2019 CASE LAW REPORT

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Braden W. Metcalf is a partner at **Nichols Jackson** with a decade of experience whose areas of expertise include ad valorem taxation, municipal law, administrative, and zoning law. He is committed to providing superior customer service in resolving complex trial and appellate taxation litigation and municipal-related litigation for appraisal districts, economic development corporations, and governmental agencies throughout the state. He is a regular speaker on Ad Valorem Taxation for the State Bar, Texas Association of Appraisal Districts, and the Texas Association of Assessing Officers. He lives in Farmers Branch, Texas where he serves as an Assistant City Attorney and Prosecutor with his wife, Nicole, and two daughters (Abby – 7 and Riley – 3).

Nichols Jackson was initially formed in 1895, making it one of the oldest continuing law firms in Dallas, Texas. The firm has over forty years' experience in ad valorem taxation and municipal law. The firm serves as counsel for appraisal districts, municipalities, and political subdivisions throughout the state.

Education
Southern Methodist University
(B.B.A. Real Estate Finance, 2003)
University of Oklahoma
(J.D. 2006)

Professional Licenses
State Bar of Texas, 2006

Professional Associations and Memberships
State Bar of Texas
Texas City Attorneys Association
Texas Association of Appraisal Districts
Texas Association of Assessing Officers
NT-TAAO Host Trustee
State Bar of Texas, Section of Taxation, Property Tax Committee Chairman (2018-Present).

Peer Recognition
"Rising Star" in State, Local & Municipal Law, Thomson Reuters (2015, 2016, 2017, 2018 and 2019).

Texas Supreme Court

Willacy County Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 555 S.W.3d 29 (Tex. 2018), opinion corrected on reh'g (Sept. 28, 2018)

Real property owner brought action to contest decision of county appraisal review board which affirmed county appraisal district's change in determination of ownership of a large quantity of grain stored on property, shifting tax liability back to real property owner. Following a bench trial, the District Court affirmed. Real property owner appealed, and the Court of Appeals, 492 S.W.3d 824, reversed in part and rendered in part. Appraisal district petitioned for review.

The Supreme Court held that: appraisal district acted within its authority when correcting appraisal roll to reflect that property owner was true owner of grain stored on its property; agreement between chief appraiser and property owner could not finally determine issue of ownership of grain; validity of final agreement was subject to attack on the basis of fraud; and property owner could not recover attorney's fees as the prevailing party.

Bosque Disposal Sys., LLC v. Parker County Appraisal Dist., 555 S.W.3d 92 (Tex. 2018), reh'g denied (Sept. 28, 2018)

Landowners filed petitions for review of county appraisal district's assessment of four subsurface saltwater disposal wells separately from and in addition to tracts of land on which wells were located for property tax purposes. The 415th District Court, Parker County, granted summary judgment for landowners. District appealed. The Court of Appeals held that wells could be separately assessed from tracts of land on which they were located.

On petition for review, the Supreme Court held that separate appraisal of taxpayers' saltwater disposal wells and the land on which they were located did not constitute double taxation.

In re Occidental Chem. Corp., 561 S.W.3d 146 (Tex. 2018), reh'g denied (Dec. 14, 2018)

Owners of commercial piers that crossed county boundary petitioned for writ of mandamus to determine which county was authorized to assess ad valorem taxes. The Supreme Court, held that resolving issue was not dependent upon determination of questions of fact, as would have precluded original jurisdiction; mandamus relief was necessary, and thus original jurisdiction was not precluded; issue gave strong and special reason for exercise of original jurisdiction; statute providing original jurisdiction to resolve issue did not violate prohibition on retroactive laws; as a matter of first impression, taxes were owed to county from which piers extended; and owners were entitled to mandamus relief.

