

R1800.6
A 7 13
12:6

Government Publications
Texas State Documents

AUG 23 1991 ✓

Depository
Dallas Public Library

TEXAS RESEARCH LEAGUE

ANALYSIS

PROPERTY TAX LEGISLATION OF THE 72nd LEGISLATURE

Since the property tax is at once the single largest source of state and local government tax revenue and the tax most disliked by taxpayers, it is only natural that it should receive considerable attention whenever the legislature meets. The recently concluded legislative session proved to be no exception as more than 30 pieces of legislation were adopted dealing with the property tax and its administration. This *Analysis* issue briefly highlights some of the more significant features of the new laws. An important proposed constitutional amendment authorizing certain local-option exemptions is summarized in the box below.

PUBLIC SCHOOL FINANCE

The appropriate use of the property tax to fund public schools was at the core of the Supreme Court's decision holding the current financing scheme unconstitutional. Consequently, perhaps the most significant changes in the property tax came

as part of the legislature's redesign of public school finance in SB 351 as amended by HB 2885.

County Education Districts. The heart of the new school finance plan is the creation of 188 county education districts (CEDs), a new taxing unit created solely to

AUGUST 10 CONSTITUTIONAL AMENDMENTS BALLOT

1. *"The constitutional amendment to allow the voters of a county education district to adopt certain exemptions from the district's ad valorem taxation for residence homesteads and to provide for the taxation of certain tangible personal property."*

Proposition 1 would make the property tax exemption policy of the newly created county education districts (CED) consistent with that of other taxing jurisdictions. At the same election, voters in each CED will be asked to approve (contingent on passage of the amendment) exemptions from CED taxes for (1) up to 20% of the value of residence homesteads (not less than \$5,000), and (2) \$10,000 of the value of residence homesteads of the elderly or disabled. Also at the same election, voters may approve CED taxation of non-income producing tangible personal property (primarily boats, aircraft and motor homes) which would otherwise be exempt without such action.

2. *"The constitutional amendment providing for the issuance of general obligation bonds to provide educational loans to students."*

Proposition 2 would authorize the Higher Education Coordinating Board to issue up to an additional \$300 million of state general obligation bonds to replenish the college student loan program.

Volume 12
Number 6
June
1991

levy a portion of school property taxes. Most of the CEDs (157) include only one county, but 97 counties are combined into 31 CEDs of two or more counties so that no CED has more than \$280,000 of property wealth per weighted student. The legislature is responsible for making future boundary changes necessary to maintain this standard.

Each CED is governed by a board of trustees composed generally of one trustee from each school district within its boundaries. The CED is strictly a taxing mechanism, and authority to manage the public schools is retained by each local school district's board of trustees.

CEDs that encompass more than one county will use the property appraisals of each appraisal district in which one of its component school districts participates. Unless the CED board of trustees contracts otherwise with one or more appraisal districts or taxing units, each component school district is responsible for assessing and collecting CED taxes in their respective district.

Tax Rates. Property taxes levied by the CEDs will be combined with state aid to fund the total cost of the foundation school program (Tier 1). The Commissioner of Education will calculate the amount of property taxes which each CED must raise as its share of foundation program costs (local fund assignment, LFA). The CED then will be required to adopt the tax rate necessary to raise this LFA.

The Tier 1 taxes collected are to be distributed to component school districts on the basis of each district's share of the CED's taxable property, with the proviso that no district may receive funds in excess of its foundation program costs. Thus, some districts (the very wealthiest) will contribute more to the LFA than they receive from the CED.

The Tier 1 rates mandated by the new law increase from \$0.72 per \$100 of value in 1991-92 to \$1.00 per \$100 in 1994-95. Thus, each CED must adopt a tax rate that raises, when applied to

current year tax roll values, an amount equal to \$0.0072 times taxable values for the prior year as determined by the State Property Tax Board (SPTB). Since SPTB values, in addition to applying to a different year, do not account for local option exemptions and since estimated collection ratios must be accounted for, actual CED tax rates may be significantly higher than the mandated \$0.72 rate. See sample calculation in the accompanying box.

All of the tax rates specified in the new law are structured in a similar fashion to take into account taxes that probably will not be collected during the year. In general, these so-called "effective collection tax rates" are all determined by dividing total tax collections by SPTB values, and multiplying by 100. Thus, just as in Tier 1, actual tax rates almost always will be higher than the effective collection tax rates specified in the law.

