

**ASSEMBLY FINANCE COMMITTEE
THE CITY AND BOROUGH OF JUNEAU, ALASKA
Wednesday, January 8, 2020, 5:30 PM.
Assembly Chambers**

I. CALL TO ORDER

II. ROLL CALL

III. APPROVAL OF MINUTES

- a. **Wednesday, December 4, 2019**

IV. ITEMS FOR DISCUSSION

- a. **Risk Fund Overview**
- b. **Remote Sales Tax Code Ordinance**
- c. **School Bond Debt Reimbursement**
- d. **Centennial Hall Funding**

V. INFORMATION ITEMS

- a. **Mandatory Disclosure (Real Estate)**
- b. **Juneau School District - Preliminary Student Count**
- c. **Highlights from the Governor's Budget Proposal**

VI. NEXT MEETING DATE

- a. **Wednesday, February 5, 2020**

VII. ADJOURNMENT

ADA accommodations available upon request: Please contact the Clerk's office 72 hours prior to any meeting so arrangements can be made to have a sign language interpreter present or an audiotape containing the Assembly's agenda made available. The Clerk's office telephone number is 586-5278, TDD 586-5351, e-mail: city.clerk@juneau.org

DRAFT
City and Borough of Juneau
Minutes - Assembly Finance Committee Meeting
Wednesday, December 4, 2019, 5:30 PM

I. Call to Order

The meeting was called to order at 5:30 PM by Loren Jones, Chair.

II. Roll Call

Committee Members Present: Alicia Hughes-Skandijs, Carole Triem, Wade Bryson, Greg Smith, Michelle Bonnet Hale, Chair Loren Jones, and Mayor Beth Weldon.

Committee Members Participating Telephonically: N/A.

Committee Members Absent: Maria Gladziszewski, and Rob Edwardson.

Staff Present: Rorie Watt, City Manager; Mila Cosgrove, Deputy City Manager; Jeff Rogers, Finance Director; Robert Palmer, City Attorney; Clinton Singletary, Sales Tax Administrator; Lindsey Foster, Admin Officer, Parks & Recreation; Sam Muse, Controller; and Elisabeth Jensen, Budget Analyst.

III. Approval of Minutes

The November 6, 2019, minutes were approved as presented.

IV. Fiscal Sustainability Process

Clerk's Note: An in-meeting 5-page supplemental packet, "Mid-Year Budget Update", was provided to the Assembly members at the meeting and via email.

Jeff Rogers, Finance Director, discussed the in-meeting handout, framing it as information usually provided at the Assembly Retreat, yet setting the groundwork for discussion pre-retreat.

The Assembly discussed the information.

The meeting recessed at 5:42 PM.

The meeting reconvened at 5:44 PM.

Mr. Rogers and the Assembly continued to discuss the in-meeting handout.

The meeting recessed at 6:23 PM.

The meeting reconvened at 6:33 PM.

Chair Jones, introduced pages 5-29 of the meeting packet, "Follow-up Responses to Requests made in Nov 2, 2019 AFC Meeting", asking the Assembly members to work through the information one item at a time, with any further questions they may have based on the information presented.

Minutes - Assembly Finance Committee Meeting Wednesday, December 4, 2019, 5:30 p.m.

Staff fielded questions from the Assembly.

The meeting recessed at 7:51 PM.

The meeting reconvened at 8:02 PM.

The Assembly continued to discuss the topic.

V. Motor Vehicle Registration Tax (MVRT) Update

Jeff Rogers, Finance Director, presented the memo "Consideration of Increase to Motor Vehicle Registration Tax Follow-up", found on pages 30 – 33 of the meeting packet, providing a brief history of the actions and discussions leading to the most recent document.

Ordinance 2019-41 was introduced to at the Assembly meeting on November 25, 2019. The Assembly referred it to the Assembly Finance Committee for further discussion and set it for public hearing at the Assembly meeting on December 16, 2019.

The Assembly discussed the information with Mr. Rogers, and Robert Palmer, City Attorney.

At the request of the AFC, Mr. Palmer agreed to amend the ordinance, adding an rate escalation clause. The amendment would be provided to the Assembly in version (b) of Ordinance 2019-41

VI. School Bond Debt Memo

Jeff Rogers, Finance Director, introduced the topic referring to page 34 of the meeting packet, explaining two clear paths forward of the many options available.

