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The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective.

Edward Kliewer III

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THE NEW PROPERTY TAX CODE AND PERFECTING THE APPEAL: THE TAXPAYER'S PERSPECTIVE

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I. INTRODUCTION

In Texas, one of the primary sources of revenue for counties, cities and school districts is the property tax. Generally, the method by which property is taxed for ad valorem tax purposes is to ascertain its fair market value and then apply a tax rate to that value in each of the jurisdictions in which the property is located. Ad valorem is defined as "according to value,"¹ and consequently, unless specifically excluded, all property will be valued in accordance with its market value.² Statutes have further provided and our

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1. See, e.g., *City of Austin v. Cannizzo*, 267 S.W.2d 808, 812 (Tex. 1954); *Tenneco, Inc. v. Polk County*, 546 S.W.2d 63, 65 (Tex. Civ. App.—Beaumont 1976), *rev'd on other grounds*, 554 S.W.2d 918 (Tex. 1977); *Atlantic Richfield Co. v. Warren Indep. School Dist.*, 453 S.W.2d 190, 197 (Tex. Civ. App.—Beaumont 1970, writ ref'd n.r.e.).

2. See, e.g., *Texas East. Transmission Corp. v. Sealy Indep. School Dist.*, 580 S.W.2d

cases have held that all property is taxable unless specifically exempted.³ Moreover, the courts have strictly construed these exemption statutes.⁴ In order to qualify as exempted property, the taxpayer must prove the property falls directly within the exemption statute.⁵ In the event the taxpayer's property is on the periphery of the statutes, the courts, in general, have found the property to be taxable.⁶

The majority of the previously applicable taxation statutes were enacted prior to 1890. Since that time much litigation involving property taxes has required the courts to interpret these statutes. Beginning January 1, 1982, virtually all of these statutes were repealed and replaced by the Property Tax Code.⁷ The purpose of

596, 598 (Tex. Civ. App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.) (constitution requires that property be taxed in proportion to fair cash market value); *Bynum v. Alto Indep. School Dist.*, 521 S.W.2d 656, 658 (Tex. Civ. App.—Tyler 1975, writ ref'd n.r.e.) (property taxed in proportion to its value); *Atlantic Richfield Co. v. Warren Indep. School Dist.*, 453 S.W.2d 190, 197 (Tex. Civ. App.—Beaumont 1970, writ ref'd n.r.e.) ("value" means reasonable cash market value). Additionally, Article 8, section 1 of the Texas Constitution provides that taxes shall be equal and uniform. TEX. CONST. art. VIII § 1; see *Smith v. Davis*, 426 S.W.2d 827, 833 (Tex. 1968). The courts, however, recognize that absolute equality and uniformity is unattainable and require only a reasonable attempt at uniformity. See, e.g., *Anderson County Taxpayer's League v. City of Palestine*, 576 S.W.2d 679, 683 (Tex. Civ. App.—Tyler 1979, no writ); *Johnson City Indep. School Dist. v. Crides*, 535 S.W.2d 725, 728 (Tex. Civ. App.—Austin 1976, writ ref'd n.r.e.); *Dailey v. Borger Indep. School Dist.*, 386 S.W.2d 572, 577 (Tex. Civ. App.—Amarillo 1965, writ ref'd n.r.e.).

3. See TEX. TAX CODE ANN. §§ 11.11-28 (Vernon 1982); 1931 Tex. Gen Laws, ch. 124 §1, at 211; see also *Leander Indep. School Dist. v. Cedar Park Water Supply Corp.*, 479 S.W.2d 908, 912 (Tex. 1972); *State v. American Legion Post 58*, 611 S.W.2d 720, 723 (Tex. Civ. App.—El Paso 1981, no writ); *David Graham Hall Found. v. Highland Park Indep. School Dist.*, 371 S.W.2d 762, 764 (Tex. Civ. App.—Dallas 1963, writ ref'd n.r.e.).

4. See, e.g., *Daughter's of St. Paul, Inc. v. City of San Antonio*, 387 S.W.2d 709, 713 (Tex. Civ. App.—San Antonio 1965, writ ref'd n.r.e.); *City of Wichita Falls v. Cooper*, 170 S.W.2d 777, 781 (Tex. Civ. App.—Fort Worth 1943, writ ref'd n.r.e.); *City of Abilene v. State*, 113 S.W.2d 631, 635 (Tex. Civ. App.—Eastland 1937, writ dism'd).

5. See *State v. American Legion Post No. 58*, 611 S.W.2d 720, 723 (Tex. Civ. App.—El Paso 1981, no writ) (subject property must be embraced within the constitutional authorization and within statutory exemptions made pursuant to such constitutional exemptions); *Air Force Village Found., Inc. v. Northside Indep. School Dist.*, 561 S.W.2d 905, 909 (Tex. Civ. App.—El Paso 1978, writ ref'd n.r.e.) (burden is upon party claiming exemption to prove it comes within an exemption).

6. See *River Oaks Garden Club v. City of Houston*, 370 S.W.2d 851, 856 (Tex. 1963) (fact that an organization performs some charitable acts is not enough to qualify for an exemption); *Daughter's of St. Paul, Inc. v. City of San Antonio*, 387 S.W.2d 709, 713 (Tex. Civ. App.—San Antonio 1965, writ ref'd n.r.e.) (property must be used exclusively for charity, unmixed with other purpose to be exempt).

7. TEX. TAX CODE ANN. §§ 1.01-43.03 (Vernon 1982).

this article is to compare certain aspects of the Property Tax Code (the Code) with the statutes and case authority in interpreting the statutes as they existed prior to January 1, 1982.

Prior to the enactment of the Code there were approximately 3,000 different taxing jurisdictions within the State of Texas. With few exceptions, each of these jurisdictions had a functioning tax office which placed assessments on the taxpayers' properties within that jurisdiction.⁸ If the taxpayer's property was located in more than one jurisdiction, it was possible that the same piece of property could have several different values. The Code has consolidated the appraising and assessing functions to one appraisal district within each county.⁹ The purpose of these districts will be to place a single value on the property located within that district, and each jurisdiction within that district will be required to use that value in levying a tax against a taxpayer owning property. Additionally, the Code makes dramatic changes in not only procedural requirements, but also substantive rights of taxpayers.¹⁰ The extensive number of changes under the Code make it impossible to discuss all of them adequately in a single article. For that reason, this article will be directed towards specific procedural and substantive requirements that the taxpayer must follow in order to protect its rights, as well as comparing these rights as they exist today with pre-existing law. For clarity, this article will be divided into the following topics: 1. Filing Requirements; 2. Pre-Hearing Procedural Requirements of the Taxing Jurisdiction; 3. Pre-Hearing Procedural Requirements of the Taxpayer; 4. Preparation for the Hearing; 5. Conduct of the Hearing; and 6. Remedy.

