LEGAL PANEL/CASE LAW UPDATE

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Texas Supreme Court

EXLP Leasing, LLC v. Galveston Cent. Appraisal Dist., 2018 WL 1122363 (Tex. Mar. 2, 2018)

Holdings: statute determining taxable value of leased natural-gas compressors was presumptively constitutional; statute did not violate state constitution's equal and uniform provision; and taxable situs for dealer-held heavy equipment is location where dealer maintains its inventory.

EXLP Leasing ("EXLP") challenged the Galveston Central Appraisal District's ("GCAD") valuation of EXLP's leased compression units located in Galveston County. The trial court granted GCAD summary judgment in part, on the grounds that Tex. Tax Code sections 23.1241 and 23.1242 are unconstitutional as applied to EXLP's compressors. The appellate court reversed in part, holding that neither party produced summary judgment evidence on the reasonableness of the tax code sections at issue. Both sides sought review from the Texas Supreme Court.

The Court rejected GCAD's constitutional challenge, dismissing their argument that for constitutional purposes "value" must mean "market value" in all instances. Instead, the legislature must decide how property should be valued for taxation. In reviewing chapter 23 of the Tex. Tax Code, and the formula-based approaches to calculating value therein, the Court noted that the meaning of "market value" depends on the rules the legislature enacted. Because GCAD did not carry its burden of showing the sections were unconstitutional, their challenge failed as a matter of law.

On the issue of situs, the Court agreed with EXLP that sections 23.1241 and 23.1242 show the legislature's intent to fix the situs at the location the dealer maintains its inventory, instead of in the various locations the compressors might be, per the default rules in section 21.02. Section 23.1241 concerns inventory-wide revenue as a whole, rather than the income from a particular unit of equipment. The Court further reasoned that a system based on section 21.02 could not work with the prepayment framework outlined in sections 23.1241 and 23.1242.

Willacy Cnty. Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 2018 WL 1974485 (Tex. Apr. 27, 2018)

Holdings: chief appraiser has statutory authority to correct ownership on the appraisal roll when that change does not increase the amount of taxes owed on the subject property; agreements under section 1.111(e) of Tex. Tax Code are voidable if fraud is proven; and taxpayer not entitled to attorney's fees under section 42.29.

After receiving its tax bill, Sebastian Cotton & Grain ("Sebastian") contacted Willacy County Appraisal District ("WCAD") and claimed that only 14 percent of the grain rendered was owned by Sebastian, the rest having been sold to DeBruce prior to January 1, 2009. Sebastian filed a

motion to correct ownership under section 25.25(c) of the Tex. Tax Code and attached the relevant contracts. WCAD's chief appraiser confirmed to Sebastian that he would change the appraisal roll accordingly, and no ARB hearing was held. After DeBruce protested the corrected appraisal roll, WCAD changed the roll back, again listing Sebastian as the owner of the grain. Sebastian protested, and the ARB upheld WCAD's ownership determination.

Sebastian appealed to district court, arguing that WCAD lacked authority to change ownership on the appraisal roll because doing so increased Sebastian's tax bill and that its verbal agreement with WCAD's chief appraiser constituted a binding agreement under section 1.111(e) of the Tex. Tax Code. WCAD asserted the agreement was based on Sebastian's fraudulent misrepresentations. The trial court agreed, and upheld WCAD's determination of ownership. The appellate court reversed, holding that WCAD did not have authority to change the ownership determination under section 25.25(b).

The Texas Supreme Court reversed, holding that WCAD acted within its authority under section 25.25(b), because the change did not involve a substantive re-evaluation of the property's market value. The court reasoned that ownership gives rise to tax liability, and the appraisal roll merely reflects that, rather than creating tax liability on its own. The court ruled that section 1.11 agreements don't determine actual ownership, and that those agreements may be reviewed and rejected on the basis of fraud. Finally, the court held that attorney's fees were unavailable, because Sebastian brought its appeal under section 25.25(b), not section 25.25(c) or (d).