In addition to Tier 1 taxes levied by CEDs, local school districts can impose Tier 2 and 3 taxes. In Tier 2, each district will have the option to levy additional taxes for enrichment and facilities, and the state will guarantee a specified yield per penny of tax rate up to a maximum of \$0.45 (not to exceed \$0.20 of which may be used to pay for facilities). The guaranteed yield increases from \$21.50 per penny per weighted pupil in 1991-92 to \$28 in 1994-95. If local resources do not generate these guaranteed amounts, state funds will be used to make up the shortfall. Wealthy districts which raise more than the guaranteed amounts are allowed to keep the excess.

Tier 2 and 3 tax collections for 1991-92 together may not exceed an amount greater than \$0.0078 times SPTB values for 1990-91. So that combined CED and local school district tax rates will not exceed a total of \$1.50, the school district cap falls (in conjunction with the rise in CED tax rates) from \$0.78 to \$0.50 for 1994-95. Thus, the allowable tax rates for unequalized enrichment (Tier 3) will fall from \$0.33 (\$0.78 minus \$0.45) in 1991-92 to \$0.05 (\$0.50 minus \$0.45) in 1994-95.

Once again, these limits are based on collections, not a rate as has been used in the past.

A school district may exceed the \$0.78 rate limit if additional funds are necessary to service bonds authorized before 4/1/91 and issued before 9/1/92. Prior to the issuance of any additional bonds, a district must demonstrate to the attorney general a projected ability to service all bonds within specified tax rate limits. Subsequently, however, a district may exceed the limit if necessary to service outstanding debt in the future without reducing maintenance and operations expenditures.

Revenue Limits. A floating overall cap is included in an attempt to protect realized gains in equalization, but in practice this complicated revenue limit may be less than completely effective if it is implemented as currently interpreted. Districts exceeding the limit are given a one-year grace period before required tax rate reductions have to be made. Since a new limit is to be calculated each year by the Commissioner of Education, the one-year grace period may operate to effectively negate the requirement for districts that are over the limit to reduce their tax collections in the future.

The current 8% tax rate increase limit for purposes of triggering a potential rollback election has been changed to a flat \$0.08 limit. In addition, the provision allowing districts to exclude from the rollback limitation any tax rate necessary to maximize state aid has been repealed. However, taxes necessary to offset a reduction in total revenue as certified by the Commissioner of Education will be excluded from the rollback limitation.

From 1991 through 1994, school districts are required to publish, prior to adopting a tax rate (and include in tax bills), a specified "notice of comparable rates and revenues". This notice shows the minimum required CED tax rate, the revenue per student that would be generated by last year's tax rate both under prior law and under the new law, and the proposed tax rate and the

1991-92 CED Tax Rate Calculation

Below is an example of how the required 1991-92 Tier 1 (local fund assignment) tax rate will be calculated for a hypothetical CED that includes four school districts.

Step 1: Sum the 1990 SPTB property values for the component school districts:

District 1	\$7,250,000,000
District 2	5,625,000,000
District 3	8,437,500,000
District 4	1,187,500,000
Total 1990 Values	\$22,500,000,000

Step 2: Multiply total 1990 values by the Tier 1 required rate (\$0.72/\$100) to determine the total revenue required to fund the CED local fund assignment:

$$\$22,500,000,000 \times \$0.0072 = \$162,000,000$$

Step 3: Divide the total revenue required by the expected collection rate - assumed in this example to be 96% (this step takes into consideration the amount of taxes expected to be lost due to delinquencies and to tax freezes on elderly-owned homesteads):

$$\$162,000,000 / .96 = \$168,750,000$$

Step 4: Sum the 1991 Appraisal District taxable values for the component school districts (these values vary from those in Step 1 [a] because of the different tax year, and [b] because of local-option exemptions):

District 1	\$6,500,000,000
District 2	5,000,000,000
District 3	7,500,000,000
District 4	1,000,000,000
Total 1991 Values	\$20,000,000,000

Step 5: Divide adjusted amount of revenue required (step 3) by the total 1991 tax roll values (step 4) to determine 1991 CED tax rate:

$$\$168,750,000 / \$20,000,000,000 = .0084375$$

or

$$\$0.84375 \text{ per } \$100 \text{ of taxable value}$$

revenue per student it will provide. In addition, a statement must be included that state law does not require school districts to adopt taxes above the CED rate nor to adopt a rate that maximizes the receipt of state funds.

