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OPINION COMMITTEE

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711-2548

RQ-0148-GA

FILE # ML-43380-03

I.D. # 43380

Dear General Abbott:

I request your opinion regarding the following questions:

(1) Is a school district that collected ad valorem taxes for the 2002 tax year on a travel trailer that is exempt from taxation under S.J.R. No. 25 and S.B. No. 510, Acts of the 78th Legislature, Regular Session, 2003, required to refund the taxes collected for that year?

(2) If a school district is not required to refund the ad valorem taxes collected for the 2002 tax year on a travel trailer described above, may the governing body of the school district elect to authorize a refund of those taxes?

BACKGROUND

Before its amendment in 2001, Section 1(d), Article VIII, Texas Constitution, authorized the legislature to exempt from ad valorem taxation tangible personal property not held or used for the production of income, except structures that were personal property and used or occupied as residential dwellings. Section 1(e) of that article authorized the governing body of a political subdivision to provide for the taxation of tangible personal property exempt under a law adopted under Section 1(d). Under the authority provided by former Section 1(d), the legislature enacted Section 11.14, Tax Code. Section 11.14(a) exempted from taxation all of a person's tangible personal property, other than a manufactured home, not held for the production of income. Section 11.14(c) authorized the governing body of a taxing unit, by resolution or order, to provide for taxation of tangible personal property otherwise exempted under Section 11.14(a).

Under those provisions, a particular travel trailer might or might not have been subject to taxation. A travel trailer determined to be an improvement to real property was taxable as real property. A travel trailer determined not to be an improvement to real property constituted tangible personal property exempt from taxation unless held for the production of income or taxed at the

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option of the governing body of a particular taxing unit. Determination of whether a particular travel trailer was an improvement to real property involved the resolution of difficult factual questions and posed a risk of inconsistent treatment by appraisal districts. The complexity of the law regarding the taxability of travel trailers was evidenced by two attorney general's opinions. See Op. Tex. Att'y Gen. Nos. JC-0150 (1999) and JC-0282 (2000).

A constitutional amendment proposed by H.J.R. No. 44, 77th Legislature, Regular Session, 2001, and approved by the voters on November 6, 2001, amended Section 1, Article VIII, Texas Constitution, by adding Subsection (j), which permitted the legislature by general law to authorize a taxing unit, *other than a school district*, to exempt from ad valorem taxation a travel trailer, as defined by the legislature, regardless of whether the travel trailer was real or personal property, if the travel trailer was registered in this state in compliance with the vehicle registration laws and not held or used for the production of income. Subsection (j) took effect January 1, 2002.

In accordance with that constitutional amendment, the 77th Legislature enacted H.B. No. 2076 (Chapter 521, Acts of the 77th Legislature, Regular Session, 2001). H.B. No. 2076 amended Section 11.14(a), Tax Code, to exclude travel trailers from the exemption from taxation provided by that section and added Section 11.142, Tax Code, to provide that the governing body of a taxing unit, *other than a school district*, could exempt from taxation a travel trailer, regardless of whether the travel trailer was real or personal property, if the travel trailer was registered in this state in compliance with Chapter 502, Transportation Code, and not held or used for the production of income. H.B. No. 2076 took effect January 1, 2002, and applied to taxes imposed for a tax year beginning on or after that date.

The bill analyses prepared by the Office of House Bill Analysis for H.J.R. No. 44 and H.B. No. 2076 noted that travel trailers were subject to sales tax but stated that they were not subject to "real property taxes" until Attorney General Opinion Nos. JC-0150 and JC-0282, *supra*, were issued. The concern expressed was that the imposition of both sales and ad valorem taxes on travel trailers would constitute double taxation. H.J.R. No. 44 and H.B. No. 2076 were said to provide that appropriately registered travel trailers not held or used for the production of income would be exempt from ad valorem taxation.

