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The Honorable Greg Abbott
Attorney General of Texas
Supreme Court Building
ATTN: Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43768-04
I.D. # 43768

OPINION COMMITTEE

Certified Mail, Return Receipt Requested

Re: Whether Section 6.025(d) of the Tax Code permits chief appraisers in overlapping appraisal districts to enter on the tax roll either the lowest market value or the lowest appraised value of the property established by the two districts, but not the lowest of both the market value and the appraised value

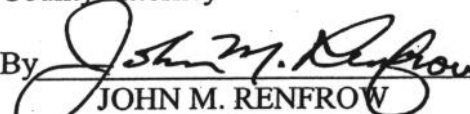
Dear General Abbott:

The Harris County Appraisal District has requested advice concerning whether TEX. TAX CODE ANN. § 6.025(d) (Vernon Supp. 2004) permits chief appraisers in overlapping appraisal districts to enter on the tax roll either the lowest market value or the lowest appraised value of the property established by the two districts, but not the lowest of both the market value and the appraised value. Please find attached a memorandum brief. Your cooperation in this matter is greatly appreciated. Should you have any questions or require further information, please do not hesitate to call.

Sincerely,

MIKE STAFFORD
County Attorney

By


JOHN M. RENFROW
Assistant County Attorney

Attachment

cc: Harris County Appraisal District

MEMORANDUM BRIEF

QUESTION PRESENTED:

Does Section 6.025 (d) of the Tax Code permit chief appraisers in overlapping appraisal districts to enter on the tax roll either the lowest market value or the lowest appraised value of the property established by the two districts, but not the lowest of both the market value and the appraised value?

INTRODUCTION:

In Harris County, the boundaries of a number of taxing units, including municipalities and school districts, lie in several appraisal districts. Pursuant to Tax Code Section 6.025 (d), some taxing units have opted not to participate in the funding of the Harris County Appraisal District or the performance of appraisals by the Harris County Appraisal District. Generally, an appraisal district's boundaries are the same as the boundaries of the county for which it has been established.¹ A taxing unit with territory in more than one county may choose to have the appraisal district for each county appraise the property in that county. Taxing units may also choose to participate in only one appraisal district, which appraises all property located within its boundaries, as well as property located in the taxing unit's territory in the other county.² Appraisal districts which have such overlapping boundaries are commonly referred to as overlapping appraisal districts.³

Since property appraisal is an inexact process, it is common for the same property to be appraised differently by the overlapping appraisal districts. When the appraisers in the overlapping appraisal districts establish different values, the property owner often files a protest in the appraisal district which set the higher value, citing the lower appraisal as support for a reduction in value. The likelihood of having differing values is compounded when an Appraisal Review Board changes a value during a protest hearing.

Such conflict creates confusion and leads to inconsistent results. The legislature first attempted to remedy the situation during its Regular Session in 1995 by the addition to the Tax Code of Section 6.025.⁴ In its original form, Section 6.025 stated as follows:

(a) The chief appraisers of two or more appraisal districts that have boundaries that include any part of the same territory shall enter into a written understanding that, with respect to the property located in the territory in which each of the districts has appraisal jurisdiction:

¹ TEX. TAX CODE ANN. §§ 6.01 and 6.02 (a) (Vernon 2001).

² TEX. TAX CODE ANN. § 6.02 (b) (Vernon Supp. 2004).

³ The title of Section 6.025 is "Overlapping Appraisal Districts; Joint Procedures."

⁴ TEX. TAX CODE ANN. § 6.025 (Vernon Supp. 2004).