Exemptions. As detailed in the box on page 1, a constitutional amendment will be submitted to voters on August 10 authorizing existing local-option exemptions from CED taxes for certain residence homesteads and for non-income producing personal property (SJR 42).

Abatements. CEDs may not enter into property tax abatement agreements. However, tax abatement agreements entered into by school districts prior to 9/1/91 will apply to both school district and CED taxes.

Freeport. Since the constitutionally mandated deadline by which official action had to be taken in order to continue to tax freeport goods has passed, CEDs will not be able to tax such property. Generally freeport goods are defined as those which are in Texas for less than 175 days for purposes of assembly, storage, manufacture, processing or fabrication.

Market Value Study. Effective September 1, SB 984 transfers to the Comptroller of Public Accounts all the SPTB duties relative to the annual study determining the taxable property values of school districts. Also transferred to the comptroller is the responsibility for the annual evaluation of appraisal district operations as well as the performance audits of appraisal districts.

In conducting the school district value study, the comptroller is directed to review the appraisal standards, procedures and methodology used by each appraisal district to determine school property values and to test the validity of assigned taxable values using generally accepted sampling and valuation techniques. If the comptroller finds that generally accepted appraisal standards and practices were used and that the values assigned are valid, the appraisal roll is presumed to represent taxable value. Only in the absence of such a presumption is the comptroller to under-

take the job of estimating taxable values. This is a significant change from the current requirement that the SPTB make an independent determination of school district property values.

In addition, property owners whose tax liability is \$100,000 or more on any property included in the annual study may protest the comptroller's findings in an administrative hearing; such protests are currently available only to school districts. At the protest hearing, the comptroller has the burden of proving the accuracy of the findings. Further appeal to the courts continues to be available only to school districts.

If noncompliance with generally accepted appraisal standards and practices is found to exist in an appraisal district by the comptroller in two successive annual studies and the district's officials fail to take effective remedial action, the comptroller may appoint a special master to run the appraisal district until full compliance is achieved.

TAX AGENT REGULATION

In response to reported abuses by free-lance tax agents, SB 773 was adopted to require licensing and regulation of property tax consultants by the Texas Commission of Licensing and Regulation. Those affected are individuals who perform or supervise others in the performance of various services for property taxpayers, such as preparing various reports or advising on their preparation, acting as a designated agent, negotiating with the appraisal district, and providing representation at protest hearings.

The registration requirements, however, do not apply to a number of types of individuals, including, among others attorneys, CPAs, public employees, and a property owner's employees.

There are two classes of registrants - property tax consultant and senior property tax consultant. All registrants must be high school graduates over 18 years of age, pay required fees, meet all required qualifications, and establish a place of

business in the state or designate a resident agent for service of legal process.

Property tax consultants must complete 15 classroom hours of approved education courses, with at least four relating to the laws regulating property tax consulting services. To perform consulting services for compensation, a registered property tax consultant must be employed by or be associated with a senior property tax consultant.

To register as a senior property tax consultant, an individual must acquire 25 credits based on education and experience, must have performed property tax consulting services as a primary occupation for at least four of the last seven years, and must pass an approved examination testing knowledge of property tax law and administration or hold a professional designation from a non-profit trade association. If they register before 2/1/95, the exam requirement is waived for individuals with at least 25 years experience, provided the last seven have been continuous.

Registration is valid for two years and renewal is contingent on completion, during the two-year period, of at least 20 classroom hours of approved continuing education courses. Disciplinary action may be taken against registrants for gross incompetence, fraud or ethical violations. Failure to register is a Class B misdemeanor.

EXEMPTIONS AND SPECIAL VALUATIONS

In addition to the exemptions relating to school taxes, a number of other tax exemptions were either proposed or amended.

Water Corporations. In November a proposed constitutional amendment (SJR 15) will be submitted to voters authorizing the legislature to exempt property owned by nonprofit water supply or wastewater corporations if the property is necessary for and used in the acquisition, treatment, storage, transportation, sale, or distribution of water or the provision of wastewater services. Under the implementing legislation (SB 325) rates charged to customers must

be reduced to offset the amount saved by the tax exemption.