Although the legislature clearly intended to create a broad exemption from ad valorem taxation for travel trailers, the exclusion in H.J.R. No. 44 and H.B. No. 2076 of school districts from the taxing units authorized to exempt travel trailers from ad valorem taxation arguably had the effect of requiring school districts to tax them on or after January 1, 2002. In recognition of that effect, on March 12, 2002, the governor and several members of the legislature, including me and the author and sponsor of H.J.R. No. 44 and H.B. No. 2076, wrote a letter to all chief appraisers in the state stating that despite the legislature's clear intent to restrict all taxing units' authority to tax travel trailers, questions were being raised as to whether the language of the joint resolution and the bill exempted all travel trailers from property taxation. According to the letter, the author and sponsor of the joint resolution and the bill, together with other members of the legislature, had stated that their intention in enacting the legislation was to eliminate taxes on travel trailers, and the author and sponsor had committed to introduce legislation in the next session to resolve any questions as to the ad valorem taxation of travel trailers. In addition, the letter noted, the next legislature could require

that any taxes collected on travel trailers in 2002 be refunded the following year. In recognition of the unsettled state of the law, the letter advised chief appraisers to consult with their legal counsel as to whether they should refrain from implementing the unintentional changes made by the legislation until the legislature clarified the issue the following session.

Consequently, the 78th Legislature, Regular Session, 2003, adopted S.J.R. No. 25, which proposed a constitutional amendment approved by the voters on September 13, 2003, amending Section 1(d), Article VIII, Texas Constitution, to authorize the legislature by general law to exempt from ad valorem taxation tangible personal property, except structures substantially affixed to real estate and used or occupied as residential dwellings and except property held or used for the production of income. The amendment proposed by S.J.R. No. 25 also repealed Section 1(j), Article VIII. Finally, the amendment stated that it applies to a tax year that begins on or after January 1, 2002.

In accordance with S.J.R. No. 25, the 78th Legislature enacted S.B. No. 510 (Chapter 5, Acts of the 78th Legislature, Regular Session, 2003). That bill amended Section 11.14(a), Tax Code, to provide that a person is entitled to an exemption from taxation of all tangible personal property, other than manufactured homes, that the person owns and is not held or used for production of income and to provide that Section 11.14(a) does not exempt from taxation a structure that a person owns and that is substantially affixed to real estate and is used or occupied as a residential dwelling. In addition, S.B. No. 510 repealed Section 11.142, Tax Code, the provision added in 2001 that authorized the governing body of a taxing unit other than a school district to exempt travel trailers from ad valorem taxation. Finally, S.B. No. 510 provided that it applies to taxes imposed for the 2002 and subsequent tax years.

The bill analyses for S.J.R. No. 25 and S.B. No. 510 prepared by the House Local Government Ways and Means Committee recite that following the adoption in 2001 of H.J.R. No. 44 and H.B. No. 2076, it became apparent that what was intended to be an exemption for travel trailers actually had the effect of adding travel trailers to the property tax rolls. The analyses indicate that S.J.R. No. 25 and S.B. No. 510 were intended to clarify the exemption from ad valorem taxation of eligible travel trailers not held or used for the production of income.

Under the law as amended by S.J.R. No. 25 and S.B. No. 510, a travel trailer that is substantially affixed to real estate and is used or occupied as a residential dwelling or held or used for the production of income is subject to ad valorem taxation by all taxing units. A travel trailer that is not substantially affixed to real estate or not used or occupied as a residential dwelling and not held or used for the production of income is exempt from taxation by all taxing units, including school districts, unless the governing body of a particular taxing unit takes action to tax the trailer.

As explained above, the wording of H.J.R. No. 44 and H.B. No. 2076 created confusion as to the legislature's intent in 2001 concerning the taxability by school districts of travel trailers that constitute personal property. Notwithstanding the letter from Governor Perry and members of the legislature explaining the legislature's intent, certain school districts, presumably believing that taxation of personal property travel trailers was required by H.J.R. No. 44 and H.B. No. 2076, collected taxes on those trailers for the 2002 tax year. However, S.J.R. No. 25 and S.B. No. 510

have now clarified the legislature's intent that those travel trailers be exempt from taxation by all taxing units, including school districts, other than a taxing unit whose governing body affirmatively acts to tax them. The legislature expressly provided that S.J.R. No. 25 and S.B. No. 510 should apply to taxes for the 2002 tax year.

