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Ad Valorem Taxation Litigation and Recent Changes to the Property Tax Code.

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AD VALOREM TAXATION LITIGATION AND RECENT CHANGES TO THE PROPERTY TAX CODE

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I. INTRODUCTION

Recent cut backs in federal spending and declining oil prices adversely affecting all aspects of our state economy and, thus, directly

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affecting the state's ability to fund local governments, has compelled local governments to increase their revenue base to fund their increasing governmental role. Meanwhile, today's sluggish economy is causing businesses to analyze all their financial expenditures including their tax burden.[1] Thus, an inevitable conflict arises between taxpayers and taxing/appraisal authorities over the value of the taxpayers' property upon which the property tax assessment is based.[2] This conflict has caused a substantial increase of litigation in the area of ad valorem taxation.[3]

Generally, a property's ad valorem tax is determined by applying the tax rate of the jurisdiction in which the property is located to the property's fair market value. Ad valorem taxation applies to all real property unless specifically excluded by the Tax Code.[4] Since exemptions are not favored, a taxpayer has the burden of proving that the property is directly within the Code's exemption sections.[5] If there is doubt as to a property's exempt status the courts will generally find the property taxable.[6]

Local governments seeking to increase their tax revenues have a duty to follow their local taxing procedure.[7] Further, it is not the function of an appraisal district or an appraisal review board to generate revenue.[8] Rather, the function of the appraisal district is to place

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1. *See* San Antonio Light, Oct. 15, 1987, at B3, col. 5. Ninety-five percent of the lawsuits filed against the Bexar Appraisal District are by businesses owning high-value commercial property. These businesses disagree with their properties' appraised market value, and generally agree that the market value has decreased, as evidenced by the numerous recent foreclosures. *See id.*

2. *See id.* In 1987, for example taxpayers protested 72,000 of the 465,000 appraisal accounts in Bexar County, Texas. *See id.*

3. *See id.* Taxpayers' 80 lawsuits against the Bexar Appraisal District in 1985 increased to 198 lawsuits in 1986 and 137 lawsuits in 1987 as of Oct. 15. It is estimated that lawsuits filed against the Bexar Appraisal District will quadruple in 1987. *See id.*

4. *See* Leander Indep. School Dist. v. Cedar Park Water Supply Corp., 479 S.W.2d 908, 912 (Tex. 1972)(property taxed unless excluded).

5. *See* Swearingen v. City of Texarkana, 596 S.W.2d 157, 160-61 (Tex. Civ. App.—Texarkana 1979 n.w.h.)(religious bookstore does not qualify for exemption because not "actual place of religious worship"); *see also* Highland Church of Christ v. Powell, 644 S.W.2d 177, 180-81 (Tex. App.—Eastland 1983, writ ref'd n.r.e.)(portion of building used as religious radio station was actual place of religious worship, but remainder of building did not qualify for exemption).

6. *See* 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.)(tax exempt status requires property to be exclusively used for an exempted use).

7. *See* TEX. CONST. art. VIII, § 14 (tax assessor-collector required to perform duties as described by legislature).

8. *See* TEX. TAX CODE ANN. §§ 6.01-6.11 (Vernon 1982); *see also* Wilson v. Galveston

values on the properties in the tax base.[9] An appraisal review board's function is to examine and review the appraisal district's function in light of applicable taxpayer protests.[10]

The purpose of this article is to examine ad valorem taxation under the Texas Property Tax Code (Code) and the resultant litigation. This article will review pre-Code litigation and the resultant litigation brought about by recent amendments to the Code. The Texas Constitution's due process requirements will be applied to the Code's exclusive remedies section. Also, the taxing authorities' collection and enforcement procedures and taxpayers' liability will be reviewed. Finally, the article will provide recommendations to further successful litigation of ad valorem cases.

II. PRE-PROPERTY TAX CODE LITIGATION

It is not within the scope of this article to give a complete history of litigation concerning ad valorem taxes prior to the adoption of the Code in 1982. Some examples, and a general history, however, are important to place post-1982 litigation in prospective.[11]

The Texas Constitution provides the unequivocal requirement that taxpayer's property be equally and uniformly taxed in proportion to its market value.[12] Prior to the adoption of the Tax Code, a taxpayer's only remedy to illegal taxation was to enjoin the entire taxing process pending determination of the complaint.[13] Failing this, a taxpayer could simply refuse to pay the tax, wait to be sued for delinquent taxes, and then assert the constitutional right to be taxed uniformly and equally in accordance with the property's market value.[14] However, an almost insurmountable procedural burden was

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County Cent. Appraisal Dist., 713 S.W.2d 98, 99-101 (Tex. 1986)(county assessor not impliedly given duty to raise revenues)..

9. *See* Wilson v. Galveston County Cent. Appraisal Dist., 713 S.W.2d 98, 99 (Tex. 1986)(power to appraise implicit part of duty to assess).

10. *See* TEX. TAX CODE ANN. §§ 6.41-6.43, 41.01-41.12 (Vernon 1982). The reality of the situation is, however, that appraisal districts and appraisal review boards often adopt the mentality that they are, in effect, a revenue generating arm of the local government. Any practitioner in the field should bear this in mind.

11. *See generally* Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885 (1973). This article provides an overview of "pre-code" litigation.

12. *See* TEX. CONST. art. VIII, §§ 1, 20 (Vernon 1985).

13. *See* Roland v. City of Tyler, 5 S.W.2d 756 (Tex. Comm'n App. 1928, opinion adopted).

14. *See id.* at 760.

placed upon the complaintant in that the taxpayer was required to show that the taxing authorities had followed an arbitrary plan or scheme, and that the adoption of the plan had caused substantial injury.[15] Thus, no matter what degree the tax plan violated the Texas Constitution the taxpayer's only relief was conditioned on proof that he was substantially injured.[16] In interpreting "substantial injury," courts required the taxpayer to show that the property was actually assessed at a substantially higher percentage of its market value than the percentage used for other property.[17] If the taxpayer met this burden of proof, relief was limited to the amount or extent of the excess.[18]

A taxpayer trying to vindicate his constitutional rights seldom prevailed because of this onerous burden of proof.[19] The learned Chief Justice of the Fourth Court of Appeals in San Antonio, Carlos Cadena, made light of this extreme burden in his opinion in *Charles Schreiner Bank v. Kerrville Independant School District*:[20]

> The burden is impossible to discharge, since it is doubtful that the assessor himself knows how much property has been omitted, or if he has such knowledge, the value of such property . . . This decision was reached although the Court recognized that, from a practical standpoint, the assessor, with his 180 employees, could not acquire information concerning the extent and value of the omitted property. Where a court requires a lonely taxpayer to do that which 181 taxing officials could not do is, from a practical standpoint, the same as refusing to make any effort to require that taxing officials abide by constitutional

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15. *See, e.g.,* State v. Federal Land Bank, 160 Tex. 282, 287, 329 S.W.2d 847, 850 (1959)(party challenging tax plan must prove tax plan is arbitrary, illegal, and caused substantial injury); State v. Whittenburg, 153 Tex. 205, 210-11, 265 S.W.2d 569, 573 (1954)(taxpayer attacking arbitrariness of tax scheme must show scheme is illegal, arbitrary, and caused substantial injury).

16. *See* City of Orange v. Livingston Ship Bldg. Co., 258 F.2d 240, 246-48 (5th Cir. 1958).

17. *See, e.g.*, City of Arlington v. Cannon, 153 Tex. 566, 571, 271 S.W.2d 414, 417 (1954)(taxpayer must show substantial injury); Charles Schreiner Bank v. Kerrville Indep. School Dist., 683 S.W.2d 466, 469 (Tex. App.—San Antonio 1984, no writ)(taxpayer must show property assessed at substantially higher percentage of market value than other property).

18. *See* Charles Schreiner Bank v. Kerrville Indep. School Dist., 683 S.W.2d 466, 469 (Tex. App.—San Antonio 1984, no writ).

19. *See* 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.)(legal doctrines, controlling presumptions, and burdens of proof were inequitable impediments to taxpayer's vindication of his constitutional rights).

20. 683 S.W.2d 466 (Tex. App.—San Antonio 1984, no writ).

> and statutory mandates. Such rules effectively prevent success by a complaining taxpayer.[21]

In the same opinion, the Chief Justice also reviewed the inequities in the taxing process in *Federal Land Bank v. State*,[22] where a taxpayer was denied relief because the assessed tax on his exempt property amounted to only $0.41:

> Of course, 41 cents here and 41 cents there add up to hundreds of thousands, if not millions, of dollars illegally extracted from the taxpayers, all, of course, without imposing substantial hardship on any one taxpayer. The taxing authorities profit handsomely from their illegal activities while the courts content themselves with adjusting the judicial blindfold to insure that the old adage, "you can not fight city hall," remains true, at least in the area of taxation . . . there is no justification for judicial tolerance and eye-winking disguised as procedural rules . . . where the taxing scheme is wholly unlawful and fundamentally wrong.[23]

Despite recognition of the inequities surrounding pre-Code procedural tax law and the adoption of a statutory taxation scheme courts continue to "adjust the judicial blindfold" and deny relief to taxpayers under the guise of procedural rules.

III. PROPERTY TAX CODE

Since the Texas Legislature codified the current property tax code in 1982,[24] the Code has been refined through subsequent amendments in 1985 and 1987.[25] Notwithstanding its codification, taxpayers and

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21. *Id.* at 470.

22. 314 S.W.2d 621 (Tex. Civ. App.—San Antonio 1958), *rev'd*, 160 Tex. 282, 329 S.W.2d 847 (1959).

23. Charles Schreiner Bank v. Kerrville Indep. School Dist., 683 S.W.2d 466, 470-71 (Tex. App.—San Antonio 1984, no writ) (discussing the inequities of the "substantial injury" rule).

24. *See* Act of June 10, 1981, ch. 389, § 40, 1981 Tex. Gen. Laws 1490, 1787. "This Act is intended as a recodification only, and no substantive change in the law is intended by this Act." *Id.*

25. *See* Act of June 17, 1987, ch. 435, § 1, Tex. Sess. Law Serv. 3988, 3988-89 (Vernon)(effective Jan. 1, 1988 section 1.111 added); Act of June 15, 1985, ch. 823, §§ 1-5, 1985 Tex. Gen. Laws 2880, 2880-81 (amending section 1.12). *See generally* Kliewer & Breen, *The New Property Tax Code and Perfecting the Appeal: A Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887 (1982). Although this article provided good procedural guidance, the article lacked a review of appellate court decisions under the Property Tax Code due to the Code's then recent enactment. When the first cases were reported in 1983, two things became readily apparent: (1) not many taxpayers or their attorneys are very familiar with the Property Tax

their attorneys continue to lose cases due to unfamiliarity with the present Code and courts are unjustifiably reluctant to provide relief to taxpayers when the Code can be read in such a way as to deny relief. Therefore, a brief explanation of the more salient amendments to the Code is necessary.

A. *Amendments of Subtitle A: General Provisions*

There have been notable amendments to the Code's general provisions, for example, the addition of section 1.111, authorizes a property owner to designate a person in possession of the property, to act as the owner's agent for any purpose involving the property under the Code.[26] The designation must be in writing, signed by the owner, and clearly indicate that the person is authorized to act on behalf of the property owner in property tax matters relating to the property.[27] Any such designation remains in effect until revoked by the property owner, unless the written agreement expressly provides for expiration.[28]

This section should obviate the necessity of a property owner having to file authorization in each year and overrules case law that required dismissing a valid lawsuit because the property owner was not a party.[29] The section does not require the authorization to be filed

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Code, and (2) courts are still reluctant to provide the taxpayer with relief when any provision of the Property Tax Code could be read to deny the taxpayer such relief.

26. *See* Act of June 17, 1987, ch. 435, § 1, 1987 Tex. Sess. Law Serv. 3988, 3988-89 (Vernon)(authorizing agent to contest ad valorem taxation effective Jan. 1, 1988).

27. *See id.*

28. *See id.*

29. *See* Bennett-Barnes Invs. v. Brown County Appraisal Dist., 696 S.W.2d 208 (Tex. App.—Eastland 1985, writ ref'd n.r.e.). In *Bennett-Barnes*, a lawsuit was brought by a taxpayer concerning the situs of a leased airplane. The taxpayer, who was the lessee of the plane, contended that since the airplane was used throughout the state it did not have situs for taxation in Brown County and, thus, must be taxed at the residence of its owner, Republic Leasing, in Dallas, Texas. The taxing authorities argued that sections 41.41 and 42.01 gave only a "property owner" the right to protest appraisals before the appraisal review board and appeal the board's order. The court agreed with the taxing authority and held that only the *property owner*, not the lessee, had standing to challenge the property tax valuation on leased personal property. *See id.* at 208-09.

