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By Opinion Committee at 2:12 pm, Jan 04, 2024

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January 4, 2024

RQ-0528-KP

Ken Paxton
Attorney General
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Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78701-2548

RE: Calculation of Tax Ceiling pursuant to changes to Texas Tax Code 11.26 made by SB12 (87th Legislature)

Dear General Paxton:

I am writing to get clarification on an apparent conflict with Tax Code 11.26(a) and changes made by SB12 (87th Legislature) as described below and further described in the background section. There are no prior Attorney General Opinions directly on point with the question and facts herein.

QUESTION PRESENTED

In 1997, Tax Code § 11.26, enacted to put into place the limitation (ceiling) established by Tex Const Art VIII, § 1-b(d), was amended to compare both the first and second year after a homestead qualified for the over-65/disability exemption and set the ceiling at the lower of those two levies. In 2021, 11.26 was amended to add sections (a-5) through (a-10) to recalculate the ceiling based on the reductions in school tax rate from 2019 forward. However, this recalculation is calculated based on the levy in the **first** year of qualification. Does this mean that the two-year comparison in 11.26(a) is repealed by implication? If not, how do we reconcile the two provisions? Since school funding is affected by the loss in revenue by the total reduction, clarification for all schools is both necessary and desired.

BACKGROUND AND HISTORY

Tax Code § 11.26 and ART VIII, § 1-b(d)

Prior to 1997, both the general homestead exemption and the over 65/disability homestead exemptions had to be in place on January 1 of the tax year — they were not put into place midyear. In 1997, the 75th Legislature amended Tax Code §11.42(b) and § 26.112 to allow over 65 taxpayers to qualify in mid-year. See SB 1437 (1997). Similarly, in the same year, recognizing that an over -65



taxpayer would most likely see a reduction in school tax levy in the year following qualification, the Legislature also amended 11.26(a) as follows:

If the individual qualified that residence homestead for the exemption after the beginning of that first year, the maximum amount of taxes that a school district may impose on that residence homestead in a subsequent year is determined as provided by Section 26.112 as if the individual qualified that residence

homestead for the exemption for that entire first year, except as provided by Subsection (b). If the individual qualified that residence homestead for the exemption after the beginning of that first year and the residence homestead remains eligible for the exemption for the next year and if the school district taxes imposed on the residence homestead in the next year are less than the amount of taxes imposed in that first year, a school district may not subsequently increase the total annual amount of ad valorem taxes it imposes on the residence homestead above the amount it imposed in the year immediately following the first year for which the individual qualified that residence homestead for the exemption, except as provided by Subsection (b).

In 2003, this section, 26.112 and Tex Const Art VIII, Sec 1-b(d) were amended to include homesteads of persons with disabilities as defined by §11.13.

It is noteworthy that the language in 11.26(a) above has never been mandated by the Constitutional provision.

SB12 Mandated reduction in the Ceiling

In 2021, Art VIII, §1-b was amended to allow the Legislature to provide for the reduction of the limitation provided in subsection (d) to "reflect any statutory reduction from the preceding tax year in the maximum compressed rate". See SJR 2 (2021) adding subsection (d-2).

The Legislature did provide for that reduction in SB12 (2021) which added subsections (a-5) through (a-10) to Tax Code §11.26. This reduction is done for each year back to the year the owner or spouse first qualified for the 11.13(c) exemption (beginning in 2019) by making an incremental deduction from the levy in the first year of adjustment by subtracting the product of the difference in Maximum Compressed Rates between the first and second year of qualification and the prior year's taxable value. This adjustment is done each year from 2019 forward as

necessary until 2023 when the new ceiling is put into place. In each year after 2023, a similar adjustment is made to reflect the differences in Maximum Compressed Rate.

This mechanism, regardless of when the taxpayer qualifies for the over-65/disability exemption starts the reduction calculation from the levy in the first year (not the ceiling). Subsections (a5) through (a-10), depending on when the taxpayer first qualified for the exemption (2018 or prior year through present) all use the same language in (2) of each subsection —

...(2) subtracting the amount computed under Subdivision (1)[the difference in MCR between the first and second year times the prior year taxable value} from the amount of tax the district imposed on the homestead in the ... [first year of qualification] tax year. (emphasis added)

Conflict Between Sections

Even though we believe the conflicts between the 2023 enactments and the language quoted to be irreconcilable and that the 2023 enactments control, we have been made aware that different assessors are trying to reconcile the two provisions by either adjusting the starting levy to compare first and second year of qualification or calculating the total reduction pursuant to SB 12 both on the levy in the first year and on the levy in the second year and using the lesser.

Our county, both the County Assessor and the Chief Appraiser, has taken the position that the sections are irreconcilable and that SB12 impliedly repealed the two-year comparison in 11.26(a) for the following reasons:

- The language used in the Constitutional provision seems to limit the levy allowed by a school to that of the year of qualification unless there are new improvements,
- The amendments in SB12 explicitly and clearly state that the calculation starts with the levy in 2018 or the first year of qualification (if after 2018) and not the previously established ceiling,
- The amendments in SB12 do not allow or provide for any additional comparison of levies or ceilings in the calculation,
- The two-year comparison is not mandated by the Constitution, and
- The reasoning behind the two-year comparison was obviated by SB 8 (2021, 2nd CS), which allowed the general homestead exemption to be pro-rated into place at time of acquisition and not the next January 1.

Also, although there were further reductions provided in SB2 (2023), those reductions are to be done after the SB12 reductions are done, so they are irrelevant to this question. As stated, since there are some disagreements in the interpretation of the section and concomitant differences in calculation, there will be different methodologies used by assessors across the state in reporting the losses due to the change in ceiling. See Tex Const Art VIII, § 1(a) "All taxation shall be equal and uniform."

We thank you for any clarification you can provide.

Yours truly,

A handwritten signature in black ink, appearing to read "John R. Gillespie". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John R. Gillespie
Wichita County Criminal District Attorney
Wichita County Criminal District Attorney's Office