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Procedural Rights and Remedies under the Texas Property Tax Code - A Guide to the Code, Recent Amendments, and Developing Case Law.

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**PROCEDURAL RIGHTS AND REMEDIES UNDER THE TEXAS
PROPERTY TAX CODE—A GUIDE TO THE CODE,
RECENT AMENDMENTS, AND DEVELOPING
CASE LAW**

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CHARLES J. MULLER III**

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I. INTRODUCTION

The Texas Property Tax Code, which became effective January 1, 1982, contains a unified scheme for obtaining administrative and judicial review of property tax appraisals. In the years following its enactment, several of the Code's procedural rules have been amended and many of its provisions have been construed by appellate courts and the Texas Supreme Court. This article summarizes the taxpayer's procedural rights and remedies set forth in the Code and amendments, and discusses the judicial interpretations of those rules.¹

Prior to the Property Tax Code, the constitution and statutes governing property tax appraisals provided only limited remedies to taxpayers, and often failed to provide adequate due process protection. As a result, the courts developed a series of equitable remedies which enabled property owners to obtain judicial review of property valuations through collateral attack on those valuations. Such remedies included suits for injunctive relief or mandamus, and sometimes employed the statutory procedure for obtaining declaratory judgment. Those judicially-created remedies, however, contained numerous procedural pitfalls and traps for the unwary. As summarized by one court of appeals: "The chief characteristic of this state of affairs was

1. See Kliever & Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887 (1982) (reviewing taxpayer's remedies under the then recently-enacted Property Tax Code).

that the taxpayer normally lost because of various legal doctrines, controlling presumptions, and burdens of proof that were judicially interposed to protect the regularity of public revenues.”² Moreover, prior to the Code, each taxing jurisdiction could, and usually did, make its own appraisals of property, with the result that a single parcel of property often was appraised at a different value by each jurisdiction.³ The pre-Code situation also created difficulties for taxing jurisdictions whose functioning, for example, would be under the potential threat of injunction suits.

II. THE APPRAISAL PROCESS

A. Overview

Effective 1982, the Texas Legislature enacted the Property Tax Code, which contains a comprehensive statutory scheme providing for the determination, appeal, and certification of property tax appraisals, including specific provisions for administrative and judicial review.⁴ Fundamental to the scheme is the creation in each county of a new political subdivision of the state, known as an “appraisal district,” which is responsible for appraising property for each ad valorem taxing unit within the district.⁵ The Code also establishes an appraisal review board for each appraisal district. The appraisal review board is a quasi-judicial body whose primary function is to ensure that property is not appraised in excess of market value and that all property is uniformly appraised.⁶ Several courts have held that the statutory scheme comports with constitutional due process

2. *Valero Transmission Co. v. Hays Consol. Indep. School Dist.*, 704 S.W.2d 857, 861 (Tex. App.—Austin 1985, writ ref’d n.r.e.).

3. *See Wilson v. Galveston County Cent. Appraisal Dist.*, 713 S.W.2d 98, 99 (Tex. 1986).

4. For an extensive discussion of the Property Tax Code and the motivations behind its enactment, see *Texas Architectural Aggregate v. Adams*, 690 S.W.2d 640 (Tex. App.—Austin 1985, no writ); *see also Valero Transmission Co. v. Hays Consol. Indep. School Dist.*, 704 S.W.2d 857, 859 n.1 (Tex. App.—Austin 1985, writ ref’d n.r.e.) (discussing Property Tax Code provisions).

5. *See TEX. TAX CODE ANN.* § 6.01 (Vernon 1982) (establishing appraisal districts); *see also id.* § 6.02 (Vernon Supp. 1987) (defining district boundaries); *id.* § 6.05 (Vernon 1982) (establishing appraisal office within appraisal district). The Code’s centralized appraisal has been held to be authorized by Article VIII, section 18(b) of the Texas Constitution. *See Wilson v. Galveston County Cent. Appraisal Dist.*, 713 S.W.2d 98, 100 (Tex. 1986).

6. *See TEX. TAX CODE ANN.* §§ 6.41, 41.01 (Vernon 1982).

requirements.⁷

Property is taxed based on its value, ownership and use as of January 1 of each year.⁸ Property is required to be appraised at its fair market value.⁹ Each appraisal district is directed to provide for a periodic reappraisal of all real property within its district.¹⁰ Under current law, there must be a reappraisal at least once every four years.¹¹ The four-year reappraisal, however, is a minimum requirement; it does not relieve the appraisal district of its obligation to ensure that all property is appraised at its full market value each year. The appraisal district also identifies and appraises newly constructed property or property inadvertently omitted from the appraisal rolls.¹²

B. Rendition

A "rendition" is simply a listing of the owner's taxable property with his name and address. A rendition may, at the owner's option, also include his estimate of value.¹³ Property owners are required to render taxable personal property, but are not generally required to render real property.¹⁴ A property owner, however, at the request of the chief appraiser, may be required to render any property he owns.¹⁵ The owner is required to render any property within thirty days of the date the property loses an exemption.¹⁶ A property owner may also file a "report of decreased value" if he believes the value decreased during the preceding year due to a reason other than normal depreciation, in which event the chief appraiser is required to view the property to verify the reported decrease in value. The chief appraiser must then deliver a written notice of his determination to the property owner.¹⁷

7. See, e.g., *Wilson v. Galveston County Cent. Appraisal Dist.*, 713 S.W.2d 98, 101 (Tex. 1986); *Brooks v. Bachus*, 661 S.W.2d 288, 290 (Tex. App.—Eastland 1983, writ ref'd n.r.e.).

8. See TEX. TAX CODE ANN. §§ 21.01, 11.42 (Vernon 1982).

9. See TEX. CONST. art. VIII, § 1; see also TEX. TAX CODE ANN. § 23.01(a) (Vernon 1982).

10. See TEX. TAX CODE ANN. § 25.18(a) (Vernon 1982).

11. See *id.* § 25.18(b).

12. See *id.* §§ 25.21, 25.23 (Vernon 1982 & Supp. 1987).

13. See TEXAS PROPERTY TAX BOARD, PROPERTY TAX GLOSSARY 44 (Sept. 1986).

14. See TEX. TAX CODE ANN. § 22.01(a) (Vernon 1982). "[A] person shall render for taxation all tangible *personal* property . . ." *Id.* (emphasis added).

15. See *id.* § 22.01(b).

16. See *id.* § 22.02.

17. See *id.* § 22.03 (Vernon 1982 & Supp. 1987).

Renditions are to be filed after January 1 and before April 1, although the chief appraiser may extend the deadline upon written request to April 30, and for good cause shown in writing, the deadline may be extended to May 15.¹⁸ Renditions are to be made on forms that substantially comply with forms prescribed by the State Property Tax Board.¹⁹

A property owner may choose to render real property in order to require the appraisal district to notify him if it intends to appraise the property at a greater value.²⁰ Rendition, it should be noted, is *not* a prerequisite to obtaining administrative and judicial review of an appraisal.²¹ Whether to render real property and whether to render a value are matters of tax strategy that should be given careful consideration. For example, filing a rendition will likely cause a review of the taxpayer's property, and could even actually harm the owner if he renders at a value greater than the value the district would otherwise determine.²²

C. *Application for Exempt Status or Special Use Valuation*

Under the Texas Constitution and the Property Tax Code, property may qualify for exempt status or for taxation under certain special use valuations.²³ Appropriate applications must generally be filed before May 1, but the chief appraiser may, by written order, extend the deadline for filing applications for a single period not to exceed sixty

18. *See id.* § 22.23. Any written requests for extension should be filed before the deadline expires.

19. *See id.* § 22.24 (Vernon 1982). *See generally* 21 J. HOWELL, *PROPERTY TAXES* § 374 (Texas Practice 2d ed. 1982).