This case exemplifies the procedural pitfalls present for an unwary taxpayer under the Code. The holding ignores the rights of the real party in interest. If only a property owner has a right to protest and/or appeal an excessive valuation then the taxpayer is denied due process and equal protection because the real party in interest, the lessee who is responsible for the payment of the taxes under the lease, would apparently have no remedy. Additionally, the true owner, who has passed through the taxes to the lessee in a triple net lease, does not care

with the appraisal district, but it is assumed that filing is necessary to put the appraisal district on notice.[30] Such a designation could be contained in the lease agreement and should be a standard clause in every commercial lease signed in this state, regardless of the type of property involved.[31]

The Code's general provisions section 1.12 was also amended to change the standard for determination of unequal property appraisal

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whether an assessment is based upon market value and is equal and uniform since he will never have to pay the taxes himself.

Support for allowing the taxpayer lessee to bring suit can be found within the Code itself as in the case of a commercial lease on a piece of real property. Section 1.04 of the Code defines property to mean any matter or thing capable of private ownership. *See* TEX. TAX CODE ANN. § 1.04(1)(Vernon 1982). Real property is defined as: "(A) land; (B) an improvement; . . . (F) an estate or *interest*, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation, in a property enumerated in paragraphs (A) through (E) of this subdivision." TEX. TAX CODE ANN. § 1.04(2) (Vernon 1982) (emphasis added). Further, it is unquestioned that a leasehold is an interest in an estate or property. Thus, where appraisal districts assert that taxpayers have no interest in leased property, especially in connection with real property, the Code itself should preclude a similar result as that found in *Bennett-Barnes*. However, a prudent practitioner will obtain authority from the true owner of the property, in the case of a lessee who is responsible for the payment of the taxes under the commercial lease, and join the property owner along with the lessee at both the administrative level and at trial.

30. *See* TEX. TAX CODE ANN. § 1.11 (Vernon 1982).

31. The following, while not included as a form, may be a helpful guideline:

> It is further agreed that lessee, at his option, shall be solely and exclusively responsible for contesting the demised premises' ad valorem tax liability for any year of this lease. Owner/lessor hereby grants, delegates, assigns and gives to lessee the power to contest any matter or function causing, creating or relating to ad valorem taxes on the demised property for the term of this lease. This grant of authority shall include, without limitation, the authority to deal with the taxing and/or appraisal authorities of any county, city, state, or other political subdivision as concerns ad valorem taxes upon the demised property for any year of this lease. Likewise, without limitation, lessee is specifically authorized to challenge valuations, for tax purposes, as they relate to the demised premises during the term of this lease. Said authority to challenge shall be deemed to include, without limitation, the right to sue for relief under applicable statutes and laws and lessee is hereby assigned any right, cause of action, chose in action, or the like which owner/lessor may have under applicable law as relates to ad valorem taxes upon the demised property for the term of this lease. All expenses and costs of contesting or challenging ad valorem taxes upon the property pursuant to this subparagraph shall be borne by lessee and lessee does hereby agree to pay all such expenses and costs as well as any tax, penalty, interest or other assessment upon the property as a result of such contest/challenge. Owner/lessor agrees to cooperate fully with lessee in the event lessee elects to challenge or contest ad valorem taxes upon the property for any year of the lease, including but not limited to joining in any suit, protest, appeal, or the like as concerns the ad valorem taxes upon the property. Further, lessor shall not pay an ad valorem tax or any portion thereof upon the demised property during the term of this lease without the express written consent of lessee.

from that of a "weighted average level of appraisal" to a "median level of appraisal."[32] Although the actual impact on the taxpayer may be disputed, the intent of the change was to lessen the taxpayer's burden of proving unequal appraisal and to provide a method for taxpayer's to determine more readily whether the property is taxed equally and uniformly with other properties in the district.[33]

B. *Changes to Subtitle C: Taxable Property and Exemptions*

Other notable changes to the Code occurred in the taxable property and exemptions chapter. Section 11.18, which authorizes property tax exemptions for charitable organizations, was amended in 1985 and 1987. The 1985 amendment created a new exemption for charitable organizations that solicit contributions for other charitable human services and slightly modified the qualification requirements for private water supply organizations.[34] The 1987 amendment created an exemption for charitable organizations, foundations, or trusts that perform bio-medical or scientific research or education for public benefit.[35]

A 1987 amendment to section 11.20 expanded a religious organization's property tax exemption by enlarging their real property exemption to include any incomplete improvement that is under active construction or other physical preparation if it is designed and intended to be used as a place of regular religious worship when completed.[36] This exemption also includes the land which will be reasonably necessary for the religious organization's use of the improvement as a place of regular religious worship. However, this ex-

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32. *See* Act of June 15, 1985, ch. 823, § 1, 1985 Tex. Gen. Laws 2880, 2880-81, *codified at* TEX. TAX CODE ANN. § 1.12 (Vernon Supp. 1987).

33. This change relates to amended section 5.10 which requires the State Property Tax Board to conduct annual studies in each appraisal district to determine the uniformity and median level of appraisals as to each major class of property within the appraisal district. *See* TEX. TAX CODE ANN. § 5.10 (Vernon Supp. 1987)(ratio studies required in each appraisal district). Also, section 41.41 relates to sections 1.12 and 5.10 in that it allows the taxpayer to protest the unequal appraisal of his property based on the median level of appraisal of the properties in the district. *See id* § 41.41. The term "weighted average level of appraisal" is no longer in the Code.

34. *See* TEX. TAX CODE ANN. § 11.18 (Vernon Supp. 1987)(amending subsection (c)).

35. *See* Act of June 17, 1987, ch. 430, § 1, 1987 Tex. Sess. Law Serv. 3974, 3974 (Vernon)(effective Jan. 1, 1988 qualifying charitable organizations amended).

36. *See* Act of June 18,1987, ch. 640, § 1, 1987 Tex. Sess. Law Serv. 4876, 4876-77 (Vernon)(amendment of section 11.20(a) and addition of section 11.20(f) effective Jan. 1,1988).

emption for incomplete improvements will not be granted for more than two years. Additionally, new section 11.421 provides that if the chief appraiser denies a timely filed religious organization exemption application that otherwise qualified for the exemption on January 1, but did not satisfy the requirements of section 11.20(c)(3)[37] on that date, the organization is eligible for the exemption for that tax year if they satisfy the requirements of 11.20(c)(3) before June 1 of that year or the 30th day after the date the chief appraiser notifies the organization of its failure to comply with those requirements, whichever is later.[38] Furthermore, the religious organization will be required to complete a new application certifying that the requirements of 11.20(c)(3) have been met.[39] This same option is available to the religious organization if the chief appraiser cancels an exemption that the chief appraiser feels was erroneously allowed in any tax year.[40]

Finally, the Code's miscellaneous property tax exemptions were expanded to include scientific research corporations. Section 11.23 was amended to provide a property tax exemption for non-profit corporations which own property and use it in scientific research and educational activities for the benefit of one or more colleges and universities.[41]

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37. TEX. TAX CODE ANN. § 11.20 (c)(3) (Vernon 1982). This subsection requires religious organizations seeking an exemption to, by its charter or bylaws:

(A) pledge its assets for use in performing the organization's religious functions; and

(B) direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state or to a charitable, educational, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954 [26 U.S.C. § 501(c)(3)], as amended."

Id.

38. *See* Act of June 18, 1987, ch. 640, § 3, 1987 Tex. Sess. Law Serv. 4876, 4878-79 (Vernon)(effective Aug. 31, 1987).

39. *See id.*

40. *See id.*

41. *See* Act of June 18, 1987, ch. 640, § 5, 1987 Tex. Sess. Law Serv. 4876, 4879 (Vernon)(effective Aug. 31, 1987 subsection 11.23(k) added). Section 11.29 is another addition and authorizes a taxation exemption for land owned by an individual that is dedicated by that person by easement for use as a disposal sight for depositing and discharging materials dredged from the main channel of the Gulf Intercoastal Waterway by the Government. *See* Act of June 17, 1987, ch. 428, § 1, Tex. Sess. Law Serv. 3965, 3965-66 (Vernon)(land exemption effective Jan. 1, 1988). An additional personal property exemption, which exempts as personal property boats owned by individuals only for recreational purposes and not for the production of income, is in Section 11.14. *See* Act of May 26, 1987, ch. 181, § 1, 1987 Tex. Sess. Law Serv. 2715, 2715 (Vernon)(effective May 26, 1987). This boat exemption parallels the previous car exemption of non-income producing personal property. *See* TEX. TAX CODE ANN.

C. *Changes to Subtitle D: Appraisal And Assessment*

The renditions and other reports chapter of the Code was amended twice by the legislature. First, section 22.03 was amended to allow a taxpayer's report of decreased value of his oil and gas property to be merely reviewed by the chief appraiser before making a decision on the property's value.[42] This should reduce the time needed by the chief appraiser to make a decision since the chief appraiser formerly had to view the oil and gas property to verify the taxpayer's report.[43] Second, section 22.23 was amended to move the deadline for filing rendition statements from May 1 to April 1 and to give the chief appraiser the authority to extend the rendition deadline to April 30 without a written order.[44] Taxpayers are entitled to an automatic thirty day extension upon written request and an additional extension of up to fifteen days for good cause.[45]

The Code's appraisal methods and procedures had required that the property's market value be used for tax purposes.[46] This appraisal method was clarified by amending section 23.01 to provide that each property shall be appraised based upon the individual characteristics that affect that property's market value.[47] This amendment should make the taxpayer's job a bit easier in protesting the value placed on his property, since individual factors affecting the property's market value can be analyzed.

The special appraisal provisions regarding property inventory were also clarified as applied to real estate. Section 23.12 was amended to include residential real property held as inventory for sale by a dealer in real estate, i.e., residential subdivisions would now be valued according to generally accepted appraisal principles as land held in in-

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§ 11.25 (Vernon 1982)(exempting from taxation family's or individual's automobiles not used for the production of income).

42. *See* TEX. TAX CODE ANN. § 22.03(b) (Vernon Supp. 1987).

43. *See id.* § 22.03(b) (Vernon 1982), *amended by* Act of June 8, 1985, ch. 315, §§ 1, 2, *codified at* TEX. TAX CODE ANN. §§ 22.03(b)-(c) (Vernon Supp. 1987). In light of the current market conditions affecting oil, gas, and mineral properties, this amendment may have an important impact.

44. *See* Act of May 28, 1987, ch. 185, § 1, 1987 Tex. Sess. Law Serv. 2743, 2743-44 (Vernon)(section 22.23(b)'s amendment effective Jan. 1, 1988).

45. *See id.*

46. *See* TEX. TAX CODE ANN. § 23.01(b) (Vernon 1982)(property's market valued determined by generally accepted appraisal techniques).

47. *See id.* (Vernon Supp. 1987).

ventory for ultimate re-sale to an end user.[48]

Section 23.51, which provides definitions used in appraising agricultural land, amended the definition of "qualified open-space land" to include land that is used to raise or keep exotic animals for the production of human food, fiber, leather, pelts, and other products having commercial value.[49] Additionally, section 23.51(1) now permits land that is contiguous to land that had qualified for open space valuation to receive the same valuation even if it did not have a sufficient history of qualified use to be eligible for the valuation in its own right.[50] Sections 23.51(4) and 23.72 provide an improved method of calculating "net to land" for purposes of arriving at an open space value upon the property, and also add to the definition of "qualified open space land" land that is used for the production of timber or forest products.[51]

The Code's chapter regarding local appraisal of property experienced several amendments. Section 25.195 was amended giving property owners the right to inspect the appraisal records, supporting data, and tax schedules relating to the taxpayer's property after the chief appraiser has submitted the records to the appraisal review board.[52] An amendment to section 25.20 makes May 15th the mandatory date for the chief appraiser to certify value estimates to the local taxing units.[53] Additionally, section 25.22's amendment makes May 15th the mandatory date for the chief appraiser to submit appraisal records to the appraisal review board.[54] However, section 25.25 was amended to allow the chief appraiser and property owner to file, at any time before the taxes become delinquent, a joint motion requesting the appraisal review board to correct a substantial error in

48. *See* Act of June 18, 1987, ch. 590, § 1, 1987 Tex. Sess. Law Serv. 4627, 4627 (Vernon)(amendment of 23.12(a) and addition of 23.12(e) effective Aug. 31, 1987).

49. *See* Act of June 19, 1987, ch. 780, § 2, 1987 Tex. Sess. Law Serv. 5537, 4438-39 (Vernon)(effective Jan. 1, 1988).

50. *See id.* (subject to condition and requirements stated).

51. *See* Act of June 19, 1987, ch. 780, § 1, 1987 Tex. Sess. Law Serv. 5537, 5537-38 (Vernon)(amendment effective Jan. 1, 1988); Act of June 19, 1987, ch. 780, § 2, 1987 Tex. Sess. Law Serv. 5537, 5538-39 (Vernon)(effective Apr. 29, 1987). Thus, it appears that timber land could qualify either under an open space valuation or under subchapter E, appraisal of timber land.

52. *See* Act of Apr. 29, 1987, ch. 38, § 1, 1987 Tex. Sess. Law Serv. 145, 145 (Vernon).

53. *See* TEX. TAX CODE ANN. § 25.20(a) (Vernon Supp. 1987)(deleted "or as soon thereafter as practicable").