Ward County Appraisal Dist. v. EES Leasing LLC, 563 S.W.3d 203 (Tex. 2018); Reeves County Appraisal Dist. v. MidCon Compression, L.L.C., 563 S.W.3d 207 (Tex. 2018); Reeves County Appraisal Dist. & Loving County Appraisal Dist. v. Valerus Compression Services, 563 S.W.3d 210 (Tex. 2018); and Loving County Appraisal Dist. v. EXLP Leasing, LLC, 563 S.W.3d 213 (Tex. 2018)

These are four companions pending when the Supreme Court issued the EXLP Leasing, LLC v. Galveston Central Appraisal District opinion which was discussed last year. These rulings follow the EXPL ruling.

Taxpayers, as lessors of natural gas pipeline compressor packages, filed actions seeking review of appraisal review board's decision upholding county appraisal district's determination that compressor packages operating in county belonged on district's appraisal role and district's valuations of compressor packages as business personal property, rather than under statutory formulas for calculating the market value of heavy equipment inventory held for lease or rent. After actions were consolidated, the District Court granted taxpayers summary judgment in part, declaring that compressor packages qualified as heavy equipment, and following bench trial, found in favor of district on remaining issues and entered take-nothing judgment in its favor. Taxpayers appealed. The El Paso Court of Appeals, 478 S.W.3d 790, affirmed in part and reversed and rendered in part. Both parties sought review. The Supreme Court held that compressor packages were taxable in county in which they were stored by dealer while not being leased and where they were serviced.

Texas State Courts of Appeal

Tarrant Appraisal Dist. v. Tarrant Reg'l Water Dist., 547 S.W.3d 917 (Tex. App.—Fort Worth 2018, no pet.)

Appellee Tarrant Regional Water District owns property along the Trinity River and leases part of it to a business entity that operates a restaurant. After failing to convince the Tarrant Appraisal Review Board that the property was exempt from ad valorem taxes, TRWD initiated the underlying tax appeal in the district court and obtained a summary judgment that the property was tax exempt.

Appellant Tarrant Appraisal District challenged the trial court's rulings denying its special exceptions and evidentiary objections, but the principal issue in this appeal is whether, and under what constitutional or statutory authority, TRWD's property is tax exempt. The Court of Appeals agreed with TAD that the property's eligibility for a tax exemption is limited to Tax Code section 11.11(a), which exempts public property "used for public purposes," Tex. Tax Code Ann. § 11.11(a) (West 2015), but found that no genuine issue of material fact exists concerning whether the property is used for public purposes. They concluded and held that TRWD's property is tax exempt under Tax Code section 11.11(a) because the property is used for public purposes as a matter of law.

Munn v. Smith County Appraisal Dist., 12-17-00094-CV, 2018 WL 1616384 (Tex. App.—Tyler Apr. 4, 2018, pet. denied)

Landowner sought judicial review of decision of appraisal district denying his tax protest. The 241st District Court, Smith County, dismissed the suit. Landowner appealed.

The Court of Appeals held that directive of statute governing the forfeiture of remedy for nonpayment of taxes that the "movant" must comply with the 45-day notice requirement is a directive to the taxpayer, not the taxing authority. Tex. Tax Code Ann. § 42.08(b). Payment is a condition for judicial review. *See Lall*, 924 S.W.2d at 690. Because Munn failed to pay any of those three amounts, he forfeited the right to proceed to a final determination of the appeal. Tex. Tax Code Ann. § 42.08(b). Because compliance with Section 42.08 is a jurisdictional prerequisite to the district court's subject matter jurisdiction to determine the property owner's rights, the trial court properly granted SCAD's plea to the jurisdiction. *Welling*, 429 S.W.3d at 31. Further, as SCAD was not required to give forty-five days' notice to taxing units, its failure to do so could not be a basis for a new trial. Therefore, the trial court did not abuse its discretion by not granting Munn's post-dismissal motions.

Maverick County v. Felan, 551 S.W.3d 229 (Tex. App.—San Antonio 2018, pet. filed)

Taxpayer filed a petition seeking an election to roll back the 2016 tax rate and filed a petition for writ of mandamus and an injunction seeking to compel county officials to hold the roll back election. The District Court denied county's plea to the jurisdiction and motion for summary judgment. County appealed.

The Court of Appeals held that taxpayer did not comply with statute requiring taxpayers who challenge a miscalculation of a tax rate to file a suit seeking an injunction to prohibit taxing unit from adopting the tax rate.