20. *See infra* text accompanying notes 28-38.

21. *See* TEXAS PROPERTY TAX BOARD, STATEMENT NO. 11, at 5 (May 1986). Even when the owner is required to render the property, the failure to render should not preclude administrative or judicial review. *See Birdwell v. City of Boyd*, 233 S.W.2d 603, 607 (Tex. Civ. App.—Ft. Worth 1950, no writ); TEX. CONST. art. VIII, § 11.

22. If the property owner chooses not to render his property, he will need to ascertain the proposed value of the property, as determined by the appraisal district, to determine if he needs to protest that value. *See Kliewer & Breen, The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 889-91 (1982).

23. *See* TEX. TAX CODE ANN. §§ 11.11-28 (Vernon 1982 & Supp. 1987) (statutory exemptions); *see also id.* § 23.41 (land designated for agricultural use, or "l-d" property); *id.* § 23.52 (qualified open-space land, or "l-d-1" property); *id.* § 23.72 (qualified timber land); *id.* § 23.83 (restricted park land); *id.* § 23.93 (public access airport property). *See generally* 21 J. HOWELL, *PROPERTY TAXES* §§ 161-297, 461-88 (Texas Practice 2d ed. 1982) (discussing exemptions and special use valuations).

days.²⁴ Once granted, most exemptions and special use eligibility remain in force, without filing additional applications, until the ownership changes or the qualification for exemption or special use terminates.²⁵ When the exempt status or eligibility for special use terminates, the owner is required to notify the appraisal district in writing before May 1.²⁶ If the chief appraiser denies an application, he is required to deliver written notice within five days after that date and include "a brief explanation of the procedures for protesting his action."²⁷

D. *Notice of Appraised Value*

The chief appraiser of the appraisal district is required to give written notice to property owners of the appraised value of their property in three circumstances: (1) where the appraised value is greater than it was in the prior year,²⁸ (2) where the appraised value is greater than the value as rendered by the property owner if he rendered the property,²⁹ or (3) where the property was not on the appraisal roll in the preceding year.³⁰ The notice of appraised value is required to contain detailed information prescribed by statute, including the appraised value of the property for the current year as determined by the appraisal district, as well as the kind and amount of each partial exemption, if any, approved for the current year.³¹

The notice of appraised value is required to be delivered "[b]y May 15th or as soon thereafter as practicable, and, in any event, not later than the 20th day before the date the appraisal review board begins

24. See TEX. TAX CODE ANN. §§ 11.43(d), 23.43(b), 23.54(d), 23.75(d), 23.84(b), 23.94(b) (Vernon 1982). Model forms for exemption applications have been adopted by the State Property Tax Board.

25. See *id.* §§ 11.43(c), 23.54(e), 23.75(e), 23.84(c), 23.94(c) (Vernon 1982 & Supp. 1987). Agricultural use status under Code section 23.41, however, requires an annual application. See *id.* § 23.43(a); see also 21 J. HOWELL, PROPERTY TAXES § 465 (Texas Practice 2d ed. 1982).

26. See TEX. TAX CODE ANN. §§ 11.43(g), 23.54(h), 23.75(h), 23.84(d), 23.94(d) (Vernon 1982).

27. *Id.* § 11.45; see also *id.* §§ 23.44, 23.57, 23.79, 23.85, 23.95.

28. See TEX. TAX CODE ANN. § 25.19(a) (Vernon 1982). Appraisal districts may, and standardly do, dispense with notice where the increase in value is less than \$1,000. See *id.* § 25.19(g).

29. See *id.* § 25.19(a).

30. See *id.*; see also Popp, *Determination of Situs, Jurisdiction and Allocation for Ad Valorem Taxation of Personal Property*, 46 TEX. B.J. 1260, 1261 (1983).

31. See TEX. TAX CODE ANN. § 25.19(b) (Vernon 1982).

considering protests.”³² Despite the strict statutory language, however, the time limits are almost certainly directory and not mandatory.³³ Minor deviations from these time limits, such as delivery of a notice of hearing eighteen days before the board commences hearings, will thus be ignored, at least where the taxpayer is not harmed.³⁴ Notices of appraised value will also be sent when the appraisal district makes “supplemental appraisals” of property discovered to have been omitted from the appraisal rolls.³⁵

A notice of appraised value may also originate from the appraisal review board in certain circumstances. In reviewing the entire appraisal roll, the board may increase appraised values or make other changes adverse to property owners.³⁶ The board must notify the property owner of any such change not later than the fifteenth day before it approves the appraisal roll.³⁷ The Code expressly provides that failure to deliver such notice nullifies the change.³⁸

III. ADMINISTRATIVE REVIEW

A. *Protest*

In order to obtain a hearing before the appraisal review board, the property owner³⁹ must file a written protest with the appraisal review board before July 1 or not later than the thirtieth day after the date the notice of appraised value was delivered by the chief appraiser to

32. *Id.* § 25.19(a).

33. *See* Valero Transmission Co. v. Hays Consol. Indep. School Dist., 704 S.W.2d 857, 865-66 (Tex. App.—Austin 1985, writ ref’d n.r.e.).

34. *See* Adams v. Kendall County Appraisal Dist., No. 04-86-00130-CV (Tex. App.—San Antonio 1986, no writ) (not yet reported); *cf.* Victory v. State, 138 Tex. 285, 291, 158 S.W.2d 760, 764 (1942) (“substantial” compliance with notice requirements is permissible).

35. *See* TEX. TAX CODE ANN. §§ 25.21, 25.23 (Vernon 1982 & Supp. 1987). The same procedural rules and time limits discussed in the text apply to supplemental appraisals, including giving notice of value, but the taxpayer must file notice of protest within *ten* days after the supplemental records are submitted for review. *See id.* § 25.23(d); *see also* 21 J. HOWELL, PROPERTY TAXES § 578 (Texas Practice 2d ed. 1982).

36. *See* TEX. TAX CODE ANN. §§ 41.10, 41.11 (Vernon 1982).

37. *See id.* § 41.11(a).

38. *See id.* § 41.11(c). In contrast, the failure to deliver other types of notice would not affect the validity of an appraisal, although such failure may provide grounds for the property owner to file a protest after the ordinary time limit had expired. *See id.* § 41.411.

39. *See* Bennett-Barnes Inv. Co. v. Brown County Appraisal Dist., 696 S.W.2d 208, 209 (Tex. App.—Eastland 1985, writ ref’d n.r.e.) (holding that protest must be brought by property owner, and not, for example, a lessee).

the property owner, whichever date is later.⁴⁰ When the notice comes from the review board, however, the owner has ten days after delivery of the notice to file a protest.⁴¹ A notice of protest filed after these dates, but before the appraisal review board approves the appraisal records, may still be accepted if the property owner establishes good cause for failure to file the notice on time.⁴² In addition, there is a specific provision for filing late notice where the property owner was not given or did not receive the notice of value, which is discussed below. The notice of protest need not be made on an official form, although one is available, but must simply identify the property owner and the subject property or properties and indicate dissatisfaction with an action of the appraisal district.⁴³

B. *Appraisal Review Board Hearing*

After a notice of protest is filed, the appraisal review board will schedule a hearing⁴⁴ and deliver notice of the hearing to the property owner not later than the fifteenth day before the hearing date.⁴⁵ At the hearing, the property owner may contest any matter adversely affecting him,⁴⁶ including the appraised value of his property,⁴⁷ uniformity of the appraisal,⁴⁸ inclusion of his property on the appraisal

40. See TEX. TAX CODE ANN. § 41.44(a)(1) (Vernon Supp. 1987).

41. See *id.* § 41.44(a)(2).

42. See *id.* § 41.44(b).

43. See *id.* § 41.44(c), (d). Each appraisal district will have available a form for protest, based on State Property Tax Board Model Form 41.44.