54. *See id.* § 25.22(a) (deleted "or as soon thereafter as practicable").

the records.[55] While "substantial error" is not defined, it stands to reason that it must be a fairly large error to qualify under section 25.25, since the general rule is that except for action of the appraisal review board pursuant to a protest, or the court pursuant to an appeal from the appraisal review board, the appraisal roll may not be changed.[56] Apparently, since the motion must be brought jointly by the chief appraiser and the property owner, the appraisal review board cannot correct a substantial error without the property owner's cooperation and acquiescence. Therefore, if the "substantial error" resulted in a favorable tax treatment for the property owner, he would likely refuse to join with the chief appraiser in petitioning the appraisal review board for a correction.

Section 25.25 also provides that the appraisal review board must provide a notice to all taxing units involved in taxation of the property, making them interested parties who may participate at the board hearing to oppose or support the property owner and/or the chief appraiser.[57] Section 25.25(e) further requires the property owner to comply with Code section 42.08, which provides for the payment by the taxpayer of either the amount of last year's taxes or the amount of taxes not in dispute, which ever is greater, or the taxpayer will forfeit his right to appeal.[58] The failure of the appraisal review board to correct a substantial error as contemplated by section 25.25 should be appealable to the district court under chapter 42, since it would be an act or action of the appraisal review board and/or appraisal district which adversely affects the taxpayer.[59]

The assessment chapter of the Code had five important sections amended in 1987. Section 26.01(c)[60] was repealed, thereby voiding the appraisal district board of director's authority to extend the July 25th deadline for certification of an appraisal roll to each taxing unit.[61] Thus, the deadline is now mandatory. The amendment of

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55. *See id.* § 25.25(d)(correction of appraisal roll).

56. *See id.* (Vernon 1982).

57. *See id.* § 25.25(d) (Vernon Supp. 1987).

58. *See id.* § 25.25(e).

59. *See id.* § 41.41(8)(property owner entitled to protest any action applying to and adversely affecting the owner).

60. *See id.* § 26.01(c)(submission of rolls to taxing units).

61. *See* Act of June 20, 1987, ch. 947, § 1, 1987 Tex. Sess. Law Serv. 6342, 6342-43 (Vernon)(effective Jan. 1, 1988). As will be pointed out later in the article, the Appraisal District and the Appraisal Review Board are required to adhere to mandatory deadlines just as taxpayers are required to follow the deadlines.

Code sections 26.04 through 26.07[62] changed the procedures for calculating and publishing a tax rate;[63] adopting a tax rate in two fashions, one a debt service rate and a rate for maintenance and operating expenses;[64] and allowing a taxing unit to increase its tax rate to provide health care services required by the act to protect the increase from a tax rate rollback election.[65] Methods of adopting a tax rate, and a taxpayer's rights and remedies for protection therefrom are outside the scope of this article, but a practitioner faced with a client or group of clients who wish to contest the adoption of a tax rate should begin with a careful examination and review of these sections.

D. *Changes to Subtitle E: Collections and Delinquency*

Simplification of the collections chapter occurred with the amendment of section 31.04 establishing a delinquency date for each tax bill mailed after January 10th. Formerly, the delinquency date was to be determined by establishing the date on which "substantially all of the tax bills were mailed."[66] Now, any tax bill mailed after January 10th must be paid before the first day of the next month in which the taxpayer has at least twenty-one days for payment.[67] For example, a tax bill mailed to the taxpayer on February 15th would not be due until the first day of April since the first day of March is less than twenty-one days from the date the tax bill was mailed. Furthermore, if the delinquency date is postponed the postponed date is the date penalties and interest on the taxes begin to accrue under section 33.01.[68]

In addition, amended section 31.07 allows a tax collector to accept partial payment of taxes.[69] Formerly, the practice or rule was that if the tax collector felt that the payment tendered by the taxpayer was

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62. *See* TEX. TAX CODE ANN. § 26.04 (Vernon 1982)(submission of roll to governing body); Tex. Tax Code Ann. § 26.05 (Vernon 1982)(tax rate); Tex. Tax Code Ann. § 26.06 (Vernon 1982)(notice, hearing, and vote on tax increases); Tex. Tax Code Ann. § 26.07 (Vernon 1982)(election to repeal increase).

63. *See* Act of June 18, 1987, ch. 988, § 2, 1987 Tex. Sess. Law Serv. 6732, 6736 (Vernon)(effective Jan. 1, 1988).

64. *See* Act of June 18, 1987, ch. 947, § 8, 1987 Tex. Sess. Law Serv. 6342, 6347-60 (Vernon)(effective Jan. 1, 1988).

65. *See* Act of June 20, 1987, ch. 947, § 9, 1987 Tex. Sess. Law Serv. 6342, 6360-61 (Vernon)(effective Jan. 1, 1987).

66. *See* TEX. TAX CODE ANN. § 31.04 (Vernon Supp. 1987)(deleted language regarding mailing date).

67. *See id.*

68. *See id.*

69. *See id.* § 31.07(c)(certain payments allowed).

not the full amount, he was under no obligation to accept the payment and he would return the tendered payment to the taxpayer.[70] This amended section would not, however, affect a tender of payment of taxes pursuant to section 42.08 of the Code where the taxpayer and the appraisal authorities are in a dispute over the valuations and exemptions.[71]

The addition of section 33.011 allows the governing body of a taxing unit to waive penalties and interest on a delinquent tax if the delinquency is the tax office's fault.[72] This section is important to a taxpayer because errors in the tax office either by the personnel or the computer are not uncommon, and, previously, the taxing unit was required to charge penalty and interest on the tax even if it was their fault.[73]

E. *Changes to Subtitle F: Remedies*

Amended section 41.12 speeds up the local review process by the appraisal review board by requiring the appraisal review board to complete substantially all protests before it can approve the appraisal records.[74] If the total appraised property value pending in protest totals more than five percent of the total appraised value of all property in the district, the appraisal review board cannot approve the appraisal records.[75]

The procedure a taxpayer must follow to protest his property valuation before the appraisal review board was amended several times. Amended section 41.41 gives the taxpayer the right to protest the unequal appraisal of his property based on the median level of appraisal of the properties in the district.[76] Section 41.411 now entitles the tax-

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70. *See* Dickinson Indep. School Dist. v. McGowan, 533 S.W.2d 127, 130 (Tex. Civ. App.—Houston [1st Dist.] 1976, writ dism'd).

71. *See* TEX. TAX CODE ANN. § 42.08(b) (Vernon Supp. 1987)(property owner must pay taxes on value not in dispute or amount paid in previous year).

72. *See id.* § 33.011 (waiver of interest and penalties).

73. *See* Op. Tex. Att'y Gen. No. H-230 (1974).

74. *See* TEX. TAX CODE ANN. § 41.12(b) (Vernon Supp. 1987)(completion of review by board).

75. *See id.* This amendment creates problems for the taxing authorities since approval of the appraisal records is an integral part of the taxing process. A more in depth discussion of this situation appears later in this article in connection with the examination of the *Valero v. Hays Consolidated Independent School District* case. *See infra* note 92 and accompanying text.

76. *See* TEX. TAX CODE ANN. § 41.41(2) (Vernon Supp. 1987). The old term "weighted average level of appraisal" is now not in the Code.

payer to file a protest even after the appraisal review board has approved the appraisal records if the taxpayer's complaint is that he did not receive notice from the appraisal district or the appraisal review board.[77] This notice will include, among other items, notice of appraised value, notice that an exemption requested by the taxpayer has been denied, and notice of the date and time of a scheduled protest hearing.[78] This new taxpayer protection section changes the old law whereby the taxing authorities enjoyed a presumption that notice had been delivered when the notice was mailed.[79]

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77. *See id.* § 41.411 (protest of failure to give notice).

78. Section 41.411's language is permissive in nature. *See id.* Thus, the question is whether the taxpayer must avail himself of the provisions of section 41.411 if the appraisal authorities fail to send him a notice. The prevailing argument will no doubt be that section 42.09's exclusive remedies provision will require the taxpayer to utilize section 41.411, because section 41.411 gets the taxpayer back into the administrative review process even though a mistake of the appraisal authorities prevented him from initially using the administrative review process.

The question arises as to when the taxpayer must avail himself of the remedies provided in chapter 41's administrative review in order to be entitled to judicial review under chapter 42. In *Estepp v. Miller*, a taxpayer filed suit regarding the 1984 appraised value of his property. *See* Estepp v. Miller, 731 S.W.2d 677, 678 (Tex. App.—Austin 1987, writ pending). In 1985 while this suit was pending, the taxpayer received his tax bill which reflected the same value as the 1984 bill. No notice of the appraised value was sent since there was no change from the previous year. *See id.; see also* TEX. TAX CODE ANN. § 25.19(g) (Vernon 1982)(notice not required if appraisal value increases $1,000 or less). Realizing the bills were the same, the taxpayer merely amended his 1984 suit to include the 1985 appraisal. *See* Estepp, 731 S.W.2d at 678-79. The court of appeals held that as the board and district were clearly aware that the taxpayer was contesting the 1984 appraised value, and the suit had not been resolved, the taxpayer was not required to comply with chapter 41's administrative review requirements to contest the identical 1985 appraisal. *See id.* at 680. This holding means that section 41.411 is not mandatory under all fact patterns and that the taxpayer may not be required to avail himself of the Code's administrative review when he has an unadjudicated tax case. Two cautionary notes: 1) at this writing, writ is pending in the supreme court; 2) the language of the opinion limits the result to the facts of the case. *See id.* at 680.

79. *See* TEX. TAX CODE ANN. § 1.07 (Vernon Supp. 1987)(evidence that taxpayer failed to receive notice rebuts presumption that delivery occurs when notice deposited in mail); *see also* New v. Dallas Appraisal Review Bd., 734 S.W.2d 712, 714-15 (Tex. App.—Dallas 1987, no writ)(rebutted presumption of receipt re-established by evidence of delivery).

Most of the various notice sections provide that the taxpayer's failure to receive his notice will not affect the validity of the tax assessed against the taxpayer. Section 41.411 allows a taxpayer to request, prior to taxes becoming delinquent, a hearing to determine whether he received the notice. The burden is on the taxpayer to prove that he did not receive notice. Thus, the first step in the protest is for the taxpayer to convince the taxing authorities that he never received the complained of notice. The second step, if the taxpayer meets his first burden of proof, would be a hearing on his underlying or substantive complaint, which he would have complained of had he received the proper notice. Again, this section is an exception to the general rule that the appraisal review board cannot hear a protest that is filed after the deadline for doing so. Note, however, that the taxpayer must file this protest before taxes

Also, the Code protects the taxpayer through the adoption of section 41.412. This new section authorizes a person who acquires property after January 1st, but before the deadline for filing a protest, to pursue that protest in the same manner as the person who owned the property on January 1st.[80] Further, if the previous owner had filed a protest, the new owner may pursue the same protest so long as he becomes the new owner before the appraisal review board has determined the protest.[81] The new owner must, however, apply to the appraisal review board to continue his appeal.[82]

The taxpayer's notice of protest to the appraisal review board procedure in section 41.44(a) was also amended to require a taxpayer to file a protest before July 1st or not later than thirty days after the date an appraisal notice was delivered, whichever date was later.[83] Formerly, a taxpayer could file a protest at any time until the appraisal review board approved the appraisal records.[84] Thus, this amendment gives the appraisal district the power to set the notice of protest deadline. If the appraisal district mails their notices to the taxpayers by the end of May, the protest deadline for all taxpayers would be July 1st. If, however, the appraisal district does not mail notices of the properties' appraised value prior to thirty days before July 1st, each taxpayer will have a different filing deadline for their protest notice.[85]

A taxpayer protest under amended section 41.45(a) provides that where properties are owned in undivided or fractional interests, such as oil and gas interests, the appraisal review board's hearings must be scheduled to provide participation by all the owners who have filed

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become delinquent. *See* TEX. TAX CODE ANN. § 41.411 (Vernon Supp. 1987). The taxpayer must also comply with section 42.08's payment of undisputed taxes or previous year's taxes in order to preserve his rights of protest and appeal. *See* TEX. TAX CODE ANN. § 42.08 (Vernon Supp. 1987).

80. *See* Act of June 17, 1987, ch. 451, § 1, 1987 Tex. Sess. Law Serv. 4040, 4040-41 (Vernon)(effective Aug. 31, 1987).

81. *See id.*

82. *See id.*

83. *See* Act of May 28, 1987, ch. 185, § 3, 1987 Tex. Sess. Law Serv. 2743, 2744 (Vernon)(effective Jan. 1, 1988).

84. *See* TEX. TAX CODE ANN. § 41.44 (Vernon 1982).

