims. The court explained that governmental bodies are ordinarily immune from suit and from liability unless the legislature waives that immunity and allows them to be sued. The legislature waived governmental immunity to some extent when it enacted Chapter 42 of the Tax Code and allowed property owners to sue appraisal districts for de novo review of ARB orders. The legislature, however did not waive the appraisal district's immunity against the other claims asserted by Parra. The court also noted that Parra's due-process rights were not violated because Parra had received a hearing from the ARB and because it had the right to appeal and have the trial court review the ARB's order de novo.

Seiflein v. City of Houston

2010 WL 376048 (Tex. App. – Houston [1st Dist.], February 4, 2010, no pet hist.) (not reported)

Issues: evidence and proof in delinquent-tax case

In 2003, the city sued Seiflein for delinquent taxes on real property going back to 1983. At trial, the city introduced certified copies of its delinquent-tax records for the property. Those records showed the property to be owned by Intercoastal Refining Co. The city, however, also introduced a certified copy of a 1993 deed conveying the property to Seiflein and a 2005 letter from Seiflein's lawyer asking the appraisal district to appraise the property in Seiflein's name. Seiflein offered no evidence. The trial court ordered the

foreclosure of the tax liens for all the years in question and adjudged Seiflein to be personally liable for the taxes for 1994 and subsequent years. Seiflein appealed.

On appeal, Seiflein acknowledged that §33.47 of the Tax Code ordinarily allows a taxing unit to prove up its case in a delinquent-tax trial by simply offering certified copies of its records. In the absence of contrary evidence from the defendant, those records provide all the proof necessary to support a judgment for the taxing unit. Seiflein, however, argued that §33.47 should not apply in this case because the city's records showed the wrong property owner. (Seiflein did not deny actually owning the property.) The court of appeals rejected that argument and explained that the city's other evidence was sufficient to prove that Seiflein was the owner of the property, at least since the 1993 deed. The city's evidence, taken together, proved all that the city needed to prove. The court also noted that under §25.02, an appraisal-roll error concerning the name of a property owner does not invalidate the taxes on his property. The court of appeals affirmed the judgment for the city.

Dallas County Tax Collector v. Andolina

303 S.W.3d 926 (Tex. App. – Dallas, January 26, 2010, no pet. hist.)

Issues: application of tax payment

A company called Horizon filed for Chapter 11 bankruptcy protection. The reorganization plan ordered by the bankruptcy court called for Horizon to pay \$70,000 in taxes on its real and personal property and to sell its assets to Andolina, one of the company's owners. The plan stated that there would be no sale of the company's real or personal property until the taxes were paid in full. Horizon proceeded to sell its real property to Andolina, and the title company sent the tax collector \$60,000 to pay the taxes on the real property. The tax collector applied the payment first to pay the personal-property taxes in full and then applied the remainder to the real-property taxes. This left \$10,000 of real-property taxes unpaid and secured by liens on the real property. Andolina sued the tax collector demanding that the whole payment be applied to the real-property taxes. The trial court ruled for Andolina and ordered the tax collector to reapply the whole payment to the real-property taxes. The tax collector appealed.

The court of appeals recognized that under the Tax Code real-property taxes are assessed and collected separately from personal-property taxes and are secured by separate tax liens. A taxpayer can pay one kind of taxes without paying the other. In this case, however, the bankruptcy court's order had the effect of combining the tax liens on Horizon's real and personal property. It prohibited the sale of any property until all of the taxes were paid. When Andolina filed suit in the trial court, he was asking that court for an order inconsistent with the bankruptcy court's order. A court cannot allow that kind of "collateral attack" on an earlier court order. Thus, the trial court was wrong when it ruled for Andolina. The court of appeals reversed the trial court's judgment.

SWP Remic Properties II LP v. Harris County Appraisal District

2010 WL 26524 (Tex. App. – Houston [14th Dist.], January 7, 2010, no pet.)(not reported)

Issues: who can file a protest or appeal

In 2007, the appraisal district appraised a real property in the name of SWP. SWP protested the appraisal of the property, and the ARB reduced the appraised value. SWP then filed suit to appeal the ARB's order and seek an even lower appraised value. SWP named itself in the lawsuit "as the Property Owners and the Property Owners." The district then discovered that the property had not been owned by SWP for several years; it was owned by Equitex. The district asked the trial court to dismiss the case because the plaintiff, SWP did not own the property. Before the trial court could act on the appraisal district's request, SWP amended its pleadings to add Equitex as a plaintiff. The district again urged the trial court to dismiss the case. The trial court granted the district's request, and the plaintiffs appealed.