Bosque Disposal Systems, LLC v. Parker Cnty. Appraisal Dist., 2018 WL 2372810 (Tex. May 25, 2018)

Holding: separate appraisal of taxpayers' saltwater disposal wells and the land where they were located did not constitute double taxation.

The Parker County Appraisal District ("PCAD") appraised subsurface saltwater disposal wells separately from the owners' tracts of land and surface improvements. Following denial of their protests by the ARB, the owners brought suit, arguing that the additional assessment based on the income stream from the wells subjected the land to "multiple appraisals for the same property." The trial court granted owners' motion for summary judgment, asserting that the Tex. Tax Code does not authorize the PCAD to separately value and tax the disposal wells and the fee simple surface tracts.

The appeals court reversed, rejecting the owners' argument that separate assessment of the surface and subsurface is prohibited without severance and conveyance of all or part of the latter estate. The court also rejected the owners' claim that taxable real property must fit in one of the categories listed in chapter 25 of the Tax Code, because some of the categories overlap. The Texas Supreme Court affirmed, reasoning that the disposal wells could be classified as an improvement, an estate or interest in land, or a combination of the two, and contribute to the property's value. The Court found nothing improper in PCAD's decision to separately assign and appraise the surface and disposal wells, adding that the Property Tax Code allows different appraisal methods for different components of property.

Courts of Appeal

Sullivan v. Sheridan Hills Dev. L.P., 2017 WL 1719170 (Tex. App. – Houston [14th Dist.] May 2, 2017, pet. denied)

Holding: Plaintiff failed to establish subject matter jurisdiction by alleging a valid waiver of governmental immunity.

Sheridan Hills sued Sullivan, Harris County's Tax Assessor-Collector, seeking declaratory and mandamus relief voiding the illegal assessment of penalties and interest and ordering a refund of same paid under protest following the settlement of Sheridan Hills's property tax appeal. The trial court granted Sheridan Hills's motion for summary judgment. The appeals court reversed, ruling that Sheridan Hills did not plead sufficient facts to establish that its claims are not barred by governmental immunity.

Freestone Power Generation, LLC v. Texas Comm'n on Envtl. Quality, 2017 WL 3044547 (Tex. App. – Austin July 11, 2017, pet. filed)

Holding: under statute on tax exemption for pollution-control property, heat recovery steam generators cannot be determined to be 100 percent non-pollution-control property.

Several power plants challenged the orders of the Texas Commission on Environmental Quality ("TCEQ") denying them tax exemptions under Tex. Tax Code section 11.31 for pollution control property. Specifically, the companies applied for positive use determinations for heat recovery steam generators (HRSGs). The trial court affirmed TCEQ's orders, and the companies appealed.

Applying an abuse of discretion standard, the appeals court reversed the trial court, reasoning that section 11.31 clearly establishes that HRSGs are pollution control property entitled to positive use determinations.

Vitol, Inc. v. Harris Cnty. Appraisal Dist., 529 S.W.3d 159 (Tex. App. – Houston [14th] August 3, 2017, no pet.)

Holding: the 30-day protest period regarding the denial of an interstate or foreign commerce exemption began upon receipt of the Notice of Appraised Value for Property Tax Purposes.

Vitol rendered information about its business property for tax year 2014 to the Harris County Appraisal District ("HCAD"), along with a form requesting an Interstate or Foreign Commerce tax exemption. No exemption was granted on Vitol's 2014 Notice (instead, a "O" was listed under a column labelled "Exemptions Granted"), but Vitol discussed the exemption with HCAD informally. Months later, Vitol filed a written protest with the ARB, claiming that HCAD did not provide proper notice of the denial of the exemption. The ARB denied Vitol's protest, and Vitol sued.

In its plea to the jurisdiction, HCAD argued that Vitol failed to exhaust its administrative remedies regarding the IFC exemption because it did not protest the 2014 Notice within 30 days of receipt.

