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MAYES MIDDLETON



STATE REPRESENTATIVE • DISTRICT 23

April 7, 2020

The Honorable Ken Paxton
Texas Attorney General
300 W. 15th Street
Austin, TX 78701

Dear General Paxton:

This letter serves as a formal request of your opinion regarding the equalization process under the Texas Tax Code and Constitution. More specifically, under the current public health emergency, will property owners be afforded true due process and not be dissuaded from availing themselves of their statutory and Constitutional right to protest an action that increases their tax liability?

Background

The Texas Constitution, Article 8, Section 1(a) requires taxation to be equal and uniform. Section 1(b) requires all real and tangible personal property to be taxed in proportion to its value (which shall be ascertained as provided by law). Section 18(a) establishes that the Legislature shall provide for equalizing the value of property and at (c) provides for boards of equalization (the Appraisal Review Board). Section 20 provides that “No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value nor shall any Board of Equalization of any governmental or political subdivision or taxing district within this State fix the value of any property for tax purposes at more than its fair cash market value...” Both Section 18 and 20 assign the Legislature the authority to pass necessary laws for the proper administration of these Constitutional rights and Section 23(b) provides that “Administrative and judicial enforcement of uniform standards and procedures for appraisal of property for ad valorem tax purposes shall be prescribed by general law.”

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The Texas Tax Code requires county appraisal districts to deliver notice of any change in an appraisal record that adversely impacts a property owner. This may include an increase in value that results in an increase in tax liability, removal or denial of an exemption, or other situations. The Texas Comptroller, on his website under Property Tax Assistance, Appraisal Protests and Appeals <https://comptroller.texas.gov/taxes/property-tax/protests/index.php> states, “One of your most important rights as a taxpayer is your right to protest to the appraisal review board (ARB)...” Section 41 of the Texas Tax Code specifically defines guidelines and provides remedies for property owners to protest and, at Section 41.44 requires protests to be initiated not later than May 15th or 30 days after the date of an appraisal notice is delivered (whichever is later).

Most county appraisal districts (CADs) provide an opportunity for an informal process in which a property owner meets with a district appraiser and information is exchanged that often results in reductions (particularly if physical depreciation or maintenance items exist). This type of meeting could have the potential of further spreading the coronavirus.

To avoid this situation, it is possible for property owners to file a protest electronically as Section 41.415 of the Tax Code requires CADs that maintain an internet website to implement a system for electronic filing, providing an opportunity to settle informally any value differences. Although not every property owner may wish to utilize this process, it would help enable the equalization process to proceed normally and place fewer people in danger. Of course, not all property owners have access to the internet and some taxpayers are unable to use the CAD website even with home internet access.

In the event a property owner rejects a settlement offer, Section 41.12(a)(1) requires the appraisal review board (ARB) to hear and determine timely filed protests. Section 41.41(a) states, “A property owner is entitled to protest before the appraisal review board...” specific actions including any action that adversely affects the property owner (such as a value increase). Section 41.44(c) provides that a property owner is entitled to a hearing and determination of the protest. Section 41.45 requires the appraisal review board to schedule a hearing and at 41.45(b) provided that a property owner is entitled to appear and offer evidence and also provides for a hearing to be conducted via telephone. Specific requirements and conditions are outlined for this process, including the requirement that evidence provided for an over-the-phone protest must be presented by a notarized paper affidavit. Despite the ability to have a hearing by telephone, Section 41.45(n) makes it clear that a property owner does not waive the right to appear in person simply by submitting an affidavit of evidence or by electing to appear by telephone conference call.

Another option may be available by utilizing Section 41.45(o) of the Tax Code and the Texas Administrative Code, Title 34, Part 1, Chapter 9, Subchapter D, Rule 9.805(d)ⁱⁱ which allow an appraisal district, if using audiovisual equipment at a hearing, to provide equipment of a similar kind or type for use by the property owner (or owner's agent). This may allow for ARB hearings to be conducted via video conferencing but will require CADs to provide the same or comparable equipment to a property owner utilizing this method to formally protest their value. Additionally, the appraisal district must provide timely notice of the type, kind, and character of audiovisual equipment the appraisal district makes available in the appraisal review board hearing procedures.