44. See TEX. TAX CODE ANN. §§ 41.45, 41.46(a) (Vernon 1982). As a matter of practice, the taxpayer will often be able to meet with a representative of the appraisal district in an informal "pre-board" conference to determine if an agreement on some or all of the issues can be reached prior to a formal board hearing.

45. The taxpayer often may be asked to waive the fifteen-day notice requirement if a hearing can be scheduled sooner.

46. See TEX. TAX CODE ANN. § 41.41(8) (Vernon Supp. 1987).

47. See *id.* § 41.41(1).

48. See *id.* § 41.41(2). Property is generally to be appraised at full market value. See *id.* § 23.01(a) (Vernon 1982). Even where property is not appraised in excess of market value, however, the owner may still be entitled to have the appraisal reduced if his property is appraised at a higher percentage of its value than the "median level of appraisals" of other property in the district. See *id.* § 1.12 (Vernon Supp. 1987) (defining median level of appraisal). For example, an owner of property appraised at seventy-five percent of market value could obtain a reduced appraisal if all other property on the average were appraised at fifty percent of market value. This remedy, however, is rarely used for several reasons. For one, if the review board, in reviewing the appraisal records, discovered such a substantial undervaluation, it likely would return the records to the chief appraiser for correction. See *id.* §§ 41.01, 41.02

records,⁴⁹ the denial in whole or in part of a partial exemption,⁵⁰ denial of qualification for special use taxation,⁵¹ the identification of the taxing units in which his property is taxable,⁵² or whether he owns the property.⁵³ If the appraisal review board determines that the appraisal records are incorrect, it shall correct the appraised value or make such other changes as are necessary to conform the records to the requirements of law.⁵⁴ The Code requires the review board to deliver by certified mail to both the property owner and the chief appraiser a notice of issuance of the order and a copy of the order determining the protest.⁵⁵ Ordinarily, only a copy of the order of the board is sent, which also serves as notice of its issuance.

C. *Other Powers of the Review Board*

1. Correction of "Clerical Errors"

The appraisal review board, on motion of either the chief appraiser or the property owner, may correct "clerical errors" that affect a property owner's liability or multiple appraisals of a property in a single year.⁵⁶ Such correction may be made "at any time" and thus may be made after the "delinquency date."⁵⁷

2. Correction of "Substantial Errors"

Under a seldom used provision added in 1985, the chief appraiser

(Vernon 1982). Moreover, establishing the "median level of appraisal," as defined in section 1.12, is a complicated and costly matter, usually beyond the means of a single property owner.

49. *See id.* § 41.41(3) (Vernon Supp. 1987). To prevail on a protest of situs, the property owner must establish that the property is on the appraisal roll of another district or is not taxable in the state. *See id.* § 41.42.

50. *See id.* § 41.41(4). Although subsection 4 refers to a "partial exemption," the refusal to grant a complete exemption may be appealed to the review board under section 41.41(8), which allows for a review of "any other action that applies to the property owner and adversely affects him." *Id.* § 41.41(8).

51. *See id.* § 41.41(5).

52. *See id.* § 41.41(6).

53. *See id.* § 41.41(7).

54. *See id.* § 41.47(b) (Vernon 1982).

55. *See id.* § 41.47(a) (d); *see also* Herndon Marine Prods., Inc. v. San Patricio County Appraisal Review Bd., 695 S.W.2d 29, 34 (Tex. App.—Corpus Christi 1985, writ ref'd n.r.e.).

56. *See* TEX. TAX CODE ANN. § 25.25(c) (Vernon 1982). The State Property Tax Board has stated that "these changes do not represent changes of thought or decision on the part of the appraisal review board; rather, they conform the roll to what the appraisal review board in good faith intended in approving it." TEX. PROP. TAX BOARD, TEXT NO. 325, PROPERTY TAX LAW 75 (Oct. 1984).

57. *See infra* text accompanying notes 88-92.

and the property owner may jointly move the review board to correct a "substantial error." The motion must be filed and taxes tendered before the delinquency date.⁵⁸ The review board will schedule a hearing at which the taxing jurisdictions affected may appear.

D. *Timely Mailing Rules*

Where an official or agency is required to "deliver" a notice by a specified date, it apparently may comply by mailing the notice by that date. A presumption then arises that the notice was in fact delivered to the property owner, but the owner may establish that he did not in fact receive the notice.⁵⁹

Property owners likewise may rely on a timely mailing rule. Where property owners are required, by a specified date, to make any payment or file any document, including notices of protest, they may comply by mailing the item by "regular first-class mail" properly addressed and postage prepaid.⁶⁰ Given a literal reading, certified or registered mail would not appear to comply with the statute.⁶¹ To be safe, taxpayers might send two copies of a notice, one by regular mail and one by certified or registered mail. In any event, some proof of mailing should be obtained.

58. See TEX. TAX CODE ANN. § 25.25(d)(e) (Vernon Supp. 1987). Although the statute is somewhat ambiguous, it appears that the review board is not required to issue its order before the delinquency date. See *id.* § 25.25(e).

59. See *id.* § 1.07. Prior to a 1983 amendment, it was clear that timely mailing constituted "delivery." See *id.* § 1.07(c). Section 1.07(c), prior to amendment, provided that "[a] notice permitted to be delivered by first-class mail by this section is delivered when it is deposited in the mail." Property Tax Code Act, ch. 841, § 1.07(c), 1979 TEX. GEN. LAWS 2217, 2220 (former Tax Code section 1.07(c)), amended by Act of January 1, 1984, ch. 885, § 1.07(c), 1983 TEX. GEN. LAWS 4947, 4947. As the Code now reads, it could be argued that delivery occurs only upon actual receipt. *But see* TEX. TAX CODE ANN. § 25.19(f) (Vernon 1982) (failure to receive notice does not affect validity of property appraisal). As to the showing necessary to rebut the presumption of receipt, compare Dallas County Appraisal Dist. v. Lal, 701 S.W.2d 44, 47-48 (Tex. App.—Dallas 1985, writ ref'd n.r.e.) (evidence insufficient to rebut presumption) with Uvalde County Appraisal Dist. v. Kincaid Estate, 720 S.W.2d 678, 680-81 (Tex. App.—San Antonio 1986, no writ) (sufficient testimony to rebut presumption). Delivery to the proper address has been held to be sufficient, even though notice does not get to the person listed as fiduciary under Code Section 1.11. See MCI Telecommunications Corp. v. Tarrant County Appraisal Dist., 723 S.W.2d 350, 352 (Tex. App.—Fort Worth, 1987, no writ).

60. See TEX. TAX CODE ANN. § 1.08 (Vernon 1982).

61. *But see* MCI Telecommunications Corp. v. Tarrant County Appraisal Dist., 723 S.W.2d 350, 355-56 (Tex. App.—Fort Worth 1987, no writ) (rejecting contention that the presumption of delivery under section 1.07(c) does not apply to notice sent by certified mail).

IV. APPEAL TO THE DISTRICT COURT

A. *Notice of Appeal*

The property owner may appeal an adverse decision of the review board to the district court.⁶² The chief appraiser likewise may appeal an order of the review board.⁶³ Either party's time to appeal the order of the appraisal review board runs from the date he receives the board's order and notice of issuance. Written notice of appeal must be filed within fifteen days of the date of receipt.⁶⁴

The notice of appeal must be filed with the appraisal review board, the body issuing the order appealed.⁶⁵ Filing a notice of appeal with the appraisal district instead of the review board will result in loss of the right to appeal.⁶⁶ Although the appraisal district and appraisal review board often may occupy the same offices and employ the same staff, practitioners should be careful to ensure that the notice of appeal is filed with the review board and not the appraisal district.⁶⁷ There is no official form for the notice of appeal. Virtually all the

62. *See id.* § 42.01(1).