The court of appeals upheld the dismissal of the case. The court explained that because SWP did not own the property in 2007, it had no standing to contest the 2007 appraisal in a protest or lawsuit. The plaintiffs tried arguing that §42.21 of the Tax Code allows the pleadings in a pending suit to be amended to "correct or change the name of a party." The court of appeals rejected that argument and explained that §42.21 does not allow a property owner like Equitex to appear as a plaintiff in an appeal when it never filed a protest with the ARB. The plaintiffs also tried arguing that SWP was not really a separate entity, that it was really just a "common name" for Equitex and that the Rules of Civil Procedure allow a party to substitute its formal name for its common name during the course of a suit. The record, however, contained no evidence that Equitex had ever done business under the name of SWP. They were separate companies.

Attorney General's Opinions

Opinion No. GA-0787

July 26, 2010

Issues: tax-lien transfers; deferred collection

Section 33.06 of the Tax Code allows a person sixty-five or older to defer the collection of taxes on his homestead. If the property owner files an affidavit with the appraisal district or with a court considering a delinquent-tax suit, collection efforts must stop. The tax liens on the property cannot be foreclosed as long as it remains the person's homestead. The Attorney General was asked whether these deferral rules also apply to tax liens that have been transferred to private lenders. He explained that a private lender who acquires a tax lien stands in the shoes of the taxing unit from which he acquired it. He has no greater right to foreclose or collect the debt than the taxing unit would have if the lien had not been transferred. If the property owner files a deferral affidavit, he can stop collection efforts by the private lender just as he could stop collection efforts by a taxing unit. This rule applies even if the delinquent taxes arose before the property owner turned sixty-five.

Opinion No. GA-0775

May 20, 2010

Issues: school districts' rollback elections

In this opinion, the Attorney General responded to several questions concerning school districts' rollback elections. He was asked whether a school district would have to hold a rollback election if its adopted M&O rate exceeded the M&O component of its rollback rate but its total adopted rate did not exceed its total rollback rate. He explained that such a situation could not occur. Under §26.08 of the Tax Code, a district's debt rate is added without adjustment into the district's total rollback rate. The higher the debt rate, the higher the rollback rate. Thus, the debt rate never determines whether a rollback election is necessary. If a district's adopted M&O rate exceeds the M&O component of its rollback rate, the district has to hold an election.

Another question concerned a district that successfully adopts a rate that exceeds its rollback rate in a particular year. How will that affect the district's rollback rate in the following year? The Attorney General explained that a district must calculate its rollback rate using two different equations. The lower of the two calculated rates is the rollback rate. The first equation, gives the district full credit for the rate (above the rollback rate) that was approved in the prior year. For example, if voters approved a rate 3¢ above the rollback rate in the first year, the district would add 3¢ when calculating its rollback rate in the second year. Under the second equation, however, things are not so simple. The district cannot simply add in the rate of additional taxes approved in the prior year's election. But, the revenues raised in the prior year, including the revenues resulting from the tax effort over and above the prior year's rollback rate will affect the district's effective M&O rate and thus affect its rollback rate for the current year under the second equation. Thus, the way that a favorable rollback election in the first year affects the rollback rate in the second year depends on the particular circumstances involved.

The Attorney General also addressed §26.08(a), which, in the event of a disaster, allows a district to adopt a tax rate that exceeds its rollback rate without holding an election. He explained that the provision applies only in the year following the year in which the disaster occurs. In the second year following the disaster, the district is once again subject to the rules governing rollback elections. He also explained that a school district that calculates its rollback rate before it has received its certified appraisal roll from the appraisal district must use the appraisal district's estimated values. It cannot substitute its own estimates. Further, once a district has adopted a rate that exceeds its rollback rate and that rate has been approved by the voters, the trustees may not go back and lower the adopted rate.

Opinion No. GA-0758

February 9, 2010

Issues: truth-in-taxation procedures for water districts

The South Texas Water Authority (STWA) is a water district, a species of conservation and reclamation district created pursuant to Art. XVI, §59 of the Texas Constitution. As such, it is subject to the special truth-in-taxation rules set out in Chapter 49 of the Water Code. The STWA, however, asked whether it could use the Tax Code's truth-in-taxation procedures instead of those found in the Water Code. It wanted to use the same procedures used by cities and counties. The STWA pointed out that the legislative act creating it provides that "[t]he laws of this state applicable to cities and towns may be adopted and shall be used [by the STWA] to the extent pertinent and practicable."

The Attorney General responded that the STWA had to use the Water Code's truth-in-taxation procedures. When the legislature adopted procedures specifically for districts like the STWA, it implicitly determined that the Tax Code's procedures were not "pertinent and practicable" for use by those districts. Thus, the act creating the STWA could not be read to allow the district to use the Tax Code's procedures.