The trial court granted HCAD's plea, and the appellate court affirmed. The court reasoned that the 2014 Notice complied with section 25.19 of the Tex. Tax Code because it listed the appraised value and indicated that no exemptions were granted. Vitol was thus entitled to protest to the Appraisal Review Board under chapter 41 and had 30 days to do so. Because they failed to timely protest, the court held that Vitol failed to exhaust its administrative remedies and HCAD's plea to the jurisdiction was properly granted.

Brazos Elec. Power Coop., Inc. v. Texas Comm'n on Envtl. Quality, 538 S.W.3d 666 (Tex. App. – El Paso Sept. 15, 2017, pet. filed)

Holdings: TCEQ had discretion to issue negative use determination and deny tax exemption for device listed under section 11.31(k) of the Tex. Tax Code; company waived issue of improper informal rulemaking; heat steam recovery generators having a productive purpose did not qualify as 100 percent pollution-control property; and agency met arbitrary and capricious standard in rendering decision.

Brazos Electric Power Cooperative ("BEPC") sued the Texas Commission on Environmental Quality ("TCEQ") over the agency's denial of its application for an ad valorem tax exemption under section 11.31 of the Tex. Tax Code. BEPC installed heat steam recovery generators to decrease air pollution at its two power plants. The district court affirmed TCEQ's denial and BEPC appealed.

The appeals court ruled that TCEQ did not act arbitrarily or capriciously in rendering its decision, which relied on the cost analysis procedure that balances the costs of upgrading to a more environmentally-friendly technology against the positive potential return derived from that investment. The appeals court agreed that TCEQ still had discretion to deny a tax break under section 11.31 even if the device was specifically listed in section 11.31(k) of the code. The court reasoned that applicants with properties on that list were not guaranteed a positive-use determination, but were instead afforded certain administrative preferences. The court also rejected BEPC's claims that TCEQ engaged in informal rulemaking in violation of the Administrative Procedures Act for lack of adequate briefing.

Almeter v. Bastrop Cent. Appraisal Dist., 2017 WL 4478217 (Tex. App. – Austin October 5, 2017, pet. denied)

Holdings: trial court did not abuse its discretion in decisions regarding evidence, but did improperly dismiss plaintiff's 2016 claims, which weren't discussed within appraisal district's summary judgment motion.

Almeter sued Bastrop Central Appraisal District ("BCAD") after it denied her application for an open-space agricultural appraisal for tax years 2015 and 2016. BCAD filed motions for summary judgment, which the trial court granted. Almeter appealed, arguing that her land's use was to the degree of intensity accepted in the area, that BCAD's intensity standard was invalid, and that the trial court improperly handled evidence offered by the parties. The appeals court ruled that Almeter's affidavit wasn't timely, so the trial court did not abuse its discretion in excluding it. Likewise, Almeter did not raise a fact issue regarding BCAD's intensity standards, so the trial

court did not err in granting BCAD's motion for no-evidence summary judgment. However, the court ruled that the trial court erroneously dismissed Almeter's claims related to the 2016 tax year, as BCAD's motion only addressed Almeter's 2015 claims.

Kilgore Indep. Sch. Dist. v. Axberg, 535 S.W.3d 21 (Tex. App. – Texarkana October 12, 2017, no pet.)

Holdings: Superintendent and Board of Trustees did not commit ultra vires act, so claims against them were dismissed; and sovereign immunity does not apply to constitutional claim against school district.

Taxpayers sued Kilgore ISD ("KISD"), members of KISD's board of trustees, and KISD's superintendent after the KISD board voted to repeal KISD's local option homestead exemption. The vote came two weeks after Governor Greg Abbott signed a bill that, upon approval of a constitutional amendment, would forbid taxing authorities from taking such action. Defendants filed a motion to dismiss and plea to the jurisdiction, which the trial court denied.