### DISCUSSION

My first question is whether a school district that collected ad valorem taxes for the 2002 tax year on a travel trailer that is exempt from taxation under the law as amended by S.J.R. No. 25 and S.B. No. 510 is required to refund the taxes collected for that year. The legislature provided that the amended law applies to the 2002 tax year, but it did not expressly require that taxes collected for that tax year on those travel trailers be refunded.

In general, a person who voluntarily pays a tax that is imposed without statutory authority is not entitled to a refund. Mutual mistake of law is not a valid ground for refunding a tax. A person who has paid such a tax is entitled to a refund only on a showing that the payment resulted from fraud, mutual mistake of fact, or duress, whether implied or express. See Camacho v. Samaniego, 954 S.W.2d 811, 825-826 (Tex. App.--El Paso 1997, pet. denied). The purposes of the voluntary payment rule are to discourage litigation and to secure the taxing authority in the orderly conduct of its affairs. Johnson Controls, Inc. v. Carrollton-Farmers Branch Independent School District, 605 S.W.2d 688, 689 (Tex. Civ. App.--Dallas 1980, writ ref'd n.r.e.). None of those exceptions to the voluntary payment rule appear to apply in this case.

Section 31.11, Tax Code, requires refunds of certain overpayments or erroneous payments of taxes, but that section does not appear to apply since it applies when a tax was *correctly* assessed but the taxpayer made a mistake in paying it, such as accidentally paying to the wrong account, inadvertently paying an amount greater than that assessed, or overpaying because of calculation errors. That section does not apply to a mistake of law. First Bank of Deer Park v. Deer Park Independent School District, 770 S.W.2d 849, 853 (Tex. App.--Texarkana 1989, writ denied). Section 26.15(f), Tax Code, which provides for a refund if a correction of a tax roll based on a change made in an appraisal roll under Section 25.25, Tax Code, decreases the tax liability of a property owner after the owner has paid the tax, also appears not to authorize a taxpayer to compel a refund since changes to an appraisal roll may be made under Section 25.25(c) only to correct clerical errors or for certain other reasons that are inapplicable in this context.

Finally, a court might be reluctant to find that a person is entitled to a refund of taxes paid because of the factors articulated in Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District, 826 S.W.2d 489 (Tex. 1992). In that case, the court held that the public school finance system was unconstitutional but elected to apply its ruling only prospectively, in part because the burden of permitting the legislature to impose an illegal tax on the citizens of the state was outweighed by the potential for a very serious disruption in the education of the state's children. *Id.* at 518-521. Requiring school districts that collected taxes for the 2002 tax year on travel trailers to refund money that has been budgeted and spent could adversely affect the districts' operations.

If you conclude that a school district is not required to refund ad valorem taxes collected for the 2002 tax year on travel trailers exempt from taxation under the law as amended by S.J.R. No. 25 and S.B. No. 510, my second question is whether the governing body of the school district may elect to authorize a refund of those taxes. The wording of H.J.R. No. 44 and H.B. No. 2076 suggested that school districts were not permitted to exempt travel trailers from ad valorem taxation. However, the legislative history of H.J.R. No. 44 and H.B. No. 2076, as well as the governor's and legislators' letter to chief appraisers, indicates that the legislature in 2001 intended to enact a broad exemption from ad valorem taxation of travel trailers by all taxing units despite the confusion regarding the applicability of the exemption to school districts. Some school districts, relying on the wording of the joint resolution and the bill, imposed ad valorem taxes on travel trailers for the 2002 tax year, while other school districts elected not to tax them until the legislature had an opportunity to clarify the issue.

