2018 CASE LAW REPORT

2018 TAAO Annual Conference
Fort Worth, Texas
August 26-29, 2018

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Braden W. Metcalf is a partner at **Nichols Jackson** with a decade of experience with areas of expertise in ad valorem taxation, municipal law, administrative, and zoning law. His practice is devoted almost entirely to trial and appellate litigation on behalf of appraisal districts and governmental agencies throughout the state. The Firm was initially formed in 1895, making it one of the oldest continuing law firms in Dallas, Texas. The firm has over forty years' experience in ad valorem taxation and municipal law. The firm serves as counsel for appraisal districts, municipalities, and political subdivisions throughout the state.

He is committed to providing superior customer service in resolving complex taxation litigation and municipal-related litigation for appraisal districts, economic development corporations, and governmental agencies throughout the state. He is a regular speaker on Ad Valorem Taxation for the State Bar, Texas Association of Appraisal Districts, and the Texas Association of Assessing Officers.

He lives in Farmers Branch, Texas where he serves as an Assistant City Attorney and Prosecutor with his wife, Nicole, and two daughters (Abby – 6 and Riley – 2).

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

Professional Licenses
State Bar of Texas, 2006

Professional Associations and Memberships
State Bar of Texas
Texas City Attorneys Association
Texas Association of Appraisal Districts
Texas Association of Assessing Officers
NT-TAAO Host Trustee
State Bar of Texas, Section of Taxation, Property Tax Committee (Member) (Vice-Chair: 2016 to date)

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

Texas Supreme Court

EXLP Leasing, LLC v. Galveston Cent. Appraisal Dist., 15-0683, 2018 WL 1122363 (Tex. Mar. 2, 2018)

Taxpayers, who were wholly owned subsidiaries of corporation, challenged the county appraisal district's valuation of taxpayers' leased compression units located in county. The 10th District Court, Galveston County, granted county summary judgment in part. Taxpayers appealed. The Court of Appeals affirmed in part and reversed in part. Both parties petitioned for review.

The Supreme Court held that the statutory provision that governed the computation of property tax on a dealer's heavy equipment inventory through the use of a formula-based approach that based market value on a portion of generated income was presumptively constitutional; statute that governed the computation of property tax on heavy equipment did not violate the State constitution's equal and uniform provision; and the taxable situs for dealer-held heavy equipment was the location where the dealer maintained its inventory, rather than the various locations where leased equipment might have otherwise been physically located.

Willacy County Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 16-0626, 2018 WL 1974485 (Tex. Apr. 27, 2018)

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

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

Bosque Disposal Sys., LLC v. Parker County Appraisal Dist., 17-0146, 2018 WL 2372810 (Tex. May 25, 2018)

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

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

Texas State Courts of Appeal

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

Memorandum Opinion

A PETITION WAS FILED ON OCTOBER 9, 2017. THE COURT REQUESTED FULL MERITS BRIEFING ON FEBRUARY 16, 2018.

Appellant Mike Sullivan, in his official capacity as Harris County Tax Assessor–Collector, appealed a summary judgment ruling granting commercial property owner Sheridan Hills Development L.P. declaratory judgment and mandamus relief and ordering him to refund penalties and interest assessed on Sheridan Hills' 2013 taxes. On appeal, Sullivan alleged that the judgment should be reversed because the law did not authorize a judgment ordering Sullivan in his official capacity to pay funds on Sheridan Hills' suit for mandamus and declaratory relief. The Court of Appeals agreed with Sullivan holding that Sheridan Hills failed to establish the trial court's subject matter jurisdiction by alleging a valid waiver of governmental immunity.

United Indep. Sch. Dist. v. U.S. Trailer Relocators, LLC, 04-17-00281-CV, 2018 WL 2943821, (Tex. App.—San Antonio June 13, 2018, no pet. h.)