II. PROCEDURAL REQUIREMENTS OF THE TAXPAYER

A. *Filing Requirements*

Under both the Code and the prior statutes, the first procedural

8. See 1879 Tex. Gen. Laws ch. 27, § 1, at 1324.

9. TEX. TAX CODE ANN. § 6.01 (Vernon 1982). Unless otherwise provided the appraisal district's boundaries are the same as the county's boundaries. *Id.* § 6.02. A unit that has boundaries extending into two or more counties may choose to participate in only one appraisal district. *Id.* § 6.02(h).

10. See TEX. TAX CODE ANN. §§ 1.01-43.03 (Vernon 1982).

step a taxpayer must follow is the rendition of its property.¹¹ The purpose of the rendition is to identify taxable property located within the taxing units. In the past, the taxpayer was required to file a separate rendition for each taxing jurisdiction within which the taxpayer's property was located.¹² Prior to 1982, the taxpayer had to render an inventory of the property and its value to the county as of January 1, of each year, and that rendition had to be filed by April 30.¹³ The taxpayer had to render in the cities and school districts by April 1.¹⁴ It was not necessary that the taxpayer render at market value, however, if the taxpayer felt the question of valuation was to be the subject of litigation.¹⁵

Under the Code, the taxpayer is required to file a single rendition with the chief appraiser of the appraisal district prior to May 1. This rendition is due no later than May 1 although the chief appraiser may extend the time fifteen days for good cause shown.¹⁶ The placing of a market value on the rendition is now optional.¹⁷

The importance of rendering property under both the pre-existing law and the Code is that if the taxing jurisdiction intends to

11. See *Royalty v. Nicholson*, 411 S.W.2d 565, 575 (Tex. Civ. App.—Houston 1967, writ ref'd n.r.e.); TEX. TAX CODE ANN. § 22.01 (Vernon 1982). By rendering the property, the taxpayer places the burden upon the taxing entity of giving notice of any proposed increase, and to disprove the taxpayer's values at a board of equalization hearing. See, e.g., *Seguin Indep. School Dist. v. Blumberg*, 402 S.W.2d 552, 555 (Tex. Civ. App.—San Antonio 1966, writ ref'd n.r.e.); *Bexar County v. Humble Oil & Ref. Co.*, 213 S.W.2d 882, 885 (Tex. Civ. App.—San Antonio 1948, writ ref'd n.r.e.); *Brundrett v. Lucas*, 194 S.W. 613, 616 (Tex. Civ. App.—San Antonio 1917, writ ref'd). Liability for payment of taxes is personal, falling on the true owner of the property. See *Smart v. Tower Land & Inv. Co.*, 582 S.W.2d 543, 546 (Tex. Civ. App.—Dallas 1979), *rev'd on other grounds*, 597 S.W.2d 333 (Tex. 1980); *Humble Oil & Ref. Co. v. Fautham*, 268 S.W.2d 239, 242 (Tex. Civ. App.—Galveston 1954, writ dism'd).

12. 1897 Tex. Gen. Laws ch. 142, § 1 at 1257.

13. 1943 Tex. Gen. Laws ch. 109, § 1 at 190.

14. 1875 Tex. Gen. Laws ch. 99, § 91 at 509 (some school districts accepted renditions through April 30 although there was no statutory authority for such action).

15. See *Harlingen Indep. School Dist. v. Dunlap*, 146 S.W.2d 235, 236 (Tex. Civ. App.—San Antonio 1940, writ ref'd). Once the taxpayer rendered, the burden was on the taxing entity to disprove the taxpayer's valuation. See *Wells Indep. School Dist. v. St. Louis S.W. Ry. Co.*, 324 S.W.2d 442, 447-48 (Tex. Civ. App.—Texarkana 1959, writ ref'd n.r.e.). If the taxpayer did not render, the burden was on the taxpayer to disprove the valuation placed on the property by a taxing entity. See *City of Waco v. Conlee Seed Co.*, 449 S.W.2d 29, 30 (Tex. 1969); *Yamini v. Gentle*, 488 S.W.2d 839, 843-44 (Tex. Civ. App.—Dallas 1972, writ ref'd n.r.e.).

16. TEX. TAX CODE ANN. § 22.23 (Vernon 1982).

17. *Id.* § 22.24(d). "A rendition or report form may permit but may not require a property owner to state his opinion about the market value of his property." *Id.* § 22.24(d).

place a value on the property greater than that rendered, the taxpayer is entitled to notice and an opportunity to protest the proposed increase.¹⁸ Under the Code, if the taxpayer does not place a value on his rendition, then he will not be notified of any appraisal review board hearings unless (1) he has filed a protest document stating that the value of the property was reduced from its taxable value in the previous year for any reason other than accumulated depreciation,¹⁹ or (2) the appraisal district intends to increase the value of the property from that assessed in the previous year.²⁰

B. *Pre-Hearing Procedural Requirements Of The Taxing Jurisdiction*

Until January 1, 1982, each taxing jurisdiction with the power to assess held its own board of equalization hearing.²¹ Under the Code, the former function of the board of equalization is consolidated into a single appraisal review board which sets the value for all the property located within the appraisal district.²² Therefore, the taxpayer is only required to make a single appearance to protest its value rather than having to appear in every single taxing jurisdiction where the taxpayer feels that its property has been

18. See, e.g., *Seguin Indep. School Dist. v. Blumberg*, 402 S.W.2d 552, 555 (Tex. Civ. App.—San Antonio 1966, writ ref'd n.r.e.); *Bexar County v. Humble Oil & Ref. Co.*, 213 S.W.2d 882, 883 (Tex. Civ. App.—San Antonio 1948, writ ref'd n.r.e.); *Harlingen Indep. School Dist. v. Dunlap*, 146 S.W.2d 235, 237 (Tex. Civ. App.—San Antonio 1940, writ ref'd).

19. TEX. TAX CODE ANN. § 41.41 (Vernon 1982).

20. *Id.* § 25.19(a)(1).

21. 1909 Tex. Gen. Laws ch. 38, § 1 at 372-74. The board of equalization convened on or before June 1, and received the assessment rolls of the tax assessor-collector. *Id.* § 1 at 372-74. The board of equalization's assessment of property tax is a quasi-judicial function and no attack could be made on the board's valuations in the absence of fraud, lack of jurisdiction, illegality, or arbitrary erroneous plan. See, e.g., *Martin v. City of Mesquite*, 590 S.W.2d 793, 796 (Tex. Civ. App.—Dallas 1979, writ ref'd n.r.e.); *Zavala County v. E.D.K. Ranches, Inc.*, 544 S.W.2d 484, 486 (Tex. Civ. App.—San Antonio 1976, no writ); *Bass v. Aransas County Indep. School Dist.*, 389 S.W.2d 165, 175 (Tex. Civ. App.—Corpus Christi 1965, no writ).