85. The appraisal district is required to show a protest deadline on the notices of appraised value. *See id.* § 25.19(b)(7). The taxpayer should carefully examine each notice to make sure that the dates are correct. As a practical matter, clients should be advised to file notices of protest as soon after receiving notice as possible.

such a protest.[86] Hand in hand with this amendment, section 41.47(b) was amended to provide that if the appraised value of the property interest is changed as a result of the protest, the appraisal review board must change the appraised value of all other interests in the same property in proportion to the ownership interests.[87]

A taxpayer's right to appeal a protest was clarified with the amendment of section 41.47(a).[88] The appraisal review board is required upon the issuance of the final order pursuant to a taxpayer protest to prominently state on the order, in clear and concise language, the property owner's right to appeal the appraisal review board's decision to the district court, and include the deadline for filing the notice of appeal and for filing the petition for review.[89]

The final change to the taxpayer's protest procedure was the repeal of section 41.47(c) regarding the appraisal review board's determination of the taxpayer's protest.[90] Previously, an appraisal review board had to complete all protests before it could approve the appraisal records.[91] This presented a compliance problem for the various appraisal review boards[92] and the amended rule is now set forth in sec-

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86. *See* Act of June 18, 1987, ch. 794, § 1, 1987 Tex. Sess. Law Serv. 5578, 5578 (Vernon)(effective June 18, 1987).

87. *See id.* § 2 at 5579.

88. *See* Act of June 19, 1987, ch. 773, § 2, 1987 Tex. Sess. Law Serv. 5506, 5507 (Vernon)(effective Jan. 1, 1988).

89. *See id.*

90. *See* TEX. TAX CODE ANN. § 41.47(c) (Vernon 1982), *repealed by* Act of June 12, 1985, ch. 504, § 3, 1985 Tex. Gen. Laws 2089, *codified at* TEX. TAX CODE ANN. § 41.47(c) (Vernon Supp. 1987).

91. *See id.*

92. *See* Valero Transmission Co. v. Hays Consol. Indep. School Dist., 704 S.W.2d 857, 859 n.1, 862-63 (Tex. App.—Austin 1986, writ ref'd n.r.e.). In *Valero*, the school district sued the taxpayer for delinquent taxes while his protest of the appraisal was still before the appraisal review board. *See id.* at 861. Valero argued that until the board made a determination of his protest, sent notification pursuant to section 41.47(d), and certified the appraisal roll his bill was not due. *See id.* at 859-61. The Austin Court of Appeals, in affirming the trial court's denial of Velero's contention, judicially changed 41.47(c)'s language that "the board shall determine all protests before approval of the appraisal records as provided by subchapter A of this chapter" by adding the "or as soon thereafter as is practical." *See id.* at 863-66.

The Austin Court of Appeals missed the point of Valero's contentions. Valero's position rested solely upon the failure of the due process guarantees afforded them by the administrative processes prescribed by the Property Tax Code's chapters 41 and 42. Valero had strictly complied with the Code's provisions in asserting their protest. The failure to resolve Valero's protest was solely and exclusively the fault of the appraisal authorities in that Valero had not received a 41.47(d) order determining its protest even though the protest hearing had been conducted by the Hays Appraisal Review Board fourteen months earlier.

Valero conflicts with *Garza v. Block Distributing Co.*, wherein the court held that a taxpayer

tion 41.12.[93]

The judicial review chapter of the Code has been amended several times since its initial enactment. Section 42.06(b) was amended to require that a taxpayer's notice of appeal of an appraisal review board order must be filed with the chief appraiser rather than the appraisal review board.[94] The amendment of section 42.08 has helped the taxpayer because he need only substantially comply with the payment of taxes due in order to preserve his right of appeal to the courts.[95] For-

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was denied due process where taxing authorities levied a tax but did not give the taxpayer an opportunity to have the valuation reviewed and, thus, jurisdiction to tax the property never attached. *See* Garza v. Block Distrib. Co., 696 S.W.2d 259, 262 (Tex. App—San Antonio 1985, no writ). This holding is consistent with other general principals of law. *See, e.g.*, Aycock v. City of Fort Worth, 371 S.W.2d 712 (Tex. Civ. App.—Fort Worth 1963, writ ref'd n.r.e.)(taxpayer allowed any defenses in state constitution regardless of tax law provisions); Vance v. Town of Pleasanton, 277 S.W. 89, 90 (Tex. Comm'n App. 1925, judgm't adopted)(Constitution's defenses not taken away by legislature).

To this day, *Valero* remains the only case wherein an appellate court has held that when the taxpayer has complied with the Code but the taxing authorities have not, the taxpayer still loses. Undoubtedly, under a literal reading of *Valero*, delinquent tax lawyers statewide could begin filing delinquent tax suits against taxpayers who are diligently and properly pursuing the remedies afforded them under chapters 41 and 42 of the Code, but who, through no fault of their own, have been stymied by some failure of the appraisal authorities to comply with the terms of the Code. This is undoubtedly a denial of due process and the Supreme Court of Texas should disapprove of the concept embodied in the opinion in *Valero*.

93. *See* TEX. TAX CODE ANN. § 41.12(b) (Vernon Supp. 1987). "The appraisal review board must complete substantially all timely filed protests before approving the appraisal records and may not approve the records if the sum of the appraised values . . . of all properties on which a protest has been filed but not determined is more than five percent of the total appraised value of all other taxable properties." *Id.*

94. *See* Act of June 19, 1987, ch. 898, § 1, 1987 Tex. Sess. Law Serv. 6011-12 (Vernon)(amending section 42.06(b),(c)).

95. *See* TEX. TAX CODE ANN. § 42.08 (Vernon Supp. 1987)(nonpayment of taxes causes forfeiture of remedy). Even if the taxpayer substantially complies with the order of the Code's procedural guidelines he may, however, be denied judicial relief. In *Corchine Partnership v. Dallas County Appraisal District* the taxpayer filed his notice of appeal with the appraisal district, but not with the appraisal review board as required by section 42.06 of the Code. *See* Corchine Partnership v. Dallas County Appraisal Dist., 695 S.W.2d 734, 735 (Tex. App.—Dallas 1985, writ ref'd n.r.e.). Later, when the taxpayer filed his suit, he sued only the appraisal district, failing to include the appraisal review board. *See id.* The trial court dismissed the suit for want of jurisdiction, and the court of appeals affirmed, holding that failure to send the notice of appeal to the appraisal review board was a jurisdictional prerequisite to bringing the suit. *See id.* The court further held that this procedural requirement must be met by the taxpayer when initially filing the suit and could not be corrected by amending his suit to include the correct parties. *See id.* at 735-36.

Although the taxpayer may not correct his procedural defect, the taxing authorities may waive their right to complain of the taxpayer's procedural defect. *See* Morris County Tax Appraisal Dist. v. Nail, 708 S.W.2d 473, 474 (Tex. App.—Texarkana 1986, writ ref'd n.r.e.). In *Nail*, the court held that while sections 42.06 and 42.21 of the Code are in the nature of

merly, anything other than absolute compliance with section 42.08 eliminated this right.[96] Thus, a taxpayer who has made a bona fide

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statutes of limitations for the benefit of the appraisal districts, the failure to comply with these limitation statutes is an affirmative defense which must be pled. Since the taxing authorities did not raise the defense until their motion for judgment notwithstanding the verdict, the affirmative defense was waived. *See id.* Although it found the board had waived its timely filing of notice defense, the court had to decide if the taxpayer had complied with the Code's procedural requirement that he pay the undisputed amount of tax or the tax paid in the previous year. Since the Code does not specify where the money must be paid, the court held that the taxpayer paying the undisputed tax into the court's registry was in substantial compliance with the statute. Thus, the taxpayer had met the procedural requirements and could proceed with his law suit. *See id.* at 475.

Nail's implication that substantial compliance with the statutes of limitation in the Code will not bar at taxpayer appeal conflicts with *Poly-America, Inc. v. Dallas County Appraisal District*. *Poly-America* holds that failure to sue the appraisal review board within the forty-five day time limit imposed by section 42.21 deprives the court of jurisdiction to hear the appeal. *See* Poly-America, Inc. v. Dallas County Appraisal Dist., 704 S.W.2d 936, 937 (Tex. App.—Waco 1986, no writ); *see also* Corchine Partnership v. Dallas County Appraisal Dist., 695 S.W.2d 734, 735-36 (Tex. App.—Dallas 1985, writ ref'd n.r.e.)(failure to give notice of appeal to the appraisal review board under section 42.06 deprives court of jurisdiction).

96. *See* TEX. TAX CODE ANN. § 42.08(b) (Vernon 1982)(failure to pay taxes before delinquency date results in forfeiture of legal remedy). Despite the Code's uncompromising language, a taxpayer has won a case due to the taxing authorities' non-compliance with the Code. *See* Garza v. Block Distrib. Co., 696 S.W.2d 259, 262 (Tex. App.—San Antonio 1985, no writ). In *Block*, the Bexar Appraisal District had submitted its appraisal roll to the county showing that Block's personal property had been appraised at $908,300.00. *See id.* at 260. The county accepted the roll and levied a tax on Block's personal property based upon that value. Later, the appraisal district discovered that it had made a mistake and omitted $3,000,000.00 in Block's liquor inventory. Rather than notifying Block that they had discovered their error, they merely certified the rolls and sent Block another tax statement with the increased valuation. *See id.* The increased valuation, along with the increase in taxes due, was made without notifying Block of any hearing at which he could protest this unilateral imposition of an additional tax burden upon his property. *See id.* at 260-61.

Block filed a suit and was granted an injunction against the appraisal district. *See id.* The San Antonio Court of Appeals affirmed the trial court's granting of injunctive relief while rejecting the appraisal district's contention that the trial court did not have jurisdiction because Block did not pay the entire amount of assessed taxes by the delinquency date. *See id.* at 262. The court, in overruling this contention, stated:

> [W]e have a quasi-judicial body making a large increase in the valuations without giving the taxpayer the opportunity to be heard. And, having so violated [the taxpayer's] due process rights, [the appraisal district] would now deny the taxpayer any opportunity to obtain judicial relief from its illegal acts. The mere statement of the proposition demonstrates its lack of merit. . . The 1982 Bexar County Appraisal Review Board's market valuation of *Block*'s tangible commercial property . . . was void because of the Board's failure to follow the statutory procedure for giving Block notice of the protest hearing. Not only was the Board's determination void, but also the Board never acquired jurisdiction to reassess the value of Block's property.

Id. at 261-62.

In actuality, the board did not have jurisdiction because the appraisal district did not follow statutory directives contained in the Tax Code to increase the assessment after it had already

good faith effort to comply with section 42.08, but has not been technically correct, will not forfeit his legal right of appeal. However, a fact question will exist as to whether the taxpayer substantially complied.

The exclusive remedies in the judicial review chapter of the Code were enlarged with the amendment of section 42.09.[97] Section 42.09 now allows a taxpayer to plead in a delinquent tax suit the affirmative defense that he did not own the property on January 1 of the year in which the tax was imposed.[98] This legislation applies only to delinquent tax suits filed on or after its effective date of May 6, 1987.[99]

The necessary parties to a court action in district court was delineated with the amendment of section 42.21.[100] It provides that the property's owner, the appraisal review board, and the appraisal district are necessary parties depending on which Code section is used to bring the petition for review.[101] Although section 42.25 was not amended its application was changed since it relates to amended sections 1.12, 5.10, and 41.41. Thus, the standard for a challenge to unequal appraisal of a taxpayer's property shall be the median level of appraisal rather than the weighted average level of appraisal. To prevail, the taxpayer must prove in district court by a preponderance of

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sent Block a tax bill, which purported on its face to represent Block's total tax liability for 1982. *See id.* The court went on to state that "the reasoning behind this holding is simple. The rule of due process requires notice of the increase to the taxpayer with an opportunity to be heard before his property may be encumbered by an additional tax lien." *Id.* at 262. Further, "since the appraisal board never acquired jurisdiction of the proposed increase in value, it's approval thereof was a void act and subject to challenge at any time or place." *Id.*

97. *See* TEX. TAX CODE ANN. § 42.09 (Vernon Supp. 1987); *see also* Brooks v. Bachus, 661 S.W.2d 288, 289-90 (Tex. App.—Eastland 1983, writ ref'd n.r.e.)(failure to follow Code's administrative remedies deprives court of jurisdiction to hear taxpayer's complaint). In *Brooks*, the court held that the Code's administrative remedies satisfied state constitutional due process requirements. *See id.* In addition, the Code is presumed to meet constitutional standards and if the taxpayer pursues his administrative remedy but fails to comply with the Code's procedural guidelines the taxpayer can not later allege that the Code is unconstitutional. *See* Texas Architectural Aggregate, Inc. v. Adams, 690 S.W.2d 640, 643 (Tex. App.—Austin 1985, no writ)(Code remedies exclusive and presumed constitutional supplanting taxpayer's common-law rights).

98. *See* Act of May 6, 1987, ch. 53, § 1, 1987 Tex. Sess. Law Serv. 265, 265-66 (Vernon)(effective May 6, 1987).

99. *See id.*

100. *See* TEX. TAX CODE ANN. § 42.21(b) (Vernon Supp. 1987).