The Assembly discussed the information.

VII. Next Meeting Date

The meeting previously schedule for Wednesday, December 11, 2019 was cancelled. The next AFC meeting will take place on Wednesday, January 8, 2020.

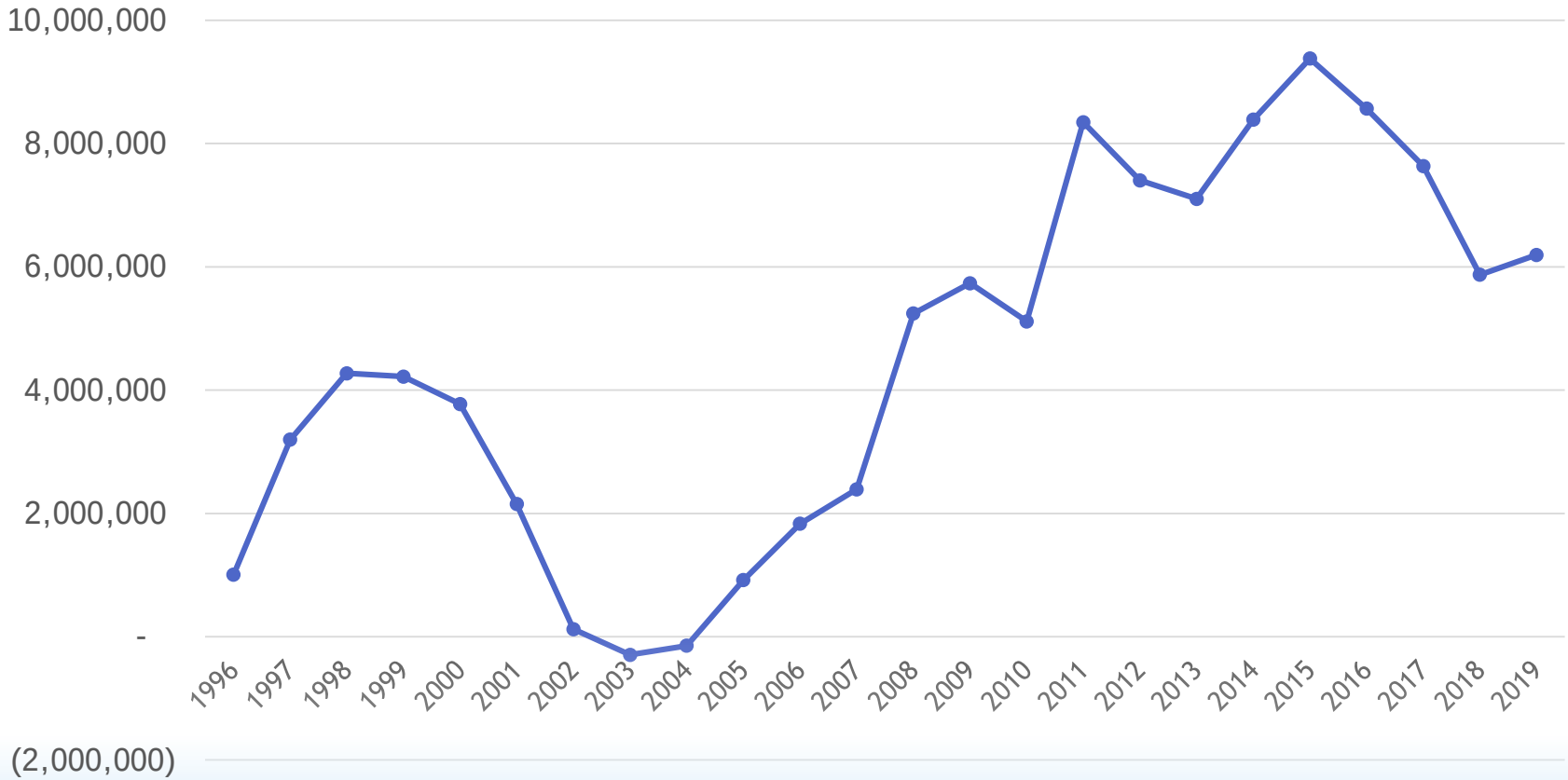
VIII. Adjournment

Meeting was adjourned at 8:32 PM.