22. TEX. TAX CODE ANN. § 6.01 (Vernon 1982). Under the Code, the chief appraiser of each district shall prepare, by April 15 or as soon thereafter as practicable, appraisal records listing all property and stating the appraised values of each. *Id.* § 25.01. Also by April 15, the chief appraiser shall deliver written notice to the property owner of the appraised value of the property if (1) the appraised value is greater than the preceding year and (2) the property was not on the appraisal roll in the preceding year. *Id.* § 25.19. Notice to the property owner of any change made as a result of the taxing unit challenge must be made fifteen days prior to the approval of the records by the appraisal review board. *Id.* § 41.11.

overassessed. The duties of the board of equalization, now the appraisal review board, are basically the same, each being vested with the primary duties of ensuring that (1) the property is not assessed in excess of its market value and (2) that all property is being assessed equally and uniformly with other property.²³

The Code does not set forth the procedural rules to be utilized at the hearings of the appraisal review board. In order to prevail in district court, on a challenge of excessive valuation, however, the taxpayer must prove that its property is being valued in excess of five percent over its fair market value.²⁴ To prevail on the question of inequality, the taxpayer must show that its property is being assessed at more than ten percent greater than the weighted average of appraisal.²⁵ Since there is neither statutory nor case authority establishing the procedure by which the appraisal review board hearings will be conducted, the taxpayer must at this time rely on the interpretation of the pre-existing statutes given by the courts. At the board of equalization hearings, the taxpayer could challenge either the market value, the question of equality, or both.²⁶

Prior to the enactment of the Code, if a taxpayer rendered its property for taxation and appeared before the board of equalization pursuant to notice, the rendered value would be the value of the property for ad valorem tax purposes. In order to overcome such rendered value, the taxing jurisdiction had to assume the burden of producing competent sworn testimony to support its valua-

23. See, e.g., *Smith v. Davis*, 426 S.W.2d 827, 833-34 (Tex. 1968); *Texas East. Transmission Corp. v. Sealy Indep. School Dist.*, 580 S.W.2d 596, 604 (Tex. Civ. App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.); *Bynum v. Alto Indep. School Dist.*, 521 S.W.2d 656, 658 (Tex. Civ. App.—Tyler 1975, writ ref'd n.r.e.).

24. See TEX. TAX CODE ANN. § 42.27(b) (Vernon 1982).

25. *Id.* § 42.26. Under section 1.12 the weighted average level of appraisal is determined by:

dividing the total appraised value, as determined by the appraisal office or the appraisal review board, of all properties in an appraisal district or of a statistically valid sample of properties in the district by the sum of the following with respect of those properties:

- (1) the total value determined according to law of properties that qualify for appraisal for tax purposes according to a standard other than market value; and
- (2) the total market value of all other properties.

Id. § 1.12.

26. See *Lively v. MK&T Ry.*, 102 Tex. 545, 547, 120 S.W. 852, 856 (1954); *Atlantic Richfield Co. v. Warren Indep. School Dist.*, 453 S.W.2d 190, 197 (Tex. Civ. App.—Beaumont 1970, writ ref'd n.r.e.).

tion.²⁷ The preparation for the board of equalization hearing served two purposes: (1) to reduce the valuation of the property at the hearing and (2) to lay the predicate for an appeal to the district court if the ultimate valuation was considered to be excessive.²⁸ Prior to the board of equalization hearing, a determination of what was to be appealed must have been made, i.e., a challenge of market value or a challenge of equalization, or both.²⁹ This initial decision was important because it beared upon what evidence would be presented at the hearing.³⁰

C. *Pre-Hearing Procedural Requirements Of The Taxpayer*³¹

Typically in the past, professional mass appraisal firms were retained by the taxing jurisdictions to annually reappraise commer-

27. See, e.g., *Republic Ins. Co. v. Highland Park Indep. School Dist.*, 129 Tex. 55, 56, 102 S.W.2d 184, 187 (1937); *Seguin Indep. School Dist. v. Blumberg*, 402 S.W.2d 552, 555 (Tex. Civ. App.—San Antonio 1966, writ ref'd n.r.e.); *Wells Indep. School Dist. v. St. Louis Sw. Ry. Co.*, 324 S.W.2d 442, 447-48 (Tex. Civ. App.—Texarkana 1959, writ ref'd n.r.e.).

28. Once the taxpayer had gone through the administrative process of appearing before the board of equalization and was not satisfied with the values placed upon the property, the only remedy was to sue the taxing entity in a district court. See, e.g., *City of Waco v. Conlee Seed Co.*, 449 S.W.2d 290,30 (Tex. 1969); *Luloc Oil Co. v. Caldwell County*, 601 S.W.2d 789, 791 (Tex. Civ. App.—Beaumont 1980, writ ref'd n.r.e.); *Pierce v. City of Jacksonville*, 403 S.W.2d 512, 516 (Tex. Civ. App.—Tyler 1966, writ ref'd n.r.e.).

29. See, e.g., *City of Waco v. Conlee Seed Co.*, 449 S.W.2d 29, 31 (Tex. 1969) (taxpayer alleged property was valued grossly in excess of its market value); *Lively v. MK&T Ry.*, 102 Tex. 545, 547, 120 S.W. 852, 856 (1909) (intangible values were being taxed at higher percentage of value than land); *Atlantic Richfield Co. v. Warren Indep. School Dist.*, 453 S.W.2d 190, 197 (Tex. Civ. App.—Beaumont 1970, writ ref'd n.r.e.) (alleged one taxpayers property was being taxed at a higher percentage than another's).

30. Compare *City of Waco v. Conlee Seed Co.*, 449 S.W.2d 29, 31 (Tex. 1969) (decisions of board as to market value will not be set aside unless they are in fact excessive) with *Lancaster Indep. School Dist. v. Pinson*, 510 S.W. 2d 380, 383 (Tex. Civ. App.—Dallas 1974, writ ref'd n.r.e.) (if taxpayer attacks plan because of inequality; proof of actual market value of plaintiff's property is necessary).

31. Under the new Property Tax Code there are no pre-hearing procedural requirements of the taxpayer. There are, however, several procedural requirements that the taxpayer must meet before a hearing. Under the Code before May 11 or within twenty days after the appraisal records are submitted, which should be April 15, the taxpayer protest petition must be filed. TEX. TAX CODE ANN. § 41.44 (Vernon 1982). If a change in the property valuation of a taxpayer is made pursuant to Section 41.11, the taxpayer must file his protest petition not less than ten days following the receipt of the notice of the change. *Id.* § 41.44(a)(2). If supplemental appraisal records are made, the property owner must file a protest petition within ten days after the date the records are submitted for review and such review shall be completed within thirty days after the date the records are submitted. *Id.* § 25.23(d). The taxpayer must be given fifteen days notice of the hearing date to protest the increase in appraisal value. *Id.* § 41.46.

cial and industrial properties. The same is true for the valuation of these properties under the Code. If this type of property is involved and the challenge of the taxpayer is one of market value, then it becomes necessary to present testimony of qualified witnesses to support that taxpayer's valuation.³² The participation of these witnesses in the cause of the taxpayer is essential, not only to present the taxpayer's analysis of fair market value, but also to aid the representative of the taxpayer in the examination of any representatives of the taxing jurisdiction. If the challenge is not one of market value but of equalization, then the best witness to substantiate the taxpayer's valuation is in many cases the appraiser representing the taxing unit.