UISD filed an original petition to collect delinquent taxes from USTR. At the outset of the trial, UISD notified the trial court it no longer sought personal liability against USTR, but sought only to foreclose the tax lien securing payment of the tax delinquency. USTR, which began operating in 2011, did not file a rendition statement with WCAD in 2012 or 2013. When WCAD discovered in 2014 that USTR had been operating without filing rendition statements, WCAD appraised the value of the property USTR allegedly owned on January 1 of 2012 and 2013 and entered the property and its appraised value in the appraisal records. At both trials, UISD presented certified copies of USTR's tax statement showing the amount of taxes, penalties, and interest owed by USTR for years 2012 and 2013, which constituted "prima facie evidence ... that the amount of tax alleged to be delinquent against the property and the amount of penalties and interest due on that tax as listed are the correct amounts." After UISD made its prima facie case by introducing the tax records required by Section 33.47(a), the burden shifted to USTR to show, by introducing competent evidence, that it paid the full amount of taxes, penalties, and interest or that there is some other defense that applies to the case.

The Court held that non-ownership is not a defense in a tax delinquency suit where the taxing entity seeks foreclosure of a tax lien on property and concluded that UISD was entitled to enforce its tax lien on USTR's property to collect the amount of taxes, penalties, and interest due on USTR's account.

Denton Cent. Appraisal Dist. v. Gladden, 02-17-00400-CV, 2018 WL 3288590, (Tex. App.—Fort Worth July 5, 2018, no pet. h.)

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

Munn v. Smith County Appraisal Dist., 12-17-00094-CV, 2018 WL 1616384 (Tex. App.—Tyler Apr. 4, 2018, no pet. h.)

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

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

Maverick County v. Felan, 04-17-00393-CV, 2018 WL 1733175 (Tex. App.—San Antonio Apr. 11, 2018, pet. filed)

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

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

In re Catherine Tower, LLC, 03-17-00735-CV, 2018 WL 3041088 (Tex. App.—Austin June 20, 2018, no pet. h.)

Catherine Tower filed suit and relied solely on the ground of unequal appraisal. Catherine had financed its recent purchase of the property through a loan obtained from a financial-services arm of Prudential Insurance Company, secured by a deed of trust for Prudential's benefit that was recorded in the Travis County real property records. Uncovering that filing, TCAD served notice in the litigation of its intent to take a deposition on written questions from Prudential, accompanied by a request for production of documents calculated to secure any analyses of the property's value that had been prepared or obtained in connection with the loan. The document request called for "[a]ny appraisals, valuations or estimates of value performed in connection with the loan by [Prudential] to Catherine Tower." In fact, Catherine had been required to commission an appraisal of the property in connection with Prudential's loan, and the undertaking generated an elaborate and lengthy analysis of the property's value, taking account of, in Catherine's words, "confidential financial and budgeting projections—such as tenant names, addresses, balances owed, and lease terms; company financial health; and company financial projects and performance information." Catherine preserved objections that the document request exceeded the permissible scope of discovery by seeking information that was neither relevant to an unequal-appraisal claim brought under Tax Code Section 42.26(a)(3), nor reasonably calculated to lead to admissible evidence.

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

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

United States v. Fisch, CR H-11-722, 2018 WL 1541780, at *1 (S.D. Tex. Mar. 28, 2018)

Bertman moved to deny the taxing authorities' claims, arguing that the Harris County taxing authorities have failed to establish an interest under 21 U.S.C. § 853(n)(6) in taxes claimed for 2013 to 2016. (Docket Entry No. 674 at 2). She argues that although the property was forfeited to the government in 2015, (Docket Entry No. 471), the relation-back doctrine means that the government's interest vested when the offenses occurred between 2006 and 2010. *Id.* Bertman asserts that because the government's interest in the property vested before 2013, the taxing authorities cannot claim an interest in taxes from 2013 or later. She also asserts that the taxing authorities do not fall into the "bona fide purchasers" exception of § 853(n)(6)(B). *Id.*

Nat'l Church Residences of Alief, TX v. Harris County Appraisal Dist., 01-15-00900-CV, 2017 WL 6329938 (Tex. App.—Houston [1st Dist.] Dec. 12, 2017, no pet. h.)

A Nonprofit organization that owned an apartment complex providing federally-subsidized housing to low-income elderly persons sought judicial review of decision by the county appraisal district, which denied organization's request to be exempt, as a charitable organization. The District Court entered judgment in favor of the appraisal district. Organization appealed.

On rehearing, the Court of Appeals held that the organization qualified as an institution engaged primarily in a "public charitable function" under the State Constitution, as required before it may be considered for tax exempt status as a charitable organization, and the organization provided housing "without regard to the residents' ability to pay," as required to qualify for property tax exemption.

