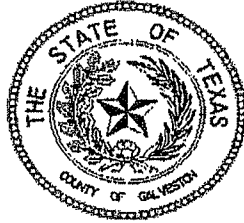


OCT 25 2017

OPINION COMMITTEE  
**GALVESTON  
COUNTY**



FILE # ML-48235-17

IS # 48235

Office of County Auditor

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October 25, 2017

Via Email: [opinion.committee@aog.texas.gov](mailto:opinion.committee@aog.texas.gov)

RQ-0188-KP

The Honorable Ken Paxton  
Attorney General of Texas  
Attention: Opinion Committee  
Post Office Box 12548  
Austin, Texas 78711-2548

**REQUEST FOR OPINION**

Dear General Paxton:

As the County Auditor of Galveston County, Texas, I respectfully request an Opinion from your office. The questions presented are:

I.

The Texas Property Tax Code under Section 23.02 provides that governing bodies of taxing units may request that properties located in an area declared to be a disaster by the Governor may be reappraised at their market value after the disaster. It also provides that taxing units requesting the reappraisal are responsible for paying all costs of the reappraisal but does not specify whether the taxing unit would be responsible only for the extraordinary additional and reasonable costs. Is a taxing unit justified therefore for funding only those reasonable additional costs of the reappraisal?

II.

Section 25.19(a) of the Texas Property Tax Code requires a chief appraiser deliver a notice to a property owner of the appraised value of his or her property if the value is greater than in the previous year, the value is greater than that value rendered by the property owner, if the property was not on the appraisal roll in the preceding year or if an exemption (or partial exemption) was canceled or reduced. Section 25.19(g) provides for notice of owners not previously included on a homesteaded property if the property was reappraised, if ownership of the property changes or if an agent requests notice. Section 25.19 further provides timelines and instructions for contesting the proposed value as well as notice content.

Since a disaster reappraisal typically results in a reduction in value, is notice required when a property value is decreased?

III.

In the event the response to II above is that notice is not required, does the Code provide for a later correction should the reduced amount be insufficient in the opinion of the property owner?

The Honorable Ken Paxton  
October 25, 2017  
Page 2

As you are aware, Hurricane Harvey resulted in a Governor-declared disaster declaration for 60 Texas counties. Hundreds of thousands of properties were damaged. Multiple taxing jurisdictions have requested disaster reappraisal by county appraisal districts but no guidelines exist that address the specific issues that are and will continue to arise as these appraisals are conducted. Thousands of property owners will potentially benefit from the reappraisal in that their tax burden will be prorated such that 2017 taxes will be based on the combination of both the January 1 and post disaster values. Some governments are reluctant to proceed, however, since the determination of notice and equalization are not defined and costs and timeliness associated with disaster reappraisal will be impacted.

The need for a swift response is therefore humbly requested.

Sincerely,



Randall Rice CPA  
County Auditor  
Galveston County

Attachment:

Statutory Code – Supporting Brief

## Statutory Code - Supporting Brief

The Texas Constitution, Article 8, Section 1 (b) states, in part, that, "All real property...shall be taxed in proportion to its value, which shall be ascertained as may be provided by law."<sup>1</sup>

The Texas Property Tax Code, 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."

The Texas Property Tax Code, Section 23.02(a) provides for "...reappraisal of all property damaged in the disaster at its market value immediately after the disaster..."<sup>1</sup>

What we attempt to establish is that for the purposes of disaster reappraisal, after a chief appraiser determines that a reduction in value is appropriate (using acceptable appraisal techniques), that the records be corrected by order of the ARB (we believe) under Texas Property Tax Code Section 41.08,<sup>2</sup> that a letter be provided to owners notifying them of the disaster reappraisal adjustment, and that a formal notice of appraised value will be sent in 2018 at which time the 2017 disaster value could be revisited along with the 2018 value determination.

### I. Tax Code Requirements

The Texas Property Tax Code does not specifically identify process in accomplishing disaster reappraisal, particularly after values have been certified as part of the typical valuation process. Some county appraisal districts suggest that they will perform the reappraisal, send notice and impose the entire equalization process including informal conferences with appraisers and Appraisal Review Board consideration.