The legislature in 2003 clarified its intent by adopting S.J.R. No. 25 and enacting S.B. No. 510, which exempted from ad valorem taxation by all taxing units, including school districts, travel trailers that constitute personal property. By providing that S.J.R. No. 25 and S.B. No. 510 apply beginning with the 2002 tax year but not requiring school districts to refund taxes paid for that tax year on travel trailers that are exempt from taxation under the new law, the joint resolution and the bill may be fairly construed to authorize, but not require, a school district that collected taxes on travel trailers for the 2002 tax year to refund those taxes as well as to clarify that a school district that did not collect taxes on travel trailers for that year was not required to do so. Authorizing school districts to refund ad valorem taxes collected by them on travel trailers for the 2002 tax year in effect puts them in the position they would have been in had H.J.R. No. 44 and H.B. No. 2076 not excepted them from the taxing units authorized to exempt travel trailers from taxation.

In construing a statute, the courts give effect to all the words of the statute and do not treat any statutory language as surplusage, if possible. The courts avoid constructions that would render a constitutional provision meaningless or nugatory and refuse, whenever possible, to construe constitutional language in a way that renders it idle or inoperative. Spradlin v. Jim Walter Homes, Inc., 34 S.W.3d 578, 580 (Tex. 2000). Section 311.021(2), Government Code, provides that in enacting a statute it is presumed that the entire statute is intended to be effective. A holding that school districts are not authorized to refund taxes collected on travel trailers for the 2002 tax year would fail to give full effect to the provisions in S.J.R. No. 25 and S.B. No. 510 that they apply beginning with that tax year.

Assuming that S.B. No. 510 is construed to authorize refunds of taxes collected for the 2002 tax year, the bill does not violate the ban on retroactive laws provided by Section 16, Article I, Texas Constitution, since the bill is the enabling legislation for S.J.R. No. 25, and the constitutional amendment proposed by the joint resolution provides that it applies beginning with that tax year. Similarly, S.B. No. 510 as so construed does not violate Section 55, Article III, Texas Constitution, which prohibits the legislature from releasing or extinguishing, or authorizing releasing or extinguishing, the indebtedness, liability, or obligation of a corporation or individual to the state or a political subdivision of the state, except for delinquent taxes that have been due for at least 10 years. Taxes due are clearly an obligation to a taxing entity that cannot be forgiven under that provision. Corpus Christi People's Baptist Church, Inc. v. Nueces County Appraisal District, 904

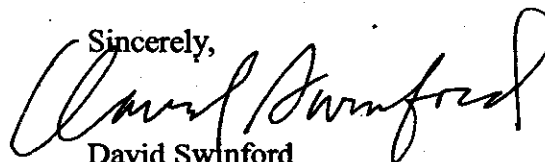
S.W.2d 621, 625 (Tex. 1995). However, while that provision precludes forgiveness of delinquent taxes, it does not appear to preclude a refund of taxes paid. See Op. Tex. Att'y Gen. No. GA-0071 (2003) (Section 55, Article III, does not preclude a municipality from rebating to a business a portion of the municipal sales taxes collected and remitted by the business; the municipality has not released or extinguished an obligation to the state or municipality if the business has collected and remitted the sales taxes as required by law). Furthermore, the provision in S.J.R. No. 25 to the effect that the constitutional amendment proposed by that joint resolution applies beginning with the 2002 tax year appears to authorize the legislature to permit school districts to refund taxes collected for that year.