- (1) permits each appraiser to have access to and use information appropriate to appraisals, including a record of an exemption application, rendition, or other property owner report;
 - (2) eliminates differences in the information in appraisal records of the districts, including information relating to ownership of property, the description of property, and the physical characteristics of property; and
 - (3) contains the form of a written advisory prescribed by the comptroller informing the owners of property that reports and other documents required of the owners must be filed with or sent to each appraisal district and that the owners should consider sending any other document relating to the property to each appraisal district.
- (b) The advisory described by Subsection (a)(3) may be sent to a property owner having property appraised by each district when the notice of appraised value required by Section 25.19(a) is sent.
- (c) The chief appraisers of appraisal districts described by Subsection (a) shall coordinate their appraisal activities so as to facilitate the appraisal of the same property appraised by each district at the same value.⁵

Subsections (a), (b), and (c) of Section 6.025 have remained essentially unchanged, even though Section 6.025 has been amended three times since 1995. In 1997, the following subsections were added:

- (d) If a chief appraiser approves an application for a residence homestead exemption under Section 11.13 or an application under that section for a residence homestead exemption for an individual who is disabled or 65 years of age or older, the chief appraiser of every other appraisal district in which the property is located shall recognize that exemption and enter the exemption on the appraisal rolls of the appraisal district.
- (e) If on May 1 all the chief appraisers of the appraisal districts described by Subsection (a) in which a parcel or item of property is located are not in agreement as to the appraised value of the property, on that date each of the chief appraisers shall enter as the value of the property on the appraisal records of the appropriate appraisal district the value that is calculated by:
- (1) adding the appraised value of the property as determined by each chief appraiser; and
 - (2) dividing the sum of those appraised values by the number of appraisal districts in which the property is located.
- (f) The owner of property for which the appraised value is determined under Subsection (e) is entitled to file a protest in relation to the property with the appraisal review board of any appraisal district in which the property is located. If the appraisal review board or a court on appeal of the protest determines a different appraised value for the property pursuant to the protest or appeal, the chief appraiser of every appraisal district in which the property is

⁵ Act of May 23, 1995, ch. 186, § 1, effective January 1, 1996.

located shall enter that appraised value of the property on the appraisal records of the appraisal district.⁶

During the following session of the legislature, subsections (d), (e), and (f) were repealed.⁷ No bills were introduced during the 77th Legislature to amend Section 6.025. The 78th Legislature's amendment of Section 6.025,⁸ which added subsection (d), raises the issue to be resolved in this request for opinion. The current version of Section 6.025 states as follows:

§6.025. Overlapping Appraisal Districts; Joint Procedures

(a) The chief appraisers of two or more appraisal districts that have boundaries that include any part of the same territory shall enter into a written understanding that, with respect to the property located in the territory in which each of the districts has appraisal jurisdiction:

- (1) permits each appraiser to have access to and use information appropriate to appraisals, including a record of an exemption application, rendition, or other property owner report;
- (2) eliminates differences in the information in appraisal records of the districts, including information relating to ownership of property, the description of property, and the physical characteristics of property; and
- (3) contains the form of a written advisory prescribed by the comptroller informing the owners of property that reports and other documents required of the owners must be filed with or sent to each appraisal district and that the owners should consider sending any other document relating to the property to each appraisal district.

⁶ Acts 1997, 75th Leg., R.S., ch. 1357, effective January 1, 1998. The language used in subsections (d), (e), and (f) does not appear to have been contained in any of the bills introduced in the house or senate. It was added as a floor amendment by Senator Jerry Patterson. Accordingly, there is no bill analysis regarding this amendment of Section 6.025.

⁷ Acts 1999, 76th Leg., R.S., ch. 250, effective January 1, 2000. The repeal of subsections (d), (e), and (f) is as mysterious as their appearance. Section 6.025 (e) unambiguously required chief appraisers in overlapping appraisal districts who could not agree on an appraised value by May 1 to use the average of all appraised values produced by the overlapping districts. The bill analyses for H.B. 1037 states the purpose of the repeal as follows:

Some appraisers have interpreted the former law to require each appraiser to agree on one value, rather than requiring them to average the disparate values.

H.B. 1037 requires the chief appraisers of the appraisal districts who have two or more overlapping appraisal districts to coordinate, to the extent practicable, their appraisal activities so as to encourage and facilitate the appraisal of the same property appraised by each district at the same value.