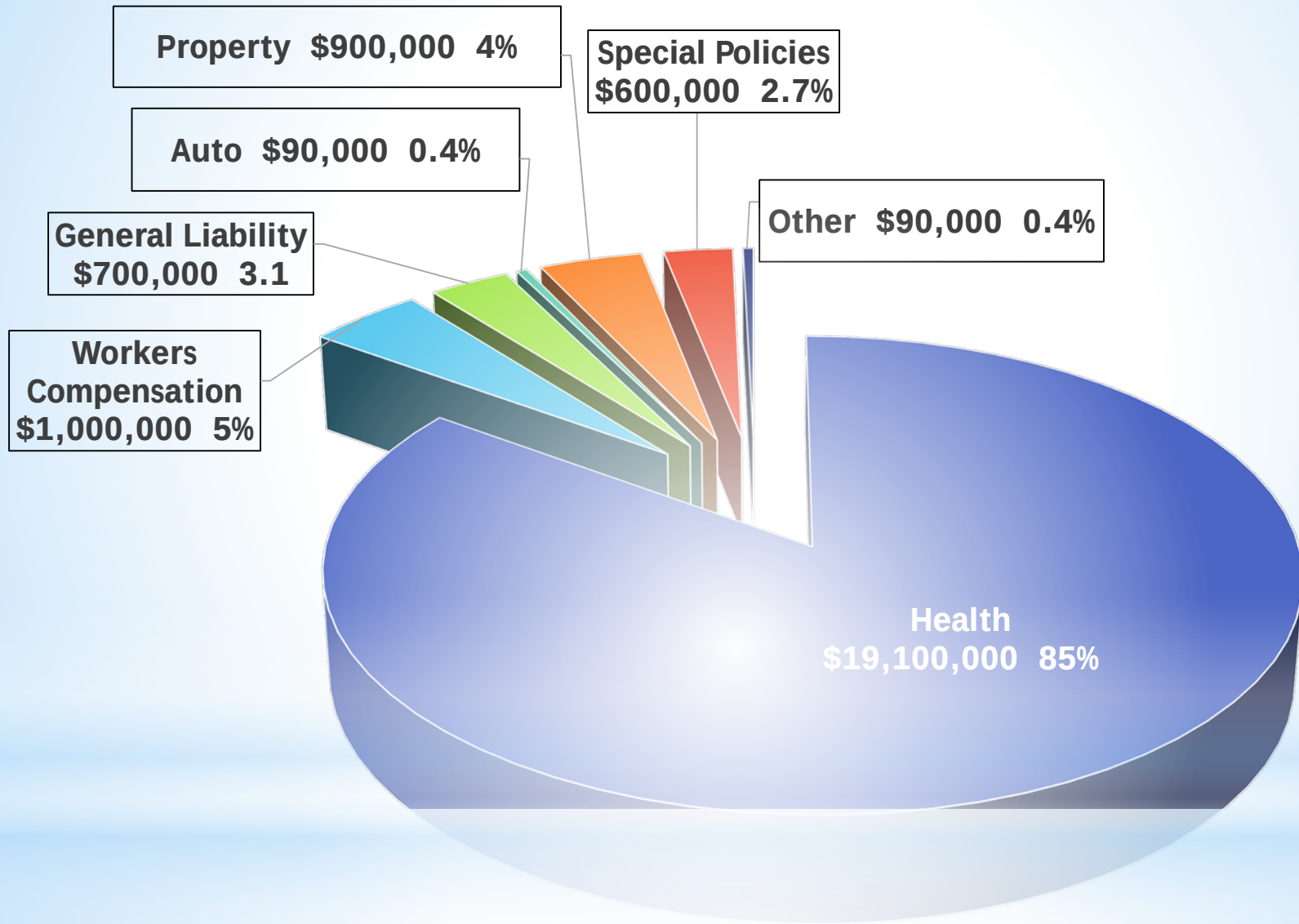
Risk Management **for CBJ, BRH, and JSD**

CBJ Assembly Finance Committee
January 8, 2020

Risk Fund Balance FY1996 - FY2019



**Risk Fund Balance
Since 1996**



FY19 Risk Fund Actual Expenditures (Rounded)

Self-Insured

- * Health Benefits
- * General and Auto Liability, Employment Practices
- * Workers Compensation