When the equalization of taxes has been challenged and there has been adequate time to prepare a ratio study (the relationship of fair market value to assessed value of property within the jurisdiction), the witness who made such study should be prepared to testify before the board of equalization. To preserve a challenge of equalization in the district court, it is, under both the pre-existing statutes and the Code not necessary to present expert testimony as to inequality existing within the taxing jurisdiction at the board hearing.

D. *Preparation For The Hearing*

The importance of preparing witnesses for these quasi-judicial hearings cannot be overemphasized. Preparing a witness for an appraisal review board hearing is the same as preparing the same witness for testimony at the time of trial. The witness must be made aware of the quasi-judicial nature of the hearing, and that it may not be as structured as testimony before a district court judge, but important nonetheless. The witness should know and recognize any weaknesses in his valuation, and be prepared to provide whatever supporting documentation is necessary to substantiate his opinion as to the value. Furthermore, if the testimony is of a very technical nature, the expert must be aware that for the most part he is testi-

32. See *Seguin Indep. School Dist. v. Blumberg*, 402 S.W.2d 552, 555 (Tex. Civ. App.—San Antonio 1966, writ ref'd n.r.e.) (where taxpayer files sworn rendition, board must hear expert testimony before raising valuation); *Cole v. City of Dallas*, 229 S.W.2d 192, 193 (Tex. Civ. App.—Dallas 1950, writ ref'd n.r.e.) (expert's opinion as to value may be based upon the price paid for another similar piece of land).

fyng before laymen, so it is of paramount importance to put his testimony in terms that can be understood by the average person.

Most taxing jurisdictions are required to file with various state agencies documentation of the methods of valuation and the ultimate values placed on various classifications of property within the taxing jurisdiction.³³ These documents have given an excellent basis for the cross-examination of representatives of the taxing jurisdiction. The taxpayer should be prepared to make the same type of preparation under the Code that was employed in pre-Code hearings before the board of equalization subject to any procedural guidelines which are ultimately promulgated by the various appraisal districts.

E. Conduct Of The Hearing

As always, it must be remembered that there is no substitute for detailed preparation and the knowledge of the strengths and weaknesses of the presentation. Under the Code and pre-existing statutes, the most advantageous opportunity to gain admissions against the interest of the taxing jurisdictions will be before the appraisal review board. Generally the taxing jurisdiction's preparation for these hearings will not be as detailed as the taxpayer's should be and, therefore, the jurisdiction is vulnerable to admissions.

It is a sound practice to have the hearing transcribed. Moreover, the taxpayer should be prepared to make its own transcription of the hearing, preferably with a court reporter, and not rely upon any transcription of the hearing made by the appraisal review board. If litigation is contemplated because a valuation is not favorable, then it is also advantageous to have an attorney at the hearing before the appraisal review board. The record of the appraisal review board hearing is not admissible in any litigation,³⁴ nevertheless, it can be extremely valuable for discovery purposes.

Many states have rules which set forth the procedure followed within the appeal process. In Texas, however, there are no procedural rules governing these hearings. If the taxpayer has rendered, theoretically the taxing jurisdiction is then required to put into ev-

33. See TEX. TAX CODE ANN. § 11.82 (Vernon 1972) (requires school districts to file Educ. report of property value each year with the state Property Tax Board).

34. TEX. TAX CODE ANN. § 42.23(b) (Vernon 1982).

idence the basis of the increase in value. This is not always the case, so the taxpayer should be flexible to local procedures and be prepared to place its case before the board, even though it is extremely preferable that the taxing jurisdiction's evidence be put before the board first.

If a challenge in the district court on equalization only is contemplated, the most opportune time to establish the market value of the taxpayer's property is thru the use of the appraiser representing the taxing jurisdiction at the appraisal review board hearing. This is of importance because if the matter is taken to district court, the taxing jurisdiction in Texas may challenge its own valuation for purposes of defending a claim of excessiveness.

F. Remedies

Under pre-existing law as with the Code, once a taxpayer has gone through the administrative process and is still not satisfied with the values placed up on its property, the only remedy is to file suit against the appraisal district in a district court.³⁵ Under the Code, the taxpayer must give written notice of appeal within fifteen days after it receives the notice required after the determination of the taxpayer's original protest to the appraisal review board.³⁶ Suit must be filed within forty-five days after the taxpayer receives notice that the final order has been entered. Failure to file suit prevents any remedy, including defense to a delinquent tax suit.³⁷ The burden of following these requirements must be strictly adhered to by the taxpayer, and the failure to do so will result in the loss of any right to challenge excessive value, no matter how wrongly the taxpayer has been treated.

Once suit is filed, the burden of proof is on the taxpayer to prove that the fair market value of the property is at least five percent less than the valuation placed on the property by the appraisal review board and/or that the weighted average of appraisal of prop-

35. See, e.g., *Luloc Oil Co. v. Caldwell County*, 601 S.W.2d 789, 791 (Tex. Civ. App.—Beaumont 1980, writ ref'd n.r.e.); *Missouri-Kansas-Texas R.R.Co. v. City of Dallas*, 594 S.W.2d 766, 768 (Tex. Civ. App.—Dallas 1980), *rev'd*, 623 S.W.2d 296 (1981); *Pierce v. City of Jacksonville*, 403 S.W.2d 512, 516 (Tex. Civ. App.—Tyler 1966, writ ref'd n.r.e.).

36. TEX. TAX CODE ANN. § 42.06 (Vernon 1982). Under Section 41.47 after the appraisal review board hears a protest it makes its decision by written order. The board then delivers a copy of the order to the property owner by registered mail. *Id.* § 41.47.

37. *Id.* § 42.21.

erty within the taxing jurisdiction is ten percent less than the assessment placed against the taxpayer's property.³⁸

There is no case authority delineating the type of evidence the taxpayer must be prepared to offer to sustain its allegations under the Code. The trial will be conducted as a trial de novo.³⁹ Thus a review of pre-Code case authority might be helpful to the taxpayer.

Prior to the enactment of the Code, there were basically three types of lawsuits. The first was an attack on the valuation of the property on the basis that the values were discriminatory, arbitrary, that there was omitted property or that the property was valued in excess of its market value.⁴⁰ The second type of suit was one in which the taxing entity obtained no jurisdiction over the taxpayer.⁴¹ And, the final type was one contending that the levy of the tax itself was invalid.⁴²

The remedies that typically were sought were a temporary restraining order, temporary injunction, permanent injunction, and finally a writ of mandamus (an order from the court that the tax assessor valued the property in accordance with the laws of the State).⁴³ The first type of lawsuit, one attacking the valuation on the basis that it was discriminatory or arbitrary or in excess of market value, was a very difficult lawsuit. The burden of proof was placed on the taxpayer to disprove the valuation placed on that taxpayer's property.⁴⁴ This burden of proof could have been in-

38. *See id.* at § 42.27 (b), § 42.26.

