



## HARRISON & DUNCAN PLLC

Weston Centre, Suite 1200  
112 E. Pecan Street  
San Antonio, TX 78205  
Telephone: (210) 559-6733  
Toll-Free: (800) 720-6610

**Joseph M. Harrison IV**

Floresville, Texas Office  
Old Floresville Firehouse  
1009 C Street, Suite 200  
Floresville, TX 78114-2223  
Telephone: (830) 393-0500  
Facsimile: (830) 393-4941

March 24, 2015

Mr. Paul Pennington  
P.E. Pennington & Company, Inc  
4300 Marsh Ridge Road  
Unit 104  
Carrollton, Tx. 75010

RE: Summary of San Antonio Court of Appeals Decision in *Bexar Appraisal District v. Sivage et. al.*

Dear Paul:

As you know, land used for grazing, hay or crop growing or other qualified agricultural use can receive favorable "open space" appraisal at less than full market value levels as long as the requirements for that treatment are met. Then, if the owner later develops the land, the law permits the tax office to "recapture" those tax savings by billing the property owner for the difference, with interest.

This recapture covers the five years preceding the year that the use changed. But what about the year of change itself? How should the land be taxed for that year? Our Tax Code has always been silent on that issue. As a result, many counties have taken it upon themselves to tax the land at full market levels for that year too (which is effectively a 6<sup>th</sup> year or tax recapture since agricultural use was still in place January 1, our statutory assessment date). Yet counties claimed they could do this anyway, relying on language in the old state agricultural appraisal manual published more than 30 years ago.

We challenged this claim in a group of four cases that we first won at the district court level, then again at the Court of Appeals this past November. After that, the local appraisal district gave up and did not request further appellate review. The result of this decision is that as long as your property was still being used for agricultural purposes on January 1, you can't be appraised at full market value for that year, even if you started developing the property later in the year. The recapture for the five prior years remains legal, but county meddling and over-reach with respect to the year the property changed use is prohibited.

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Also, because this is new appellate case law, if you or your client was recently subjected to an unlawful “6<sup>th</sup> year” recapture, and even if they already paid it, there are procedures for going back seeking recovery of those amounts. Let me know of any questions about these important rulings or how they apply to specific fact situations.

Very truly yours,

*Joseph M. Harrison IV*

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