63. *See id.* § 42.02. The chief appraiser must have written authorization of the appraisal district board to appeal. *See id.*

64. *See id.* § 42.06(a). Where only notice of issuance is sent, rather than the actual order, the time for appeal will not begin to run. *See Herndon Marine Prods., Inc. v. San Patricio County Appraisal Review Bd.*, 695 S.W.2d 29, 34 (Tex. App.—Corpus Christi 1985, writ ref'd n.r.e.). Receipt of a copy of the board's order, however, may also suffice as notice of the order, and would therefore start the time for appeal. *See MCI Telecommunications Corp. v. Tarrant County Appraisal Dist.*, 723 S.W.2d 350, 354 (Tex. App.—Fort Worth 1987, no writ). It is of extreme importance to record the actual date of receipt of the order. The review board will be able to ascertain the date of receipt from the return receipt card. It is suggested that the date of receipt be marked on the actual order at the time of receipt.

65. *See TEX. TAX CODE ANN.* § 42.06(b) (Vernon 1982).

66. *See Corchine Partnership v. Dallas County Appraisal Dist.*, 695 S.W.2d 734, 735-36 (Tex. App.—Dallas 1985, writ ref'd n.r.e.); *see also Appraisal Review Bd. v. International Church of Foursquare Gospel*, 719 S.W.2d 160, 160 (Tex. 1986). It has been recently held, however, that where a property owner filed a notice of appeal with the appraisal district, which then forwarded it to the review board, and the review board received the notice before the fifteen days had expired, the appeal was timely filed. *See Texas Conference Ass'n of Seventh-Day Adventists v. Central Appraisal Review Bd.*, 719 S.W.2d 255, 256-58 (Tex. App.—Waco 1986, writ ref'd n.r.e.).

67. The difficulty of distinguishing between the appraisal district and review board is illustrated in *Texas Conference Ass'n of Seventh-Day Adventists v. Central Appraisal Review Bd.* In this case, a property owner received a letter purporting to be notice of the order of the review board which was signed by the secretary of the review board; however, it was written on the appraisal district's letterhead. *See Texas Conference Ass'n of Seventh-Day Adventist v. Central Appraisal Review Bd.*, 719 S.W.2d 255, 257 (Tex. App.—Waco 1986, writ ref'd n.r.e.).

courts have held that failure to file timely notice of appeal with the Appraisal Review Board is jurisdictional.⁶⁸

B. *Petition*

The next step after filing a notice of appeal is to file a petition for review with the appropriate district court. Again, the time for filing the petition runs from the date of receipt of the review board's order. The petition must be filed within forty-five days of that date.⁶⁹ Venue is in the district court for the county in which the appraisal review board is located.⁷⁰ The statute requires that both the appraisal district and the appraisal review board be named as defendants and served in the action.⁷¹ Courts in the past have been split as to whether the failure to name and serve both is fatal,⁷² but the Texas Supreme Court recently ruled that failure to name both parties is jurisdictional.⁷³

68. See, e.g., *Towne Square Assocs. v. Angelina County Appraisal Dist.*, 709 S.W.2d 776, 778 (Tex. App.—Beaumont 1986, no writ); *Dallas County Appraisal Dist. v. Lal*, 701 S.W.2d 44, 46 (Tex. App.—Dallas 1985, writ ref'd n.r.e.); *Corchine Partnership v. Dallas County Appraisal Dist.*, 695 S.W.2d 734, 735-36 (Tex. App.—Dallas 1985, writ ref'd n.r.e.). In *Morris County Tax Appraisal District v. Nail*, however, the court held that a property owner's failure to comply with the Code's time limits is an affirmative defense which must be timely pled under TEX. R. CIV. P. 94, or is waived. See *Morris County Tax Appraisal Dist. v. Nail*, 708 S.W.2d 473, 474 (Tex. App.—Texarkana 1986, writ ref'd n.r.e.). *Nail* is almost certainly wrongly decided in light of the Texas Supreme Court's recent opinion in *Appraisal Review Board v. International Church of Foursquare Gospel*, where the court ruled that failure to comply with the time limit provided in section 42.21 of the Tax Code was jurisdictional. See *Appraisal Review Bd. v. International Church of Foursquare Gospel*, 719 S.W.2d 160, 160 (Tex. 1986).

69. See TEX. TAX CODE ANN. § 42.21 (Vernon Supp. 1987).

70. See *id.* § 42.22 (Vernon 1982).

71. See *id.* § 42.21(b) (Vernon Supp. 1987). The appropriate procedure for service of citation is prescribed in section 42.21(c).

72. Compare *Taylor County Appraisal Dist. v. International Church of Foursquare Gospel*, 711 S.W.2d 306, 308 (Tex. App.—Eastland) (failure to name both parties not fatal), *rev'd*, 719 S.W.2d 160 (Tex. 1986) with *Poly-America, Inc. v. Dallas County Appraisal Dist.*, 704 S.W.2d 936, 937 (Tex. App.—Waco 1986, no writ) (failure to serve both parties requires dismissal).

73. See *Appraisal Review Bd. v. International Church of Foursquare Gospel*, 719 S.W.2d 160, 160 (Tex. 1986). The statutory requirement that the appraisal review board be named as a party serves no purpose and should be changed. The review board's function is equivalent to that of an administrative court, such as the Tax Court; consequently, the board should not be treated as a party to the case. In the following discussion, the appraisal district will be referred to as the party adverse to the property owner, although, as a technical matter, the appraisal review board also is a party.

C. District Court Review

The district court will review the appraisal review board's determination de novo, and is specifically empowered to fix the appraised value of the property in accordance with law, enter orders necessary to insure equal treatment, and enter such other orders that are necessary to preserve rights protected by and impose duties required by the law.⁷⁴ If the court determines that the appraised value of property exceeds its market value, the court will order that the value of the property on the appraisal roll be reduced to the market value.⁷⁵ Since the trial is de novo, it may be that, in ruling on a taxpayer's appeal, a court could nevertheless increase the appraised value if the appraisal district establishes that the property was underappraised.⁷⁶ The value determined by the court is binding on the taxing units involved in the lawsuit, but only for the tax year in question.⁷⁷

D. Tender of Taxes and "Delinquency Date"

1. Tender of Tax

Under pre-Code common law, a property owner was required to tender the amount of tax he conceded was due before he brought an action in court.⁷⁸ If, however, the owner voluntarily paid the *entire* tax due, some courts held that he had conceded his liability and con-

74. See TEX. TAX CODE ANN. §§ 42.23, 42.24 (Vernon 1982); see also *id.* §§ 42.25, 42.26 (Vernon 1982 & Supp. 1987). To obtain relief for non-uniform appraisal, the property owner must show that the property was valued at a figure more than ten percent in excess of the "median level of appraisal" of other properties in the district. See *id.* § 42.26 (Vernon Supp. 1987). As noted earlier, this remedy is rarely used.

75. See *id.* §§ 42.24, 42.25 (Vernon 1982); see also *id.* § 42.26 (Vernon Supp. 1987). Prior to a 1983 amendment, a property owner could prevail in district court only if the property was valued at more than five percent over market value. See Property Tax Code Act, ch. 841, § 42.27(b), 1979 Tex. Gen. Laws 2217, 2312 (former Tax Code section 42.27(b)), *repealed by* Act of Aug. 29, 1983, ch. 905, § 2, 1983 Tex. Gen. Laws 5033, 5033.

76. See Hunt County Tax Appraisal Dist. v. Rubbermaid, Inc., 719 S.W.2d 215, 219-20 (Tex. App.—Dallas 1986, writ ref'd n.r.e.) (appraisal district not bound by value on roll). *But see* TEX. TAX CODE ANN. § 42.02 (Vernon 1982) (requiring chief appraiser to obtain written authorization to appeal review board order).