39. *Id.* § 42.23(a).

40. *See, e.g.,* Luloc Oil Co. v. Caldwell County, 601 S.W.2d 789, 791 (Tex. Civ. App.—Beaumont 1980, writ ref'd n.r.e.); Atlantic Richfield Co. v. Warren Indep. School Dist., 453 S.W.2d 190, 197 (Tex. Civ. App.—Beaumont 1970, writ ref'd n.r.e.); City of Houston v. Baker, 178 S.W. 820, 824 (Tex. Civ. App.—Galveston 1915, writ ref'd).

41. *See, e.g.,* City of Arlington v. Cannon, 153 Tex. 566, 567, 271 S.W.2d 414, 416 (1954) (board of equalization had no jurisdiction over property owners who did not receive the required notice); Fayetteville Indep. School Dist. v. Crowley, 528 S.W.2d 344, 346 (Tex. Civ. App.—Austin 1975, no writ) (attempted raise in value was void for want of jurisdiction since owners were not notified in writing prior to board's meeting); Ward County v. Wentz, 69 S.W.2d 571, 572 (Tex. Civ. App.—El Paso 1934, no writ) (action of board in raising valuation without notice to taxpayer was a fraud upon him).

42. *See* Lumberton Mun. Util. Dist. v. Cease, 596 S.W.2d 601, 605 (Tex. Civ. App.—Beaumont 1980, no writ).

43. *See* City of Houston v. Baker, 178 S.W. 820, 823-25. (Tex. Civ. App.—Galveston 1915, writ ref'd).

44. *See, e.g.,* Westwood Indep. School Dist. v. Southern Clay Prods., 604 S.W.2d 511, 515 (Tex. Civ. App.—Tyler 1980, no writ); Martin v. City of Mesquite, 590 S.W.2d 793, 797-98 (Tex. Civ. App.—Dallas 1979, writ ref'd n.r.e.); Pierce v. City of Jacksonville, 403 S.W.2d

creased by failure of the taxpayer to timely act after the valuation had been placed upon the tax roll.⁴⁵ That is, Texas courts held that if a taxpayer "sat on its rights" and allowed the taxing plan to go into effect, then it had to prove that the valuation of the property was grossly excessive.⁴⁶ If, however, that taxpayer filed its lawsuit prior to the certification of the tax roll, then the taxpayer was only required to prove substantial injury.⁴⁷ The differentiation of burden has been eliminated by requiring that suit be filed within forty-five days after final determination of fair market value by the appraisal review board.⁴⁸

The Code, by articulating the five percent greater than the fair market value and ten percent greater than weighted average level of appraisal, has attempted to define what was previously an undefined injury. While the definition of weighted average level of appraisal is at best confusing, at least the taxpayer has some direc-

512, 516 (Tex. Civ. App.—Tyler 1966, writ ref'd n.r.e.).

45. See, e.g., *Whelan v. State*, 155 Tex. 14, 16, 282 S.W.2d 378, 380-81 (1955); *Bynum v. Alto Indep. School Dist.*, 521 S.W.2d 656, 659 (Tex. Civ. App.—Tyler 1975, writ ref'd n.r.e.); *Bass v. Aransas County Indep. School Dist.*, 389 S.W.2d 165, 175 (Tex. Civ. App.—Corpus Christi 1965, writ ref'd n.r.e.).

46. See *Whelan v. State*, 155 Tex. 14, 15, 282 S.W.2d 378, 380 (1955); *State v. Whittenburg*, 153 Tex. 205, 207-08, 265 S.W.2d 569, 572-73 (1954); *Keystone Operating Co. v. Runge Indep. School Dist.*, 558 S.W.2d 82, 83-84 (Tex. Civ. App.—San Antonio 1977, writ ref'd n.r.e.); *Bass v. Aransas County Indep. School Dist.*, 389 S.W.2d 165, 170 (Tex. Civ. App.—Corpus Christi 1965, writ ref'd n.r.e.). The court in *Bass* stated the applicable rule in cases where the taxpayer sat idly by until the taxing authority sought to collect taxes by an illegal plan:

Once [the tax] plan is put into effect, in the absence of showing by comparison of the assessments against his property with assessments against other like property, of a gross discrimination against him, the land owner may defeat recovery of taxes only to the extent that they are excessive, and he must assume the burden of proving excessiveness. He must show that the use of such a plan worked to his substantial injury, and the extent to such injury.

Bass v. Aransas County Indep. School Dist., 389 S.W.2d 165, 170 (Tex. Civ. App.—Corpus Christi 1965, writ ref'd n.r.e.).

47. See, e.g., *Commissioners Court of Anderson County v. Calhoun*, 575 S.W.2d 72, 75 (Tex. Civ. App.—Tyler 1978, no writ); *Bynum v. Alto Indep. School Dist.*, 521 S.W.2d 656, 659 (Tex. Civ. App.—Tyler 1975, writ ref'd n.r.e.); *Bryson v. Bertram Indep. School Dist.*, 443 S.W.2d 77, 79 (Tex. Civ. App.—Austin 1969, writ ref'd n.r.e.). If suit was filed by the taxpayer before the tax assessment plans were put into effect it was a direct attack upon the plan. See, e.g., *City of Arlington v. Cannon*, 153 Tex. 566, 567, 271 S.W.2d 414, 416 (1954); *Atlantic Richfield Co. v. Warren Indep. School Dist.*, 453 S.W.2d 190, 195 (Tex. Civ. App.—Beaumont 1970, writ ref'd n.r.e.); *Superior Oil Co. v. Sinton Indep. School Dist.*, 431 S.W.2d 383, 386 (Tex. Civ. App.—Corpus Christi 1968, no writ).

48. TEX. TAX CODE ANN. § 42.21 (Vernon 1982).

tion in preparing its case for trial. The pre-Code problems faced by the taxpayer can be illustrated by a review of pertinent cases.

There was no real definition of the difference between grossly excessive and substantial injury; however, grossly excessive has been defined as what shocks the mind.⁴⁹ The best example of grossly excessive was the case of the *City of Waco v. Conlee Seed*⁵⁰ In that case, the taxpayer did not render his property, did not appear before the board of equalization, and a delinquent tax suit was filed against the taxpayer. The taxpayer was then required to defend on the grounds that the property was valued grossly in excess of its market value. The court held that the valuation of his property was 1,100% overvalued, and therefore, grossly excessive.⁵¹ The issue of filing suit before the roll is certified is exemplified by two cases. In *Zglinski v. Hackett*,⁵² the taxpayer was notified of the value on a Monday after the board had met and filed suit immediately. The court held that this action on the part of the taxpayer was a collateral attack, that he must prove the value was grossly excessive since he allowed the roll to go into effect even though he filed immediately upon finding out the valuation assigned to his property.⁵³ In *Burkland v. Hackett*,⁵⁴ a suit against the same taxing entity, the taxpayer met with the board which declined to advise taxpayer what action it was going to take. The taxpayer then filed suit without waiting for a decision from the board and the taxing entity argued that the suit was premature. The court of civil

49. See *Westwood Indep. School Dist. v. Southern Clay Prods.*, 604 S.W.2d 511, 515 (Tex. Civ. App.—Tyler 1980, no writ); *Martin v. City of Mesquite*, 590 S.W.2d 793, 797-98 (Tex. Civ. App.—Dallas 1979, writ ref'd n.r.e.).