101. *See id.* A petition for review by the chief appraiser requires the suit to be against the appraisal review board and the property owner. A petition by the taxing unit must be against the appraisal district, the appraisal review board, and the property owner. Any other petition must be against the appraisal district and the appraisal review board. *See id.*

the evidence that his property was appraised ten percent or more above the median level of appraisal of other properties in the appraisal district.[102]

One final change to the judicial review chapter was the legislature's addition of section 42.29 allowing the recovery of attorney's fees.[103] A prevailing taxpayer alleging excessive or unequal appraisal, under sections 42.25 and 42.26, may be awarded reasonable attorney's fees not to exceed the greater of $5,000.00 or twenty percent of the total amount of disputed taxes.[104] To prevail under section 42.25 the taxpayer must only show that the appraised property value "according to the appraisal roll exceeds the appraised value required by law."[105] Under section 42.26, the taxpayer, to prevail in his appeal, must prove that the appraised value of his property varies at least ten percent from its value calculated on the basis of the median level of appraisal.[106] Section 42.29 is intended to provide the taxpayer an opportunity to collect his attorney's fees from the taxing authorities if he prevails in a bona fide dispute with the taxing authorities. Absent this provision, the cost of retaining competent counsel to pursue the taxpayer's remedies would often be prohibitive, since it would, in the case of an individual taxpayer, typically exceed the amount of taxes in dispute.

The final significant change to the Code involves a taxing unit's suit against the appraisal office. Section 43.04 was added to entitle the taxing unit to sue the chief appraiser or the appraisal review board to comply with mandatory Code deadlines.[107] The court is required to determine whether there was a valid reason why the chief appraiser or the appraisal review board did not meet the required deadlines. If the court's ordered date for compliance is not met it is punishable by contempt.[108]

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102. *See* TEX. TAX CODE ANN. § 42.26 (Vernon Supp. 1987)(remedy for unequal appraisal requires 10 percent variance).

103. *See id.* § 42.29 (attorney's fees available to prevailing taxpayer).

104. *See id.*

105. *See id.* § 42.25 (Vernon 1982). Presumably, this would include one dollar in excess value.

106. *See id.* § 42.26 (Vernon Supp. 1987)(remedy for unequal appraisal).

107. *See id.* § 43.04 (suit to compel compliance with deadlines).

108. *See id.*

IV. ARE THE CONSTITUTION'S DUE PROCESS REQUIREMENTS MET BY THE TAX CODE'S EXCLUSIVE PROVISIONS?

The legislature's enactment of the Property Tax Code was intended to supplant a taxpayer's common law causes of action and remedies concerning the appraisal and assessment of his properties' ad valorem taxation.[109] The legislature may, *consistent with the requirements of due process*, abolish a well established common law cause of action or remedy only if it provides a substitute that is certain and reasonably adequate.[110] Additionally, any such substitute may not be effectively foreclosed by procedural or other requirements that are themselves arbitrary or unreasonable on balance.[111] Section 42.09 of the Code reads as follows:

> The procedures prescribed by this title for adjudication of the grounds of protest authorized by this title are exclusive, and a property owner may not raise any of those grounds:
> (1) in defense to a suit to enforce collection of delinquent taxes; or
> (2) as a basis of a claim for relief in a suit by the property owner to arrest or prevent the tax collection process or to obtain a refund of taxes paid.[112]

Section 42.09's phrase "those grounds" refers to the enumeration of rights in the Code's right of protest section.[113] Section 41.41, the right of protest section, contains a list of matters which the taxpayer may protest, including but not limited to "any other action that applies to the property owner and adversely affects him."[114] Chapters 41 and 42 set forth the procedural requirements which the taxpayer must follow in order to obtain an administrative and, subsequently, a judicial review of his grievances as against the appraisal authorities.[115]

Prior to the Code's adoption, a taxpayer's remedies for excessive or unequal taxation were embodied in article 7345f of the Revised Civil

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109. *See* Texas Architectural Aggregate, Inc. v. Adams, 690 S.W.2d 640, 642 (Tex. App.—Austin 1985, no writ)(legislature intended to replace common-law legal and equitable remedies).

110. *See* Lebohm v. City of Galveston, 154 Tex. 192, 197, 275 S.W.2d 951, 954 (1955).

111. *See* Sax v. Votteler, 648 S.W.2d 661, 665-66 (Tex. 1983)(legislation unreasonably abridging a justiciable right denies due process).

112. TEX. TAX CODE ANN. § 42.09 (Vernon 1982).

113. *See id.* § 41.41 (Vernon Supp. 1987).

114. *Id.* § 41.41(8).

115. *See id.* §§ 41.01-.69, 42.01-.43 (Vernon 1982 & Supp. 1987).

Statutes.[116] This article provided for certain procedural time tables, the right of trial by jury, and the taxing authorities' defenses to taxpayer's suits. It also provided that rights afforded under the article were cumulative and that the rights *did not* preempt other remedies granted by statute or evolved at common law.[117]

Section 42.09's exclusive remedies evolved from repealed article 7329, which listed "defenses to tax suits" and purported to limit taxpayer defenses as follows:

> There shall be no defense to a suit for collection of delinquent taxes, as provided for in this chapter except:
> (1) That the Defendant was not the owner of the land at the time the suit was filed.
> (2) That the taxes sued for have been paid, or
> (3) That the taxes sued for are in excess of the limit allowed by law, but this defense shall apply only to such excess.[118]

Article 7329 was interpreted in *Aycock v. City of Fort Worth*,[119] where the taxpayer was sued for delinquent ad valorem taxes.[120] In response to the city's motion for summary judgment, Aycock alleged that the taxing procedure was illegal because his property's value assessment was not in accordance with legal requirements, the taxation was not equal and uniform, and the valuation on his property was grossly excessive.[121] The trial court granted a summary judgment in favor of the city of Fort Worth based upon the provisions of article 7329, which limited a taxpayer's defenses.[122] In reversing the trial court, the court of appeals stated that:

> Despite the provisions in Vernon's Ann. Tex. Rev. Civ. St. Art. 7329, "Defense to tax suits",—which purport to confine a defendant in a suit for delinquent taxes to defenses that he did not own the land sought to be taxed, had already paid the taxes claimed, or that the taxes sought were in excess of the limit allowed by law,—it is settled that the provi-

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116. *See* TEX. REV. CIV. STAT. ANN. art. 7345f (Vernon 1960), *codified at* TEX. TAX CODE ANN. §§ 42.01, .21-.22, .23(c), .27 (Vernon 1982 & Supp. 1987).

117. *See id.* 7329 (Vernon 1960), *codified at* TEX. TAX CODE ANN. § 42.09 (Vernon 1982).

118. *Id.* The language of article 7329 was intended to limit the taxpayer's defenses to a tax suit. It should be remembered that prior to the adoption of the Tax Code one taxpayer remedy was to wait until being sued for taxes and then assert his constitutional defenses.

119. 371 S.W.2d 712 (Tex. Civ. App.—Fort Worth 1963, writ ref'd n.r.e.).

120. *See id.* at 714.

121. *Id.*

122. *Id.*

> sions of said article do not have validity operable to prevent a defendant taxpayer from presenting those additional defenses to such a suit which are guaranteed him under any provision of our State Constitution.[123]

The court found that a taxpayer who does not follow the administrative provisions may have a higher burden of proof in resisting an assessment.[124] However, a taxpayer's failure to comply with the administrative provisions will not prevent him from asserting constitutional defenses to the scheme of taxation, regardless of any statute which purports to so limit his rights and remedies.[125]

Courts, in dicta, have stated that the Code's statutory scheme is sufficient to meet the requirements established by the Texas Supreme Court in *Lebohm v. City of Galveston*[126] and *Sax v. Votteler*.[127] It must be dicta because each court has stated that the taxpayer failed to preserve his right to challenge the constitutionality of section 42.09, thus, a finding of the sufficiency of the Codes' statutory scheme "was

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123. *Id.* at 715. Additionally, the court stated:

> The taxpayer in the instant case was not cut off from presenting the defenses he plead, upon which he raised an issue or issues of fact by his counter-affidavit. The defense was vouch-safed to him in our State Constitution, Vernon's Annotated ST. in Article VIII, "Taxation and Revenue" Section 1, "Equality and Uniformity"; which provides that the taxable value of property shall be ascertained as may be provided by law. It was in obedience to the mandate of this provision that the legislature provided the method for ascertaining the taxable values of property by enacting the statutes including Article 7211, "Equalization of Assessments" and article 7212, "Boards May Equalize," a property owner may invoke these statutes to defeat a suit for taxes not ascertained as thereunder provided, notwithstanding other statutes which would deny him such defense. . . This constitutional guaranty follows and is controlling of the method the legislature has prescribed for ascertaining taxable values and is to be considered in connection therewith.

Id.

124. *Id.* at 715-16.

125. *See id.* at 716. Surprisingly, the propositions established in *Aycock* have not been cited in ad valorem tax cases.

Interestingly, no taxpayer has yet preserved his rights on appeal to challenge the constitutionality of section 42.09. Although the court of appeals stated in *Valero* that the taxpayer did not challenge the constitutionality of 42.09, this was either an error or an oversight on the part of the opinion writer, in that it was specifically stated as a ground of appeal both in Valero's motion for new trial, and in Valero's points of appeal, and briefed as such in appellant's brief. *See* Supplemental/ Reply Brief for Appellant at 36-40, *Valero Transmission Co. v. Hays Consol. Indep. School Dist.*, 704 S.W.2d 857 (Tex. App.—Austin 1986, writ ref'd n.r.e.)(No. 14,474). Why the court chose to overlook this ground of error, since the same court, and the same author of the Valero opinion, seem to express some reservation and doubt about the constitutionality of 42.09 in the *Herndon Marine* case cited above is unknown.

126. 154 Tex. 192, 275 S.W.2d 951 (1955).

127. 648 S.W.2d 661 (Tex. 1983).

not necessary to the decision."[128] Further, courts have consistently held that a taxpayer's failure to comply with the statutory provisions of the Code will foreclose him from challenging the validity of the appraisal, subsequent assessment, and tax based thereon in a court of law, holding, inter alia, that a taxpayer's failure to timely comply with the Code's administrative provisons deprives the court of jurisdiction to adjudicate any of the taxpayer's asserted defenses.[129] In most instances, a court has denied relief to a taxpayer who has failed to give notice of appeal to the appraisal authorities pursuant to section 42.06, and/or has failed to file his petition for review naming both parties as

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128. *See* Tide Water Oil Co. v. Bean, 148 S.W.2d 184, 189-91 (Tex. Civ. App.—Dallas, no writ)(findings not necessary to holding are dicta).

129. *See, e.g.*, Corchine Partnership v. Dallas County Appraisal Dist., 695 S.W.2d 734, 735 (Tex. App.—Dallas 1985, no writ)(court lacks jurisdiction where taxpayer fails to give notice of appeal); 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.)(failure to timely file written notice of appeal deprives court of jurisdiction to hear taxpayer's challenge). At least one court has held that the taxpayer may have remedies concerning excessive assessments outside the purview of chapter 41 notwithstanding the provisions of section 42.09. In *Liland v. Dallas County Appraisal District*, the taxpayer alleged that in 1982 and 1983 the appraisal district had made a "clerical error" in the value which it placed upon his property. *See* Liland v. Dallas County Appraisal Dist., 731 S.W.2d 109, 110-11 (Tex. App.—Dallas 1987, no writ). To prevent foreclosure of tax lien, Liland had paid the county and the city taxes, penalties, and interest based upon the erroneous appraisals and sued for a refund of the excess taxes paid. *See id.* at

In rejecting the trial court's granting of dismissal for lack of jurisdiction due to the taxpayer's failure to comply with chapter 41 of the Code, the court of appeals held that chapter 41 did not govern a situation where a taxpayer was alleging that a clerical error had occurred under chapter 25. The court held that chapter 41 only applies where the chief appraiser purposefully increases the appraised value of the property and sends notice thereof or when a clerical error occurs and the chief appraiser or the board catches it and is able to correct it before the records are approved. Since the taxpayer's contention was that the large increase in value was not purposeful, but was rather the result of clerical error, chapter 41 was held not applicable. The court further held that the taxpayer still had a remedy under section 25.25(c) which states "at any time, the appraisal review board on motion of the chief appraiser, or of a property owner, may direct by written order changes in the appraisal roll to correct: (1) clerical errors that affect the property owner's liability for a tax." *See id.* at 111-13.