77. *Cf.* Property Tax Code Act, ch. 841, § 42.27(c), 1979 Tex. Gen. Laws 2217, 2312 (former Tax Code section 42.27(c), *repealed* 1983).

78. See, e.g., Zglinski v. Hackett, 552 S.W.2d 933, 936 (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, 104-05 (Tex. Civ. App.—Eastland 1970, no writ).

sequently could not obtain a refund.⁷⁹

The Code continues the tender requirement in a modified form. A property owner who appeals to the district court must pay the greater of (a) the tax due on the value of property not in dispute or (b) the tax paid on the property in the preceding year.⁸⁰ Read literally, this could, in certain situations, require a property owner to tender an amount greater than the taxes that would result from the order of the review board. For example, assume that a piece of property was valued at \$300,000 for 1983, on which the taxes imposed and paid were \$3,000, but that for 1984, the review board determined the value to be \$250,000, on which taxes of \$2,500 would be due. If the property owner contended that the property was worth only \$200,000, under the above rule the owner would have been required to tender \$3,000 (the greater of \$3,000 or \$2,000), despite the fact that only \$2,500 of taxes would result from the board's valuation. Under a 1985 change, however, the property owner need not tender an amount greater than the tax due under the order of the review board.⁸¹

Failure to tender the tax will result in dismissal of the case.⁸² One court has recently held that voluntary payment of the entire tax due will, under the Code as before, require dismissal of the case.⁸³ This holding appears to be erroneous as it ignores the fact that the Code is intended to displace the pre-Code remedies and procedures. It also fails to consider Code section 42.43, which specifically provides that a

79. See, e.g., *National Biscuit Co. v. State*, 134 Tex. 293, 302-03, 135 S.W.2d 687, 692 (1940).

80. See TEX. TAX CODE ANN. § 42.08(b) (Vernon Supp. 1987). "The phrase 'that is not in dispute' refers to that portion of the appraised value of the property involved that the *property owner* does not dispute." *Hunt County Tax Appraisal Dist. v. Rubbermaid Inc.*, 719 S.W.2d 215, 219 (Tex. App.—Dallas 1986, writ ref'd n.r.e.) (emphasis in original).

81. See TEX. TAX CODE ANN. § 42.08(b) (Vernon Supp. 1987) (as amended by Act of May 24, 1985, ch. 195, § 1, 1985 Tex. Gen. Laws 782, 782).

82. See *id.* But see *Garza v. Block Distrib. Co.*, 696 S.W.2d 259, 260-62 (Tex. App.—San Antonio 1985, no writ). In *Block Distributing*, the property owner had paid the *lesser* of the undisputed taxes and the prior year's taxes. See Brief for Appellant at 5, 6-9, *Garza v. Block Distrib. Co.*, 696 S.W.2d 259 (Tex. App.—San Antonio 1985, no writ). Under highly unusual and complex facts, the court held that the property owner's failure to tender the correct amount did not deprive the owner of the right to relief in court. The court reasoned that the appraisal review board's failure to provide notice of hearing effectively took the case outside of the Code. See *Garza v. Block Distrib. Co.*, 696 S.W.2d 259, 262 (Tex. App.—San Antonio 1985, no writ). Although the court's reasoning may be questionable, it is clear that the tender requirement does apply to cases that are brought under the Code.

83. See *Hunt County Tax Appraisal Dist. v. Rubbermaid, Inc.*, 719 S.W.2d 215, 219 (Tex. App.—Dallas 1986, writ ref'd n.r.e.).

property owner may obtain a refund of overpaid taxes.⁸⁴

The tax should be tendered to the taxing jurisdictions, although one court has held in a questionable decision that a tender made directly to the court is acceptable.⁸⁵

The Code provides that taxing jurisdictions may adopt certain discounts for taxes paid before January.⁸⁶ For example, a discount of three percent may be given for taxes paid in October. If a property owner tenders payment before January, he should be permitted to take the discount into consideration in computing the amount to tender under Code section 42.08. If the amount calculated under section 42.08 is \$5,000, for example, a property owner who tenders in October should be able to pay \$4,850 (\$5,000 less the three percent discount).⁸⁷

2. Time for Tendering and "Delinquency Date"

The tax must be tendered before the "delinquency date," which generally is February 1 of the following year.⁸⁸ Where the tax bill is not mailed until after January 10, however, the delinquency date will be postponed to the first day of the next month that will provide a period at least twenty-one days after the date of mailing.⁸⁹ A 1984 amendment to the Code has clarified that the value of properties will not be certified while on protest, and as a consequence, tax bills normally should not be sent while a case is pending before the review board.⁹⁰ As a precautionary matter, however, if a taxpayer has filed a

84. See TEX. TAX CODE ANN. § 42.43 (Vernon 1982). Section 42.43 authorizes the refund of excess taxes "paid" without qualification, and is not limited to refunds or taxes "paid" under section 42.08, the tender provision. See *id.*; see also § 42.42(b), (c) (Vernon 1982); 21A J. HOWELL, PROPERTY TAXES § 1303, at 456 (Texas Practice 2d ed. 1982) (stating "As to matters arising under the code, the voluntary payment rule does not apply.").

85. See *Morris County Tax Appraisal Dist. v. Nail*, 708 S.W.2d 473, 474-75 (Tex. App.—Texarkana 1986, writ ref'd n.r.e.).

86. See TEX. TAX CODE ANN. § 31.05 (Vernon Supp. 1987).

87. Although Code section 42.08 refers simply to the amount "paid" in the prior year, consistency would seem to require that, in determining the amount of taxes "paid" in the prior year, any discount should be eliminated. Thus in the above example, the amount "paid" would be the full \$5,000, rather than \$4,850.

88. See TEX. TAX CODE ANN. § 31.02 (Vernon 1982).

89. See *id.* § 31.04 (Vernon Supp. 1987).

90. See *id.* § 26.01(c) (as amended by Act of Jan. 1, 1984, ch. 884, § 3, 1983 Tex. Gen. Laws 4945, 4946; see also *id.* § 25.23 (Vernon 1982 & Supp. 1987). Prior to June 12, 1985, the Code provided that the board "shall determine all protests before . . . approval of the appraisal records . . ." Act of Jan. 1, 1982, ch. 13, § 41.47(c), 1981 Tex. Gen. Laws, 1st Spec. Sess. 117,

protest, but has not heard anything from the review board, he should make inquiries about the status of his protest, and should at all events do so before February 1.

After the review board has determined an appeal, the value set forth in its order will be certified and tax bills will be mailed.⁹¹ Since review boards normally dispose of most protests before January 10, it will only be in unusual circumstances that the delinquency date and the deadline for tendering will be extended past February 1. The Code specifically provides that the pendency of an appeal to district court will not affect the delinquency date.⁹²

3. Early Tendering

The Code prescribes no beginning date for tendering, and an argument that taxes were tendered too early where paid before the rolls were certified was rejected by the court in *Morris County Appraisal District v. Nail*.⁹³

4. Hearing on Tender

Problems may arise in determining the amount of tax to be tendered. For example, a property may have been split among different accounts in the prior year, making it difficult to compute the exact amount of tax paid on "the property" in that year. It is especially difficult to compute the proper tender on personal property, since the specific properties in an account may vary substantially from year to year. It may also be difficult to determine the amount not in dispute where the owner has not settled on a value or where the appraisal district has conceded that the value on the rolls is incorrect.⁹⁴ Under

172 (former tax Code section 41.47(c), *repealed by* Act of June 12, 1985, ch. 504, § 3, 1985 Tex. Gen. Laws 2089, 2089 (emphasis added). One court has recently held that the language in section 41.47(c) was directory only, rather than mandatory, and that the pre-1985 Code in fact contemplated certification of property values while on protest. *See Valero Transmission Co. v. Hays Consol. Indep. School Dist.*, 704 S.W.2d 857, 866 (Tex. App.—Austin 1985, writ ref'd n.r.e.).