See HOUSE COM. ON WAYS & MEANS, BILL ANALYSIS, TEX, H.B. 1037, 76th Leg., R.S. (1999).

⁸ Acts 2003, 78th Leg., R.S., ch. 455, § 1, effective January 1, 2004; Acts 2003, 78th Leg., R.S., ch. 1041, § 1(a), effective January 1, 2004.

(b) The advisory described by Subsection (a)(3) may be sent to a property owner having property appraised by each district when the notice of appraised value required by Section 25.19(a) is sent.

(c) The chief appraisers of appraisal districts described by Subsection (a) shall to the extent practicable coordinate their appraisal activities so as to encourage and facilitate the appraisal of the same property appraised by each district at the same value.

(d) If on May 1 all the chief appraisers of the appraisal districts described by Subsection (a) in which a parcel or item of property is located are not in agreement as to the appraised or market value of the property, on that date each of the chief appraisers shall enter as the appraised or market value of the property on the appraisal records of the appropriate appraisal district the lowest appraised or market value of the property as determined by any of the chief appraisers. If as a result of a protest, appeal, or other action the appraised or market value of the property is subsequently reduced in any of the appraisal districts, the chief appraiser shall notify each of the appraisal districts of the reduced appraised or market value. The chief appraiser of each appraisal district shall enter that reduced appraised or market value on the appraisal records as the appraised or market value of the property. If the appraised or market value is reduced in more than one appraisal district, each chief appraiser shall enter the lowest of those values on the appraisal records.⁹

DISCUSSION:

The history of Section 6.025 establishes a clear intent on the part of the legislature to encourage, if not require, chief appraisers in overlapping appraisal districts to agree on the same value or values for individual properties. The effort appears to be unsuccessful in that the statute has been amended three times since its passage in 1995.

In most circumstances, the question of whether the legislature meant to require overlapping appraisal districts to match both appraised value and market value is academic. The Tax Code defines "appraised value" as "the value determined as provided by Chapter 23 of this code."¹⁰ Section 23.01 (a) states that "Except as otherwise provided by this chapter, all taxable property is appraised at its market value as of January 1."¹¹ Consequently, appraised value and market value are identical for most properties.

There are two major categories of property for which appraised value and market value are not identical. This impacts the tax burden on the property because the appraised value is the basis for taxation. Section 26.09 (c)¹² directs tax assessors to calculate the tax owed on a particular property by:

⁹ TEX. TAX CODE ANN. § 6.025 (Vernon Supp. 2004).

¹⁰ TEX. TAX CODE ANN. § 1.04 (8) (Vernon 2001).

¹¹ TEX. TAX CODE ANN. § 23.01 (a) (Vernon 2001).

¹² TEX. TAX CODE ANN. § 26.09 (c) (Vernon 2001).

- (1) subtracting from the *appraised value* of a property as shown on the appraisal roll for the unit the amount of any partial exemption allowed the property owner that applies to *appraised value* to determine *net appraised value*;
- (2) multiplying the *net appraised value* by the assessment ratio to determine assessed value;
- (3) subtracting from the assessed value the amount of any partial exemption allowed the property owner to determine taxable value; and
- (4) multiplying the taxable value by the tax rate. (emphasis added)

Thus, if appraised value differs from market value, the tax burden will also be different.

The most common category of property for which appraised and market value are not always identical is residential property which qualifies as a homestead. Since 1998, Tax Code Section 23.23 has provided a limitation on increases in the value of qualified residential property. For these properties, the appraised value is determined as follows:

- (a) The appraised value of a residence homestead for a tax year may not exceed the lesser of:
 - (1) the market value of the property; or
 - (2) the sum of:
 - (A) 10 percent of the appraised value of the property for the last year in which the property was appraised for taxation times the number of years since the property was last appraised;
 - (B) the appraised value of the property for the last year in which the property was appraised; and
 - (C) the market value of all new improvements to the property.