Under a normal tax year scenario, notice to property owners is required, among other reasons, when tax liability increases under Section 25.19(a)(1)<sup>ii</sup> (*included in its entirety in Endnotes*). Appraisal rolls may be corrected under Section 25.25<sup>iii</sup> subject to Section 41 but all suggest that notice and equalization are required when actions occur that adversely impact a property owner and make no reference to those that reduce tax liability thus affecting them in a positive manner.

Further supporting that notice may not be required is that Section 25.19(d) provides that, "...failure to receive a notice required by this section does not affect the validity of the appraisal of the property..."

Section 25.19(g) provides for notice for properties that have not received notice under 25.19(a) if the property has been reappraised in the current year, ownership has changed or an agent or owner specifically requests one. This paragraph would therefore specifically exclude properties that received 2017 notices as well as limit notice on the remaining 90,000 that may not be homesteads violating the equal and uniform requirement of the Texas Constitution at Article 8, Section 1(a) which states, "Taxation shall be equal and uniform."

Thus, the question remains as to whether notice under Section 25.25 is required. Surely the typical processes take time and attention away from recovery efforts. If the purpose of disaster reappraisal is to insure those who have suffered the devastating impact of damage to their properties are taxed fairly (*at a combination of the January 1 and subsequent disaster value*), accomplishing this task necessitates streamlining the effort.

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<sup>1</sup> Sec. 1(b) All real property and tangible personal property in this State, unless exempt as required or permitted by this Constitution, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.

<sup>2</sup> Sec. 41.08. CORRECTION OF RECORDS ON ORDER OF BOARD. The chief appraiser shall make the reappraisals or other corrections of the appraisal records ordered by the appraisal review board as provided by this subchapter. The chief appraiser shall submit a copy of the corrected records to the board for its approval as promptly as practicable.

## II. Authorities Granted the Comptroller

The Comptroller has the authority to clarify Property Tax Code Section 25.19 with regard to notice requirements under disaster reappraisal and Section 41 regarding the process of approval of the records and equalization but has thus far not provided any guidance. This authority is provided for, but not limited to, the following provisions of the Property Tax Code:

- A. Section 5.03(a) provides for the Comptroller to "...adopt rules establishing minimum standards for the administration and operation of an appraisal district. The minimum standards may vary according to the number of parcels and the kinds of property the district is responsible for appraising."<sup>iv</sup>
- B. Section 5.05(a) provides that, "The comptroller may prepare and issue publications relating to the appraisal of property and the administration of taxes, or may approve other publications...for use in the administration of property taxes, including: (1) a general appraisal manual; (2) special appraisal manuals as authorized by law...(6) a handbook containing selected laws and all rules promulgated by the comptroller relating to the property tax and its administration..."<sup>v</sup>
- C. Section 5.08(a) provides that, "The comptroller may provide professional and technical assistance on request in appraising property..."<sup>vi</sup> or performing other appraisal activities.
- D. Under 5.103 the Comptroller provides Appraisal Review Board oversight and guidance.<sup>vii</sup>

## III. The Authority of the Governor to Correct or Clarify This Matter Via Use of the Disaster Declaration

The Governor declared a disaster under the Government Code Section 418.014. Under Section 418.016(a)<sup>3</sup>, he may suspend certain laws and rules if "...strict compliance...would in any way prevent, hinder or delay necessary action in coping with a disaster." The imposition of immediate notice and protest processes under Section 25.19 will prevent, hinder and delay recovery of those disaster reappraisal intends to provide relief. It is not proposed that property owners are denied the right to have the reappraised value adjusted but that it may be allowed at a later time.