S.B. No. 510, if construed to authorize tax refunds, might be held to violate Section 52(a), Article III, Texas Constitution, which prohibits the legislature from authorizing a political subdivision of the state from granting public money or anything of value in aid of, or to, an individual, association, or corporation, or Section 51, Article III, which prohibits the legislature from making or authorizing a grant of public money to an individual, association of individuals, or municipal or other corporation. However, the courts have held that those provisions bar only gratuitous payments to individuals, associations, or corporations, not payments that serve a legitimate public purpose. Texas Municipal League Intergovernmental Risk Pool v. Texas Workers' Compensation Commission, 74 S.W.3d 377, 383-384 (Tex. 2002). Allowing school districts to refund ad valorem taxes collected on travel trailers for the 2002 tax year that are clearly exempt from taxation under S.J.R. No. 25 and S.B. No. 510 would serve the public purpose of giving effect to the legislature's original intent expressed in H.J.R. No. 44 and H.B. No. 2506 and clarified in S.J.R. No. 25 and S.B. No. 510 to exempt those trailers from taxation. The taxes in question were never intended to become public money and would not have been collected had school districts followed the governor's and legislators' request that they refrain from taxing travel trailers until the legislature had an opportunity to clarify the law. See Camacho, 954 S.W.2d at 811, 825 (a tax or fee collected without statutory authority should not be considered the property of the governmental entity). A voluntary refund of taxes that were collected under a mistaken understanding of the legislature's intent does not appear to constitute the kind of gratuitous payment of public money proscribed by the constitution. Furthermore, as noted above, S.B. No. 510 is the enabling legislation for S.J.R. No. 25, and since the constitutional amendment proposed by that joint resolution provides that it applies beginning with the 2002 tax year, to the extent that it authorizes tax refunds it constitutes an exception to any other constitutional provision that would otherwise prohibit tax refunds.

In addition to the constitutional provisions bearing on discretionary school district ad valorem tax refunds, a school district board of trustees is limited by Section 45.105(c), Education Code, to spending school district funds for purposes necessary in the conduct of the public schools as determined by the board. However, to the extent of any conflict, S.B. No. 510 would prevail since it is the later enactment. See Section 311.025(a), Government Code.

Thank you for your consideration of this matter.

Sincerely,



David Swinford

State Representative

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FILE # RQ-00148-GA  
I.D. # 43419

RE: Request for opinion regarding legal authority to refund taxes on certain travel trailers in 2002 and 2003.

Salutations Attorney General Greg Abbott:

I seek your opinion on a matter pursuant to TEX. GOV'T CODE §402.043 regarding whether there is legal authority to refund taxes imposed on certain travel trailers in 2002 and 2003.

In September, 2003, the people of the State of Texas adopted a constitutional amendment that reads as follows:

S.J.R. No. 25

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to exempt certain travel trailers from ad valorem taxation.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (d), Section 1, Article VIII, Texas Constitution, is amended to read as follows:

(d) The Legislature by general law shall exempt from ad valorem taxation household goods not held or used for the production of income and personal effects not held or used for the production of income. The Legislature by general law may exempt from ad valorem taxation:

(1) all or part of the personal property homestead of a family or single adult, "personal property homestead" meaning that personal property exempt by law from forced

sale for debt:

(2) subject to Subsections (e) and ~~(f)~~ (g) ~~and (j)~~ of this section, all other tangible personal property, except structures which are substantially affixed to real estate ~~[personal property]~~ and are used or occupied as residential dwellings and except property held or used for the production of income; and

(3) subject to Subsection (e) of this section, a leased motor vehicle that is not held primarily for the production of income by the lessee and that otherwise qualifies under general law for exemption.

SECTION 2. Subsection (j), Section 1, Article VIII, Texas Constitution, is repealed.

SECTION 3. Section 1, Article VIII, Texas Constitution, is amended by adding Subsection (i-1) to read as follows:

(I-1) TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 78th Legislature, Regular Session, 2003, authorizing the legislature to exempt from ad valorem taxation a travel trailer not held or used for the production of income and expires January 1, 2005.

(b) The amendment to Section 1(d), article VIII of this constitution, takes effect January 1, 2004, and applies only to a tax year that begins on or after January 1, 2002. The repeal of Section 1(j), article VIII of this constitution, takes effect January 1, 2004.

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to authorize the legislature to exempt from ad valorem taxation travel trailers not held or used for the production of income."

In addition, the legislature enacted amendments to the Property Tax Code to implement this constitutional amendment.