Fully Insured

- * Property
- * Special Policies: Airport, Docks and Harbors, BRH, Eaglecrest

Insurance Program Overview

Self-insured plan

- * Covers 987 CBJ and BRH benefited employees/
2,274 covered lives
- * Health self-insured fund covers actual claims
costs + administrative fee, consultants, and stop
loss insurance
- * Self-insured Retention - \$250,000
- * Premiera BCBS of Alaska administers the plan
- * \$19.5M FY20 budget
- * Greater ability to control overall cost

Health Benefits Program

* Placeholder – working with
Aon to get good graphic

CBJ Claims Trend

- * Increasing cost of healthcare nationwide
- * Increasing cost of pharmacy nationwide
- * Smaller insured pool = greater overall volatility.
- * Impact of Affordable Care Act
 - * As of December 2019, the ACA Excise Tax has been repealed

Risks to the Health Benefit Fund

Encourage smart consumerism

- * 24-hour NurseLine
- * Essentials Formulary for Pharmacy—4 tier formulary to promote use of generics
- * Moved to two plan options—Standard & Economy
- * Increase the employee cost share to align with nationwide trend of 80/20—CBJ is currently ~90/10
- * Teladoc medicine
- * Employee Wellness Program

Health Benefits Cost Containment

Top spending (2018)

- * Chemical Dependency= 6% of total spend in 2018 (\$1.0 M)
 - * 49 members (1.9%)
- * Pharmacy= 17% of total spend in 2018 (\$2.7M)
 - * 1% of scripts (10 members) drove 51.3% of Rx cost
- * Chronic disease +mental health $\approx$ 20% of total spend in 2018
 - * Cancer: 44 members (1.7%) \$1.2M
 - * Psychiatry: 528 members (20.3%) \$629K
 - * Cardiovascular disease: 345 members (13.2%) \$600K
 - * Diabetes: 126 members (4.8%) \$497K

Primary Health Care Cost Drivers

Chronic Disease

*US: 90% of the nation's \$3.5 trillion in annual health care expenditures (CDC, 2017)

*CBJ: $\approx$ 20% of total spend in 2018

*Chronic disease $\rightarrow$ more chronic disease

*13% of our members= 63% of costs in 2018



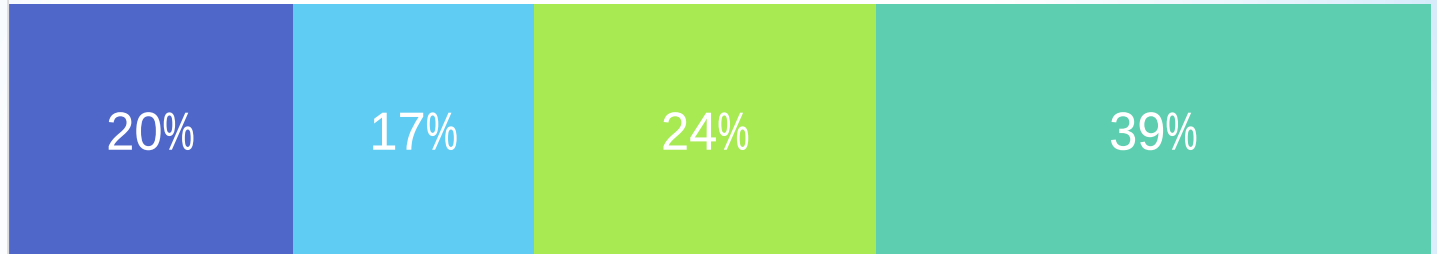
The Cost of Chronic Disease

*Health Yourself Wellness Program

Good for our employees and good for CBJ.

■ Healthy ■ Low Risk ■ Moderate Risk ■ High Risk

% OF COSTS



% OF MEMBERS



2018 CBJ & BRH
Population

* For every dollar invested in wellness...

* \$3.27 saved in medical

(Baiker, Cutler, Song; 2010)

* For every day of exercise...