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

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

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

Vitol, Inc. v. Harris County Appraisal Dist., 529 S.W.3d 159 (Tex. App.—Houston [14th Dist.] 2017, no pet.)

Taxpayer, an owner and operator of a petrochemical storage facility, sought review of the appraisal review board's denial of taxpayer's protest of county appraisal district's failure to grant taxpayer an interstate or foreign commerce tax exemption on its ad valorem property taxes. The District Court denied taxpayer's motion for a continuance, granted appraisal district's plea to the jurisdiction, and dismissed. Taxpayer appealed.

The Court of Appeals held that the 30-day period in which taxpayer could protest the lack of an interstate or foreign commerce exemption in its property tax assessment began upon receipt of the Notice of Appraised Value for Property Tax Purposes, and the trial court did not abuse its discretion in denying taxpayer's motion to continue the hearing on the plea to the jurisdiction.

Brazos Elec. Power Coop., Inc. v. Texas Comm'n on Envtl. Quality, 538 S.W.3d 666 (Tex. App.—El Paso 2017, pet. filed)

Electric company that had installed heat recovery steam generators (HRSG) at its two power plants brought action against Texas Commission on Environmental Quality (TCEQ), seeking declaration regarding its entitlement to an ad valorem tax exemption reserved for devices installed to comply with state and federal regulations aimed at abating air pollution. The District Court entered judgment affirming TCEQ's denial of the tax exemption. Electric company appealed.

The Court of Appeals held that the TCEQ had discretion to issue negative use determination and deny a tax exemption for use of enumerated pollution-control facilities, devices, or methods; the company waived issue of whether TCEQ engaged in improper informal rulemaking; HRSG having a productive purpose could not qualify as 100% pollution-control property; and that the TCEQ did not act arbitrarily and capriciously in selecting a boiler as technology that was comparable to a HRSG.

Freestone Power Generation, LLC v. Texas Comm'n on Envtl. Quality, 03-16-00692-CV, 2017 WL 3044547 (Tex. App.—Austin July 11, 2017, no pet. h.)

Owners of combined-cycle power-generation plants sought judicial review of the Texas Commission on Environmental Quality's (TCEQ) order affirming the TCEQ's Executive Director's (ED) negative use determinations for the plants' heat recovery steam generators (HRSGs). After consolidation, the District Court affirmed. Owners appealed.

The Court of Appeals held that under statute on tax exemption for pollution-control property, HRSGs cannot be determined to be 100% non-pollution-control property and sent the case back to the TCEQ for further determination in compliance with this ruling.

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

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

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

Harris County v. Harris County Appraisal Dist., 01-16-00389-CV, 2017 WL 2686328 (Tex. App.—Houston [1st Dist.] June 22, 2017), reconsideration en banc denied, 01-16-00389-CV, 2018 WL 2925645 (Tex. App.—Houston [1st Dist.] June 12, 2018, no pet. h.)

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

Attorney General Opinions

Opinion No. KP-144

The computation of state funding for school districts receiving additional state aid for tax reduction must not include local option homestead exemption repeals or reductions that Tax Code subsection 11.13(n-1) prohibits.

Opinion No. KP-147

A court would likely construe subsection 11.13(l)(2)(B) of the Tax Code to refer to an owner's temporary residence in an establishment set up to assist persons with overcoming illness or injury, or with needs related to physical or mental weakness or growing old, through a wide range of activities, regardless of whether the owner receives such services.

Opinion No. KP-154

Subsection 26.08(a) of the Tax Code requires the registered voters of an independent school district to approve an adopted tax rate if the governing body of the district adopts a tax rate that exceeds the district's rollback tax rate. The rollback rate calculation, defined in subsection 26.08(n), includes a maximum maintenance and operations tax rate component and a current debt service tax rate component. The debt service component of the rollback rate does not reflect the debt service tax rate of the preceding year but of the current year. As a result, the rollback tax rate effectively measures only the maintenance and operations component of the tax rate. An independent school district may not increase a maintenance and operations tax rate above the maximum maintenance and operations tax rate component calculated for purposes of the rollback tax rate without voter approval through a tax ratification election.

Opinion No. KP-0175

A tax appraisal district has no authority to detach property from one school district and transfer the property to another school district under section 13.051 of the Education Code. The Legislature has not given an appraisal district independent authority to determine or alter the boundaries established by a school district.

Opinion No. KP-192

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