91. *See* TEX. TAX CODE ANN. § 26.01(c) (Vernon Supp. 1987).

92. *See id.* § 42.08; *see also* *Valero Transmission Co. v. Hays Consol. Indep. School Dist.*, 704 S.W.2d 857, 860 n. 1 (Tex. App.—Austin 1985, writ ref'd n.r.e.). *But see* TEX. TAX CODE ANN. § 42.42 (Vernon 1982) (providing, in effect, that delinquency date for accrual of penalties - but not of interest - will be postponed while case is pending in court).

93. 708 S.W.2d 473 (Tex. App.—Texarkana 1986, writ ref'd n.r.e.).

94. *See Hunt County Tax Appraisal Dist. v. Rubbermaid Inc.*, 719 S.W.2d 215, 219 (Tex. App.—Dallas 1986, writ ref'd n.r.e.).

a 1985 amendment, either party may move to hold a hearing on the proper amount of tax to be tendered.⁹⁵ If the court determines that the property owner substantially complied with the tender, it will not dismiss the case, but rather will permit him to cure any deficiency within thirty days.⁹⁶

E. *Attorneys' Fees*

A property owner who prevails in a suit in district court may be awarded reasonable attorneys' fees not to exceed the greater of \$5,000 or 20% of the total amount of taxes in dispute.⁹⁷ The amount of taxes in dispute, however, may not always be clear. It could be measured by the difference in values pled, if any. On the other hand, where, for example, the appraisal district introduces evidence supporting a higher or lower value than on the appraisal roll, it is arguable that the amount in dispute should reflect such higher or lower value. Where an appraisal district has consistently maintained a particular value, the district should not be able to avoid attorney's fees by amending its pleadings at the eleventh hour to reduce the amount in dispute.

The Code does not define who is the "prevailing" party. When a property owner obtains any reduction in value, it would appear that he has "prevailed" and would be entitled to a fee. In determining the amount of fees that is "reasonable," however, the court should be able to take into consideration the extent to which the property owner was successful.⁹⁸

F. *Appeal to the Court of Appeals*

Either party may appeal the district court's judgment to the appropriate court of appeals.⁹⁹

95. See TEX. TAX CODE ANN. § 42.08(c) (Vernon Supp. 1987).

96. See *id.* It is questionable whether tendering the correct amount of taxes, but one day late, is "substantial compliance" under Code section 42.08(c).

97. See *id.* § 42.29. Prior to a 1983 amendment, the statute simply provided that a prevailing property owner could be awarded "reasonable attorney's fees." See Property Tax Code Act, ch. 841, § 42.27(d), 1979 Tex. Gen. Laws 2217, 2312 (former Tax Code section 42.27(d)), repealed by Act of Aug. 29, 1983, ch. 905, § 2, 1983 Tex. Gen. Laws 5033, 5033.

98. See, e.g., *Davis Masonry, Inc. v. B-F-W Constr. Co.*, 639 S.W.2d 448, 448 (Tex. 1982); *Golden v. Murphy*, 611 S.W.2d 914, 916 (Tex. Civ. App.—Houston [14th Dist.] 1981, no writ).

99. See TEX. TAX CODE ANN. § 42.28 (Vernon 1982).

G. *Timely Mailing Rules*

The timely mailing rules discussed above also apply to the filing by the property owner of a notice of appeal to the district court.¹⁰⁰

H. *Post Appeal Payment or Refund of Taxes*

If a final determination of a court results in a tax liability greater than the amount tendered, the property owner will be sent a supplemental bill for the excess. The property owner will owe interest on the unpaid taxes, but will be given an additional period to pay before any penalties accrue.¹⁰¹

These provisions suggest that taxing units will not attempt to collect disputed taxes while the case is in litigation. One court, however, has ruled that the pendency of an appeal does not bar taxing units from bringing suit for contested taxes,¹⁰² a ruling which does find some support in other Code provisions.¹⁰³

If the final determination results in a tax liability less than the taxes already paid, the property owner will be refunded the difference, but no provision is made for the payment of interest.¹⁰⁴

100. *See id.* § 1.08; *see also* Rockdale Indep. School Dist. v. Thorndale Indep. School Dist., 681 S.W.2d 225, 227 (Tex. App.—Austin 1984, writ ref'd n.r.e.).

101. *See* TEX. TAX CODE ANN. § 42.42 (Vernon 1982). If, however, the court's final determination exceeds the amount of the review board's order and the taxpayer has previously paid the full amount of taxes imposed, a new delinquency date will be set. Consequently, interest and penalties will not accrue on the increased taxes until that date. This situation would typically occur where the taxpayer was satisfied with the review board's order, but the chief appraiser appealed under Code section 42.02. The situation is unclear as to the accrual of interest where both the taxpayer and the chief appraiser appeal from the review board's order. Under the scheme apparently intended by the Code, interest should continue to accrue on the difference between the taxes imposed on the review board's value and the amount tendered, but not on the taxes on any increase in value over the board's value. The Code, however, does not clearly resolve this issue.

102. *See* Valero Transmission Co. v. Hays Consol. Indep. School Dist., 704 S.W.2d 857, 862-63 (Tex. App.—Austin 1985, writ ref'd n.r.e.).

103. *See* TEX. TAX CODE ANN. § 42.08(a) (Vernon Supp. 1987) (providing that "[t]he pendency of an appeal . . . does not affect the date taxes become delinquent"); *id.* § 33.41(a) (Vernon 1982) (stating that "[a]t any time after [a] tax on property becomes delinquent, a taxing unit may file suit to [collect the tax]").

104. *See id.* § 42.43 (Vernon 1982). *But see* Hunt County Tax Appraisal Dist. v. Rubbermaid Inc., 719 S.W.2d 215, 219 (Tex. App.—Dallas 1986, writ ref'd n.r.e.) (holding that payment of entire amount due requires dismissal of case).

V. EXCLUSIVITY OF REMEDIES

A. *The Code Preempts Pre-Code Law*

The Property Tax Code provides that the remedies set forth therein are “exclusive” and that a property owner may not raise any of the grounds of protest authorized by the Code either as a defense to a suit for collection of delinquent taxes or as a basis of a claim for relief in any other suit disputing his taxes, or to obtain a refund of taxes paid.¹⁰⁵ Based on this provision, the courts, at least where the issue has been raised,¹⁰⁶ have held virtually without exception that the statutory scheme for protest and judicial review set forth in the Code totally displaces and abolishes all pre-Code remedies.¹⁰⁷ Accordingly, where a property owner fails to avail himself of the remedies set forth in the Code in a timely and proper fashion, the courts have held that he has waived his remedies and cannot further dispute his tax liability. For example, where a property owner is sent a notice of increased appraised value but fails to timely protest that value to the appraisal review board, he will not be able to later dispute that increased value.¹⁰⁸ Similarly, where a property owner protests a matter to the

105. See TEX. TAX CODE ANN. § 42.09 (Vernon 1982).

106. Where the exclusivity of the Code remedies has not been raised, some courts have entertained suits that would appear to be barred by Code section 42.09. See, e.g., *Temple Eastex, Inc. v. Spurger Indep. School Dist.*, 720 S.W.2d 607, 608-09 (Tex. App.—Beaumont 1986, no writ) (declaratory judgment suit for appraisal of timber land); *Moody House, Inc. v. Galveston County*, 687 S.W.2d 433, 436-37 (Tex. App.—Houston [14th Dist.] 1985, writ ref’d n.r.e.) (court entertained declaratory judgment action on exempt status); *Plano Indep. School Dist. v. Oake*, 682 S.W.2d 359, 360-01 (Tex. App.—Dallas 1984) (property owner brought action to enjoin competing counties from taxing his property until the boundary could be determined), *rev’d*, 692 S.W.2d 454 (Tex. 1985).