Freeport Goods in Enterprise Zones. Also on the November constitutional amendments ballot will be a proposal (SJR 39) to authorize a county, junior college district or municipality to adopt an exemption for freeport goods which are acquired or brought into an enterprise zone by a qualified business. To qualify, a firm must be actively engaged in a new business or the expansion of an existing enterprise. Official action by a governing body must be taken before April 1 of the first year in which the property would be taxable and a written agreement must be executed which states the terms and duration of the exemption. Implementing legislation (SB 772, Art. 8) lays out the appraisal procedures to be followed in determining the value of the exempted enterprise zone goods; these procedures basically track those applicable to the general freeport exemption.

Freeport Goods Definition. The statute (Sec. 11.251, Tax Code) containing the definition of freeport goods was amended by HB 1859 to simply refer to the constitutional provision (Art. VIII, Sec. 1-j). In addition to restating the constitutional language, the requirement in the original implementing act that the goods must be under the same continuous ownership was omitted.

Veterans Organization Property. Legislation (HB 30) was adopted to implement a 1989 constitutional amendment that exempted property owned by various veterans organizations. Significantly, the law provides that occasional renting of the property for other nonprofit activities will not affect its exempt status, if the rental proceeds are used solely for maintenance and improvements.

Public TV Stations. Sec. 11.18, Tax Code, lists the permissible functions which an organization must exclusively perform in order to qualify for the property tax exemption extended to charities. SB 670 adds to the list the operation of a TV station that produces or broadcasts educational, cultural, or other public interest programming

and that receives grants from the Corporation for Public Broadcasting.

Ag-Use Valuation. Wildlife management has been added to the list of activities which can qualify land for agricultural use valuation (HB 1298). The land must be used to propagate a sustaining breeding population of indigenous wild animals or to produce a harvestable supply of those animals for human use in at least two of the following ways: habitat, erosion, or predator control; supplemental water or food supply; providing shelter; or making census counts.

City Development Corporations. Pursuant to SB 376, cities in counties of over 750,000 population that have a total sales tax rate not exceeding 7.25% may create development corporations and, with voter approval, levy a 0.5% sales tax for the benefit of the corporation. Any development corporation project (as well as any leasehold interest granted by the corporation) is exempted from property taxation.

TAXPAYER APPEALS

Binding Arbitration. As provided by SB 783, a property owner now has the right to resolve an appeal of an appraisal review board order through binding arbitration. On motion of the taxpayer, the district court that would otherwise hear the appeal will appoint an impartial third party to conduct the arbitration. The arbitration award may include any remedy that the court could order and is binding and enforceable if so stipulated by the property owner or if so agreed by all parties before the award's rendition. However, an award is not binding if it results in a tax liability in excess of the amount assessed under the appealed order.

Taxpayer Information. At least 14 days before a protest hearing, the chief appraiser will be required to deliver to the property owner a pamphlet explaining available remedies and a copy of the hearing procedures, and to allow the property owner to inspect and obtain a copy of all materials that will be introduced at the hearing

(HB 201). Any information that is requested and not timely delivered to the protesting taxpayer may not be used as evidence at the hearing. In addition, failure of the chief appraiser to comply entitles the taxpayer to a postponement of the scheduled hearing.

OMNIBUS BILL

Literally dozens of changes in the Property Tax Code affecting everything from collections to appeals were made by SB 772. The following lists some of the more noteworthy changes:

- Tax collectors must remove and cancel delinquent taxes on real property after 20 years and on personal property after 10 years.
- The taxable value of the property and the tax rate must be added to the tax payment information included on tax receipts.
- If a tax bill is mailed to a mortgagee, the mortgagee must mail a copy to the property owner within 30 days.
- Notices of appraised value must be sent to any taxpayer who requests the notice in writing. Such notices are now sent only after reappraisal or ownership changes.
- Property owners denied an appraisal review board hearing may bring suit to force such a hearing to be held.
- Income and expense information related to a property that is filed with an appraisal office is confidential and not open for public inspection.
- Appraisal review board members are specifically prohibited from communicating with another person about the subject of a protest hearing.
- The amount of attorney's fees available to a protesting property owner who prevails in court is increased to the greater of \$15,000 (up from \$5,000) or 20% of the tax reduction rather than the total taxes in dispute. However, the fees awarded may not exceed the total amount of the tax reduction realized.