50. 449 S.W.2d 29 (Tex. 1969).

51. *Id.* at 32-33.

52. 552 S.W.2d 933 (Tex. Civ. App.—Austin 1977, writ ref'd n.r.e.).

53. *Id.* at 935. *Contra Owens Ill., Inc., v. Little Cypress-Mauriceville Indep. School Dist.*, 481 S.W.2d 477 (Tex. Civ. App.—Beaumont 1972, no writ) (several days passed before lawsuit filed, and court held a reasonable effort had been made by the taxpayer). Once the tax plan was put into effect, the taxpayer lost his right to the remedies of injunction and mandamus. See *Luloc Oil Co. v. Caldwell County*, 601 S.W.2d 789, 791 (Tex. Civ. App.—Beaumont 1980, writ ref'd n.r.e.). Additionally, in a collateral attack on a tax plan, the taxpayer had the burden of proving excessiveness of the tax; once they established substantial injury, the taxpayers remedies were limited to voiding only the excess. See, e.g., *Sierra Blanca Indep. School Dist. v. Sierra Blanca Corp.*, 514 S.W.2d 782, 785 (Tex. Civ. App.—El Paso 1974, no writ); *Swamp Irish, Inc. v. Snow*, 501 S.W.2d 690, 692 (Tex. Civ. App.—Corpus Christi 1965, no writ); *Bass v. Aransas County Indep. School Dist.*, 389 S.W.2d 165, 170 (Tex. Civ. App.—Corpus Christi 1969, no writ); .

54. 575 S.W.2d 389 (Tex. Civ. App.—Tyler 1978, no writ).

appeals held that had the taxpayer waited for the board's disposition of their case, the tax plan might be put into effect, and therefore place a more onerous burden on the taxpayer. They allowed the taxpayer's suit to be filed and granted the relief the taxpayer sought.⁵⁵

Another case is that of *Grayson County v. Dennard*.⁵⁶ *Grayson County* is an omitted property case.⁵⁷ The taxpayers argued that their values should not be increased because personal property was not on the tax roll, which incidentally is no longer going to be a consideration because most non-income producing personal property is no longer assessable.⁵⁸ In *Grayson County*, the taxpayers filed suit in advance of certification of the tax roll, and the court held that it was a direct attack. The court refused to enjoin the entire tax roll, but enjoined only that portion of the roll which applied to the named plaintiffs.⁵⁹

The difficulty of challenging fair market value is illustrated by the relatively small number of cases sustaining the taxpayer's allegations. Recently, however, the courts have begun to review the taxpayer's plight with more sympathy.⁶⁰ In each of these recent cases, the paramount question was whether or not the board of equalization had placed the property of these taxpayers on their various tax rolls in excess of fair market value. In *Polk County v. Tenneco, Inc.*⁶¹ the Texas Supreme Court held that questions of market value were ones of fact, but questions of gross excessive-

55. *Id.* at 393.

56. 574 S.W.2d 179 (Tex. Civ. App.—Eastland 1978, no writ).

57. In attacking tax plan because of omission of certain property from tax rolls, the taxpayer had to prove the absence from the tax rolls of certain taxable property, a resulting substantial monetary injury, and that the omission was a deliberate, arbitrary and fundamentally erroneous scheme to permit certain property to escape a tax burden. *See* *Swamp Irish, Inc. v. Snow*, 501 S.W.2d 690, 692 (Tex. Civ. App.—Corpus Christi 1973, no writ); *Skinner Corp. v. Callahan Indep. School Dist.*, 409 S.W.2d 929, 932-33 (Tex. Civ. App.—Corpus Christi 1966, no writ).

58. TEX. TAX CODE ANN. § 21.02 (Vernon 1982).

59. *Grayson County v. Dennard*, 574 S.W.2d 179, 185 (Tex. Civ. App.—Eastland 1978, no writ). The court in *Grayson* stated that an injunction blocking certification of the tax roll as to every taxpayer in the county would be overly broad. They, therefore, limited relief to the plaintiffs that challenged assessment. *Id.* at 185.

60. *See, e.g.*, *Polk Co. v. Tenneco, Inc.*, 554 S.W.2d 918 (Tex. 1977); *Lively v. MK&T Ry. Co.*, 102 Tex. 545, 120 S.W. 852 (1909); *Texas E. Trans. Corp. v. Sealy Indep. School Dist.*, 580 S.W.2d 596 (Tex. Civ. App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.).

61. 554 S.W.2d 918 (Tex. 1977).

ness and of substantial discrimination were questions of law for the court.⁶² These cases will be the standard by which the taxpayer's burden of proof is measured under the Code as well.

Once a lawsuit was filed, the allegations in the suit took varying forms. The most common was that one taxpayer's property was being taxed at a higher percentage of value than another taxpayer's. The best case from the taxpayer's standpoint on the question of equalization is the case of *Atlantic Richfield, Co. v. Warren Independent School District*.⁶³ In that case, Atlantic Richfield sought injunctive relief from the adoption of the tax rolls contending that the board of equalization had adopted a fundamentally erroneous plan of taxation resulting in their substantial injury.⁶⁴ The taxpayer alleged that its mineral values were on the tax roll at approximately forty-six percent of value while land was at nineteen percent of value. The court held that the taxpayer was entitled to the relief it sought due to the inequality of the valuation.⁶⁵ In the case of *Lively v. M K & T Railway, Co.*,⁶⁶ the railroad company argued that its intangible values were being taxed at a higher percentage of value than the land. The court held this inequality was a violation of the Constitution which required all property to be taxed equally and uniformly.⁶⁷ In a recent case involving 1979 taxes, *Parker County v. Spindletop Oil & Gas Co.*,⁶⁸ the Supreme Court set aside the 1979 assessments as a result of inequality, holding that the county placed oil and gas properties on the tax rolls at one hundred per cent market value while all other property was assessed at varying percentages having no relation to market value.⁶⁹

It was not enough for the taxpayer to show that a plan was arbitrary and discriminatory when the suit was a challenge to equality. When the taxpayer filed a lawsuit, it automatically put its own values into issue, whether or not it had agreed with the board of

62. *Id.* at 920-921; accord *Texas E. Trans. Corp. v. Sealy Indep. School Dist.*, 580 S.W.2d 596, 604 (Tex. Civ. App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.).