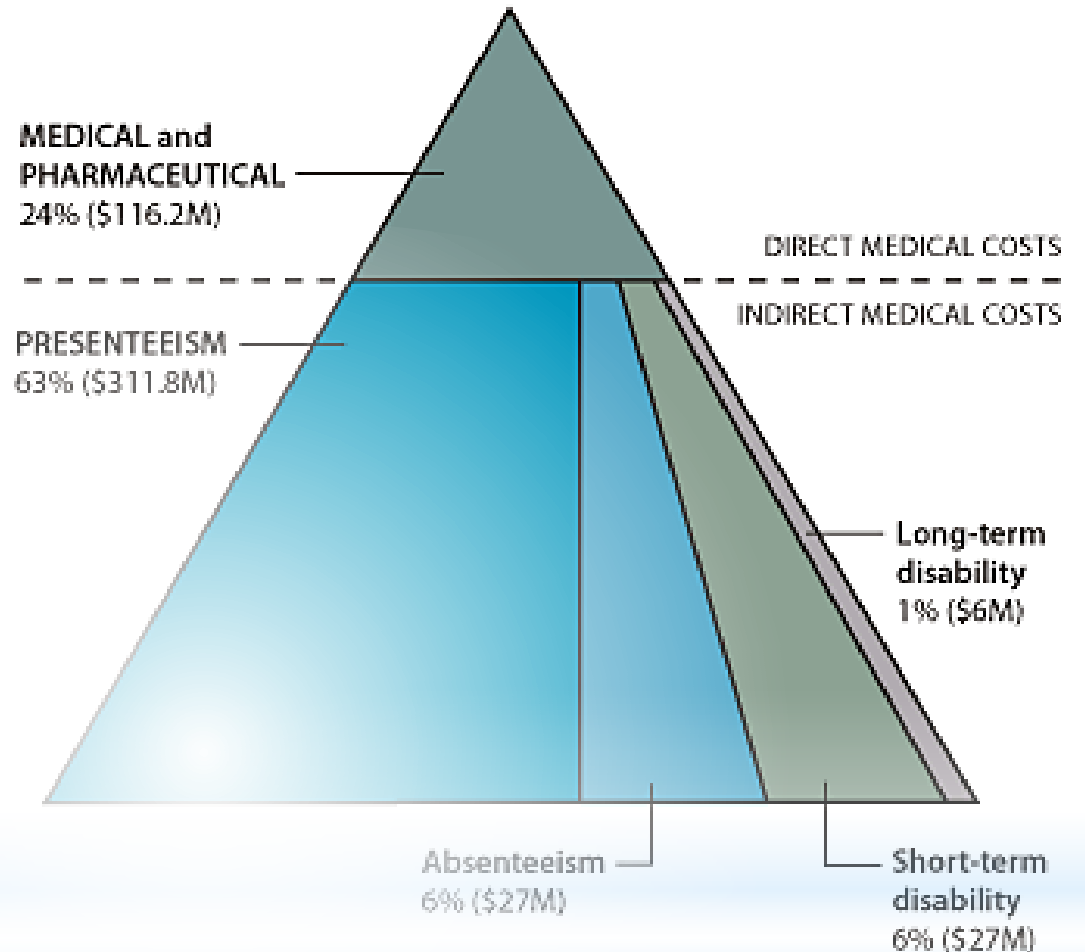
* 25% of errors prevented

(BRATLAB, 2015)

* For every lunchtime stroll...

* Better focus, more enthusiastic, less anxiety

(Thøgersen-Ntoumani, 2015)



The Cost of Poor Health

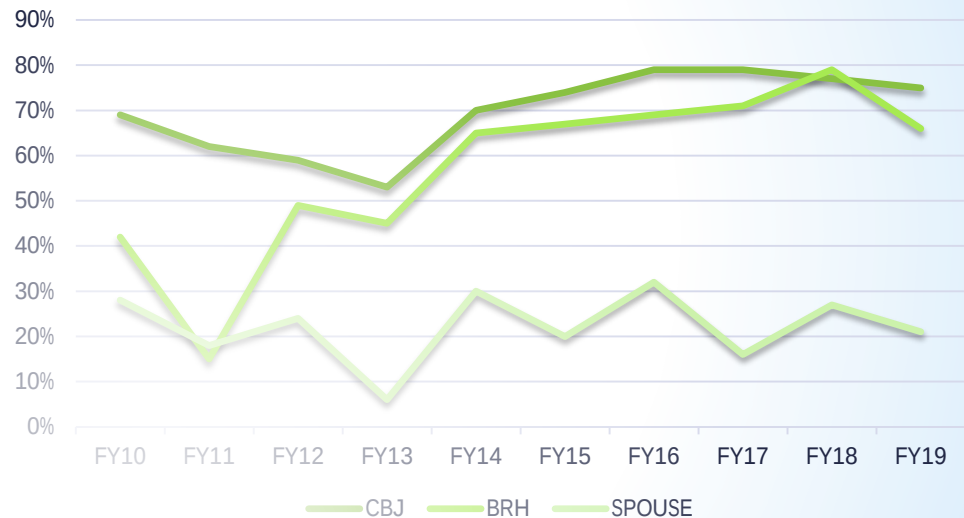
- * Awareness
- * Knowledge
- * Behavior
- * Environment

Tools:

- * Incentives
- * Biometrics
- * Challenges
- * Communications

"I love the challenges to keep me healthy. I have been at 8 hospitals and none can match your Health Yourself program!"

