

Focus | *Probate, Trusts & Estates/Tax Law*

Texas Legislature Gives Property Owners Tools to Fight Back

BY MICHAEL P. MOORE
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The constitutional bedrock of property taxation in Texas is that it be fair, equal, and uniform. To realize that constitutional guarantee, Texas lawmakers empowered two governmental entities to safeguard property owners' rights—Appraisal Districts, which value real and personal property for tax purposes, and Appraisal Review Boards which review the decisions of the Appraisal District. Texas law gives property owners specific rights to challenge their properties' valuations and requires the government to follow specific rules and procedures that are designed to protect those rights. However, it is an unfortunate fact that not every District or Review Board is willing to play by those rules.

The failure of districts to comply with the rules, whether intentionally or unintentionally, is well-docu-

mented. In 2019, the Travis County Appraisal District improperly accessed proprietary information from a realtor group and used it in determining its assessments. In 2021, hundreds of thousands of Denton County taxpayers received appraisal notices that showed reductions that the District did not, in fact, intend to apply. Just this past August, the Tarrant Appraisal District Board of Directors suspended its Chief Appraiser pending an investigation into multiple allegations of malfeasance. While these instances are just those that made the news, they paint a vivid, albeit partial, picture of the Districts' and Review Boards' failure to abide by the basic requirements of the Texas Tax Code.

Noting increasing evidence of non-compliance by Districts and Review Boards, the Texas Legislature enacted Section 41A.015 of the Texas Tax Code. This statute enables property owners to request limited binding arbi-

tration to compel the Districts and Review Boards to abide by the strictures of the Tax Code. An arbitrator for this process is to be selected from a registry of attorneys maintained by the Comptroller, and the arbitration fees permitted are sharply limited—\$450 or \$550 depending on the type of property—to preserve the resources of the parties.

Traditionally, the Tax Code has provided very limited means by which property owners could address misconduct. In cases where proper notices are not delivered to taxpayers, Section 41.411 provides the opportunity to protest and then appeal the order to a district court. When a Review Board refuses to schedule a hearing, Section 41.45(f) permits the taxpayer to bring suit to compel a hearing. And Section 41.41(a)(9) allows for protests of any action of the Chief Appraiser, the District, or the Review Board that adversely affects a property owner. In each instance, a denial of the administrative protest necessitates litigation—always an expensive proposition—and there is no guarantee that the property owners can recoup their attorneys' fees, even if successful. The adoption of this limited binding arbitration process is an integral step towards giving Texas taxpayers a more equitable and cost-efficient process.

While Section 41A.015 is not a panacea for all potential scenarios in which Districts and Review Boards fail to follow the Texas Tax Code, it does provide relief to property owners in instances where Districts and Review Boards (1) adopt procedures that violate Texas law; (2) refuse to schedule a hearing on their protest; (3) refuse

to provide the information intended for use at the Review Board hearing; (4) refuse to allow the taxpayer to offer evidence, examine, or cross-examine witnesses, or present arguments at the hearing; (5) attempt to use evidence the Tax Code makes inadmissible because of nondisclosure; or (6) violate the scheduling rules established by law. This section further empowers the arbitrator to compel compliance by the District or Review Board and to rescind orders issued in contravention of the Tax Code and applicable laws.

One caveat is that property owners must act fast to avail themselves of the new arbitration procedure. The statute requires that taxpayers give the government notice within a five-day period (running from the time of the conduct complained of) as a prerequisite to using the limited binding arbitration process. After the five-day period expires, the District or Review Board has ten days to resolve the issue informally before the taxpayer can seek arbitration.

Moving toward a system that allows taxpayers to protect themselves when Appraisal Districts and Review Boards fail to abide by the Tax Code is welcome progress. After years of taxpayer complaints, the Texas Legislature has finally provided Texans the ammunition they need to defend their rights, moving the State one step closer to realizing the Constitution's guarantee that the taxation of property be fair, equal, and uniform. **HN**

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