Section 23.23 (b) requires the chief appraiser to also appraise residential homesteads at their market value and to include both the market value and the value determined under Section 23.23 (a)(2) in the appraisal records. The use of the terms "market value" and "appraised value" in Section 6.025 is consistent with these definitions.

The other major category of property for which appraised and market value are not always identical is property valued under the "productivity" provisions of Subchapters D and E of Chapter 23,¹³ relating to land used for agricultural or timber purposes. As is the case with residential homesteads, the chief appraiser determines the appraised value of these properties using a mathematical formula, and the appraised value is the lower of the result of the formula or the market value of the land. The chief appraiser is then required to enter both the market value and the appraised value of the property in the appraisal records.¹⁴

For both categories of property, application of the same mathematical formula may legitimately result in different appraised values in the overlapping appraisal districts. These

¹³ TEX. TAX CODE ANN. §§ 23.51 – 23.79 (Vernon 2001 and Vernon Supp. 2004).

¹⁴ TEX. TAX CODE ANN. §§ 23.52 (e) and 23.73 (c) (Vernon 2001).

differences occur in residential property when the limitation first went into place in a year in which the overlapping appraisal districts' market values did not match. Assume, for example, that Galveston CAD appraised a home at \$110,000 and Harris CAD appraised it at \$90,000 for tax year 2000, and that no new improvements were added during the year. The Section 23.23 formula (lesser of market value or the sum of the appraised value for the last year it was appraised plus 10 percent of the appraised value times the number of years since last appraised) would require a tax year 2001 appraised value in Galveston County of the lesser of market value or \$121,000 (\$110,000 plus 10 percent) compared to an appraised value in Harris County of the lesser of market value or \$99,000 (\$90,000 plus 10 percent). If market values have increased by more than 10 percent per year for several years, the differences in appraised value will be perpetuated for many years. Additionally, under the various permutations of Section 6.025, appraisal districts generally have not been required to recognize homestead exemptions granted by another overlapping district, thus producing even greater differences in appraised values.

Likewise, one appraisal district may grant an application for agricultural or timberland valuation on the same property for which another overlapping district has denied an identical application. This happens because qualification for such special appraisals are determined by each county based on whether the land is currently producing products to the degree of intensity generally accepted in the area with intent to produce income.¹⁵ Even if applications for productivity valuations have been granted by all overlapping districts, the formula for calculating productivity appraisals uses data that is specific to the county conducting the appraisal. Agricultural appraisals use a five-step process¹⁶ and timberland appraisals use a ten-step process¹⁷ as mandated in manuals published by the Comptroller of Public Accounts. Both methodologies require the chief appraiser to estimate the net income per acre, referred to as the "net to land," and to divide the net to land by a capitalization rate set each year by the Comptroller. This formula produces the appraised value per acre. Thus, if net to land is different for Harris and Galveston counties, application of the same formula will result in different appraised values, even though the market value may be the same.

The first sentence of Section 6.025 (d) requires chief appraisers in overlapping appraisal districts to take certain actions if they cannot reach agreement by May 1 "as to the appraised *or* market value of the property" (emphasis added) The sentence goes on to state that if this condition exists, ". . . chief appraisers shall enter as the appraised *or* market value of the property on the appraisal records of the appropriate appraisal district the lowest appraised *or* market value of the property as determined by any of the chief appraisers." (emphasis added) Some chief appraisers have interpreted this language to require that they enter both the lowest appraised value and the lowest market value. Others believe that they comply with the statute by choosing either the lowest appraised value or the lowest market value. Under the latter interpretation, only one of the two values must match, but not both. As to residential homesteads and productivity property, many chief appraisers have taken the

¹⁵ TEX. CONST. art. VIII, § 1-d-1 and TEX. TAX CODE ANN. § 23.72 (Vernon 2001).

¹⁶ 34 TEX. ADMIN. CODE § 9.4001 (1990) (Comptroller of Public Accounts), which adopts by reference the MANUAL FOR THE APPRAISAL OF AGRICULTURAL LAND (Feb. 1990).

