

# TAXPAYERS' ADVOCATE

*P.E. Pennington & Co. Results for Taxing Problems*

**P.E. Pennington & Company**

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This article was contributed by Dan Donovan of the Property Tax Section of the law firm of Geary, Porter & Donovan, A Professional corporation, which maintains offices in Dallas and Houston and represents property owners throughout the State of Texas.

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## Texas Property Tax Legislation

### Consultant Licensing

#### House Bill 1065

Effective: September 1, 1995

This bill amends certain statutes dealing with the licensing of property tax consultants.

#### Compensation Required

The definition of a "property tax consultant" has been amended to require that the person who performs or supervises others in the performance of property tax consulting services do so for compensation. In other words, if someone performs consulting services but is not being compensated, he is not a "property tax consultant" within the meaning of the Licensing Act.

### Licensing Exemptions

A licensed real estate appraiser, salesman or broker is now exempt from property tax consulting licensing requirements as long as his or her services are rendered in connection with single-family residences. Several changes were also made to the Act for appraisers, brokers or salesmen who want to register as licensed property tax consultants under the Act so they can perform consulting services on properties other than single-family residences. In order to register as a consultant, those people holding active licenses only have to complete four classroom hours of educational courses on legal issues related to property tax consulting services. This differs from regular property tax consultants, who must comply with additional TDLR qualifications and complete fifteen hours of educational courses of which four hours must be on legal issues relating to property tax consulting services.

When complying with continuing education requirements imposed under the Act, brokers, salesman and appraisers can use classes approved by their state licensing agencies rather than TDLR.

### Real Estate Appraisers

#### Senate Bill 634

Effective: August 28, 1995.

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P.O. Box 12157, Austin, TX 78711

### P.E. PENNINGTON & COMPANY, INC. PROPERTY TAX CONSULTING

4006 Beltline Road  
Suite 240  
Addison, Texas 75244  
(214) 960-1002  
FAX (214) 960-1383

Office Hours:  
7:00 a.m. to 6:00 p.m.  
Monday – Friday

## COST APPROACH vs. MARKET APPROACH *How To Get The Most With The Least Effort*

By Larry Lough, ASA, ISA

Texas Tax Appraisers, when establishing values for business personal property, typically derive these values through the use of the cost approach to value. A generally accepted definition of this method is as follows:

Cost approach is that approach which measures value by determining the current cost of an asset (i.e. replacement cost) and deducting for the various elements of depreciation, physical deterioration and functional and economic obsolescence.

Tax appraisers generally derive an arbitrary percentage, in loose compliance with the above definition, which is applied somewhat across-the-board. Some minor adjustments are made based on equipment type, and a residual value percentage is applied on equipment, regardless of age, as long as it is owned by a company. This allows for a quick and efficient establishment of the tax base. However, this method appears to be diametrically opposed to the definition of market value as prescribed by the Texas Property Tax Code Section 1.04 as follows:

(7) "Market value" means the price at which a property would

transfer for cash or its equivalent under prevailing market conditions if:

- (A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;
- (B) both the seller and the purchaser know all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the forcible restrictions on its use: and
- (C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.

Notice there is no reference to the market, in any way, in the definition of cost approach. How can the above referenced definition of market value be satisfied without a thorough study of the market and its related forces?



Without a market analysis, the demand for equipment or lack thereof, cannot be reasonably established. Additionally, factors such as advances in technology (i.e. computers and related hardware) or government regulations (i.e. Freon based cooling systems, restrictions on older medical equipment, etc.), which could drastically affect actual values, are not considered.

In conclusion, these questions can be asked. Is the cost approach efficient? Yes. Can it be applied across a broad spectrum quickly? Yes. Is it fair? Hardly. A market value appraisal, with complete research of the applicable equipment markets, can help correct the fairness question.

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This bill amends several provisions of the Texas Appraiser and Licensing Certification Act.

### Definitions

The definition of an "appraisal" under the Act is now any act or process of estimating value of property. This is broader than the previous definition, which required that the statement of value be used in connection with a federally related transaction in order to qualify as an "appraisal".

### Reciprocal Licensing

The Act was amended to allow the granting of a temporary reciprocal license to a person licensed in another state, even if the property is not part of a federally related transaction.

### Consultant Appraisals

Finally, of great interest to consultants is a new provision which states that the Act does not prevent a person duly authorized by law from performing or providing an evaluation of property for another. Since tax consultants are authorized by the Property Tax Code and the Consultant Licensing Act to act as an agent of the owner, this addition will support the position that tax consultants do not fall under the provisions of the Appraisal Act when providing consulting services.

