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Opinion Committee

October 28, 1999

The Honorable John Cornyn  
Attorney General  
Office of the Attorney General  
209 W. 14th Street, 6th Floor  
Austin, Texas 78711-2548

*RQ-0136-JC* To Liz Robinson  
FILE # ML-41083-99  
I.D. # 41083

Re: Request for Attorney General Opinion; Texas Government Code

Dear General Cornyn:

Pursuant to Section 402.042 of the Texas Government Code, I request your opinion as to the following matters of public interest: (i) whether the Texas Legislature intended for H.B. 2574 (the "Act") (Act of May 26, 1999, 76th Leg., R.S., ch. 970, 1999 Tex. Sess. Law Serv. 3720 (Vernon) (to be codified as an amendment to Tex. Tax Code §21.055)), to be applicable to the current 1999 tax year, and (ii) whether the Texas Legislature intended for the Act to be utilized pursuant to Section 25.25(c)(3) of the Texas Tax Code for the purpose of appealing to the appropriate appraisal review board for correction of appraisal rolls or the tax years 1995 through 1999. As sponsor of the Act in the Texas Legislature I can attest that it was our intent that both questions be answered in the affirmative.

Enclosed as Exhibit A is a copy of the Act and enclosed as Exhibit B is a copy of a summary of the Act circulated to members of the Texas Legislature by the Act's author which explains the purpose of the Act. In addition, copy of bill analysis prepared by Office of House Bill Analysis is enclosed as Exhibit C.

Applicability of the Act to Current 1999 Tax Year

The intent of the Texas Legislature for the Act to be applicable to the current 1999 tax year is evidenced by the inclusion of an "emergency clause" in Section 2 of the Act providing for the immediate effectiveness of the Act. While most appraisal districts have construed the Act to apply to 1999 taxes, it has come to my attention that one or more districts have interpreted the Act as being inapplicable to the current tax year. Such an interpretation is akin to presuming that the legislature has done a useless act by making the Act effective immediately. See *Love v. State*, 687 S.W.2d 469, 476 (Tex. App. - Houston [1st Dist.] 1985, refused). This opinion is being sought to obtain uniform interpretations of the Act.

As codified at Section 21.055 of the Texas Tax Code (the "Code"), the Act provides an allocation formula for ad valorem tax purposes of the value of business aircraft used both inside and outside of Texas. Prior to the enactment of the Act, the value of business aircraft used both inside and outside of the State of Texas was allocable pursuant to Code Section 21.03(a) so that only that portion of the business aircraft's value reflecting its use in Texas was taxable in Texas. Pursuant to Code Section 21.03(b), the Texas Comptroller of Public Accounts was authorized to adopt rules to establish formulas for "calculating the proportion of total market value to be allocated to this state" and pursuant to such authority, the comptroller adopted a rule containing an allocation formula for aircraft. See 34 Tex. Admin. Code §9.4033(f)(1).



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Applicability to the current tax year of 1999 is consistent with the plain language of the Act. The Act calculates the value allocation ratio on the basis of departures for the preceding tax year, and such information was readily available to taxpayers as of the effective date of the Act. Furthermore, the Act does not contain any language indicating that the Act was not applicable until the 2000 tax year. The "Background and Purpose" of the Act, as stated in the Bill Analysis of the Act prepared by the Office of House Analysis, is as follows:

"Currently, the portion of the total market value of property that fairly reflects the property's use in this state must be allocated to the state for tax purposes if the property is used for a business purpose of the owner, is taxable by a taxing unit, and is used both in this state and outside this state. H.B. 2574 establishes the allocation formula for business aircraft."

Such language clearly indicates a legislative intent to enact an allocation formula for immediate use in the current tax year of 1999.

#### Ability To Use the Act To Correct Prior Years' Appraisal Rolls

The Act also enables taxpayers to use the Act in connection with an appeal to an appraisal review board pursuant to Code Section 25.25(c)(3). The 1st District Court of Appeals in Houston decided that the allocation of value fell under the statutory language of §25.25(c)(3) regarding a change to the appraisal roll to correct for the inclusion of property that does not exist at the location described in the appraisal roll. *Himont U.S.A., Inc. v. Harris County Appraisal District*, 904 S.W.2d 740, 743 (1995, no writ). Therefore, the value allocation formula for business aircraft contained in the Act should be immediately available for use as the methodology for calculating the portion of value allocable to Texas in connection with a Code Section 25.25(c)(3) appeal for the correction of the appraisal rolls for prior tax years.

A construction of the Act permitting its use in connection with a Code Section 25.25(c)(3) appeal as of June 18, 1999 for a correction to the appraisal rolls for prior tax years is consistent with the principles of statutory construction. The Act is presumed to have been enacted by the legislature with full knowledge of the existing condition of the law and reference to it. *See Ingleside v. Johnson*, 537 S.W.2d 145, 153 (Tex. Civ. App. - Corpus Christi 1976, no writ). Therefore, the potential use of the Act in connection with a Code Section 25.25(c)(3) appeal cannot be considered an unintended effect. Also, the Act must be construed in view of the entire Code as amended and must be harmonized with the Code as a whole. *See Schlichting v. Texas State Bd. of Medical Examiners*, 158 Tex. 279, 310 S.W.2d 557, 563 (1958).

Failure to construe the Act as applicable to Code Section 25.25(c)(3) appeals would fail to make the entire Code effective and begs the question of when the Act would be applicable in such a context. Texas taxpayers had a right to a Code Section 25.25(c)(3) appeal prior to the passage of the Act. Only a construction of the Act whereby the allocation method set forth in the Act. (Sec. 21.055) is applicable in the context of a Code Section 25.25(c)(3) appeal harmonizes these Code sections.

Sincerely,



JEB:ckm