In re Catherine Tower, LLC, 553 S.W.3d 679 (Tex. App.—Austin 2018, no pet.), reh'g denied (July 26, 2018)

Catherine Tower filed suit and relied solely on the ground of unequal appraisal. Catherine had financed its recent purchase of the property through a loan obtained from a financial-services arm of Prudential Insurance Company, secured by a deed of trust for Prudential's benefit that was recorded in the Travis County real property records. Uncovering that filing, TCAD served notice in the litigation of its intent to take a deposition on written questions from Prudential, accompanied by a request for production of documents calculated to secure any analyses of the property's value that had been prepared or obtained in connection with the loan. The document request called for "[a]ny appraisals, valuations or estimates of value performed in connection with the loan by [Prudential] to Catherine Tower." In fact, Catherine had been required to commission an appraisal of the property in connection with Prudential's loan, and the undertaking generated an elaborate and lengthy analysis of the property's value, taking account of, in Catherine's words, "confidential financial and budgeting projections—such as tenant names, addresses, balances owed, and lease terms; company financial health; and company financial projects and performance information." Catherine preserved objections that the document request exceeded the permissible scope of discovery by seeking information that

was neither relevant to an unequal-appraisal claim brought under Tax Code Section 42.26(a)(3), nor reasonably calculated to lead to admissible evidence.

The Court of Appeals rejected TCAD's premise that a dispute about a property's tax appraisal value automatically or inherently places the property's market value (in the sense of what a willing buyer would pay a willing seller) at issue and thereby permits broad discovery of market-value-related information and further held that Section 42.26(a)(3), the specific basis for Catherine's appraisal challenge here, does not open that door so widely.

The Court left open the possibility that more narrowly tailed requests would be allowed by stating that if TCAD perceives in good faith that Catherine may possess specific information not already produced that is relevant to the selection of comparable properties and the application of appropriate adjustments to those properties under Section 42.26(a)(3), then it should formulate requests that seek that specific information but held that the present request, to the effect of "hand over your entire financing appraisal," is not "narrowly tailored."

Denton Cent. Appraisal Dist. v. Gladden, 554 S.W.3d 749 (Tex. App.—Fort Worth 2018, pet. denied)

In May 2012, Gladden purchased a house in Denton, Texas, for $310,000 and began occupying the Property as his principal residence. The appraised value of the Property was recorded by Appellant Denton County Appraisal District for the 2012 tax year as $203,595. DCAD increased the appraised value of the Property for the 2013 tax year to $312,352. In April 2013, Gladden applied for the general residence homestead exemption. DCAD applied Gladden's claimed Homestead Exemption to the Property for the 2013 tax year but refused to apply the 10% Homestead Cap to the 2013 tax year. DCAD claimed that the "10% Homestead Cap" located in section 23.23 of the tax code would be applied on January 1, 2014, to the 2014 tax year. Construing sections 11.13 and 23.23(c) together and giving the words of both sections their plain meaning, the Court of Appeals held that a property must first qualify for a Homestead Exemption—determined on January 1 of each tax year—as a condition precedent to the 10% Homestead Cap taking effect as to a residence homestead *on January 1 of the tax year following the first tax year* the owner qualifies the property for an exemption under [s]ection 11.13.

Harris County Appraisal Dist. v. PXP Aircraft, LLC, 01-17-00793-CV, 2018 WL 6219612 (Tex. App.—Houston [1st Dist.] Nov. 29, 2018, no pet.)

Taxpayer, an owner of commercial aircraft that was used both in and outside of state, sought review of county appraisal review board's determination that upheld a penalty for a late-filed allocation application assessed against it by county appraisal district, and the appraisal district filed a plea to the jurisdiction. On cross-motions for summary judgment, the District Court granted taxpayer's motion for summary judgment, and did not address the jurisdictional plea. Appraisal district appealed. The Court of Appeals held that taxpayer did not fail to exhaust its administrative remedies; trial court had authority to review taxpayer's appeal of board's determination; taxpayer did not request or receive an extension of allocation application deadline via its rendition application filings and

extension; and taxpayer was not entitled to a waiver of the allocation penalty due to any misunderstanding about extensions of deadlines.

