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## The Storm Rages On: How Best to Obtain Texas Property Tax Reductions in a Turbulent Economic Climate

As we navigate the waters of these tough economic times, appraisal districts faced with massive city, school and county revenue losses caused by declining property values will most likely try to stem the tide by not voluntarily lowering taxpayers' 2010 property values to their fair market values. Meanwhile, property owners struggle to reconcile the aftermath of declining occupancy rates, the bid/ask spread, and frozen financial markets with their property's value as appraised by their local appraisal district.

In anticipation of the widening gap between Texas appraisal districts' 2010 valuations and properties' fair market values, what follows is a brief toolkit to use in preparing for the good fight.

### Appraisal Issues

The stagnancy of real estate markets over the last year has lead to a drought in comparable sales data. However, capitalization rate valuation of income producing property can be an extremely helpful alternative to the market data comparison method of appraisal. As cap rates increase, the adverse impact on property values (and thus lowering of property taxes) can be significant. For example, assume a property produces an annual net cash flow of \$100,000. If, for example, the cap rate changes from 6 percent to 11 percent, the property's value would change from approximately \$1.7 million to approximately \$900,000, *all of which could be demonstrated without any comparable sales data.*

### Strategic Rendering

"Rendering" is the process whereby a taxpayer notifies the appraisal district of the property it owns in the appraisal district. Each taxpayer is required to report on its rendition statement either (i) the taxpayer's estimate of market value of its property, or (ii) such property's original cost and year of acquisition. Rendering is generally required only for business personal property but taxpayers can voluntarily render commercial and residential real property. Rendition statements should be prepared extremely carefully because they have the potential to be very effective tools in framing valuation issues (but can be litigation nightmares for taxpayers if prepared casually because they can be used by appraisal districts against taxpayers). Key issues for taxpayers to consider with respect to rendition statements are (a) whether to report its property's cost or value, (b) how the taxpayer determines market value of its property (being mindful of serious penalties for fraudulent or evasive valuations), (c) whether to voluntarily render real property, and (d) where to report tangible personal property that is not permanently located in one tax jurisdiction. *Rendition statements and property reports for this year are due April 15, 2010 with an extension to May 15 available upon written request (unless the rendition relates to property that has lost its exemption or for which an exemption application is denied, in which case the property owner has 30 days following the termination or denial to render the property).*

### Tax Protests and Hearings

The appraisal district will send a taxpayer a notice of appraised value for a property if the appraised value of such property is greater than (i) the value asserted by the taxpayer on its rendition statement or (ii) the property's appraised value for last year. If the appraised value is not acceptable, a taxpayer must timely file a protest in order to challenge the appraisal. *Generally, a tax protest is timely if it is filed before the later of May 31, 2010 (April 30, 2010 for homestead property) or 30 days following delivery to the taxpayer of the relevant notice of appraised value.*

Effective this year certain larger appraisal districts are required to implement a system that allows certain homestead property owners to proceed with their protest electronically.

The tax protest process usually gives taxpayers two opportunities to resolve a property tax dispute, once at a settlement meeting before the hearing and the other at the hearing. Frequently, a taxpayer's best shot to settle favorably the dispute before filing suit is at the settlement meeting; this is because the hearing is resolved by members of the appraisal review board, lay people appointed by the appraisal district board of directors. There are a host of issues to consider at the protest stage, including (a) whether to obtain an appraisal for settlement discussions, (b) making sure the taxpayer's protest includes all possible objections (one objection often overlooked is unequal appraisal, i.e., the taxpayer's property may be taxed at market value, but it is being taxed unfairly because other similar properties are being taxed at below market values), (c) how best to sell the taxpayer's case at the settlement conference, and (d) if the case is not settled before the protest hearing, whether the taxpayer should appear at the protest hearing by affidavit (instead of in person) – with the goal being saving time and money for the litigation stage.

### Litigation

If a taxpayer's protest is not resolved favorably, the taxpayer may file suit to challenge the determination. The taxpayer generally must file suit within 60 days following the date the taxpayer receives written notice of the appraisal review board's determination of the protest. *A taxpayer's bargaining power generally increases at the litigation stage because of several factors, including the arbiter being an unbiased judge or jury, the appraisal district's risk of paying the taxpayer's attorneys fees and the appraisal district sometimes being overwhelmed by a heavy property tax litigation docket, a trend in 2009 expected to continue through 2010. Discovery is particularly important in property tax cases.* With the right inquiries, taxpayers can access numerous nuggets in discovery, especially given the multitude of disputes the appraisal district has likely battled concerning properties similar to a taxpayer's property. Conversely, taxpayers should be wary of internal communications and outside appraisals that might support a higher value (for example, an appraisal obtained for a potential lender). We believe that it is often beneficial for a taxpayer to obtain an appraisal of the property early in the litigation process because a quality appraisal can encourage the appraisal district to settle.

If you have any questions or would like to discuss your property tax matters, please contact any of the attorneys below, each of whom has extensive experience with property tax issues. We would be very pleased to discuss your matter with you.

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