S.B. No. 510

#### AN ACT

relating to the exemption of certain travel trailers from ad valorem taxation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 11.14, Tax Code, is amended



to read as follows:

(a) ~~A [Except as otherwise provided by this subsection, a] person is entitled to an exemption from taxation of all tangible personal property, other than manufactured homes, that the person owns and that is not held or used for production of income. This subsection does not exempt from taxation a structure that a person owns which is substantially affixed to real estate and is used or occupied as a residential dwelling [travel trailer, as defined by Section 11.142, that a person owns].~~

SECTION 2. Section 11.142, Tax Code, is repealed.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003. This Act applies to taxes imposed for the tax year 2002 and thereafter.

The bill and constitutional amendment were passed to change the law that was in effect in 2002 and 2003. The law in effect at that time was TEX.CONST.art.8, §1(j), TEX.TAX CODE § 11.14, and TEX.TAX CODE § 11.142, which read as follows:

Article 8, § 1:

(j) The Legislature by general law may authorize a taxing unit, other than a school district, to exempt from ad valorem taxation by the taxing unit, a travel trailer, as defined by the Legislature, regardless of whether the travel trailer is real or personal property, that:

(1) on January 1 of the applicable tax year is registered in this state in compliance with the laws of this state relating to the registration of vehicles; and

(2) is not held or used for the production of income.

TEX. TAX CODE § 11.14

(a) Except as otherwise provided by this subsection, a person is entitled to an exemption from taxation of all tangible personal property, other than manufactured homes, that the person owns and that is not held or used for production of income. This subsection does not exempt from taxation a travel trailer, as defined by Section 11.142, that a person owns.

TEX.TAX CODE § 11.142

Sec. 11.142. TRAVEL TRAILERS. (a) In this section "travel trailer" means a house trailer-type vehicle or a camper trailer, regardless of whether the vehicle is affixed to real property, that:

(1) is less than 400 square feet in area; and  
(2) is designed primarily for use as temporary living quarters in connection with recreational, camping, travel, or seasonal use and not as a permanent dwelling.

(b) The governing body of a taxing unit, other than a school district, by official action of the body adopted in the manner required by law for official action may exempt from taxation a travel trailer that a person owns, regardless of whether the travel trailer is real or personal property, if:

(1) on January 1 of the applicable tax year, the travel trailer is registered in this state in compliance with Chapter 502, Transportation Code; and

(2) the travel trailer is not held or used for the production of income.

In compliance with the law in existence in 2002 and 2003, the appraisal district for Randall County appraised travel trailers for school district purposes only. The trailers were appraised regardless of whether the trailer was affixed to real property as long as the travel trailer was registered in this state in compliance with Chapter 502, Transportation Code and was not held or used for the production of income. Now, some of those travel trailers are exempt and some of them are not.

#### Legislative Intent

Given the language of the bill and the constitutional amendment, there can be little doubt that this change in law was to be given retroactive intent. Additional support for this conclusion may be found in the bill analysis for House Bill 510, which stated:

**SECTION 3. Effective date: upon passage or September 1, 2003.**

**Makes application of this Act retroactive to taxes imposed for the tax year 2002 and thereafter. (Bill analysis attached as an exhibit.)**

If the legislature intended that this change in law be retroactive to 2002, then it can be reasonably inferred that refunds were contemplated even though no provision was explicitly made for refunds. However, there is additional evidence that the legislature contemplated that refunds would be made.

When introducing his bill and constitutional amendment to the Senate Finance Committee (March 12, morning session), Senator Staples made the following statement after explaining that the imposition of a school tax on travel trailers in the previous session was a mistake:

Senator Staples: "Most of the appraisal district did not even assess those. There are some that did. This would require providing that back to the taxpayers."

Chair: "So it does require refunds?"

Senator Staples: "Yes, sir."

Since it appears that the legislature contemplated refunds, but did not provide an explicit mechanism for refunding taxes, is there some other provision in the Property Tax Code that provides authority for the appraisal district to correct the tax roll and for the school district to refund the taxes legally imposed on travel trailers? There appears to be none.