- Numerous changes are made which generally enhance the ability of schools and charitable organizations to qualify for tax exemptions.

MISCELLANEOUS

Open Records. The Open Records Act is amended (HB 1814) to specifically provide that any written determination letter, technical advice memorandum, or ruling in a tax matter by a governmental body with taxing authority is public information. In addition, governmental bodies are required to index such documents by subject matter and to make them available for public inspection.

Appraisal Rolls. The number of years that a chief appraiser may back-assess real property that was omitted from the roll is reduced from ten to the preceding five years (HB 507). In addition, the time limit for the appraisal review board to correct errors in the appraisal roll is extended from three to five years.

Persian Gulf Veterans. A 60-day grace period to pay delinquent taxes without incurring penalty or interest charges is provided for persons serving on active duty in the Persian Gulf. The grace period begins when the person ceases active duty, returns home for more than ten days, or resumes non-active duty status in the reserves, or after the governor issues a proclamation stating that hostilities have ended.

Tax Liens. A recorded restrictive covenant running with the land or a valid easement of record is made superior to a tax lien by SB 1426. In addition, the title vested by a tax sale also is subject to such instruments if they were recorded prior to January 1 of the year the tax lien arose.

County Tax Rate. Taxing jurisdictions currently are required to adopt a tax rate by September 1 or as soon thereafter as practicable. An exception to this rule has been added for counties receiving an appraisal roll after August 22 (SB 293). Any such county will have 30 days from the receipt of the roll to adopt a tax rate, but the

county's effective tax rate automatically will become the official tax rate if this deadline is missed.

Appraisal District Officers. The mandated county population threshold for the required appointment of a taxpayer liaison officer by the appraisal district board is increased from 80,000 to 100,000 (HB 864). In addition, this bill requires members of the appraisal district board in a county over 200,000 population bordering on a county of over 2,000,000 population and the Gulf of Mexico (Galveston County) to be a taxing unit elected officer or governing body member. As currently provided, such individuals may serve as board members in other counties.

Clerical Errors. Added to the Tax Code is a definition of clerical error which states that it means an error in transcription or calculation or an error that prevents the appraisal roll from accurately reflecting the actions of appraisal personnel (SB 514). A mistake in judgment or reasoning is specifically excluded from the definition.

In addition, a new procedure is provided for correcting appraisal roll errors on motion of either the chief appraiser or a property owner; currently a joint motion is required. An incorrect value must be more than one-third greater than the correct appraised value before the roll can be corrected and a late-collection penalty must be paid to each affected taxing unit equal to 10% of the taxes calculated on the corrected value.

IN MEMORIAM

C. I. "Stoney" Wall, a past chairman and life member of the League's board of directors, died in May in Amarillo.

Mr. Wall was a strong supporter of the League and his presence will be missed.

PUBLICATIONS

Material contained in this and all publications of the Texas Research League is intended for public use and permission is hereby granted to reproduce, cite or directly quote any information published by the League without formal request.

The League will appreciate a credit line.

For more information, and for literature published by the League on various topics, contact the Texas Research League, 512/472-3127.

Officers of the Texas Research League

J. Sam Winters Chairman	W. D. Stevens Vice Chairman
A.W. Riter, Jr. Treasurer	Gary E. Wood President

Austin Office Staff Gary E. Wood, President

Research Staff: **Robert E. Norwood**, Director of Research; **Alan E. Barnes**, **John R. Kennedy**, Senior Research Associates; **Harold Sanders**, Research Associate; **Janet Beinke**, **Jeffrey Cole**, **Anne Dunkelberg**, **Augustin Redwine**, Research Analysts; **Sarah L. Burka**, Research Librarian; **Jessica Freeman**, **Amanda Friedman**, **Sara Rusk McGonagle**, **Andrew Michael Perth**, **Joseph M. Stultz**, Research Interns

Office Staff: **Wilburn W. French**, Director of Administration; **Betty A. Flood**, Publications Manager, **Margaret White**, **Patricia Matthews**, Executive Secretaries; **Herbert Griffin**, Staff Assistant

Texas Research League
P. O. Box 12456
Austin, Texas 78711

Address Correction Requested

Nonprofit Org.
U.S. Postage
PAID
Austin, Texas
Permit No. 2104