

PAY YOUR FAIR SHARE (AND NO MORE) OF PROPERTY TAXES

Collapse of oil prices leads to turbulent times for property tax appraisals.

By David Leonard, Jonathan Hyman & Scott Funk

The collapse of oil and natural gas prices has reduced the value of commercial, industrial and residential properties across Texas, and threatens to reduce those values even further. This market collapse greatly impacts property tax appraisals and related tax revenue, especially as it relates to upstream, midstream and downstream properties, and to a lesser extent, commercial properties in general. Now more than ever, owners need to ensure they're paying their share of property taxes — and nothing more.

Judicial challenges are becoming increasingly popular due to their effectiveness in reducing appraisals to align with fair market values. The Houston Chronicle reported that there were 2,541 active lawsuits over commercial property valuations for the 2015 tax year in Harris County alone. The owners of 33 of the 34 high-rise commercial properties in downtown Houston have filed a judicial property tax challenge, as reported by the Houston Business Journal, and Exxon Mobil is suing the Harris County Appraisal District for its \$1 billion appraisal of Exxon's newly constructed campus.

To file a judicial appeal, an owner must first file an administrative appeal with the Appraisal Review Board (ARB). These protests are common and typically yield a modest reduction in the appraised value. ARB appeals, however, rarely provide full relief if the property is truly appraised too high, thereby requiring owners to pursue a judicial appeal to achieve a more meaningful reduction of the appraised value.

When pursuing a judicial appeal, an owner must file a lawsuit against the appraisal district in the district court of the county in which a property is located. An owner may file suit against the appraisal district under two different theories: excessive value and/or "equal and uniform."

Claiming excessive value is the more traditional route because owners are well-equipped to project property values based on cash flows or to compare their property to recent sales transactions. Owners should continue to ensure property appraisals align with prevailing market values.

"Equal & Uniform" Challenge

The "equal and uniform" judicial challenge is less common, but can be particularly effective.

The Texas Constitution requires that all taxation be "equal and uniform." What does this mean for property owners? While an appraisal may always be appealed on the grounds that it is higher than market value,

an owner may also appeal on grounds the property is appraised higher than comparable properties, even if the owner's property is appraised at or below its market value.

This type of protest is common for valuable midstream and downstream facilities. Valero Energy Corp., Crestwood Equity Partners, BASF SE and Total Petrochemicals USA, Inc. all recently filed property tax lawsuits alleging that their multi-million dollar facilities have not been taxed equally and uniformly compared to similar facilities.

Appraisals are subject to reduction under the equal and uniform theory if the appraisal "exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted."



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Under this claim, an appraisal must be reduced to the median of comparable properties, regardless of whether the subject property is taxed at or even below its market value.

Appraisers must undertake the following analysis to determine whether a property meets the equal and uniform standard:

Find Comparable Properties

Owners must identify a reasonable number of comparable properties. According to the Tax Code, whether or not a property is comparable is determined by similarities including: location, square footage of the lot and improvements, property age, property condition, property access, amenities, views, income, operating expenses, occupancy, the existence of easements, deed restrictions or other legal burdens that could affect marketability.

Apply Adjustments

Owners must identify the appraised value of those properties from the public record and adjust them to their property. Comparable properties are adjusted based on factors influencing

value such as location, age, depreciation, physical characteristics of the property and economic factors.

Reduce Value to the Median

Once the comparable properties are adjusted, a median is determined. If an owner can demonstrate that the appraised value exceeds this median, the court must order that the property's appraised value be reduced to match the value of the median number.

Conclusion

The collapse of commodity prices is sure to decrease property and sales tax revenues in Texas. Unwary owners may be left "holding the bag" in the form of inflated appraisals that may be necessitated by any such tax revenue shortfall. Owners should therefore continue to carefully monitor their property tax assessments and consider the equal and uniform challenge as a "new" method to keep their property taxes in check. ■

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