Presumably, section 25.25 allows the taxpayer to file *at any time* his motion with the review board to correct the appraisal roll. It is not recommended that this method be used to get a taxpayer's case to court by calling a substantial increase in value a "clerical error." This procedure should *only* be used when a true clerical error exists. *See, e.g.*, Taylor County Appraisal Review Bd. v. Int'l Church of Foursquare Gospel, 719 S.W.2d 160, 160 (Tex. 1986)(compliance with requirements jurisdictional); Flores v. Fort Bend Cent. Appraisal Dist., 720 S.W.2d 243, 245 (Tex. App.—Houston [14th Dist.] 1986, no writ)(petition must be filed within forty-five days after final order); Towne Square Assocs. v. Angelina County Appraisal Dist., 709 S.W.2d 776, 778 (Tex. App.—Beaumont 1986, no writ)(failure to file appeal notice within fifteen days jurisdictional).

defendants under section 42.21.[130]

Appellate courts, in denying taxpayer relief for failure to timely give notice or file suit, have stated that the time deadlines prescribed by Code sections 42.06 and 42.21 are in the nature of statutes of limitation.[131] Recently, however, in *Neagle v. Nelson*[132] the Texas Supreme Court took a rather dim view of onerous statutes of limitations which bar a litigant from his day in court. *Neagle* struck down article 4590i, section 10.01, a statute of limitations for health care liability claims, on the basis of the open courts doctrine of article I, section 13 of the Texas Constitution.[133] The state's open courts provision invalidates legislative acts that prevent a citizen from suing before he has a reasonable opportunity to discover the wrong, evaluate his position, and decide whether to pursue litigation.[134]

V. TAXING AUTHORITIES' COLLECTION AND ENFORCEMENT AGAINST PERSONS OR PERSONAL PROPERTY

A. *Taxing Authorities' Compliance with Code's Requirements*

If taxing authorities are the litigants, courts require strict compliance with the Code's procedural rules. In *Rockdale Independent School District v. Thorndale Independent School District*,[135] two taxing authorities were asserting the right to tax certain mining equipment.[136] The Thorndale taxing unit failed to file a fifteen day notice of appeal to the appraisal review board and, thus, the court held it lacked jurisdiction to hear the appeal.[137]

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130. *See, e.g.*, Taylor County Appraisal Review Bd. v. Int'l Church of The Foursquare Gospel, 719 S.W.2d 160, 160 (Tex. 1986)(failure to include review board fatal error); Towne Square Assocs. v. Angelina County Appraisal Dist., 709 S.W.2d 776, 778 (Tex. App.—Beaumont 1986, no writ)(failure to file notice of appeal within fifteen days or give notice fatal error).

131. *See* Corchine Partnership v. Dallas County Appraisal Dist., 695 S.W.2d 734, 735 (Tex. App.—Dallas 1985, writ ref'd n.r.e.); Poly-America, Inc. v. Dallas County Appraisal Dist., 704 S.W.2d 936, 937 (Tex. App.—Waco 1986, no writ).

132. 685 S.W.2d 11 (Tex. 1985).

133. *See id.* at 11-12; *see also* TEX. CONST. art. I, § 13.

134. *See* Neagle v. Nelson, 685 S.W.2d 11, 12 (Tex. 1985)(open courts provision of constitution protects citizens' right to sue); *see also* Nelson v. Krusen, 678 S.W.2d 918, 921 (Tex. 1984)(legislature not empowered to make legal remedy contingent upon impossible conditions); Sax v. Votteler, 648 S.W.2d 661, 665-66 (Tex. 1983)(right of common law cause of action cannot be removed without legislature showing that basis outweighs denial).

135. 681 S.W.2d 225 (Tex. App.—Austin 1984, writ ref'd n.r.e.).

136. *See id.* at 226.

137. *See id.* at 227. The *Thorndale* taxing unit's claim that section 1.08 allowed it to comply with section 42.06's notice of appeal by mailing a notice of appeal within fifteen days

However, if the taxing authority fails to give the taxpayer actual notice of his property's appraised value, causing the taxpayer to miss the deadline for timely review, the validity of the property's appraisal is not affected. In *Dallas County Appraisal District v. Lal*,[138] the taxpayer alleged he had not received his notice of appraised value, which deprived him of his due process right to challenge the appraisal and gave him the right to a trial de novo under the common law.[139] The court held that the taxing authority's compliance with section 1.07's notice procedures raises the presumption that the taxpayer received notice,[140] which was not rebutted by the taxpayer's affidavit that he had not received actual notice.[141] The court further held that even if Lal did not receive actual notice of his property's appraised value, section 25.19(f) provides that the validity of the appraisal is not affected.[142] Finally, because Lal had not gone through administrative review, nor timely given notice of appeal, or filed suit, the court declined jurisdiction.[143]

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after receipt of section 41.07's notice was denied. The court noted that section 1.08 only applied to a property owner and the Code's jurisdictional requirements "must be strictly adhered to and failure to do so results in the non-complying party's losing the right to challenge the decision." *Id.*

138. 701 S.W.2d 44 (Tex. App.—Dallas 1985, writ ref'd n.r.e.).

139. *See id.* at 47.

140. *See id.* at 45. The Property Tax Code provides that the appraisal review board must hear and determine written protests made by property owners and other taxing authorities. *See id.* at 46. The board's decision is subject to a trial de novo in district court. *See id.*

141. *See id.*

142. *See id.*

143. *See id.* at 46-48. The reason the taxpayer lost on appeal in *Lal* was because he failed to avail himself of the administrative remedies set forth in the Code, and once again, tried to assert his "constitutional" defenses to the excessive valuation placed on his property. The significance of *Lal* lies in the court's holding that the administrative review procedures set forth in the Code are sufficient to provide the taxpayer his due process rights. For this proposition, the court cited with approval *Texas Pipeline Co. v. Anderson*, wherein the court stated:

> [T]he courts are unanimous in holding that the constitutional guaranties of equal and uniform taxation and of equal protection and due process do not purport or undertake to deal with the method or manner of accomplishing these constitutional mandates; but they are fully satisfied when equality and uniformity, the dominant provision of the Constitution, has actually been attained. . . .
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> . . . The rule is settled in matters of taxation, the requirement of due process is satisfied if the party assessed is given an opportunity to be heard before some assessment board at some stage of the proceedings; it being sufficient if he is granted the right to be heard on the assessment before valuation is finally determined.

Id. at 47 (citations omitted) (quoting Texas Pipeline Co. v. Anderson, 100 S.W.2d 754, 761-62 (Tex. Civ. App.—Austin, writ ref'd), *cert. denied*, 302 U.S. 724 (1937)).

Since Lal did not avail himself of the administrative process, no "order" ever issued from

However, there are two cases where the taxpayer has won because the appraisal district failed to comply with Code requirements.[144] In *Herndon Marine Products, Inc. v. San Patricio County Appraisal Review Board*,[145] the trial court granted summary judgment for the appraisal district upon its allegation that the taxpayer failed to timely file his fifteen day notice of appeal with the appraisal review board.[146] The taxpayer successfully argued on appeal that summary judgment was precluded because a fact question existed as to whether the taxing authorities had complied with section 41.47's requirement that the appraisal review board send the taxpayer both a notice of issuance of an order upon his protest and a copy of the order.[147] The taxing authority's summary judgment proof merely stated that notice of an issuance of an order was sent, but not the order itself.[148] In other words, if the taxpayer does not receive his section 41.47(d) notice and order, the fifteen-day time table for giving notice of appeal never begins to run. This hyper-technical reading of the Code provisions in favor of the taxpayer and against the taxing authorities may have been a hollow victory, since the opinion indicates that all the taxing authorities must do on remand is prove that it strictly complied with section 41.47(d).[149]

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the appraisal review board which Lal could appeal to the district court for review. Significantly, no one has successfully preserved for appellate review the constitutionality of section 42.09, or the issue of whether the provisions of sections 42.06 and 42.21 are violative of article 1, section 14 of the Texas Constitution, the open courts doctrine.

144. *See* Garza v. Block Distrib. Co., 696 S.W.2d 259, 262 (Tex. Civ. App.—San Antonio 1985, no writ); Herndon Marine Prods., Inc. v. San Patricio County Appraisal Review Bd., 695 S.W.2d 29 (Tex. App.—Corpus Christi 1985, writ ref'd n.r.e.).

145. 695 S.W.2d 29 (Tex. App.—Corpus Christi 1985, writ ref'd n.r.e.).

146. *See id.* at 31.

147. *See id.* at 32.

148. *See id.* at 34.

149. *See id.* The court emphasized the fact that this proceeding was an appeal of a summary judgment and that any doubt as to the existence of question of fact must be decided in favor of the party opposing the motion. Since the taxing authorities could not conclusively prove they met all of section 41.47's requirements, they were not entitled to summary judgment. *See id.*; *see also* Corchine Partnership v. Dallas County Appraisal Dist., 695 S.W.2d 734 (Tex. App.—Dallas 1985, writ ref'd n.r.e.); Poly-America, Inc. v. Dallas County Appraisal Dist., 704 S.W.2d 936 (Tex. App.—Waco 1986, no writ). Thus, *Corchine* and *Poly-America* may control and not require the taxing authorities to strictly comply with the Code's provisions.

B. *Taxing Authorities' Summary Remedies for Collection and Enforcement of Unpaid Taxes*

Some courts have not required the taxing authorities to follow the Code's procedural process in order to sue for collection of unpaid taxes.[150] In *Valero Transmission Co. v. Hays Consolidated Independant School District*, the court held that a taxing unit may sue to recover delinquent taxes, even if the taxpayer had strictly complied with the Code's administrative process and the appraisal authorities failed to comply with the Code's protest determination provision.[151] This provision requires the appraisal review board to mail a notice of its order determining the taxpayer's protest to the taxpayer.[152] The court recognized that Valero had never received notice of the appraisal review board's order determining protest and, thus, could take no further action regarding their protest until the board completed its duty.

The Code's notice provision is the "linchpin" of the entire review process in a taxpayer appeal, because without an order setting the property's valuation the taxpayer cannot determine how to comply with section 42.08 and cannot file an appeal lawsuit regarding the tax valuation. The Code imposes no duty on the taxpayer other than that which Valero complied with, conversely however, the Code imposes an affirmative duty upon the appraisal authorities to comply with section 41.47(d). What Valero experienced was tantamount to a summary judgment granted in favor of an appraisal district.

However, *Valero*'s holding, not requiring a taxpayer's notice of assessment, conflicts with *Uvalde County Appraisal District v. F. T. Kincaid Estate*.[153] The *Kincaid* court held that the district's failure to deliver written notice of re-appraisal to Kincaid, as required by Code section 25.19, precluded Kincaid's necessity of complying with the Code's administrative procedures.[154] In other words, the taxpayer's need to comply with the Code's administrative provisions concerning protest and appeal were *dependent* upon the district's compliance with the notice requirements of section 25.19.[155] The court appar-

150. *See* Valero Transmission Co. v. Hays Consol. Indep. School Dist., 704 S.W.2d 857, 863-64 (Tex. App.—Austin 1986, writ ref'd n.r.e.).

151. *See id.* at 859-66.

152. *See* TEX. TAX CODE ANN. § 41.47(d) (Vernon 1982).

153. 720 S.W.2d 678 (Tex. App.—San Antonio 1986, writ ref'd n.r.e.).

154. *See id.* at 680.

155. Interestingly, subsection 25.19(f) states that failure to receive the notice required by

ently distinguished between the language "*received* the notice" and the district's failure to send the notice, since the evidence adduced at trial conclusively established that the district had failed to send the notice. Thus, *Kincaid* stands for the proposition that where the district fails to send a notice required of them, no "saving provision" in terms of taxpayer's failure to receive the notice will excuse the district from complying with the notice requirements of the statute.[156] This proposition is further supported by the subsequent decision of *New v. Dallas Appraisal Review District*, wherein it was held that notice *must* be sent to the property owner.[157]

While both *Kincaid* and *New* were decided under the Code prior to the adoption of section 41.411's protest of failure to give notice, the cases and the statute seem to say that the taxpayer is permitted to utilize section 41.411 and that appraisal authorities are required to give a taxpayer a hearing thereon. If they do not, they do not acquire jurisdiction to revalue taxpayer's property. Remember, too, that a taxpayer must comply with section 42.08 by paying last year's taxes on the amount he does not dispute to keep his protest/appeal alive.

The open question is, what if taxpayer does nothing? The langauge of 41.411 is not mandatory and the taxpayer does not have to protest the failure to give the notice. If he does nothing and merely pays taxes based on last year's tax roll, then the holdings in *Kincaid* and *New* indicate that he is immune to action by the appraisal authorities to increase the value of his property for that year.[158] Courts will

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this 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 the tax. *See* TEX. TAX CODE ANN. § 25.19(f) (Vernon 1982).

156. *See* Uvalde County Appraisal Dist. v. Kincaid Estate, 720 S.W.2d 678, 680-81 (Tex. App.—San Antonio 1986, writ ref'd n.r.e.).

157. New v. Dallas Appraisal Review Dist., 734 S.W.2d 712, 713-17 (Tex. App.—Dallas 1987, no writ). In *New*, the county appraisal district (CAD) failed to document the transfer of the property to a new owner and consequently sent notice to the prior owner of the property in issue. The court held the CAD must send notice to the *property owner*. Because the CAD sent it to the *prior* owner, section 1.07 of the Code was not complied with and, therefore, neither the CAD nor the appraisal review board acquired jurisdiction to re-value the property, thus avoiding the additional tax imposed thereon. *See id.*; *see also* Garza v. Block Distrib. Co., 696 S.W.2d 259, 262 (Tex. App.—San Antonio 1985, no writ)(failure to acquire jurisdiction voids act).