¹⁷ 34 TEX. ADMIN. CODE § 9.4011 (2004) (Comptroller of Public Accounts), which adopts by reference the TIMBERLAND APPRAISAL MANUAL (May 2004).

view that it is sufficient for both parties to agree that the relevant mathematical formula applies, but that they should use their own county-specific data in making the calculation.

In short, the application of Section 6.025(d) in some cases conflicts with the requirements of Section 23.23 and subchapters D and E of Chapter 23. In these circumstances, chief appraisers are reluctant, absent some authority, to disregard the Chapter 23 provisions in favor of the Section 6.025 provisions.

On its face, resolution of the issue rests on what the legislature means by the word "or." A frequently cited case on the meaning of "or" as opposed to "and" is *Board of Ins. Comm'rs v. Guardian Life Ins. Co.*, 180 S.W.2d 906 (Tex. 1944) in which the following rule of construction was quoted with approval by the supreme court:

'Ordinarily the words "and" and "or" are in no sense interchangeable terms, but, on the contrary, are used in the structure of language for purposes entirely variant, the former being strictly of a conjunctive, the latter, of a disjunctive, nature.'

180 S.W.2d at 908 (quoting 3 C.J.S. 1068). More recently, the Corpus Christi Court of Appeals stated the rule as follows:

At the outset, we recognize that every word in a statute is presumed to have been used for a particular purpose. . . . The word "or" is disjunctive. It expresses an alternative. (citations omitted)

Wood v. Paulus, 524 S.W.2d 749, 756 (Tex. Civ. App. – Corpus Christi 1975, writ ref'd n.r.e.).

Applying the foregoing rules of construction to the first sentence of Section 6.025 (d), the word "or," which is used four times, must in each instance be interpreted as disjunctive. Accordingly, the unambiguous meaning is that chief appraisers may choose between the alternatives of placing on the appraisal records the lowest appraised value or the lowest market value. They are not required to place both the lowest appraised value and the lowest market value on the appraisal records.

The second and third sentences of Section 6.025 (d) address the situation where a reduction in an appraised or market value results from a protest, appeal, or other action in one of the overlapping appraisal districts. The second sentence requires that the chief appraiser in the affected district notify the other appraisal districts "of the reduced appraised or market value." This requirement appears to be based on the assumption that only one of the values would be reduced. The third sentence seems to confirm this assumption in stating that "The chief appraiser of each appraisal district shall enter that reduced appraised or market value on the appraisal records as the appraised or market value of the property." To this point the language in Section 6.025 (d) is consistent with the interpretation that "or" is being used in the disjunctive.

The final sentence of Section 6.025 (d) states that "If the appraised *or* market value is reduced in more than one appraisal district, each chief appraiser shall enter the *lowest of those values* on the appraisal records." (emphasis added) This sentence is troubling because it uses the term "lowest of those values" for the first time. For this sentence to be compatible with the rest of Subsection (d), it is necessary to interpret "the lowest of those values" as referring to the disjunctive choice between appraised or market value. On its face the final sentence seems to mean that when the appraised and/or market value of a property is reduced in two or more overlapping districts as a result of a protest, appeal, or other action, all overlapping districts must enter the lowest of both the appraised and market values on the appraisal records. This interpretation would require unanimity among districts only when two or more districts have lowered values based on the outcome of a protest, appeal, or other action. For initial values determined in the ordinary course of the appraisal process, chief appraisers would be allowed to choose between the lowest appraised or market value. There does not appear to be a rational explanation for the differing results. What can be argued is that the legislative intent for the entire Subsection is contained in the last sentence.