### Protest Procedures

#### Senate Bill 783

Effective: Upon signature of Governor

Protest by Lessee

This bill adds § 42.413 to the Tax Code and provides that a person leasing personal or real property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to protest before the appraisal review board a determination of the appraised value of the property if the owner does not file a protest. For real property, the protest is limited to a single protest by either the property owner or lessee. A person bringing a protest under this section is considered to be the owner of the property for purposes of

the protest and copies of any notices relating to the protest and the order determining protest must be provided to the property owner and the lessee.

Under this new law, a property owner is also now required to send a copy of any notice of the property's reappraisal which is received by the property owner to its lessee. However, the failure of the owner to send a copy of this notice to the lessee does not effect the regular protest deadlines. This notice requirement on lessors, although it does not include any sanctions for noncompliance, is a new requirement which will provide information to lessees which is usually not now provided.

### ARB Hearings

#### House Bill 2610

Effective: September 1, 1995

Rejection of Panel Decision

Current law provides that an ARB may sit in panels of no fewer than three members to conduct protest hearings, with the final determination of the protest made by the full board. Current law does not outline the procedure to follow if a panel's recommendation is not approved by the full board. This amendment requires that in such cases, the full board may refer the matter for rehearing to a panel composed of members who did not hold the original hearing, or the full board may determine the protest. However, before determining a protest at a meeting of the full board or conducting a panel rehearing, the board is required to deliver fifteen days notice of the rehearing or meeting to the property owner or its agent.

\* \* \*

#### House Bill 2610

Effective: September 1, 1995

ARB Subpoenas

Current law allows an ARB to issue a subpoena after holding a hearing at which the ARB determines that good cause exists for its issuance. This amendment to Code Section § 41.61(c) requires that ARB deliver notice of the hearing to the party

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being subpoenaed and the parties to the protest. This notice must be delivered not later than five days before the hearing. In addition, the party being subpoenaed must be given an opportunity to be heard by the ARB at the hearing.

## Chapter 42 Appeals

### Senate Bill 101

Effective: August 24, 1995

Tax Payments Under Protest

Newly added Property Tax Code § 31.115 provides that payment of an ad valorem tax is deemed involuntary if a taxpayer indicates that the tax is being paid under protest on the instrument by which the tax is being paid or in a document accompanying the payment. In certain instances, this law will allow property owners to avoid the effect of the "dreaded" voluntary payment rule.

\* \* \*

### Senate Bill 642

Effective: January 1, 1996

42.08 Revision

This bill is the legislature's response to recent court rulings striking down as unconstitutional the mandatory tax payment provisions of Property Tax Code § 42.08. Under this amendment, a party may be excused from the requirement of prepaying the tax as a prerequisite to a district court appeal if, after filing an oath of inability to pay the taxes at issue, the court finds that such prepayment would constitute an "unreasonable restraint" on the party's right of access to the courts. After a hearing, the district court can set such terms and conditions on any grant of relief as may be reasonably required by the circumstances.

This amendment is an attempt to prevent property owners involved with property tax appeals from relying on recent court decisions to avoid paying any taxes during the pendency of the appeal. In fact, the "unreasonable restraint" language is a verbatim quote out of these court cases. However, it remains to be seen whether this attempt by the legislature to restrict the taxpayer option granted by these court cases will be effective.

\* \* \*

### Senate Bill 783

Effective: Upon signature of Governor

Appeal Rights by Lessee

Newly added § 42.015 allows a person leasing property who is contractually obligated to reimburse the property owner for taxes on the property to appeal an ARB order determining protest brought by that person under § 41.413, which is a new section discussed on Page 2. The person appealing the ARB order is considered the owner of the property for purposes of the appeal, and the chief appraiser is required to deliver notices relating to the appeal to the owner of the property and to the person bringing the appeal.

## IMPORTANT UPCOMING TEXAS TAX DATES

### NOTICE OF LITIGATION WITH APPRAISAL DISTRICTS:

Within 15 days of receipt of the ARB Order Determining Protest.

FILING SUIT: ..... Within 45 days of receipt of the ARB Order Determining Protest

TAX RATES SET: ..... Generally September-October

TAX BILLS MAILED: ..... Generally October-November

JANUARY: ..... Assessment Date January 1.

JANUARY 31: ..... Last day for payment of taxes:  
 • before they become delinquent  
 • for property subject to litigation  
 • for property subject to protest

JANUARY 31: ..... Last day to file motion to correct an incorrect appraisal

APRIL 15: ..... Rendition Due Date

TAX ROLL CERTIFICATION: ..... Generally July-August

## NATIONAL PROPERTY TAX CALENDAR

State	PP Return Deadline	RE Appeals Deadline	State	PP Return Deadline	RE Appeals Deadline
CA	4/1	9/15	TX	4/15	5/31
FL	4/1		DC	4/15	
GA	4/1	4/1	AL	4/19	
LA	4/1	4/1	SD	EXEMPT	4/19
MN	4/1		MO	4/30	6/21
MS	4/1		WA	4/30	5/1
VT	4/20	4/1	AZ	5/1	
NC	4/5		ID	3/15	5/1
HI	4/8		NE	5/1	4/1
ND	4/12		OK	3/15	5/3
CO	4/15	5/27	WI	3/1	5/10
KS	4/15		IA	5/15	4/15
KY	4/15	5/31	IN	5/15	
MD	4/15		WY	4/1	5/25
ME	4/15		AR	5/31	
OH	4/15		VA	5/31	
SC	4/15				