107. See, e.g., *Robstown Indep. School Dist. v. Anderson*, 706 S.W.2d 952, 953 (Tex. 1986); *Brazoria County Appraisal Dist. v. Nottle, Inc.*, 721 S.W.2d 391, 393 (Tex. App.—Corpus Christi 1986, no writ); *Valero Transmission Co. v. Hays Consol. Indep. School Dist.*, 704 S.W.2d 857, 861-62 (Tex. App.—Austin 1985, writ ref’d n.r.e.); *Herndon Marine Prods., Inc. v. San Patricio County Appraisal Review Bd.*, 695 S.W.2d 29, 32-33 (Tex. App.—Corpus Christi 1985, writ ref’d n.r.e.); *Texas Architectural Aggregate, Inc. v. Adams*, 690 S.W.2d 640, 643 (Tex. App.—Austin 1985, no writ); *Brooks v. Bacchus*, 661 S.W.2d 288, 289-90 (Tex. App.—Eastland 1983, writ ref’d n.r.e.). *But see* *Garza v. Block Distrib. Co.*, 696 S.W.2d 259, 261-62 (Tex. App.—San Antonio 1985, no writ) (holding that pre-Code remedies may be available where Code fails to provide adequate due process). The Fort Worth Court of Appeals has suggested that where a property owner is exempt from taxes as a matter of law, the owner is not required to comply with the provisions of the Tax Code. See *Grand Prairie Hosp. Auth. v. Tarrant Appraisal Dist.*, 707 S.W.2d 281, 284 (Tex. App.—Fort Worth 1986, writ ref’d n.r.e.). This suggestion is without support and is contrary to the clear language of the Code and extensive judicial interpretation.

108. See, e.g., *Robstown Indep. School Dist. v. Anderson*, 706 S.W.2d 952, 952-53 (Tex.

appraisal review board, but fails to timely appeal from the order of the review board, the review board's determination will be final and may not be challenged.¹⁰⁹

The importance of timely compliance with the procedural rules set forth in the Code is illustrated in a recent Texas Supreme Court opinion. In *Robstown Independent School District v. Anderson*,¹¹⁰ the court held that an individual who received, but ignored, a notice of appraised value on property which he claimed he did not own, had waived all objections and had to pay taxes on that property.¹¹¹

B. *Situation Where Taxpayer Is Not Given a Required Notice*

Numerous problems have arisen over the years in ad valorem matters where a property owner is not sent or does not receive a notice of increased value or other important procedural notice.¹¹² There is no provision in the law expressly requiring a property owner to inform the appraisal district of his current address.¹¹³ Code section 25.19(f), however, provides that failure to receive the notice of increased value required by that section "does not affect the validity of the appraisal of the property, the imposition of any tax on the basis of the appraisal, the existence of any tax lien, or any proceeding instituted to collect

1986); *Towne Square Assocs. v. Angeline County Appraisal Dist.*, 709 S.W.2d 776, 777-78 (Tex. App.—Beaumont 1986, no writ); *Dallas County Appraisal Dist. v. Lal*, 701 S.W.2d 44, 46-47 (Tex. App.—Dallas 1985, writ ref'd n.r.e.); *Brooks v. Bacchus*, 661 S.W.2d 288, 290 (Tex. App.—Eastland 1983, writ ref'd n.r.e.).

109. See *Flores v. Fort Bend Cent. Appraisal Dist.*, 720 S.W.2d 243, 244-45 (Tex. App.—Houston [14th Dist.] 1986, no writ); see also *Robstown Indep. School Dist. v. Anderson*, 706 S.W.2d 952, 952-53 (Tex. 1986); *Valero Transmission Co. v. Hays Consol. Indep. School Dist.*, 706 S.W.2d 857, 862-64 (Tex. App.—Austin 1985, writ ref'd n.r.e.); *Corchine Partnership v. Dallas County Appraisal Dist.*, 695 S.W.2d 734, 735 (Tex. App.—Dallas 1985, writ ref'd n.r.e.); *Texas Architectural Aggregate, Inc. v. Adams*, 690 S.W.2d 640, 642-43 (Tex. App.—Austin 1985, no writ); *Rockdale Indep. School Dist. v. Thorndale Indep. School Dist.*, 681 S.W.2d 225, 227-28 (Tex. App.—Austin 1984, writ ref'd n.r.e.). As previously observed, however, one court has held that failure to comply with the Code's time limits must be timely pled or is waived. See *Morris County Tax Appraisal Dist. v. Nail*, 708 S.W.2d 473, 474 (Tex. App.—Texarkana 1986, writ ref'd n.r.e.).

110. 706 S.W.2d 952 (Tex. 1986).

111. See *id.* at 952-53. Perhaps the unfortunate individual could recover the taxes he paid from the actual owner of the property.

112. See *City of Arlington v. Cannon*, 153 Tex. 566, 570, 271 S.W.2d 414, 416 (1954); *Victory v. State*, 138 Tex. 285, 291-92, 158 S.W.2d 760, 764 (1942). See generally 21A J. HOWELL, PROPERTY TAXES §§ 911-18 (Texas Practice 2d ed. 1982).

113. But see TEX. TAX CODE ANN. § 1.07(b) (Vernon Supp. 1987) (providing that notices shall be sent to taxpayer's or agent's address "according to the most recent record in the possession of the official or agency").

the tax.”¹¹⁴ In light of section 25.19(f), a taxpayer who fails to keep the appraisal district informed as to his current address does so at his own peril. Indeed, the State Property Tax Board has concluded—presumably on the basis of section 25.19(f)—that the law at least implies an obligation on property owners to keep the appraisal district notified of changes in address.¹¹⁵

In the ad valorem context, due process requires that a property owner, at a minimum, have an opportunity to be heard at some point in the process.¹¹⁶ Where a property owner does not receive a notice of appraised value or notice of a hearing, due process considerations may be implicated, at least where the owner has kept the appraisal district and review board apprised of his current address.¹¹⁷

In *Garza v. Block Distributing Co.*,¹¹⁸ a property owner was given notice of increased value and timely filed a notice of protest. The property owner was not sent timely notice of the appraisal review board hearing date and consequently failed to appear at the hearing at which the value was approved.¹¹⁹ An appellate court permitted the property owner to bring an injunction suit against the collector, without citing Code section 42.09, which makes the Code remedies exclusive. The court reasoned that to limit the property owner to the remedies enumerated in the Tax Code would deny him “any opportunity to obtain judicial relief.”¹²⁰

114. *Id.* § 25.19(f) (Vernon 1982).

115. See TEXAS PROPERTY TAX BOARD, TAXPAYER’S RIGHTS, REMEDIES, RESPONSIBILITIES 2 (1986). The Board stated:

You are responsible for making sure the property you own is listed correctly on the tax records, along with your correct name and address. If the tax collector can’t deliver your tax bill because of incorrect name or address, state law says you are still responsible for all the taxes, plus any penalties and interest for late payments.

Id.

116. See *Texas Pipe Line Co. v. Anderson*, 100 S.W.2d 754, 761-62 (Tex. Civ. App.—Austin, writ ref’d, cert. denied, 302 U.S. 724 (1937)); see also *Texas Architectural Aggregate, Inc. v. Adams*, 690 S.W.2d 640, 642-43 (Tex. App.—Austin 1985, no writ).

117. See *Kliewer & Breen, The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887 (1982).

118. 696 S.W.2d 259 (Tex. App.—San Antonio 1985, no writ).

119. As the opinion is somewhat unclear as to what notice was not given, the authors have consulted the briefs filed in the court of appeals.