Sec. 41.46ⁱⁱⁱ outlines specific requirements for a notice of hearing but does not provide for the appraisal review board to specify methods of conducting the hearing as those requirements are the duty of the chief appraiser to define under Sections 41.11(b), 41.41(b)(2) and 41.70^{iv}.

Legal Questions:

1. Do Section 41.45(o) of the Tax Code and the Texas Administrative Code, Title 34, Part 1, Chapter 9, Subchapter D, Rule 9.805(d) provide the option for ARB hearings to be conducted via video conferencing?
2. If so, will CADs be required to provide the equipment to property owners and must each property owner be notified by the May 15 deadline of exactly what the protest procedure will be including a specific description of the "type, kind, and character" of audiovisual equipment the appraisal district will make available for protests?
3. Does limiting protests to online filing and limiting protest hearings to only telephone or audiovisual equipment methods insure statutory and due process rights of Texas property owners, as well as satisfying Texas Tax Code notice requirements?
4. In what form and when is notice required to be given by CADs or ARBs of the limitations during the equalization process this Spring if electronic filing and video conferencing are mandatory? Is notice indicating that telephone or online audiovisual protest hearings are available sufficient notice under the Tax Code when they are the only options made available to property owners?
5. If notice is required of the form of protest that will be in the best interest of the health and safety of the public, has that time passed?

6. Are Tax Code notice requirements met if the protest procedure is listed on the CAD website, but not mailed to each property owner, or emailed to property owners who have personally opted into e-mail notices?
7. Tax Code Section 41.11(c) nullifies the change in records for failure to deliver notice. Would, therefore, all CAD appraisal increases be nullified by the failure to satisfy any one of the statutory notice requirements?

If the statutory and Constitutional requirements of the property tax protest process are not followed for tax year 2020, noticed values and thereby taxpayer rights to due process protections are denied, must the county appraisal districts then default to the most recent tax year, 2019, in which statutory and due process requirements were met?

Thank you for your opinion on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Mayes Middleton", with a stylized flourish at the end.

Mayes Middleton

Co-Chair of the Joint Interim Committee to Study a Coastal Barrier System

ⁱ Sec. 41.45(b) A property owner initiating a protest is entitled to appear to offer evidence or argument. A property owner may offer evidence or argument by affidavit without personally appearing and may appear by telephone conference call to offer argument. A property owner who appears by telephone conference call must offer any evidence by affidavit. A property owner must submit an affidavit described by this subsection to the board hearing the protest before the board begins the hearing on the protest. On receipt of an affidavit, the board shall notify the chief appraiser. The chief appraiser may inspect the affidavit and is entitled to a copy on request.

(b-1) An appraisal review board shall conduct a hearing on a protest by telephone conference call if: (1) the property owner notifies the board that the property owner intends to appear by telephone conference call in the owner's notice of protest or by written notice filed with the board not later than the 10th day before the date of the hearing; or (2) the board proposes that the hearing be conducted by telephone conference call and the property owner agrees to the hearing being conducted in that manner. (b-2) If a property owner elects to have a hearing on a protest conducted by telephone conference call, the appraisal review board shall: (1) provide a telephone number for the property owner to call to participate in the hearing; and (2) hold the hearing in a location equipped with telephone equipment that allows each board member and the other parties to the protest who are present at the hearing to hear the property owner offer argument. (b-3) A property owner is responsible for providing access to a hearing on a protest conducted by telephone conference call to another person that the owner invites to participate in the hearing. (c) The chief appraiser shall appear at each protest hearing before the appraisal review board to represent the appraisal office.

ⁱⁱⁱTAC Title 34, Part 1, Chapter 9, Subchapter D, Rule 9.805(d) Audiovisual equipment requirements. If the appraisal district uses audiovisual equipment at appraisal review board hearings, the appraisal district shall make available this same equipment or audiovisual equipment of the same general type, kind, and character for use at the hearing by the property owner or the owner's agent. The equipment made available shall be capable of reading and accepting the same types of file formats and devices the appraisal review board has determined are generally accepted under subsection (c) of this section. In the alternative, property owners and their agents may bring their own audiovisual equipment for their presentation of evidentiary materials at appraisal review board hearings. If the operation of audiovisual equipment at the hearing requires access to and connection with the Internet for the presentation, the parties must provide their own Internet connection and access through their own service provider. The property owner and the owner's agent may not access the appraisal district office's network or Internet connection nor any of the appraisal district office's technology or equipment other than that made available under this section and described in the appraisal review board hearing procedures. The appraisal district and the property owner or the owner's agent may use audiovisual equipment with specifications that are different from those in the hearing procedures if the parties agree to do so in writing or verbally agree as shown in the audio recording of the hearing.