Advanced Powder Sols., Inc. v. Harris County Appraisal Dist., 528 S.W.3d 779 (Tex. App.—Houston [14th Dist.] 2017), review granted, judgment vacated, and remanded by agreement (June 15, 2018)

Advanced Power, a new taxpayer to the County in 2012, did not protest the 2013 BPP appraisal and it did not tender any tax payments on the same until after March of 2014. Advanced Power filed a 25.25(c) Motion to correct and the ARB dismissed it because of the late tax payment. Taxpayer sought review of appraisal review board's decision to dismiss its motion to correct the appraisal rolls.

The trial court dismissed the suit filed by Advanced Power for lack of jurisdiction because of the late paid taxes. The Court of Appeals held that: (1) taxpayer forfeited its right to have the appraisal review board make a final determination on its motion to correct the appraisal rolls; (2) statute allowing a property owner to appeal an appraisal review board's determination that the owner's failure to make a required prepayment of taxes was the basis for taxpayer's appeal of board's order; and (3) thus the district court had no jurisdiction to render a final determination on taxpayer's motion to correct the appraisal rolls.

Harris County v. Harris County Appraisal Dist., 01-16-00389-CV, 2017 WL 2686328 (Tex. App.—Houston [1st Dist.] June 22, 2017), reconsideration en banc denied, 554 S.W.3d 708 (Tex. App.—Houston [1st Dist.] 2018, no pet.)

Harris County filed a challenge petition with the ARB claiming that the district had erroneously exempted the BPP of a third party (PRSI(CT)) in the years 2006-2013. The ARB denied the petition and the county sued the appraisal district. The Trial court granted summary judgement in favor of the appraisal district. Harris County appealed the decision of trial court to allow ad valorem tax exemption for PRSI(CT) in Foreign Trade Zone. PRSI(CT) was a new company, resulting from the merger of PRSI(DE) and parent companies. While PRSI(CT) application for new operator was pending, the US Customs and Border Protection (CBP) granted PRSI(CT) month-to-month status as 84-N operator. Harris County contends that once PRSI(DE) ceased to exist, then the zone was deactivated and PRSI(CT) owed back taxes from 2006-2013. The majority agreed, determining that without an affirmative activation of the zone for the new operator, the zone could not be considered "activated". The court reasoned that if the zone were always active, there would be no need for the CBP to require PRSI(CT) to apply for a new activation. Further, the court determined that PRSI(CT) failed to produce the necessary requirements for collateral estoppel.

Kilgore Indep. Sch. Dist. v. Axberg, 06-18-00016-CV, 2019 WL 508963 (Tex. App.—Texarkana Feb. 11, 2019, no pet. h.), reh'g denied (Feb. 26, 2019)

Taxpayers brought action against school district, alleging that district repealed a local option homestead exemption in violation of a statute and constitutional amendment. After state intervened, the County Court at Law granted taxpayers' and state's motions for summary judgment. The district appealed. The Court of Appeals held that: no evidence existed to indicate that taxpayers' homesteads

were within boundaries of school district, and thus taxpayers were not entitled to declaration on constitutionality; affidavits filed two days before summary judgment hearing, without leave of court for untimely filing, were not evidence on appeal, as required to support declaratory relief by way of summary judgment; state constitutional amendment, increasing state homestead exemption and prohibiting repeal of such exemptions by school districts, operated retroactively; tax statute, increasing state homestead exemption and prohibiting repeal of such exemptions by school districts, operated retroactively; and trial court's grant of declaratory relief not requested was harmless error.

Memorandum Opinions

Viper S.W.D., LLC v. Jackson County Appraisal Dist., 13-16-00631-CV, 2018 WL 1325780 (Tex. App.—Corpus Christi Mar. 15, 2018, no pet.), reh'g denied (June 22, 2018)

Palma v. Harris County Appraisal Dist., 01-17-00502-CV, 2018 WL 1473792 (Tex. App.—Houston [1st Dist.] Mar. 27, 2018, pet. denied)

Famsa, Inc. v. Bexar Appraisal Dist., 04-17-00672-CV, 2018 WL 2121083 (Tex. App.—San Antonio May 9, 2018, no pet.)