### ENDNOTES

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<sup>1</sup> Sec. 23.02. REAPPRAISAL OF PROPERTY DAMAGED IN DISASTER AREA. (a) The governing body of a taxing unit that is located partly or entirely inside an area declared to be a disaster area by the governor may authorize reappraisal of all property damaged in the disaster at its market value immediately after the disaster. (b) If a taxing unit authorizes a reappraisal pursuant to this section, the appraisal office shall complete the reappraisal as soon as practicable. The appraisal office shall include on the appraisal records, in addition to other information required or authorized by law:

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<sup>3</sup> Sec. 418.016. SUSPENSION OF CERTAIN LAWS AND RULES. (a) The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

(1) the date of the disaster; (2) the appraised value of the property after the disaster; and (3) if the reappraisal is not authorized by all taxing units in which the property is located, an indication of the taxing units to which the reappraisal applies. (c) A taxing unit that authorizes a reappraisal under this section must pay the appraisal district all the costs of making the reappraisal. If two or more taxing units provide for the reappraisal in the same territory, each shall share the costs of the reappraisal in that territory in the proportion the total dollar amount of taxes imposed in that territory in the preceding year bears to the total dollar amount of taxes all units providing for reappraisal of that territory imposed in the preceding year. (d) If property damaged in a disaster is reappraised as provided by this section, the governing body shall provide for prorating the taxes on the property for the year in which the disaster occurred. If the taxes are prorated, taxes due on the property are determined as follows: the taxes on the property based on its value on January 1 of that year are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days before the date the disaster occurred; the taxes on the property based on its reappraised value are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days, including the date the disaster occurred, remaining in the year; and the total of the two amounts is the amount of taxes on the property for the year. (e) Repealed by Acts 1983, 68th Leg., p. 4829, ch. 851, Sec. 28, eff. Aug. 29, 1983.

ii Sec. 25.19. NOTICE OF APPRAISED VALUE. (a) By April 1 or as soon thereafter as practicable if the property is a single-family residence that qualifies for an exemption under Section 11.13, or by May 1 or as soon thereafter as practicable in connection with any other property, the chief appraiser shall deliver a clear and understandable written notice to a property owner of the appraised value of the property owner's property if:

- (1) the appraised value of the property is greater than it was in the preceding year;
- (2) the appraised value of the property is greater than the value rendered by the property owner;
- (3) the property was not on the appraisal roll in the preceding year; or
- (4) an exemption or partial exemption approved for the property for the preceding year was canceled or reduced for the current year.

(b) The chief appraiser shall separate real from personal property and include in the notice for each:

- (1) a list of the taxing units in which the property is taxable;
- (2) the appraised value of the property in the preceding year;
- (3) the taxable value of the property in the preceding year for each taxing unit taxing the property;
- (4) the appraised value of the property for the current year, the kind and amount of each exemption and partial exemption, if any, approved for the property for the current year and for the preceding year, and, if an exemption or partial exemption that was approved for the preceding year was canceled or reduced for the current year, the amount of the exemption or partial exemption canceled or reduced;
- (5) if the appraised value is greater than it was in the preceding year, the amount of tax that would be imposed on the property on the basis of the tax rate for the preceding year;
- (6) in italic typeface, the following statement: "The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials";
- (7) a detailed explanation of the time and procedure for protesting the value;
- (8) the date and place the appraisal review board will begin hearing protests; and
- (9) a brief explanation that the governing body of each taxing unit decides whether or not taxes on the property will increase and the appraisal district only determines the value of the property.

(b-1) For real property, in addition to the information required by Subsection (b), the chief appraiser shall state in a notice required to be delivered under Subsection (a), the difference, expressed as a percent increase or decrease, as applicable, in the appraised value of the property for the current tax year as compared to the fifth tax year before the current tax year.

(b-2) This subsection applies only to a notice of appraised value for residential real property that has not qualified for a residence homestead exemption in the current tax year. If the records of the appraisal district indicate that the address of the property is also the address of the owner of the property, in addition to containing the applicable information required by Subsections (b), (b-1), and (f), the notice must contain the following statement in boldfaced 12-point type: "According to the records of the appraisal district, the residential real property described in this notice of appraised value is not currently being allowed a residence homestead exemption from ad valorem taxation. If the property is your home and you occupy it as your principal place of residence, the property may qualify for one or more residence homestead exemptions, which will reduce the amount of taxes imposed on the property. The form needed to apply for a residence homestead exemption is enclosed. Although the form may state that the deadline for filing an application for a residence homestead exemption is April 30, a late application for a residence homestead exemption will be accepted if filed before February 1, (insert year application must be filed). There is no fee or charge for filing an application or a late application for a residence homestead exemption." The notice must be accompanied by an application form for a residence homestead exemption.