120. See *Garza v. Block Distrib. Co.*, 696 S.W.2d 259, 261 (Tex. App.—San Antonio 1985, no writ); see also *Uvalde County Appraisal Dist. v. Kincaid Estate*, 720 S.W.2d 678, 680-82 (Tex. App.—San Antonio 1986, no writ). The court in *Block Distributing* held that collateral attacks on property valuations are still permissible under the Code. The holding must be read, however, in the context of a situation where, because of a failure of notice, the

In contrast, the court in *Dallas County Appraisal District v. Lal*,¹²¹ held that the Code barred a property owner from maintaining an injunction suit, notwithstanding his claim that he had never received notice of increased value.¹²² Quoting section 25.19(f), the court ruled that "even if Lal did not receive actual notice, the validity of the appraisal is not affected."¹²³

The legislature addressed the problem of failure to provide notice in Code section 41.411, which became effective June 12, 1985.¹²⁴ Under that provision, where the chief appraiser or review board does not "provide or deliver" a required notice to a property owner, the owner may protest that failure before the appraisal review board. The Code contemplates a two-stage process. The board first holds an evidentiary hearing to determine whether the property owner was not sent or did not receive the required notice. If the board finds that the owner was not provided the notice, it will proceed to hear and determine his protest as to value or other dispute.¹²⁵ Whatever its decision, the board should issue an order which may be appealed to the district court.¹²⁶ In addition, protest of notice under section 41.411 must be

Code remedies failed to provide the taxpayer with due process. In another case, the same court ruled that the Code remedies are exclusive and mandatory, even where there existed minor defects in the notices. *See Adams v. Kendall County Appraisal Dist.*, No. 04-86-00130-CV (Tex. App.—San Antonio 1986, no writ) (not yet reported). The opinion in *Block Distributing*, however, notes that the taxpayer was sent the order of the appraisal review board. *See Garza v. Block Distrib. Co.*, 696 S.W.2d 259, 261 (Tex. App.—San Antonio 1985, no writ). Given that fact, it would have been safer for the taxpayer to simply appeal that order to the district court, where he could obtain de novo review of the board's order. Indeed, to the extent the taxpayer had the opportunity for a direct appeal, the court's conclusion that the Code deprived him of due process is questionable.

121. 701 S.W.2d 44 (Tex. App.—Dallas 1985, writ ref'd n.r.e.).

122. *See id.* at 48. The court first found that Lal had failed to rebut a prima facie showing of receipt, but went on to hold in the alternative that receipt is irrelevant. *See id.* at 47-48.

123. *Id.* at 48.

124. *See Act of June 12, 1985, ch. 504, § 1, 1985 Tex. Gen. Laws 2089, 2089.* Code section 41.411 applies to notices required to be delivered for the 1985 tax year and all subsequent tax years. *See id.* § 4(a). The previous law continues to govern any notices required in the prior tax years. *See id.* § 4(b).

125. If the property owner did not receive formal notice, but in fact had actual notice in sufficient time for him to act, it is questionable whether relief would be available under section 41.411. *See Victory v. State*, 138 Tex. 285, 289-95, 158 S.W.2d 760, 763-66 (1942).

126. The statute clearly contemplates that where a property owner files a protest regarding notice under Code section 41.411, the review board will initially hear and rule on the claimed failure to receive notice. The authors are aware of situations, however, where a board has sent a letter, refusing to schedule a hearing on the ground that the property owner was sent notice. To be safe, a practitioner should appeal from such a letter as if it were an order of the

filed and taxes tendered before the delinquency date.¹²⁷

Section 41.411 thus largely closes the gap in the Code which failed to provide any procedure for administrative or judicial review where a property owner was not given notice, as was exemplified in *Block Distributing* and *Lal*. If a property owner is not sent or does not receive a required notice, such as notice of increased value or notice of an appraisal review board hearing, he now has an adequate remedy available: a protest under section 41.411 and, if unsuccessful, a direct appeal to the district court.¹²⁸ Since section 41.411 thus provides an adequate remedy and since the Code remedies are exclusive, it can no longer be correct to state, as the court did in *Uvalde County Appraisal District v. Kincaid*,¹²⁹ that "the necessity of complying with the administrative procedures depends on whether the District delivered the reappraisal notice."¹³⁰ In other words, if a property owner discovers that a required notice has not been sent, he may not rely on pre-Code remedies, but rather must pursue a protest under section 41.411.

Although a protest under section 41.411 must be filed before the delinquency date, the property owner will ordinarily know by that date of the failure of notice and, consequently, will be able to file his protest. For example, if the appraisal district fails to notify a property owner of an increase in value, he should ordinarily discover the increase upon receipt of the tax bills, which normally will occur in sufficient time for him to file a protest.¹³¹ In a few situations, however, a

board, and simultaneously bring a mandamus suit to compel the board to hear the protest of notice.

127. See TEX. TAX CODE ANN. § 41.411(a), (c) (Vernon Supp. 1987). Where multiple taxing jurisdictions are involved, multiple delinquency dates may result. Since Code section 41.411 refers to "the delinquency date," it is arguable that the passing of one delinquency date would not bar an action under section 41.411 if the other delinquency dates had not passed, although any relief obtained would apply only to the taxing jurisdictions as to which the action was timely brought.

128. Code section 41.411 implicitly modifies section 25.19(f). Read together, the two sections provide that, although the failure to receive a notice of increased value does not automatically affect the validity of an appraisal, such failure to provide the notice may entitle the owner to seek administrative and judicial review of the appraisal after the normal time limits.

129. 720 S.W.2d 678 (Tex. App.—San Antonio 1986, no writ).

130. *Id.* at 680.

131. See TEX. TAX CODE ANN. § 41.411 (Vernon Supp. 1987). The same is true for the property owner who has protested and is awaiting notice of hearing before the appraisal review board. Since a property's value should not be certified while on protest, no tax bills should be sent, and there should consequently be no delinquency date while a matter is pending before the appraisal review board, even if the board takes an extraordinarily long time to determine the protest. If, however, a property owner receives tax bills while a protest is still pending, it

property owner exercising due diligence nevertheless may not become aware of the failure of notice and the need to protest until after the delinquency date. In such instances, however, section 41.411 still theoretically leaves open a small gap where the Code fails to provide adequate due process, and appropriate pre-Code remedies may still be available.¹³²

Finally, it should be remembered that although the remedies provided in the Code are intended to be exclusive as to matters addressed by the Code, the Code does not purport to address all problems that might conceivably arise which relate to ad valorem taxation. As to problems not addressed by the Code and for which the Code consequently provides no remedies, property owners must look elsewhere for legal remedies. For example, as the State Property Tax Board has recognized, if a taxing jurisdiction were to ignore a certified roll and impose taxes based on its own roll, the taxpayers could still sue to enjoin the taxing jurisdiction.¹³³

VI. CONCLUSION

The Texas Property Tax Code is a modern, unified system for securing administrative and judicial review of property tax appraisals. The courts have generally interpreted the Code's time limits and other procedural requirements strictly. Given the increasing importance of property tax as a governmental revenue source in Texas, practitioners cannot afford to be unaware of the procedural steps and time limits contained in the Tax Code.

may indicate that the owner was not provided notice of a hearing or notice of the board's order, and, as a result, a protest under section 41.411 may be required.

132. For example, suppose an appraisal district retroactively increases the value of property already on the rolls for a prior year, but fails to provide the owner with notice. Although the owner should be able to protest under section 41.411 until the delinquency date for the supplemental bill reflecting the retroactive increase, if he does not receive such supplemental tax bill, he will not be aware of the increase and will fail to timely protest. In such admittedly rare circumstances, it is arguable that the pre-Code remedies should still be available.

133. See TEXAS PROPERTY TAX BOARD, TEXT NO. 325, PROPERTY TAX LAW 105 (Oct. 1984).