On appeal, the court reversed in part, ruling that the ultra vires claims against KISD's board of trustees and superintendent should be dismissed. The trustees and superintendent alike acted within their authority. The taxpayer's claim against KISD was not barred by sovereign immunity, however, because the suit sought only equitable or injunctive relief: specifically, repayment of taxes allegedly paid under duress, and not money damages. Defendants' exhaustion-of-administrative-remedies defense failed because the issue presented was purely a question of law. Likewise, the court rejected KISD's argument that election of remedies doctrine barred the suit because the claims against the district (declaratory judgment) and its employee (ultra vires) are distinguishable.

Hoa Dao v. Harris Cnty. Appraisal Dist., 2017 WL 4820058 (Tex. App. – Houston [1st] October 26, 2017, no pet.)

Holding: Plaintiff did not substantially comply with Tex. Tax Code section 42.08(b) because she did not pay any portion of assessed taxes before delinquency date.

In response to plaintiff's protest suit, Harris County Appraisal District ("HCAD") filed a motion to dismiss, claiming that plaintiff did not pay the taxes assessed for 2014 and so forfeited her right to appeal. Plaintiff argued that another party paid the taxes, albeit after the delinquency date, and that the late payment was "an exceptional circumstance" under the federal Bankruptcy Code. The trial court granted HCAD's motion.

The appeals court affirmed, reasoning that the sections of the federal code relied upon by plaintiff did not apply, because they only affect trustees of a bankruptcy estate. Plaintiff was not a bankruptcy trustee. Likewise, plaintiff could not rely on a provision staying proceedings against debtor, because the debtor was not a party to the instant case. Finally, the court ruled that plaintiff did not substantially comply with section 42.08(b) of the Tex. Tax Code because she did not pay any portion of the assessed taxes timely.

National Church Residences of Alief, TX v. Harris Cnty. Appraisal Dist., 539 S.W.3d 460 (Tex. App. – Houston [1st] December 12, 2017, pet. filed)

Holdings: Plaintiff met standard under Texas Constitution as an organization engaged primarily in a "public charitable function" and qualified for property tax exemption because it provided housing "without regard to the residents' ability to pay."

Plaintiff owns an apartment complex and provides federally-subsidized housing to low-income elderly individuals. The Harris County Appraisal District ("HCAD") denied plaintiff's charitable organization exemption for tax years 2012 and 2013, on the grounds that plaintiff did not provide housing without regard to the tenants' ability to pay per section 11.18(d)(13) of the Tex. Tax Code. Plaintiff filed suit, and the district court granted HCAD's summary judgment motion.

The appeals court reversed the district court on rehearing, ruling that plaintiff met the constitutional requirement that it be "engaged primarily" in a charitable function and the statutory requirement of section 11.18(d)(13). Plaintiff charged rent and required a security deposit at move-in, but both charges were determined by federal regulations and did not establish that plaintiff considered a potential tenant's ability to pay.

Viper S.W.D., LLC v. Jackson Cnty. Appraisal Dist., 2018 WL 1325780 (Tex. App. – Corpus Christi March 15, 2018, no pet.)

Holdings: evidence legally sufficient to support finding that: (1) appraisal district described the property per section 25.03 of Tex. Tax Code; (2) appraisal district complied with form and content requirements of section 25.02 of Tex. Tax Code; (3) appraisal district only taxed owner's tangible personal property; and (4) fact finder could resolve conflicting testimony in favor of appraisal district.

Viper sued Jackson County Appraisal District ("JCAD"), challenging its appraisal of Viper's saltwater disposal wells for tax years 2008 and 2009. When the case was called for trial, the court allowed Viper to amend its petition to include tax year 2010 as well. The trial court denied Viper's request for relief, and Viper appealed, challenging the legal sufficiency of the evidence supporting the trial court's findings.