### The Property Tax Code

The Property Tax Code has provisions that govern the correction of the appraisal roll by the appraisal district and the subsequent correction of tax rolls by taxing units. Once an appraisal roll is certified by the chief appraiser, correction of an appraisal roll is restricted to corrections authorized by Tax Code sections 25.25, chapter 41, and chapter 42. TEX. TAX CODE ANN. § 25.25(a). Similarly, correction of a tax roll is limited to changes authorized by Tax Code sections 26.15, chapter 41 and chapter 42. Overpayments, erroneous payments, and duplicate payments may be refunded pursuant to TEX. TAX CODE § 31.11 and 31.111, but these provisions deal only with erroneous payments that are not the result of corrections of the appraisal roll.

Section 25.25 of the Tax Code addresses a number of corrections (see 25.25(b), (c), and (d)), but does not authorize the correction of an exemption. See *Bexar Appraisal District v. Wackenhut Corrections Corporation*, 52 S.W.3d 795 (Tex.App.–San Antonio 2001, no pet.) and see *Wackenhut Corrections Corporation v. Bexar Appraisal District*, 100 S.W.3d 289 (Tex.App.–San Antonio 2002, no pet.)

Chapters 41 and 42 deal with normal appeals filed within strict statutory deadlines. Exemptions may be appealed to the administrative level (Chapter 41) and to court (Chapter 42), however, such appeals must have been perfected by filing a protest with the appraisal review board and then taking the matter to court. Both of these options must have been exercised early during the year in which the exemption arose. The timeline for filing a chapter 41 or 42 appeal has passed.

The Property Tax Code does not provide an explicit statutory mechanism for the correction of an exemption not granted in a prior year. Nonetheless, we contend that no such explicit mechanism is necessary in light of the specific language in the constitution and the statute.

The Statute and Constitutional Amendment are Sufficient to Exempt the

## Property

The primary rule of statutory interpretation is to look at the intent of the legislature and construe the statute so as to give effect to that intent. *Fleming Foods of Tex., Inc. v. Rylander* 6 S.W.3d 278, 284 (Tex.1999); *Union Bankers Ins. Co. v. Shelton*, 889 S.W.2d 278, 280 (Tex.1994). To determine legislative intent, a court may consider the language of the statute, the legislative history, the nature and object to be obtained, and the consequences that would follow from alternate constructions. *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex.2001); *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 380 (Tex.1998).

In the present case, the purpose of this statute and constitutional amendment was to correct an action of the previous legislature which inadvertently made all travel trailers subject to property taxation by schools, when most legislators and voters thought they were exempting travel trailers. The bill analysis for SB 510 and SJR 25 both read as follows (in part):

During the 77th Legislative Session, the legislature created an exemption for travel trailers from ad valorem taxes except at the school district level. Upon adoption of the constitutional amendment in November 2001, it became apparent that what was thought to be an exemption was actually adding individuals to the tax roles. S.B. 510 repeals what was passed during the 77th Session and also authorizes the legislature to exempt from ad valorem taxation certain travel trailers not held or used for the production of income, if the accompanying constitutional amendment is approved by voters.

Therefore, the present statute and constitutional amendment were intentionally made retrospective to 2002 in order to exempt the travel trailers that had previously been taxed. In order to give effect to the intent of the legislature and of the people in adopting the present constitutional amendment and statute, it is necessary that the travel trailers that are not substantially affixed to real estate and used as residences in 2002 and 2003, be exempted for those years.

Since a retroactive constitutional amendment and statute provide that property previously taxed for 2002 and 2003 are now to be exempted effective for the 2002 tax year and thereafter, it is clearly the legislative intent that certain of the travel trailers taxed by schools should now be exempt. Even in the absence of specific procedural mechanisms, the appraisal roll should be corrected and the taxes refunded to be consistent with the constitution and statutory law governing this matter.

The courts of this state have previously held that a constitutional amendment and enabling statutes may combine to be sufficient to be considered to be "self-

executing" despite conflicts with other, inconsistent law. *Steinhagen v. Eastham*, 233 S.W. 660, *affirmed* 111 Tex. 597, 243 S.W. 457 (1922).