\* \* \*

### House Bill 2624 and House Bill 2940

Effective: January 1, 1996

Special Inventories

These bills make numerous changes to the special inventory provisions addressing the valuation of Dealer Motor Vehicle inventories and procedures required for prepaying taxes on such property. Similar provisions addressing inventory valuation and prepayment of taxes are also instituted for dealers of vessel and outboard motor inventories.

## MORE THAN 100 REASONS TO USE P.E. PENNINGTON & CO., INC. FOR YOUR PROPERTY TAX APPEALS

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Ad Team, Inc.  
Ahmad-Continental Foods (Jack in the  
Box Franchisee)  
Asel Art Supply  
Atrium at Collin Ridge  
Axiom Real Estate Mgmt.  
B.B.A. Management  
Baker Hughes Mining Tools  
Balcor Management Services  
Dr. Thurman Beene  
Bradford Putnam Partners  
Brovont Properties  
C & M, Ltd.  
Cain Machine Company  
Capstone Real Estate Services  
Carpenters Local  
Robert & William Carroll  
Donald & Carolyn Caver  
The CEI Group  
Chappell Hill Mgmt. Company  
Claborn Car Rental  
Cotton Electric Service  
Cotten Nursery  
Sam Croom  
Victoria A. Davis  
Delux Inn  
Ernie Dinsdale/L.B.V. Inc.  
Mrs. Linna Etier  
Fath Management

First Colony Bank  
Focus Asset Management  
Franklin Federal Bancorp  
Furr's Cafeterias  
Gaylord Container Corp.  
Gaylord Joint Venture  
Gleeson Realty Advisors  
Gravlee Development  
Great American Hero. Inc.  
Virgil Hargett  
Harper House, Inc.  
Hayes Leasing Co., Inc. Texas (Avis Rent  
A Car)  
Bernard Hirsh Family Trust  
Hoss Equipment Company  
Housewright Company  
Royd G. Irvin  
J & B Convenience Store  
Jagee Corporation  
Abdul R. Jetpuri (Convenient Stores)  
Mohammed I. Jetpuri (Restaurants)  
Lakeland Management Co.  
Roger Lawler  
Lincolnshire Associates  
Lockhart Office Joint Venture  
Shing Mao  
Market Holdings, Inc.  
M C Partners, Ltd.  
Medoff Family Trust  
Larry & Maureen Meyer  
Milton & Weyand  
P.O.B. Montgomery

JHM Properties Inc.  
MTL #9 Joint Venture  
Murray Munves. (Clothing Mfg.)  
905 Jupiter, Inc.  
Network Circuits  
Donald Nix  
N. American Property Assoc.  
O P & J Investments (Jack in the Box  
Franchisee)  
Omega Optical, Inc.  
Ottawa Properties, Inc.  
Pace Realty Group  
Pacific Enterprises  
Pacific Partners U.S.A.  
Pappasito's (Restaurants)  
Partnership Services  
Pitzer & Collins  
Preston Partnership  
Provident Bank  
Provident Branch Banks  
Quail Run Joint Venture  
Rock Island Inc.  
Rodriguez Broadcasting  
7795 Properties Inc.  
Charles See  
Darwin Setliff, Trustee  
Fred Shaia  
Shannon Management  
Robert L. Skegrud  
Dr. Ronald N. Skufca  
Basil R. Smith  
Southwell Investment Group

Spring Creek Companies (Restaurants)  
Spring Engineers, Inc.  
Bill Strangmeyer  
Summey Building Systems  
Sunnyland Home Center, Inc.  
Super Star Rent A Car, Inc.  
Lawrence E. Tabak, Inc.  
Texas Estrada Apartments LP  
Texas Hotels, Inc.  
Texas Life Insurance Co.  
Time Warner Cable  
Trans-Texas Trailer Corp.  
Tyson Management  
Valley Forge Investment Corp.  
Van-Texas Properties LP  
VFB Family Ltd. Partnership  
Video Plus/Magnetech Corp.  
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P.E. PENNINGTON & COMPANY, INC.  
PROPERTY TAX CONSULTING

4006 Beltline Road  
Suite 240  
Addison, Texas 75244  
(214) 960-1002 FAX (214) 960-1383

*Concerned About Your Property Taxes? ...Let's Talk.*