(c) In the case of the residence homestead of a person 65 years of age or older or disabled that is subject to the limitation on a tax increase over the preceding year for school tax purposes, the chief appraiser shall indicate on the notice that the preceding year's taxes may not be increased.

(d) Failure to receive a notice required by this section does not affect the validity of the appraisal of the property, the imposition of any tax on the basis of the appraisal, the existence of any tax lien, the deadline for filing an application for a residence homestead exemption, or any proceeding instituted to collect the tax.

(e) The chief appraiser, with the approval of the appraisal district board of directors, may dispense with the notice required by Subsection (a)(1) if the amount of increase in appraised value is \$1,000 or less.

(f) In the notice of appraised value for real property, the chief appraiser shall list separately:

- (1) the market value of the land; and
- (2) the total market value of the structures and other improvements on the property.

(g) By April 1 or as soon thereafter as practicable if the property is a single-family residence that qualifies for an exemption under Section 11.13, or by May 1 or as soon thereafter as practicable in connection with any other property, the chief appraiser shall deliver a written notice to the owner of each property not included in a notice required to be delivered under Subsection (a), if the property was reappraised in the current tax year, if the ownership of the property changed during the preceding year, or if the property owner or the agent of a property owner authorized under

Section 1.111 makes a written request for the notice. The chief appraiser shall separate real from personal property and include in the notice for each property:

- (1) the appraised value of the property in the preceding year;
  - (2) the appraised value of the property for the current year and the kind of each partial exemption, if any, approved for the current year;
  - (3) a detailed explanation of the time and procedure for protesting the value; and
  - (4) the date and place the appraisal review board will begin hearing protests.
- (h) A notice required by Subsection (a) or (g) must be in the form of a letter.
- (i) Delivery with a notice required by Subsection (a) or (g) of a copy of the pamphlet published by the comptroller under Section 5.06 or a copy of the notice published by the chief appraiser under Section 41.70 is sufficient to comply with the requirement that the notice include the information specified by Subsection (b)(7) or (g)(3), as applicable.
- (j) The chief appraiser shall include with a notice required by Subsection (a) or (g):
- (1) a copy of a notice of protest form as prescribed by the comptroller under Section 41.44(d); and
  - (2) instructions for completing and mailing the form to the appraisal review board and requesting a hearing on the protest.
- (k) Notwithstanding any other provision of this section, the chief appraiser may not deliver a written notice concerning property that is required to be rendered or reported under Chapter 22 until after the applicable deadline for filing the rendition statement or property report.

iii Sec. 25.25. CORRECTION OF APPRAISAL ROLL. (a) Except as provided by Chapters 41 and 42 of this code and by this section, the appraisal roll may not be changed.

(b) The chief appraiser may change the appraisal roll at any time to correct a name or address, a determination of ownership, a description of property, multiple appraisals of a property, or a clerical error or other inaccuracy as prescribed by board rule that does not increase the amount of tax liability. Before the 10th day after the end of each calendar quarter, the chief appraiser shall submit to the appraisal review board and to the board of directors of the appraisal district a written report of each change made under this subsection that decreases the tax liability of the owner of the property. The report must include:

- (1) a description of each property; and
- (2) the name of the owner of that property.

(c) The appraisal review board, on motion of the chief appraiser or of a property owner, may direct by written order changes in the appraisal roll for any of the five preceding years to correct:

- (1) clerical errors that affect a property owner's liability for a tax imposed in that tax year;
- (2) multiple appraisals of a property in that tax year;
- (3) the inclusion of property that does not exist in the form or at the location described in the appraisal roll; or
- (4) an error in which property is shown as owned by a person who did not own the property on January 1 of that tax year.