Bustos v. Bexar Appraisal Dist., 04-17-00552-CV, 2018 WL 2222615 (Tex. App.—San Antonio May 16, 2018, pet. denied)

Davis v. Fayette County Appraisal Dist., 4:16-CV-1112, 2018 WL 2862809, (S.D. Tex. June 11, 2018)

McKinney v. Wright, 02-17-00100-CV, 2018 WL 2976420 (Tex. App.—Fort Worth June 14, 2018, no pet.)

Sullivan v. Sheridan Hills Dev. L.P., 14-15-00630-CV, 2017 WL 1719170 (Tex. App.—Houston [14th Dist.] May 2, 2017, pet. denied

In re Terrill, 17-60087-RLJ7, 2018 WL 3025399 (Bankr. N.D. Tex. June 15, 2018)

Panda Sherman Power, LLC v. Grayson Cent. Appraisal Dist., 05-17-00267-CV, 2018 WL 3737974 (Tex. App.—Dallas Aug. 7, 2018, no pet.)

Houston Copperwood Apts., L.P. v. Harris County Appraisal Dist., 01-17-00934-CV, 2018 WL 4496248 (Tex. App.—Houston [1st Dist.] Sept. 20, 2018, no pet.)

Valerus Field Sols., LP v. Matagorda County Appraisal Dist., 13-17-00520-CV, 2018 WL 4924752 (Tex. App.—Corpus Christi Oct. 11, 2018, no pet.)

In re Kinder Morgan Prod. Co., LLC, 05-18-00834-CV, 2018 WL 6599192 (Tex. App.—Dallas Dec. 17, 2018, no pet.)

Morath v. La Feria ISD, 03-17-00338-CV, 2018 WL 6729850 (Tex. App.—Austin Dec. 21, 2018, no pet. h.)

Gutierrez v. City of Laredo, 04-17-00838-CV, 2019 WL 691443 (Tex. App.—San Antonio Feb. 20, 2019, no pet. h.)

Attorney General Opinions

Opinion No. KP- 192

Pursuant to subsection 23.02(c) of the Tax Code, a taxing unit authorizing a disaster reappraisal must pay the appraisal district all the costs of making the reappraisal. Appraisal districts may not capitalize on a disaster by requesting additional funds from taxing units for expenses the appraisal district would incur regardless of the disaster. To the extent that an appraisal district incurs additional costs resulting from a disaster reappraisal, it may require participating taxing units to fund those extraordinary expenses. Section 25.19 of the Tax Code requires a chief appraiser to deliver a written notice to the owner of each property that was reappraised in the current tax year. The Legislature made no exception to this requirement for disaster reappraisals conducted pursuant to section 23.02 of the Tax Code. Thus, a court would likely conclude that a chief appraiser must provide notice to a property owner of a reappraisal when the owner's property value decreases as a result of the disaster reappraisal.

Opinion No. KP- 215

Subsection 1 l.13(n) of the Tax Code provides that if a municipality adopts a tax exemption percentage that produces an exemption of less than $5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of $5,000 of the appraised value. Because article VIII, section 1-b (e) of the Texas Constitution and the Legislature establish a legislatively defined floor for the exemption in an amount of $5,000, a court would likely conclude that a home-rule municipality lacks authority to increase the floor above $5,000. Municipalities desiring to increase the homestead exemption must do so by raising the tax exemption percentage, up to twenty percent, as authorized in the Constitution. The Legislature charged the chief appraiser with determining an individual's right to a property tax exemption, and the Commission of Licensing and Regulation prohibits appraisers from engaging in an official act that violates the law. If a taxing unit adopts an unlawful exemption, the appraiser maintains both a legal and ethical duty to determine that the exemption is inapplicable to the extent it violates the law.