

The Texas Constitution provides that taxation shall be equal and uniform. Section 42.26 (a) of the Texas Property Tax Code sets forth the “Remedy for Unequal Appraisal”. A property owner is entitled to relief on the ground that a property is appraised unequally if:

- (1) The appraisal ratio of the property exceeds by at least 10 percent the median level of appraisal of a reasonable and representative sample of other properties in the appraisal district;
- (2) The appraisal ratio of the property exceeds by at least 10 percent the median level of appraisal of a sample of properties in the appraisal district consisting of a reasonable number of other properties similarly situated to, or of the same general kind or character as the property subject to the appeal; or,
- (3) The appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.

Subsection (3) was added to Section 42.26 (a) by the Legislature in 1997 as part of a Taxpayer’s Bill of Rights. The addition of Subsection (3) was a recognition by Legislature that the remedies provided by subsections (1) and (2) were too expensive and difficult to prove to provide taxpayers with a meaningful remedy. See, Harris County Appraisal District v. United Investors Realty Trust, 47 SW3d 648 (Tex.App.–Houston [14th Dist.] 2001, pet. denied).

Specifically, under Subsection (1) a taxpayer is not only required to prove the ratio of the market value of its property to the value as determined by the Appraisal District, but also the median appraisal ratio of a statistical sample of other properties in the Appraisal District. Independently proving the market value of each property in a statistical sample of properties across the appraisal district is cost prohibitive in most instances. Depending on the type of property involved, the cost of expert appraisal fees can easily run into the tens of thousands, if not hundreds of thousands, of dollars. Moreover, the Uniform Standard of Professional Appraisal Practices (“USPAP”) requires that income and expense information be reviewed and analyzed by an appraiser in reaching an opinion of market value. In cases involving improved properties such as office buildings and shopping centers, a taxpayer is often unable to meet its burden of proof because it has no way to access confidential income and expense information on a comparable property. And, the attorney fees associated with a trial under Subsection (1) can likewise be cost prohibitive due to the trial preparation and trial time involved in independently proving the market value of each property in the representative sample.

The same problem exists under Subsection (2) as a taxpayer is required to prove that the appraisal ratio of its property exceeds the appraisal ratio of a sample of similar situated properties, or properties of the same general kind or character. For most taxpayers, the appraisal cost of proving the market value of each property in the sample is cost prohibitive. And, as in the case of Subsection (1), property specific income and expense data required for an appraiser to render an opinion of the market value of the properties in the sample is not available.

Subsection (3) was added to Section 42.26 to provide a meaningful uniform and equal remedy. Unlike Subsections (1) and (2), a taxpayer is not required to independently prove the market value of either its property or each comparable property. Instead, the taxpayer is permitted to rely upon the appraised market values as determined by the Appraisal District, i.e., the values of the comparable properties as reflected on the certified appraisal roll. The taxpayer then arrives at an indication of a uniform and equal value by adjusting the Appraisal District's certified values to its property to account for differences in such factors as location, size, age, quality, condition and economic factors. Once the properties have been adjusted to place them on equal footing with the taxpayer's property, a statistical median is derived. The taxpayer is entitled to be taxed at the statistical median.

Subsection (3) is not a tax loophole, but a remedy to assure equal taxation. The taxpayer has the burden to prove that the properties in its analysis are comparable, that there are a reasonable number used, and that the adjustments are appropriately made under generally accepted appraisal techniques. Its experts must comply with USPAP. Subsection (3) simply allows the owner to rely upon the market value determination of the comparable properties as determined by the Appraisal District as the starting point. Appraisal Districts that criticize the Subsection (3) remedy do so without answering the fundamental question of why they oppose the use of their own estimates of market value for comparable properties in determining whether a taxpayer's property has been unequally appraised. The obvious reason is that they do not want to have their mistakes that give rise to unequal appraisals revisited upon them by other taxpayers seeking nothing more than equal treatment.