Support for this argument is found in the legislative history. Section 6.025 (d) was added to the Tax Code by two separate bills, H.B.703 (introduced by Representative Solomons) and H.B. 1082 (introduced by Representative Talton), each containing identical language. The bill analysis associated with H.B. 703 states as follows:

Currently, if a property is located in districts that are appraised by two different appraisal districts, the property may have two different valuations. These values may be different by several thousand dollars. Appraisers are encouraged by statute to coordinate to have the same value, but this may not necessary [sic] take place. House Bill 703 would require both districts to adopt the lower of the two valuations.¹⁸

The Conference Committee Report on H.B. 1082 states that Section 1 of the bill:

Amends Sec. 6.025, Tax Code, requires [sic] the appraisers of two different appraisal districts to appraise property at the lower of the two appraisal values. If the value of a property has been subsequently lowered through an appeal, the other appraisal districts must be notified and must lower the appraisal value accordingly.¹⁹

Three salient observations can be made about these analyses. First, neither one mentions the concept of choosing between market value and appraised value. Second, neither one uses the word "market." Third, both speak in terms of requiring chief appraisers to use the "lower" of different values. Because the value on which property owners are taxed is the "appraised value," it would be entirely consistent with the legislative history of the statute to interpret it to mean that chief appraisers must use the lowest appraised value. For residential

¹⁸ HOUSE COMM. ON LOCAL GOVERNMENT WAYS AND MEANS, BILL ANALYSIS, Tex. H.B. 703, 78th Leg., R.S. (2003).

¹⁹ CONFERENCE COMMITTEE REPORT, SECTION-BY-SECTION ANALYSIS, Tex. H.B. 1082, 78th Leg., R.S. (2003).

homesteads, it would make no difference to the property owner whether or not the lowest market value was used by overlapping appraisal districts.

However, inconsistent results regarding residential homesteads occur when the overlapping appraisal districts do not use the same appraisal cycle. The Tax Code requires that appraisal districts implement a plan for periodic reappraisal of property and that the plan "shall provide for reappraisal of all real property in the district at least once every three years."²⁰ Several of the appraisal districts which overlap the Harris County Appraisal District ("HCAD") use the three year reappraisal cycle. For many years HCAD has officially been on a two year cycle, but reappraises most residential property annually. When residential property values are generally increasing as they have been in Harris County for the last several years, forcing HCAD to adopt another district's appraised value on a property which has not been reappraised by the other district for two years would produce an absurd result. Statutory interpretation that would produce absurd results is to be avoided. *See, e.g., Texas Bd. of Pardons & Paroles v. Feinblatt*, 82 S.W.3d 513, 518 (Tex. App. – Austin 2002, pet. denied) [citing *Employees Ret. Sys. v. Jones*, 58 S.W.3d 148, 153 (Tex. App. – Austin 2001, no pet.)].

A similar absurd result can occur on the market value side of the issue regarding the special appraisal provisions of Chapter 23 of the Tax Code relating to agricultural land, timber land, recreational land, and public access airport property.²¹ The factors that are used by appraisal districts in appraising these properties may be different, resulting in legitimate differences in appraised value. Forced use of the same appraised value by both districts is not justified. Moreover, all of the types of properties are subject to a five-year rollback in taxes if the limited use qualification is lost. The amount due is the difference in actual taxes paid for the preceding five years based on the special appraised value and the tax that would have been due during the five year period based on the market value for each of those years, plus interest from the dates on which the differences would have become due.²² If agricultural land, for example, has been bought by a developer for use as a large, expensive suburban residential subdivision, the roll back taxes due could be significantly undervalued if one of the overlapping appraisal districts was on a three-year reappraisal cycle and the other had just set a market value based on the highest and best use.

Based on the foregoing, it is respectfully requested that you determine whether Section 6.025 (d) of the Tax Code permits chief appraisers in overlapping appraisal districts to enter on the tax roll either the lowest market value or the lowest appraised value of the property established by the two districts, but not the lowest of both the market value and the appraised value.

²⁰ TEX. TAX CODE ANN. § 25.18 (Vernon 2001).

²¹ TEX. TAX CODE ANN. §§ 23.51 – 23.9807 (Vernon 2001, Supp. 2004).

²² *See, e.g., TEX. TAX CODE ANN. § 23.76* (Vernon 2001).