63. 453 S.W.2d 190 (Tex. Civ. App.—Beaumont 1970, writ ref'd n.r.e.)

64. *Id.* at 192. The taxpayer was only required to show substantial injury since it was a direct attack and suit was filed before the plan was put into effect. *Id.* at 195.

65. *Id.* at 197.

66. 102 Tex. 545, 120 S.W. 852 (1909).

67. *Id.* at 856.

68. 638 S.W.2d 765 (Tex. 1982).

69. *Id.* at 767.

equalization as to the full market value. The taxpayer must prove its own values again, and the board of equalization is not bound by its original valuations in defending the suit.⁷⁰ It could not increase the taxpayer's value for that tax year, but it could prove that the taxpayer was not actually on the roll at full value.⁷¹ *Commissioners Court of Anderson County v. Calhoun*,⁷² an example of this burden of proof. In *Calhoun*, the taxpayer filed suit to enjoin the county commissioners from putting a tax plan into effect which would place an equal value on all property irrespective of market value. The court held that a showing of an erroneous and arbitrary tax plan was not sufficient to grant an injunction. In the absence of proof of the market value of all property subject to the plan, the taxpayer did not meet his burden of proof.⁷³ Presumably a taxpayer should be prepared to sustain such a burden in a suit filed pursuant to the Code.

Another type of lawsuit was one instigated because the taxing entity failed to obtain jurisdiction over the taxpayer. This lack of jurisdiction is usually brought about because the taxpayer did not receive the required notices.⁷⁴ These cases may be of historical interest only because it is not clear whether the Code permits a jurisdictional challenge. Under the Code, the failure of the taxpayer to receive the appropriate notices from the appraisal district is not a defense to the failure of a taxpayer timely filing any required documents in order to preserve its rights.⁷⁵ By removing the taxpayer's right to overcome the presumption that such notices were mailed could in many cases deprive the taxpayer of the right to challenge its values in district court. This is of questionable constitutional validity.

70. See, e.g., *Commissioners Court of Anderson County v. Calhoun*, 575 S.W.2d 72, 75 (Tex. Civ. App.—Tyler 1978, no writ); *Lancaster Indep. School Dist. v. Pinson*, 510 S.W.2d 380, 383 (Tex. Civ. App.—Dallas 1974, writ ref'd n.r.e.); *Montgomery County v. Humble Oil & Ref. Co.*, 245 S.W.2d 326, 335 (Tex. Civ. App.—Beaumont 1952, writ ref'd n.r.e.).

71. See *Montgomery County v. Humble Oil & Ref. Co.*, 245 S.W.2d 326, 335 (Tex. Civ. App.—Beaumont 1952, writ ref'd n.r.e.).

72. 575 S.W.2d 72 (Tex. Civ. App.—Tyler 1978, no writ).

73. *Id.* at 75.

74. See, e.g., *City of Arlington v. Cannon*, 153 Tex. 566, 567, 271 S.W.2d 414, 416 (1954); *Fayetteville Indep. School, Dist. v. Crowley*, 528 S.W.2d 344, 346 (Tex. Civ. App.—Austin 1975, no writ); *Ward County v. Wentz*, 69 S.W.2d 571, 572 (Tex. Civ. App.—El Paso 1934, no writ).

75. TEX. TAX CODE ANN. § 25.19(f) (Vernon 1982).

Under pre-Code case law the failure of the jurisdiction to comply with the notice requirements rendered void any attempt by the taxing entity to increase the values of that particular taxpayer.⁷⁶ One basic advantage of this type of lawsuit was that the taxpayer did not have to prove injury.⁷⁷ The single issue was whether or not the taxing jurisdiction complied with the notice requirement and if it did not, it failed to obtain jurisdiction over the taxpayer, and therefore, any increase in value was void. Probably the single most comprehensive case in Texas is that of *City of Arlington v. Cannon*.⁷⁸ In that case, every conceivable type of taxpayer was involved—those that argued that their property had been increased without notice, those that argued that their property had been arbitrarily valued, those who received notice but did not appear at the board of equalization hearing, and those who did not receive notice and did appear. The only group of taxpayers that were successful were those who did not receive notice and did not appear.⁷⁹

Under the Code the court is given the authority to place a value on the property in question.⁸⁰ This is a material change in the law in that once a taxpayer has filed a lawsuit and proven injury and that there has been an arbitrary and discriminatory plan the court can then place its own value on the property. Under Article 7345(f)⁸¹ an affidavit and lawsuit must have been filed within forty-five days of the certification of the tax roll before the court or jury could set the value. Absent that, cases have uniformly held that the board of equalization could meet again to redetermine the

76. See, e.g., *Zavala County v. E.D.K. Ranches, Inc.*, 544 S.W.2d 484, 486-87 (Tex. Civ. App.—San Antonio 1976, no writ); *Crystal City Indep. School Dist. v. Johnson*, 535 S.W.2d 730, 733 (Tex. Civ. App.—Tyler 1976, no writ); *Fayetteville Indep. School Dist. v. Crowley*, 528 S.W.2d 344, 346 (Tex. Civ. App.—Austin 1975, writ ref'd n.r.e.). Property owner who voluntarily appeared at the board hearing waived notice, however, and submitted themselves to their jurisdiction. See *City of Arlington v. Cannon*, 153 Tex. 566, 567, 271 S.W.2d 414, 416 (1954); *Fayetteville Indep. School Dist. v. Crowley*, 528 S.W. 2d 344, 346 (Tex. Civ. App.—Austin 1975, writ ref'd n.r.e.).

77. See, e.g., *Bexar County v. Connell Leasing Co.*, 611 S.W.2d 496, 499, (Tex. Civ. App.—San Antonio 1981, no writ); *City of Houston v. Union City Transfer Co.*, 307 S.W.2d 645, 648 (Tex. Civ. App.—Houston 1957, no writ); *Ward County v. Wentz*, 69 S.W.2d 571, 572 (Tex. Civ. App.—El Paso 1934, no writ).

78. 153 Tex. 566, 271 S.W.2d 414 (1954).

79. *Id.* at 416.

80. See TEX. TAX CODE ANN. §§ 42.46, 42.27 (Vernon 1982).

81. 1977 Tex. Gen. Laws ch. 764, § 1 at 1912-13.

values.⁸² The constitutionality of Article 7345(f) which was repealed by the Code, was upheld in the case of *Banquette I.S.D. v. Tenneco, Inc.*⁸³ While it was hard to imagine a board setting a value higher than the evidence reflected in court, unless suit was filed pursuant to 7345(f), judgment against the jurisdiction still did not ultimately resolve the values. If the board of equalization never obtained jurisdiction over the taxpayer, any increases were invalid and the property was placed on the roll at either the rendered values or the value of the previous year.⁸⁴

Under the Code, a taxpayer who does not comply with the procedural requirements cannot even defend a delinquent tax suit on the basis that the valuation placed on its property is excessive.⁸⁵ Therefore, the taxpayer in *City of Waco v. Conlee Seed*⁸⁶ who did not render his property or seek relief before the board of equalization would under the Code have been required to pay taxes based on a valuation more than one thousand percent greater than the actual fair market value of that taxpayer's property.