The appellate court first rejected JCAD's argument that the trial court lacked jurisdiction over the suit because Viper did not substantially comply with section 42.08 of the Tex. Tax Code. The court sided with Viper, agreeing that because the county did not assess any taxes prior to 2008, Viper was not required to pay taxes prior to the delinquency date. However, the court ruled that the trial court did not have jurisdiction over Viper's 2010 challenge because there was no order from JCAD's ARB for that year. The court overruled all of Viper's legal sufficiency challenges, regarding the description of the property and what property was included in the appraisals.

Palma v. Harris Cnty. Appraisal Dist., 2018 WL 1473792 (Tex. App. – Houston [1st Dist.] March 27, 2018, pet. filed)

Holding: residence in Houston is real property located in Harris County, appraisable by the local appraisal district.

Palma, the beneficiary of a trust, protested his property taxes, arguing that the property's taxable situs was not Harris County. The ARB entered an order determining that the property was within Harris County, and Palma filed a petition for review in district court. Palma's arguments that the property was residential and therefore not taxable were unavailing. Harris County Appraisal District's ("HCAD") motion for summary judgment was granted by the trial court. The appeals court affirmed, as Palma failed to present evidence rebutting the evidence HCAD presented.

Munn v. Smith Cnty. Appraisal Dist., 2018 WL 1616384 (Tex. App. – Tyler April 4, 2018, pet. filed)

Holding: Tex. Tax Code section 42.08(e) notice requirement applies to taxpayer, not taxing authorities.

Munn challenged the ARB's denial of his agricultural exemption application. Smith County Appraisal District ("SCAD") filed a motion to dismiss, on the basis that Munn did not pay any taxes on the property before the delinquency date. Munn did not respond to the motion or attend the hearing, and the trial court granted the motion. The court did not rule on Munn's motion to reinstate the case, and Munn appealed.

The appellate court rejected Munn's argument that section 42.08(e) requires SCAD to provide 45 days' notice of hearing to the collector of each taxing unit prior to the trial court hearing SCAD's plea to the jurisdiction. The court agreed with SCAD that the notice requirement applies to the taxpayer, not SCAD. Because Munn did not comply with the prepayment requirement of section 42.08(b), he forfeited his right to appeal and the trial court properly granted SCAD's plea to the jurisdiction. Further, the trial court did not abuse its discretion in denying Munn a new trial.

In re Brookfield Infrastructure Group, 2018 WL 1725467 (Tex. App. – Corpus Christi-Edinburg April 9, 2018, no pet.)

Holdings: conditional mandamus relief granted regarding trial court's expanded definition of term in discovery request; limiting production of documents created after 2014 and 2015 appraisals; definition of term as including third party's attorneys; and limiting overbroad request.

In a property tax appeal for tax years 2014 and 2015, Matagorda County Appraisal District ("MCAD") sought third-party discovery from Brookfield, which filed objections and a motion for protection. The trial court granted MCAD's motion to compel the production of documents from Brookfield, overruling Brookfield's objections except as to attorney-client communications and work product. Brookfield sought mandamus relief, arguing that MCAD's discovery requests were irrelevant; overly broad; sought privileged, trade secret and confidential information; and imposed an undue burden and expense.

The appeals court agreed that the trial court abused its discretion in redefining "Tres Palacios Gas Storage Facility" to mean Plaintiffs, its business, and its assets, as that was more expansive than MCAD's original discovery request. The court also agreed that the temporal scope of the requests needed to be limited, ruling that documents created after the 2014 and 2015 appraisals were immaterial. The court also exempted attorney-client communications subject to Texas Rule of Civil Procedure 193. The court did not side with Brookfield on its trade secret argument, noting that there was an agreed protective order in place.

Tarrant Appraisal Dist. v. Tarrant Reg'l Water Dist., 547 S.W.3d 917 (Tex. App. – Fort Worth April 19, 2018, no pet.)

Holdings: statute providing tax exemption for public property used for public purpose did not require the property be exclusively used for public purposes, and portion of property leased to restaurant was used for public purposes and was therefore tax exempt.