158. *See* New v. Dallas Appraisal Review Bd., 734 S.W.2d 712, 713-17 (Tex. App.—Dallas 1987, no writ); Uvalde County Appraisal Dist. v. Kincaid Estate, 720 S.W.2d 678, 680-81 (Tex. App.—San Antonio 1986, writ ref'd n.r.e.). *But see* Gruy v. Jim Hogg County Appraisal Dist., 715 S.W.2d 170 (Tex. App.—Texarkana 1985, no writ). In *Gruy*, the court did not specifically address the validity of the district's action where it could be shown that the

probably hold that 42.09's exclusive remedies will control *requiring* a taxpayer to utilize section 41.411 or forfeit his right to complain.[159]

VI. TAXPAYERS' LIABILITY

A. *Exemptions and Special Appraisals*

This article would be incomplete without an examination of court decisions concerning exemptions and special appraisals on property. It should be noted at the outset that taxpayers applying for exemptions or for special appraisals risk the same procedural pitfalls as do

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District failed to mail the notice. They did conclude, however, that when the taxpayer voluntarily appears before the board and is given a full hearing, any prior defect in notice is waived. *See id.* at 171-72. This may, however, present a "Catch-22" situation.

In *Adams v. Kendall County Appraisal District*, taxpayers who alleged that their due process rights had been denied by the admitted failure of the appraisal authorities to properly and timely send notices to a class of one hundred forty-eight taxpayers within the county, thus precluding their proper utilization of administrative review, sued to enjoin the taxing process as to themselves. *See* Adams v. Kendall County Appraisal Dist., 724 S.W.2d 871, 872-75 (Tex. App.—San Antonio 1986, no writ). The appraisal authorities sought to dismiss the taxpayers' cause of action on the basis of section 42.09, claiming that the taxpayers had failed to comply with protest and appeal requirements, and thus had not availed themselves of the "exclusive remedies" provision of the Tax Code. *See id.* The trial court dismissed the taxpayers' suit and it was affirmed by the Fourth Court of Appeals in San Antonio. *See id.* at 876.

The court held that the taxpayers had failed to properly challenge the constitutionality of section 42.09, and thus the court did not speak to that issue. The holding in this case conflicts with the *Block* decision, but is in accord with the *Valero* case, in that it once again requires taxpayers to "comply" with the Code, regardless of whether the taxing authorities have fulfilled their statutory obligations. Again, as in *Valero*, the more enlightened decision would have been to abate the taxpayers' lawsuit and order the appraisal authorities to properly comply with the Code, thus, triggering taxpayer obligations to follow the administrative review process. Once the administrative process was completed the court could then entertain taxpayers' appeal.

It should be further noted that when taxing authorities comply with 41.47(d) by "mailing the [notice] and copy of the order" it is sufficient that they show that someone at the taxpayer's office received the mailing, notwithstanding that the stated *individual*'s representative or taxpayer did not receipt for same. *See* MCI Telecommunications Corp. v. Tarrant County Appraisal Dist., 723 S.W.2d 350, 355-56 (Tex. App.—Fort Worth 1987, no writ)(delivery to property owner's address and signature of purported agent sufficient); *see also* TEX. TAX CODE ANN. § 1.11 (Vernon 1982)(communications to fiduciary).

159. The only problem is that a section 41.411 complaint must be raised before taxes become delinquent. Since the taxing units mail the tax bills using addresses provided by the appraisal district, if the appraisal district had a bad address, so will the taxing unit. Thus, a taxpayer may never get a tax bill and not know of the tax delinquency until he is sued. Notwithstanding the "saving" provisions of the various Code sections, stating that failure to receive the notice required of the taxing authorities does not affect the validity of the tax, courts should hold that failure of the taxing authorities to properly send the notice to the correct taxpayer at the right address voids the assessment. *See infra* note 96 and notes 158-163 and accompanying text.

taxpayers aggrieved about their values and/or equal taxation.[160] The exemption statutes are found in chapter 11, subchapter B of the Property Tax Code, and include a variety of exempt property, as well as, provide for methods of applying for exemptions by the taxpayer and action required by the appraisal district.[161]

One of the biggest disputes that has arisen has been over the tax exemption of church property. The leading case decided under the Code is *University Christian Church v. City of Austin*,[162] which involved a tax exemption for church parking lots. The University Christian Church owned parking lots located across the street from the church building and near the University of Texas.[163] The church, for a monthly rental fee and percentage of gross receipts, leased the parking lot to All Right Parking, who policed and maintained the lots, and charged a fee for non-church event parking.[164]

The jury found that the church's real property, including the parking lot, was not used primarily as a place of religious worship.[165] However, in response to a separate special issue, the jury found the parking lots were "reasonably necessary for engaging in religious worship."[166] Thereafter, the trial court held against the church.[167] The Austin Court of Appeals reversed based on the requirements of section 11.20(a)(1).[168] The court held that the traditional construction of "primary use," as mandated by the section, requires an examination

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160. *See, e.g.*, Taylor County Appraisal Dist. v. Int'l Church of Foursquare Gospel, 719 S.W.2d 160, 160 (Tex. 1986)(taxing authority cause of action survives even where lack of jurisdiction appears on face of record); Texas Conference Assoc. of Seventh Day Adventists v. Cent. Appraisal Review Bd., 719 S.W.2d 255, 257 (Tex. App.—Waco 1986, writ ref'd n.r.e.)(irreversible harm when statute's administrative procedures not followed but statute's legislative intent fulfilled).

161. *See* TEX. TAX CODE ANN. § 11.45 (Vernon 1982).

162. 724 S.W.2d 94 (Tex. App.—Austin 1987, writ granted).

163. *See id.* at 95-96. The parking lots were also situated near the University of Texas and were used by students to such a degree that the church was precluded from using the parking lots for their religious worship.

164. *See id.* at 95.

165. *Id.*

166. *Id.*

167. *Id.*

168. *See id.* at 94-95. Section 11.20(a)(1) states:

> (a) An organization that qualifies as a religious organization as provided by Subsection C of this Section is entitled to an exemption from taxation of:
>
> (1) The real property that is owned by the religious organization, is used primarily as a place of regular religious worship and is reasonably necessary for engaging in religious worship.

TEX. TAX CODE ANN. § 11.20(a)(1) (Vernon 1982).

of the property as a whole, rather than a piecemeal approach.[169] Consequently, so long as the primary purpose of the entirety remains religious the property qualifies for an exemption.[170] Thus, the test for determining the exemption qualification of property owned by religious organizations requires that the property must be taken as a whole, used primarily as a place of religious worship, and be reasonably necessary to the conduct of religious worship.[171]

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169. *See* University Christian Church v. City of Austin, 724 S.W.2d 94, 95-96 (Tex. App.—Austin 1987, writ granted).

170. *See id.* at 96-97. The court further noted that section 11.20 specifically authorizes the use embodied in *University Christian Church* since that section provides that "use of property that qualifies for the exemption . . . for occasional secular purposes other than religious worship does not result in loss of the exemption if the primary use of the property is for religious worship, and all income from the other use is devoted exclusively to the maintenance and development of the property as a place of religious worship." *Id.* at 96. The court accepted the undeniable reality that in our automobile oriented society, urban institutions require parking facilities of some kind to insure their existence. *See id.*; *see also* Davis v. Congregation Agudas Achim, 456 S.W.2d 459, 461 (Tex. Civ. App.—San Antonio 1970, no writ)(infrequent renting for non-religious purposes proper if primary purpose remains religious worship); City of Houston v. Koen, 204 S.W.2d 671, 673 (Tex. Civ. App.—Galveston 1947, no writ)(exemption includes land necessary for access, light, and decorative enhancement); Trinity Methodist Episcopal v. City of San Antonio, 201 S.W. 669, 670 (Tex. Civ. App.—San Antonio 1918, writ ref'd) (includes land required for ingress and egress).

171. *See infra* note 170; *see also* Grand Prairie Hosp. Auth. v. Tarrant Appraisal Dist., 707 S.W.2d 281 (Tex. App.—Fort Worth 1986, writ ref'd n.r.e.). The taxpayer in *Grand Prairie* contended that its property was exempt from taxation because it was a publicly held hospital project, and further argued that because its taxed medical office building was exempt from taxation it did not need to comply with any legal or administrative proceeding under the Code in order to enforce the exemption. *See id.* at 282. The court found that the property was not devoted exclusively to the use and benefit of the public and, thus, was not entitled to the exemption. Therefore, the hospital was not entitled to the ad valorem taxation exemption and had to comply with the Code's statutory administrative provisions in order to preserve its remedies. *See id.* at 283-84. Because the hospital did not comply, it was precluded from bringing an action challenging the assessments under the Code or the Uniform Declaratory Judgments Act. *See id.*

It should be further noted that the attorney's fees in appealing the denial of an exemption under chapter 42 are not recoverable under section 42.29 since an award of attorney's fees to a prevailing taxpayer is limited to a taxpayer who prevails in an appeal of the court under section 42.25's remedy for excessive appraisal or section 42.26's remedy for unequal appraisal. Thus, the practitioner bringing an exemption case should plead under chapter 42 of the Tax Code, as well as, chapter 37 of the Texas Civil Practice and Remedies Code, the Uniform Declaratory Judgments Act. *See* TEX. CIV. PRAC. & REM CODE ANN. §§ 37.001-37.011, 38.001-38.006 (Vernon 1986). The appraisal authorities will no doubt attempt to invoke the provisions of section 42.09's exclusive remedies provision, however, the Uniform Declaratory Judgments Act pleadings could ask for a judicial interpretation of the application of section 42.09, as well as the Code's attorney's fees provision. Presently, no case exists concerning this procedural method, but the better court decision would be to allow such pleading and to close the obvious loophole contained in section 42.29.

B. *Place of Taxation*

The taxable situs of real property, tangible personal property, and other special property is outlined in chapter 21.[172] Generally, property must be located within the taxing unit on January 1 of the tax year to be subject to appraisal and subsequent taxation.[173] One of the principal issues concerning situs is the possibility of double taxation—a taxpayer's property taxed in one district being taxed on the same basis in another taxing district. Again, procedural pitfalls can preclude a taxpayer from obtaining a remedy against this injustice unless the Code's provisions are strictly followed.

In *Brazoria County Appraisal District v. Notlef, Inc.,*[174] a taxpayer sought and obtained a temporary injunction enjoining the Brazoria County Appraisal District and Appraisal Review Board from all proceedings involving the possible taxation of certain helicopters owned by Notlef for the tax years 1985 and 1986.[175] Notlef owned helicopters which prior to 1985 were located in Brazoria County.[176] In 1985, Notlef moved its administrative offices and landing area to Calhoun County, Texas, where the helicopters had taxable situs pursuant to the Code.[177] When Notlef received notice that the Brazoria County Appraisal District intended to institute proceedings to determine whether proper taxable situs was in Calhoun or Brazoria County, Notlef brought suit in Calhoun County for a declaratory judgment and the aforesaid injunction.[178] In dissolving the injunction, the Corpus Christi Court of Appeals held that Notlef had an adequate remedy at law and could go through the administrative processes in

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172. *See* TEX. TAX CODE ANN. §§ 21.01-.25 (Vernon 1982).

173. *See id.* § 21.01 (real property taxed by taxing unit where property located on Jan. 1). However, personal property is taxable by a taxing unit if:

(1) it is located in the unit on January 1 for more than a temporary period;

(2) it normally is located in the unit, even though it is outside the unit on January 1, if it is outside the unit only temporarily;

(3) it normally is returned to the unit between uses elsewhere and is not located in any one place for more than a temporary period; or

(4) the owner resides . . . or maintains his principal place of business in this state . . . in the unit and the property is taxable in this state but does not have a taxable situs pursuant to Subdivisions (1) through (3) of this section.

Id. § 21.02 (Vernon Supp. 1987).

174. 721 S.W.2d 391 (Tex. App.—Corpus Christi 1986, no writ).

175. *See id.* at 391.

176. *See id.* at 391-92.

177. *See id.* at 392.

178. *See id.*

Brazoria County to obtain relief if in fact Calhoun County was the proper situs for purposes of the personal property subject to taxation.[179]

If property is used outside the state or is stored in the state for later interstate transfer it may still be taxed in the state. While property in Texas only on a transitory basis cannot be taxed, storage interrupts the transit and the property acquires a fully taxable status in Texas.[180] Whereas, property stored in the state which is used continually outside the state may be taxed at a percentage of the property's market value that represents the time the property is in the state.[181]

C. *Taxpayers' Forfeiture of Remedies*

Taxpayers must strictly follow the Code's procedural guidelines or be denied any relief.[182] In *Hunt County Appraisal District v. Rub-*

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179. *See id.* at 393-94. The Corpus Christi Court of Appeals overlooked the fact that Notlef could probably not have recovered attorney's fees when they held that Notlef would not suffer any irreparable injury and, thus, he had no adequate remedy at law. If he had prevailed it would have to have been under sections 42.25 or 42.26 which do not preclude attorney's fees, as opposed to the "situs" statute, which was the question presented. Also, Notlef would have had to comply with Code section 42.08 by paying taxes in Brazoria County in an amount equal to that paid in the previous year in order to reserve his right to appeal. Therefore, he would have lost the use of his money while appealing with no later recovery for the payment of interest after a successful appeal. Again, perhaps the provisions of the Uniform Declaratory Judgments Act would have precluded this unfortunate injury.