In the present case, the constitutional amendment is clearly not self-executing. It specifically authorizes the legislature to exempt travel trailers not used for the production of income and not substantially affixed to real estate and used for residential purposes. The legislature has done so in enacting SB 510. The constitutional amendment authorized the exemption as of 2002 even though the amendment was enacted in 2003.

In compliance with the law in existence in 2002 and 2003, the appraisal district appraised travel trailers for school district purposes only. The trailers were appraised regardless of whether the trailer was affixed to real property as long as the travel trailer was registered in this state in compliance with Chapter 502, Transportation Code and was not held or used for the production of income. Now, some of those travel trailers are exempt and some of them are not.

Some school districts have expressed concerns about the legal authority to refund taxes that were imposed in accordance with law. They note that the taxes were voluntarily paid and that the Property Tax Code does not contain any mechanism by which property legitimately taxed in prior years may be removed from the tax rolls. The Property Tax Code only permits appraisal districts to eliminate certain errors in prior years' tax rolls pursuant to TEX. TAX CODE §25.25 and to remove exemptions that have been erroneously allowed in previous years pursuant to TEX. TAX CODE §11.43(h) and (i). There is no administrative mechanism to authorize the correction of tax rolls to exempt a property that was taxable at the time, but is now exempt for those years.

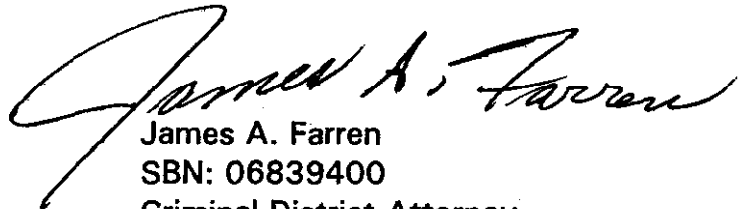
Consequently, my questions to you are:

- 1) may a school district legally refund taxes on travel trailers that were taxable by law for 2002 and 2003 pursuant to the recently enacted constitutional amendment and statute that exempts travel trailers effective January 1, 2002?
- 2) by what authority should the appraisal district act to exempt such property for 2002 and 2003?
- 3) if the appraisal district is required to exempt such property for 2002 and 2003, what procedure should the appraisal district and tax assessor/collector take to remove the property from the tax roll and to refund the money?

- 4) if the school district is not the tax assessor/collector, should the tax assessor/collector be the entity to process the refunds from the current year collections for the school district?

Thank you for your assistance in this matter. Please feel free to call with any questions you might have concerning this issue.

Respectfully submitted,



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# EXHIBIT A

**S.B. 510 78(R) BILL ANALYSIS**

**S.B. 510**

**By: Staples**

**Local Government Ways and Means  
Committee Report (Unamended)**

**BACKGROUND AND PURPOSE**

During the 77th Legislative Session, the legislature created an exemption for travel trailers from ad valorem taxes except at the school district level. Upon adoption of the constitutional amendment in November 2001, it became apparent that what was thought to be an exemption was actually adding individuals to the tax roles. S.B. 510 repeals what was passed during the 77th Session and also authorizes the legislature to exempt from ad valorem taxation certain travel trailers not held or used for the production of income, if the accompanying constitutional amendment is approved by voters.

**RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

**ANALYSIS**

**SECTION 1.** Amends Section 11.14(a), Tax Code, to provide that this subsection does not exempt from taxation a structure that a person owns which is substantially affixed to real estate and is used or occupied as a residential dwelling. Deletes language which provides that a travel trailer is not exempt from taxation.

**SECTION 2.** Repealer: Section 11.142, Tax Code (Travel Trailers).

**SECTION 3.** Effective date: upon passage or September 1, 2003.

Makes application of this Act retroactive to taxes imposed for the tax year 2002 and thereafter.

**EFFECTIVE DATE**

Upon passage or September 1, 2003.