Tarrant Regional Water District ("TRWD") sought a property tax exemption for the land it leases to a restaurant located on the Trinity River. The ARB denied the exemption for the restaurant building, its parking lot, and the landscaped areas and sidewalks around the building and parking lot. TRWD appealed in district court and filed a motion for summary judgment claiming the entire property was tax exempt as a matter of law. The trial court granted TRWD's motion, and Tarrant Appraisal District ("TAD") appealed.

The appellate court disagreed with TAD's contention that the property was not tax exempt under Tex. Tax Code section 11.11(a) because it was being used for business operations and not for the exclusive use and benefit of the public. The court found no basis for TAD's argument in the state constitution or section 11.11(a) and likewise found the case law TAD cited to be unpersuasive. Because the property was used in part for public purposes, TRWD was entitled to an exemption under section 11.11(a).

Famsa, Inc. v. Bexar Appraisal Dist., 2018 WL 2121083 (Tex. App. – San Antonio May 9, 2018, no pet.)

Holding: arbitrator did not exceed his authority or engage in misconduct or willful misbehavior by assigning burden of proof to property owner in binding arbitration.

Famsa protested the appraisal of its property before the ARB, then appealed through binding arbitration. After a documents-only hearing, the arbitrator issued an Arbitration Determination and Award assigning the same value as the ARB. Famsa filed suit seeking to vacate the award, arguing the arbitrator incorrectly assigned the burden of proof to them, exceeding his powers and amounting to misconduct or willful misbehavior. The trial court granted the Bexar Appraisal District's summary judgment motion.

The appellate court affirmed, reasoning that if there was any error in assigning the burden of proof to Famsa, it amounted to a mistake of law, which is not grounds for holding an arbitrator exceeded his powers. The court also ruled that the arbitrator's decision regarding the burden of proof, which

was explained to the parties before the hearing and to which Famsa did not object at the time, did not constitute misconduct or willful misbehavior.

Bustos v. Bexar Appraisal Dist., 2018 WL 2222615 (Tex. App. – San Antonio May 16, 2018, no pet. hist.)

Holding: Plaintiff did not substantially comply with Tex. Tax Code section 42.08(b) or (d) due to non-payment of taxes and his failure to obtain a hearing on his inability to pay.

Bustos challenged the appraisal of his residential property for tax years 2009 through 2017. Bexar Appraisal District ("BAD") moved to dismiss, claiming that Bustos failed to substantially comply with section 42.08(b) of the Property Tax Code. BAD claimed Bustos paid only $5 in taxes since 2008. The trial court granted the motion to dismiss. Bustos appealed, arguing that all of the taxable value is in dispute and requesting that the court waive the full amount due because of endemic fraud.

The appellate court reasoned that because Bustos owns the property subject to BAD's jurisdiction and believes it has some taxable value, he was required to provide a written statement of the amount he proposed to pay and to pay some portion before the delinquency date to substantially comply with section 42.08(b). Because Bustos failed to do so, he did not substantially comply with subsection (b). Similarly, Bustos did not seek or obtain a hearing on his inability to pay taxes under section 42.08(d), so he failed to substantially comply with that subsection as well.

In re Catherine Tower, LLC, 2018 WL 3041088 (Tex. App. – Austin June 20, 2018, no pet. hist.)

Holding: mandamus relief granted from producing third-party financing appraisal in equity case.

Catherine Tower, LLC, ("Catherine") acquired a high-rise apartment complex in April 2016 and timely protested the property's value for that year and appealed the ARB's order. Catherine's suit relied on an equity claim under section 42.26(a)(3) of the Tex. Tax Code. Travis County Appraisal District ("TCAD") sought any analyses of the property's value through third-party discovery on Catherine's bank. Catherine objected, on the grounds that TCAD's request was outside of the scope of discovery because it was irrelevant and not reasonably calculated to lead to admissible evidence. The district court disagreed and required production of the bank's appraisal.