Once a suit is filed under the Code pursuant to its provisions, one requirement is a tender by the taxpayer of taxes based on the greater of the amount of taxes not in dispute or the amount of taxes paid by the taxpayer in the previous year.⁸⁷ This contrasts dramatically with pre-Code procedural requirements that the taxpayer seeking injunctive relief tender the amount the taxpayer felt was due and owing.⁸⁸ The rather incongruous result of this new

82. See, e.g., *Grayston County v. Dennard*, 574 S.W.2d 179, 185 (Tex. Civ. App.—Eastland 1978, no writ); *San Marcos Consol. Indep. School Dist. v. Nance*, 495 S.W.2d 335, 344 (Tex. Civ. App.—Austin 1973, writ ref'd); *Atlantic Richfield Co. v. Warren Indep. School Dist.*, 453 S.W.2d 190, 200 (Tex. Civ. App.—Beaumont 1970, writ ref'd n.r.e.).

83. 618 S.W.2d 824 (Tex. Civ. App.—Houston [1st Dist.] 1981, writ ref'd n.r.e.).

84. See, e.g., *City of Arlington v. Cannon*, 153 Tex. 566, 567, 271 S.W.2d 414, 416 (1954); *Fayetteville Indep. School Dist. v. Crowley*, 528 S.W.2d 344, 346 (Tex. Civ. App.—Austin 1975, no writ); *Ward County v. Wertz*, 69 S.W.2d 571, 572 (Tex. Civ. App.—El Paso 1934, no writ).

85. TEX. TAX CODE ANN. § 42.21 (Vernon 1982).

86. 449 S.W.2d 29 (Tex. 1969). *Conlee Seed* was permitted to introduce proof of a grossly excessive evaluation of his property even though the procedural requirements were not followed. *Id.* at 31.

87. TEX. TAX CODE ANN. § 42.08 (Vernon 1982).

88. See, e.g., *Zglinski v. Hackett*, 552 S.W.2d 933, 935 (Tex. Civ. App.—Austin 1977, writ ref'd n.r.e.); *Harding Bros. Oil & Gas Co. v. Jim Ned Indep. School Dist.*, 457 S.W.2d 102, 104 (Tex. Civ. App.—Eastland 1970, no writ); *McGinnis v. Northwest Indep. School Dist.*, 294 S.W.2d 154, 158 (Tex. Civ. App.—Fort Worth 1956, writ ref'd n.r.e.).

requirement is that it is conceivable a taxpayer could be required to tender amounts greater than either the taxing jurisdiction or the taxpayer alleged to be due and owing in the current year. That is, if the value that the appraisal review board placed on the property in the current year is less than the value placed on the property in the immediately preceding year, but the taxpayer feels that the value should be even lower, then the taxpayer would be required to pay the amount of tax paid in the previous year, an amount which neither of the parties alleges to be due and owing.

The importance of becoming familiar with the new Code cannot be overstated. There have been dramatic changes which in many cases limit the rights of taxpayers. The failure to strictly comply with filing requirements can preclude the taxpayer from protesting an excessive valuation no matter how inequitable. In the transition period between the implementation of the Code and some case authority giving direction to the taxpayer, it must be assumed that strict compliance is an absolute necessity.

III. IMPORTANT TIMETABLES

The following are some important timetables in the new Property Tax Code that must be adhered to by both the taxing jurisdictions and the taxpayer relating to the valuation of property for ad valorem tax purposes beginning January 1, 1982.

May 1

Section 22.23—Must render property by May 1, although chief appraiser or assessor can extend time 15 days for good cause shown.

May 15 or as soon thereafter as is practicable

Section 25.01—The chief appraiser shall prepare appraisal records listing all property and stating the appraised value of each.

Section 25.22—Such records shall be submitted to the appraisal review board by the chief appraiser for review and determination of protest.

By May 15 or as soon thereafter as practicable and in any event not later than the 20th day before the date appraisal review board begins considering protests

Section 25.19—The chief appraiser shall deliver written notice to a property owner of the appraised value of his property if (1) the appraised value is greater than in the preceding year, (2) the appraisal value is greater than the rendered value, or (3) the property was not on the appraisal roll in the preceding year.

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June 1 or within 15 days after appraisal roll is submitted to appraisal review board

Section 41.04—Taxing unit must file petition challenging valuation.

Section 41.06—Taxing unit entitled to 10 days notice of challenge hearing.

Section 41.11—Notice to property owner of any change made as a result of taxing unit challenge 15 days prior to the approval of the records by the appraisal review board.

June 11 or within 20 days after the date the appraisal records are submitted (May 15) whichever is later.

Section 41.44: The taxpayer protest petition must be filed.

Not less than 10 days following receipt of notice of change pursuant to Section 41.11 a protest petition must be filed.

Section 25.23—If supplemental appraisal records are made, property owner must file a protest petition within 10 days after the date the records are submitted for review and the review shall be completed within 30 days after the date the records are submitted or as soon thereafter as practicable.

Section 41.46—Taxpayer shall be given 15 days notice of appraisal review board hearing date.

July 20 or as soon thereafter as practicable. Section 41.12—The appraisal review board shall complete its review, approve the records and submit a list of its approved changes to the chief appraiser.

July 25 or as soon thereafter as practicable. Section 26.02—The chief appraiser shall prepare and certify to the assessor of each taxing unit the appraisal roll.

August 7 or as soon thereafter as practicable. Section 26.04—The tax rate necessary to produce the same amount of taxable revenue as the preceding year is determined and notice is given of same.

September 1 or as soon thereafter as practicable. Section 26.05—Notice of the proposed tax rate if greater than that determined pursuant to Section 26.04 is given.

Section 26.06—7 days notice of public hearing must be given.

The meeting to vote on the increase may not be earlier than the third day or later than the 14th day after the date of the public hearing.

October 1 or as soon thereafter as practicable. Section 31.01—Tax bills are mailed.

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February 1

Section 31.02—Taxes become delinquent.

Section 31.04—For tax bills mailed after January 10, the delinquency date is postponed to the first day of the next month that will provide a period of at least 21 days after the date of mailing for payment.

JUDICIAL REMEDY

Section 42.06

Party must given written notice of appeal within 15 days after the date he receives the notice required after the determination of the taxpayer's original protest.

The Taxpayer shall receive 10 days notice if the chief appraiser, a taxing unit or the county appeals the decision of the appraisal review board.

Section 42.21

Suit must be filed within 45 days after the party received notice that the final order has been entered. Failure to file bars remedy.

Section 42.08

A taxpayer who files suit in order to preserve his remedy must pay the greater of the amount of value of the property in the pending action that is not in dispute or the amount of tax paid on the property in the preceding year prior to delinquency date, whichever is greater, or the taxpayer forfeits his right to proceed.