180. *See* Dallas County Appraisal Dist. v. L.D. Brinkman & Co., 701 S.W.2d 20, 23-24 (Tex. App.—Dallas 1985, no writ). In *L.D. Brinkman* the taxpayer stored goods at its distribution warehouse in Dallas. The goods were shipped into interstate commerce and intrastate commerce. Brinkman maintained that section 11.01(d) exempted a portion of those items that were shipped out of the state into interstate commerce. *See id.* at 21. The Dallas Court of Appeals held that such an allocation would be tantamount to a partial exemption, specifically prohibited by article VIII, section 2 of the Texas Constitution, and that the goods did have taxable situs in Dallas. *See id.* at 23-24.

181. *See* Aransas County Appraisal Review Bd. v. Texas Gulf Shrimp Co., 707 S.W.2d 186, 191-92 (Tex. App.—Corpus Christi 1986, writ ref'd n.r.e.). The taxpayers in *Texas Gulf Shrimp* initiated a declaratory judgment action seeking judicial review of the taxing authority's denial of a special value allocation of their shrimping trollers. The taxing authorities cross-petitioned seeking a declaratory judgment that Code sections 21.03 and 21.031 providing partial exemptions were unconstitutional. *See id.* at 187-88. The appellate court ruled for the taxing authority, holding that Code section 21.031 did not apply to taxpayers' vessels and that section 21.03 was unconstitutional on its face and, therefore, null and void. *See id.* at 188-96. The court would have required property to acquire an actual tax situs in another state or nation before the legislature could grant a partial exemption. *See id.*

182. *See* Hunt County Appraisal Dist. v. Rubbermaid, Inc., 719 S.W.2d 215, 221 (Tex. App.—Dallas 1986, writ ref'd n.r.e.)(Code's procedures mandatory and exclusive).

bermaid, Inc.,[183] a taxpayer, in an over-abundance of caution, attempted to preserve his right to appeal by tendering to the taxing authorities the full amount of the taxes due as claimed by the appraisal authorities.[184] In a plea to the jurisdiction, the appraisal authorities contended that the taxpayer's voluntary payment of all of the taxes left nothing in dispute pursuant to section 42.08 and, thus, an appeal of the value issue would be moot.[185] The court agreed, holding that voluntary payment of taxes will preclude the taxpayer from seeking a refund for overpayment of the illegal tax.[186] Thus, a taxpayer should strictly comply with the literal terms of section 42.08 by only paying the greater of last year's taxes or the amount that is not in dispute. Apparently however, a different result will occur where a mortgage company, or other third party, voluntarily pays all of the taxes while litigation is pending concerning the valuation, so long as the person who pays the tax does not have "full knowledge of all relevant facts."[187]

VII. CONCLUSION AND RECOMMENDATIONS

Taxpayers and their attorneys should be constantly wary of the procedural pitfalls and dangers of protesting and appealing an action by an appraisal district and/or appraisal review board which adversely affect him. Appended to this article are some general guidelines that the taxpayer and/or his attorney should follow in proceeding in a typical taxpayer dispute. The list is not all-inclusive but, rather, serves as a minimum guideline for use by taxpayers in disputes with the appraisal authorities.

More importantly, the courts must take a broader view of the rights which the Property Tax Code was intended to afford taxpayers. The court must remember that by the time the taxpayer is before the court, he has already been through an administrative process which included, but was not limited to, a formal or informal meeting with representatives of the appraisal district, a formal or informal meeting

183. 719 S.W.2d 215 (Tex. App.—Dallas 1986, writ ref'd n.r.e.).

184. *See id.* at 215-18.

185. *See id.*

186. *See id.* at 218-19.

187. *See* Prudential Ins. Co. of Am. v. Crystal City Indep. School Dist., 714 S.W.2d 74, 75-76 (Tex. App.—San Antonio 1986, writ ref'd n.r.e.)(insurance company's voluntary payment does not preclude recovery of illegal taxes when payment made without full knowledge of all relevant facts).

with representatives of the appraisal review board, and, in all likelihood, negotiations regarding a resolution of the case with the taxing authorities by and through their attorneys. Further, the taxpayer has spent no small amount of time, energy, and money, in terms of fees paid for professional services to appraisers, consultants, and attorneys in bringing his case before the courts. If the courts are to raise procedure and form over substance in order to preclude the taxpayer from asserting a valid claim, the taxing authorities will, as Justice Cadena said in *Charles Schreiner Bank v. Kerrville Independant School District*,[188] "profit handsomely from their illegal activities" at the expense of the taxpayer, while "the courts adjust the judicial blindfold and insure the old adage that you can't fight city hall remains true."

Contrary to Justice Powers' perception of what happens at the appraisal review board, as stated in the *Valero v. Hays County* decision,[189] proceedings before the appraisal review board are typically little more than a "rubber stamp" of the activities of the appraisal district.[190] Judicial review should certainly, as in all cases of judicial activity, be fair and impartial. But it should not be burdened with a presumption, as it has in the past, that the appraisal authorities' actions are valid. The Tax Code provides under chapter 42 that judicial review of the activities of the appraisal review board is "trial de novo." Thus, the parties should stand on equal footing, and no presumptions should be indulged in favor of either party other than the belief that each party believes that they are right.

Further, courts should not tolerate legal trickery in the guise of procedural rules which effectively preclude the taxpayer from asserting his remedies as provided him in the broad scope of the provisions of the Property Tax Code. Courts should familiarize themselves with the operative provisions of the Property Tax Code, especially chapters 41 and 42, in anticipation of increased litigation under the Tax Code after taxpayers learn they have the right to protect themselves.

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188. 603 S.W.2d 466 (Tex. App.—San Antonio 1984, no writ).

189. *See* Valero Transmission Co. v. Hays Consol. Indep. School Dist., 704 S.W.2d 857, 861 (Tex. App.—Austin 1986, writ ref'd n.r.e.)(review process designed to alleviate unfairness to taxpayer arguing unconstitutional tax).

190. No citation is given for this proposition, other than the personal experience of the author and conversations with other taxpayers and practitioners in the field, who have suffered the frustration of presenting valid cases to the appraisal review board, and having been ignored and literally invited to the courthouse.

TAXPAYER TIMETABLE FOR REVIEW PROCESS - AD VALOREM TAXATION

1. No earlier than January 1, and no later than April 1 of each year, taxpayer should render his/her/its property for taxation with the appraisal district on a form complying with requirements of the state property tax board. *See* Tex. Tax Code Ann. § 22.23(a) to 22.24 (Vernon 1982 & Vernon Supp. 1987); Act of May 28, 1987, ch. 185, § 1, 1987 Tex. Sess. Law Serv. 2743, 2743-44 (Vernon)(amending section 22.23(b)). Rendition forms, though not required are available from the local appraisal office or the state property tax board.

NOTE: Taxpayers applying for exemptions or for agricultural use designation of their land must apply by May 1. *See* Tex. Tax Code Ann. § 11.43, 23.43 to 23.54 (Vernon 1982 & Vernon Supp. 1987).

A. A person who believes the appraised value of his/her property has decreased during the preceding tax year for any reason, other than normal depreciation, may (should) file an information report describing the property involved and stating the nature and cause of the decrease. This requires a "review" of the property by the chief appraiser and notice to the property owner of his decision. *See id.* § 22.03.

NOTE: Rendition statements and property reports filed with the appraisal office are strictly confidential. *See id.* § 22.27 (Vernon Supp. 1987).

2. By May 15, or as soon thereafter as practicable, and in any event, not later than the 20th day before the date the appraisal review board begins considering protests under chapter 41, the chief appraiser shall deliver a written notice to a property owner of the appraised value of his property if:

A. The appraised value of the property is greater than it was in the preceding year. *See id.* § 25.19(a)(1) (Vernon 1982); *but see id.* § 25.19(g).

B. The appraised value of the property is greater than the value rendered by the property owner. *See infra* item #1.

C. The property was not on the appraisal roll in the preceding year. *See* Tex. Tax Code Ann. § 25.19 (Vernon 1982).

NOTE: Failure to receive this notice does not affect the validity of the appraisal, or imposition of any tax based thereon. *See id.* § 25.19(f).

3. If not satisfied with the notice of appraised value, the inclusion of his property on the rolls, or any other decision of the appraisal dis-

trict, the property owner must file a written notice of protest with the appraisal review board:

A. Before July 1 or not later than thirty (30) days after the date the appraisal notice is delivered whichever is later. *See id.* § 41.44 (Vernon Supp. 1987); Act of May 28, 1987, ch. 185, § 3, 1987 Tex. Sess. Law Serv. 2743, 2744 (amending section 41.44(a)).

B. The notice is sufficient if it identifies the protesting property owner and the property that is the subject of the protest and indicates dissatisfaction with some determination of the appraisal office. *See id.* NOTE: Forms, though not required, are available at the appraisal district or appraisal review board office.

4. After the section 41.44 protest has been filed, the appraisal review board shall schedule a hearing on the protest. The taxpayer may appear in person and present evidence, or (s)he may protest by sworn affidavit. *See* Tex. Tax Code Ann. § 41.45 (Vernon 1982); Act of June 18, 1987, ch. 794, § 1, 1987 Tex. Sess. Law Serv. 5578, 5578 (Vernon)(amending section 41.45(a)).

A. The appraisal review board is required to give the taxpayer fifteen (15) days written notice of the protest hearing. *See* Tex. Tax Code Ann. § 41.46 (Vernon 1982).

5. After the taxpayer's protest and a decision by the board, the board shall deliver, by certified mail, a notice of issuance of the order and a copy of the order to the property owner. *See* Tex. Tax Code Ann. § 41.47 (Vernon 1982 & Vernon Supp. 1987); Act of June 18, 1987, ch. 794, § 2, 1987 Tex. Sess. Law Serv. 5578, 5579 (Vernon)(amending section 41.47(b)); Act of June 19, 1987, ch. 773, § 2, 1987 Tex. Sess. Law Serv. 5506, 5507 (Vernon)(adding section 41.47(e)).

6. A property owner may appeal the board's decision to the district court. *See* Tex. Tax Code Ann. § 42.01 (Vernon 1982). To do so, (s)he must:

A. File the notice of appeal, in writing, within fifteen (15) days of the date (s)he receives the order or notice determining the protest; and

B. File the notice with the body which issued the order to be appealed or with the chief appraiser (the better practice is to file the same notice with both parties). *See id.* § 42.06; Act of June 19, 1987, ch. 898, § 1, 1987 Tex. Sess. Law Serv. 6011, 6011-12 (Vernon) (amending section 42.06(b),(c)).

7. A property owner must file suit against the appraisal district and the appraisal review board in the district court within forty-five (45)

days after she receives notice of the determination of his/her protest to preserve his/her right of appeal. *See* Tex. Tax Code Ann. § 42.21 (Vernon Supp. 1987).

8. In order to preserve his/her protest and/or appeal, the taxpayer must by February 1 of the year following the tax year in question, pay the amount of taxes on the property (s)he does not dispute, or the same amount of tax (s)he paid last year on the property, whichever amount is greater. *See id.* § 42.08.

9. The remedies described by the Property Tax Code for resolution of a dispute over taxes are exclusive. *See* Act of May 6, 1987, ch. 53, § 1, 1987 Tex. Tax Code Ann. 265, 265-66 (Vernon)(amending section 42.09).

10. Trial to the district court is "de novo." The district court shall determine the whole controversy as if the taxpayer had not gone through the administrative process. *See* Tex. Tax Code Ann. § 42.23 (Vernon 1982). After trial, the district court may:

A. Fix the appraised value of the property. *See id.* § 42.24(1).

B. Order equal and uniform appraisal of the property. *See id.* § 42.24(2).

C. Enter any other orders necessary to compel either party to comply with the law. *See id.* § 42.24(3).

11. If the taxpayer successfully proves that the appraised value as contended by the appraisal authorities is in excess of the market value as contended by the taxpayer, the taxpayer shall be entitled to reimbursement of his reasonable attorney's fees not to surpass $ 5,000 or twenty percent (20%) of the total taxes disputed. *See id.* § 42.29 (Vernon Supp. 1987).

12. If the final determination of the appeal decreases a property owner's tax liability after she has paid his/her taxes, (s)he is entitled to a refund of those taxes overpaid. *See* Act of June 18, 1987, ch. 640, § 4, 1987 Tex. Sess. Law Serv. 4876, 4879 (Vernon)(amending section 42.43).

NOTE: Time deadlines required by the Code have been held to be jurisdictional by some courts. Time deadlines may vary based on particular circumstances of the taxpayer and/or taxing authorities and, thus, those briefly outlined above are not absolute.