(d) At any time prior to the date the taxes become delinquent, a property owner or the chief appraiser may file a motion with the appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value for the owner's property. However, the error may not be corrected unless it resulted in an appraised value that exceeds by more than one-third the correct appraised value. If the appraisal roll is changed under this subsection, the property owner must pay to each affected taxing unit a late-correction penalty equal to 10 percent of the amount of taxes as calculated on the basis of the corrected appraised value. Payment of the late-correction penalty is secured by the lien that attaches to the property under Section 32.01 and is subject to enforced collection under Chapter 33. The roll may not be changed under this subsection if:

- (1) the property was the subject of a protest brought by the property owner under Chapter 41, a hearing on the protest was conducted in which the property owner offered evidence or argument, and the appraisal review board made a determination of the protest on the merits; or
- (2) the appraised value of the property was established as a result of a written agreement between the property owner or the owner's agent and the appraisal district.

(e) If the chief appraiser and the property owner do not agree to the correction before the 15th day after the date the motion is filed, a party bringing a motion under Subsection (c) or (d) is entitled on request to a hearing on and a determination of the motion by the appraisal review board. A party bringing a motion under this section must describe the error or errors that the motion is seeking to correct. Not later than 15 days before the date of the hearing, the board shall deliver written notice of the date, time, and place of the hearing to the chief appraiser, the property owner, and the presiding officer of the governing body of each taxing unit in which the property is located. The chief appraiser, the property owner, and each taxing unit are entitled to present evidence and argument at the hearing and to receive written notice of the board's determination of the motion. A property owner who files the motion must comply with the payment requirements of Section 25.26 or forfeit the right to a final determination of the motion.

(f) The chief appraiser shall certify each change made as provided by this section to the assessor for each unit affected by the change within five days after the date the change is entered.

(g) Within 60 days after receiving notice of the appraisal review board's determination of a motion under this section or of a determination of the appraisal review board that the property owner has forfeited the right to a final determination of a motion under this section for failing to comply with the prepayment requirements of Section 25.26, the property owner or the chief appraiser may file suit to compel the board to order a change in the appraisal roll as required by this section. A taxing unit may not be made a party to a suit filed by a property owner or chief appraiser under this subsection.

(g-1) In a suit filed under Subsection (g), if a hearing to review and determine compliance with Section 25.26 is requested, the movant must mail notice of the hearing by certified mail, return receipt requested, to the collector for each taxing unit that imposes taxes on the property not later than the 45th day before the date of the hearing.

(g-2) Regardless of whether the collector for the taxing unit receives a notice under Subsection (g-1), a taxing unit that imposes taxes on the property may intervene in a suit filed under Subsection (g) and participate in the proceedings for the limited purpose of determining whether the property owner has complied with Section 25.26. The taxing unit is entitled to process for witnesses and evidence and to be heard by the court.

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- (h) The appraisal review board, on the joint motion of the property owner and the chief appraiser filed at any time prior to the date the taxes become delinquent, shall by written order correct an error that resulted in an incorrect appraised value for the owner's property.
- (i) A person who acquires property after January 1 of that year to file, if the deadline for filing the motion has not passed.
- (j) If during the pendency of a motion under this section the ownership of property subject to the motion changes, the new owner of the property is entitled to proceed with the motion in the same manner as the property owner who filed the motion.
- (k) The chief appraiser shall change the appraisal records and school district appraisal rolls promptly to reflect the detachment and annexation of property among school districts under Subchapter C or G, Chapter 41, Education Code.
- (l) A motion may be filed under Subsection (c) regardless of whether, for a tax year to which the motion relates, the owner of the property protested under Chapter 41 an action relating to the value of the property that is the subject of the motion.
- (m) The hearing on a motion under Subsection (c) or (d) shall be conducted in the manner provided by Subchapter C, Chapter 41.
- (n) After a chief appraiser certifies a change under Subsection (b) that corrects multiple appraisals of a property, the liability of a taxing unit for a refund of taxes under Section 26.15(f), and any penalty or interest on those taxes, is limited to taxes paid for the tax year in which the appraisal roll is changed and the four tax years preceding that year.
- (o) The failure or refusal of a chief appraiser to change an appraisal roll under Subsection (b) is not:
- (1) an action that the appraisal review board is authorized to determine under this section;
  - (2) an action that may be the subject of a suit to compel filed under Subsection (g);
  - (3) an action that a property owner is entitled to protest under Section 41.41; or
  - (4) an action that may be appealed under Chapter 42.