(e) Appraisal Review Board hearing procedures. The following information regarding the exchange and presentation of evidence at appraisal review board hearings shall be provided in the appraisal review board hearing procedures: (1) identification of the file format types considered acceptable under subsection (c) of this section; (2) description of the types of small, portable, electronic devices suitable for retention by the recipient considered acceptable under subsection (c) of this section; (3) notice that property owners and their agents may bring their own audiovisual equipment for their presentation at appraisal review board hearings but must provide their own Internet access, if needed, through their own service provider; (4) whether the appraisal district uses audiovisual equipment at appraisal review board hearings; (5) if the appraisal district uses audiovisual equipment at appraisal review board hearings, a description of the type, kind, and character of audiovisual equipment the appraisal district makes available for use by property owners or their agents and which meets the requirements of subsection (d) of this section; and (6) notice that property owners and their agents may not access the appraisal district office's network or Internet connection nor any of the appraisal district

office's technology or equipment other than that made available under this section and described in the hearing procedures.

iii Sec. 41.46. NOTICE OF PROTEST HEARING. (a) The appraisal review board before which a protest hearing is scheduled shall deliver written notice to the property owner initiating a protest not later than the 15th day before the date of the hearing. The notice must include: (1) the date, time, and place of the hearing; (2) a description of the subject matter of the hearing that is sufficient to identify the specific action being protested, such as: (A) the determination of the appraised value of the property owner's property; (B) the denial to the property owner in whole or in part of a partial exemption; or (C) the determination that the property owner's land does not qualify for appraisal as provided by Subchapter C, D, E, or H, Chapter 23; and (3) a statement that the property owner is entitled to a postponement of the hearing as provided by Section 41.45 unless the property owner waives in writing notice of the hearing.

(b) The board shall give the chief appraiser advance notice of the date, time, place, and subject matter of each protest hearing.

(c) If the protest relates to a taxable leasehold or other possessory interest in real property that is owned by this state or a political subdivision of this state, the board shall deliver notice of the hearing as provided by Subsection (a) to: (1) the attorney general and the state agency that owns the real property, in the case of real property owned by this state; or (2) the governing body of the political subdivision, in the case of real property owned by a political subdivision.

(d) The appraisal review board shall deliver notice of the hearing by certified mail if, in the notice of protest under Section 41.44, the property owner requests delivery by certified mail. The board may require the property owner to pay the cost of postage under this subsection.

(e) Notwithstanding Section 1.085, the appraisal review board shall deliver notice of the hearing by electronic mail if, in the notice of protest under Section 41.44, the property owner requests delivery by electronic mail and provides a valid electronic mail address.

iv Sec. 41.70. PUBLIC NOTICE OF PROTEST AND APPEAL PROCEDURES. (a) On or after May 1 but not later than May 15, the chief appraiser shall publish notice of the manner in which a protest under this chapter may be brought by a property owner. The notice must describe how to initiate a protest and must describe the deadlines for filing a protest. The notice must also describe the manner in which an order of the appraisal review board may be appealed. The comptroller by rule shall adopt minimum standards for the form and content of the notice required by this section.

(b) The chief appraiser shall publish the notice in a newspaper having general circulation in the county for which the appraisal district is established. The notice may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper and may not be published in the part of the paper in which legal notices and classified advertisements appear.

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Taxes

Property Tax Assistance

APPRAISAL PROTESTS AND APPEALS

One of your most important rights as a taxpayer is your right to protest to the appraisal review board (ARB). You may protest if you disagree with the appraisal district value or any of the appraisal district's actions concerning your property.

If you are dissatisfied with the ARB's findings, you have the right to appeal the ARB's decision. Depending on the facts and type of property, you may be able to appeal to the state district court in the county in which your property is located; to an independent arbitrator; or to the State Office of Administrative Hearings (SOAH).