On appeal, TCAD argued that the district court did not abuse its discretion because the appraisal is relevant even in relation to an equity claim, since any dispute about a property's appraised value concerns the property's market value. Following the Texas Supreme Court's ruling in *EXLP Leasing*, the appellate court disagreed, rejecting the idea that any property tax dispute inherently places the property's market value in issue. Instead, Catherine's equity claim was based on appraised values assigned by the appraisal district.

Denton Cent. Appraisal Dist. v. Gladden, 2018 WL 3288590 (Tex. App. – Fort Worth July 5, 2018, no pet. hist.)

Holding: Tex. Tax Code section 23.23(c) setting 10 percent homestead cap requires that a full tax year must elapse after January 1 application of homestead before cap takes effect, and cap applies to second calendar year after purchase of property.

Gladden bought a house in May 2012 for $310,000, a price about $107,000 above the house's 2012 appraised value. Denton Central Appraisal District ("DCAD") increased the appraised value to $312,352 for 2013. Gladden applied for the homestead exemption in April 2013. DCAD applied the exemption for 2013 but did not apply the 10 percent Homestead Cap, per section 23.23 of the Tex. Tax Code. The ARB concluded the refusal was correct. Gladden sued, and the trial court ruled that the Homestead Cap did apply on January 1, 2013.

The appellate court reversed, ruling that a property must first qualify for a homestead exemption under section 11.13 and a year must pass before section 23.23's Homestead Cap takes effect. This provides a one-year window, the court reasoned, for appraisal districts to bring under-assessed properties up to their true market values. Because Gladden's homestead exemption applied to 2013, the Homestead Cap did not apply until tax year 2014.

Palma v. Harris Cnty. Appraisal Rev. Bd., 2018 WL 3355052 (Tex. App. – Houston [1st Dist.] July 10, 2018, no pet. hist.)

Holding: Plaintiff's argument challenging trial court's grant of plea to jurisdiction waived due to inadequate briefing.

Palma filed suit against the ARB, claiming he timely protested his property's taxable situs and the ARB failed to hold a hearing on the matter. The ARB filed a plea to the jurisdiction arguing that Palma did not timely file a notice of taxable situs protest and that Palma isn't entitled to a hearing because the ARB held a hearing on Palma's value protest. The trial court granted the motion, and Palma appealed. The appellate court found Palma's briefing wanting, as it did not cite the record or provide supporting authority. As in his case against HCAD, Palma claimed the subject property did not have situs in Harris County. The trial court's order was affirmed.

Panda Sherman Power v. Grayson Cent. Appraisal Dist., 2018 WL 3737974 (Tex. App. – Dallas August 7, 2018, no pet. hist.)

Holding: TCEQ positive or negative use determination is binding on appraisal districts.

Panda Sherman Power ("Panda") used heat recovery steam generators in its power plant, and applied to TCEQ for a "positive use" determination that would entitle Panda to a tax exemption under section 11.31. Grayson Central Appraisal District ("GCAD") conditionally granted the pollution control exemption for the 2014 tax year, but revoked the exemption in light of TCEQ's "negative use" determination. The ARB also denied Panda's request for the exemption, and Panda sued. The trial court granted GCAD's motion for summary judgment, accepting their argument that GCAD had no authority to grant the exemption without a positive use determination from TCEQ, per section 11.31(i).

The appellate court makes clear that under section 11.31, TCEQ's executive director determines whether property is used for pollution control. Panda did not meet section 11.31(i)'s requirement of a positive use determination from TCEQ, so it was not entitled to the pollution control exemption. Panda cited *Freestone Power Generation* for the proposition that heat recovery steam generators are entitled to the exemption as a matter of law. The court distinguished that case, as it dealt with a challenge to TCEQ's affirmance of the executive director's negative use determination. That issue was not before the trial court in this case.