<sup>iv</sup> Sec. 5.03. POWERS AND DUTIES GENERALLY. (a) The comptroller shall adopt rules establishing minimum standards for the administration and operation of an appraisal district. The minimum standards may vary according to the number of parcels and the kinds of property the district is responsible for appraising. (b) The comptroller may require from each district engaged in appraising property for taxation an annual report on a form prescribed by the comptroller on the administration and operation of the appraisal office. (c) The comptroller may contract with consultants to assist in performance of the duties imposed by this chapter.

<sup>v</sup> Sec. 5.05. APPRAISAL MANUALS AND OTHER MATERIALS. (a) The comptroller may prepare and issue publications relating to the appraisal of property and the administration of taxes, or may approve other publications relating to those matters, including materials published by The Appraisal Foundation, the International Association of Assessing Officers, or other professionally recognized organizations, for use in the administration of property taxes, including: (1) a general appraisal manual; (2) special appraisal manuals as authorized by law; (3) cost, price, and depreciation schedules as authorized by law; (4) periodic news and reference bulletins; (5) an annotated version of this title and Title 3; and (6) a handbook containing selected laws and all rules promulgated by the comptroller relating to the property tax and its administration. (b) The comptroller shall revise or supplement all materials issued by the comptroller or approve other publications periodically as necessary to keep them current. (c) The comptroller shall electronically publish all materials under this section for administering the property tax system. The comptroller shall make the materials available to local governmental officials and members of the public but may charge a reasonable fee to offset the costs of preparing, printing, and distributing the materials. (d) If the appraised value of property is at issue in a lawsuit involving property taxation, a court may not admit in evidence appraisal manuals or cost, price, and depreciation schedules, or portions thereof, that are prepared and issued pursuant to this section. The manuals or schedules may only be used for the limited purpose of impeachment in the same manner and pursuant to the same evidentiary rules as applicable to books and treatises.

<sup>vi</sup> Sec. 5.08. PROFESSIONAL AND TECHNICAL ASSISTANCE. (a) The comptroller may provide professional and technical assistance on request in appraising property, installing or updating tax maps, purchasing equipment, developing recordkeeping systems, or performing other appraisal activities. The comptroller may also provide professional and technical assistance on request to an appraisal review board. The comptroller may require reimbursement for the costs of providing the assistance. (b) The comptroller may provide information to and consult with persons actively engaged in appraising property for tax purposes about any matter relating to property taxation without charge.

<sup>vii</sup> Sec. 5.103. APPRAISAL REVIEW BOARD OVERSIGHT. (a) The comptroller shall prepare model hearing procedures for appraisal review boards. (b) The model hearing procedures shall address: (1) the statutory duties of an appraisal review board; (2) the process for conducting a hearing; (3) the scheduling of hearings; (4) the postponement of hearings; (5) the notices required under this title; (6) the determination of good cause under Section 41.44(b); (7) the determination of good cause under Sections 41.45(e) and (e-1); (8) a party's right to offer evidence and argument; (9) a party's right to examine or cross-examine witnesses or other parties; (10) a party's right to appear by an agent; (11) the prohibition of an appraisal review board's consideration of information not provided at a hearing; (12) ex parte and other prohibited communications; (13) the exclusion of evidence at a hearing as required by Section 41.67(d); (14) the postponement of a hearing as required by Section 41.66(h); (15) conflicts of interest; (16) the process for the administration of applications for membership on an appraisal review board; and (17) any other matter related to fair and efficient appraisal review board hearings.