Overall Participation



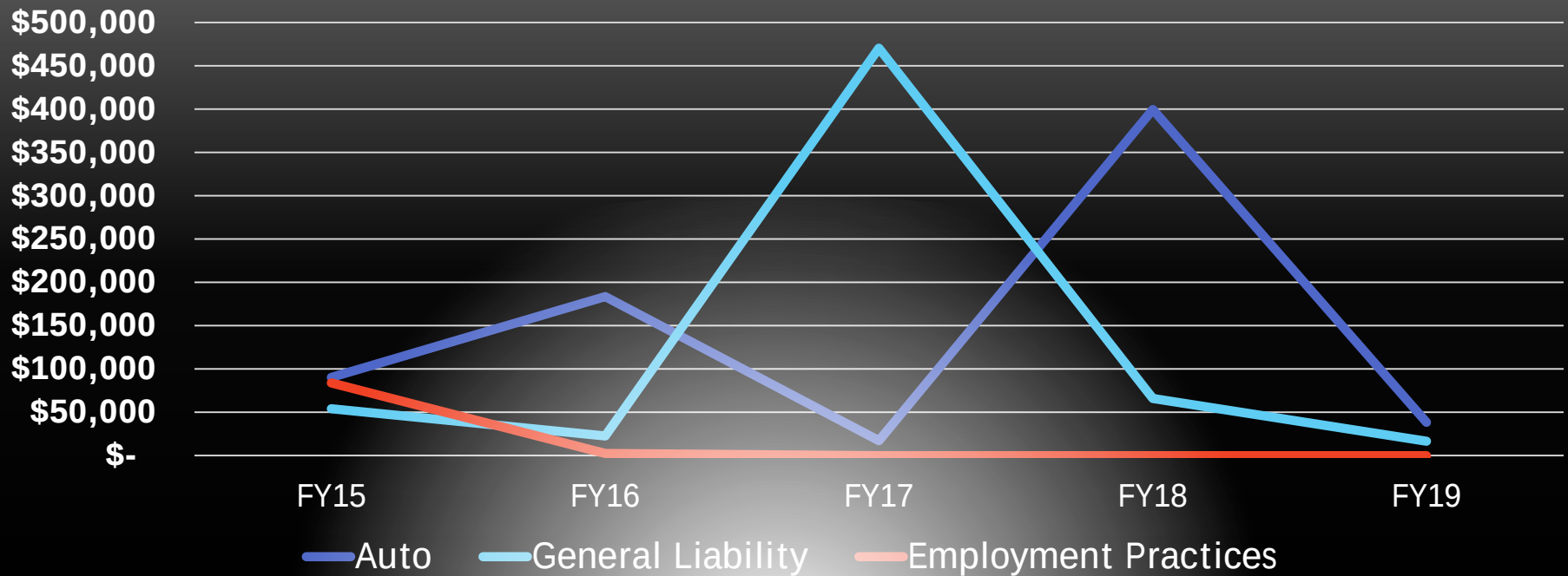
Our Health Promotion Efforts

- *Total Annual Insurance Premiums \$1.69M for FY20
- *Program includes Workers Compensation, Property, General and Auto Liability, Employment Practices, and Special General and Professional Liability Insurance for Enterprises and CCFR
- *Cost containment efforts
 - *work with broker to market insurance policies
 - *evaluate Self-Insured Retention levels – how much risk should we retain?
 - *Contract review and risk transfer where appropriate

Property/Casualty Program

CBJ, BRH, JSD

5 Year Claims Experience



Self-Insured Retention - \$250,000

Concern

- ❖ Broad, diverse exposures throughout CBJ, BRH, and JSD

Mitigation

- ❖ Claims database with online incident reporting used to monitor trends
- ❖ Video camera systems at many facilities and on buses

Liability Coverage

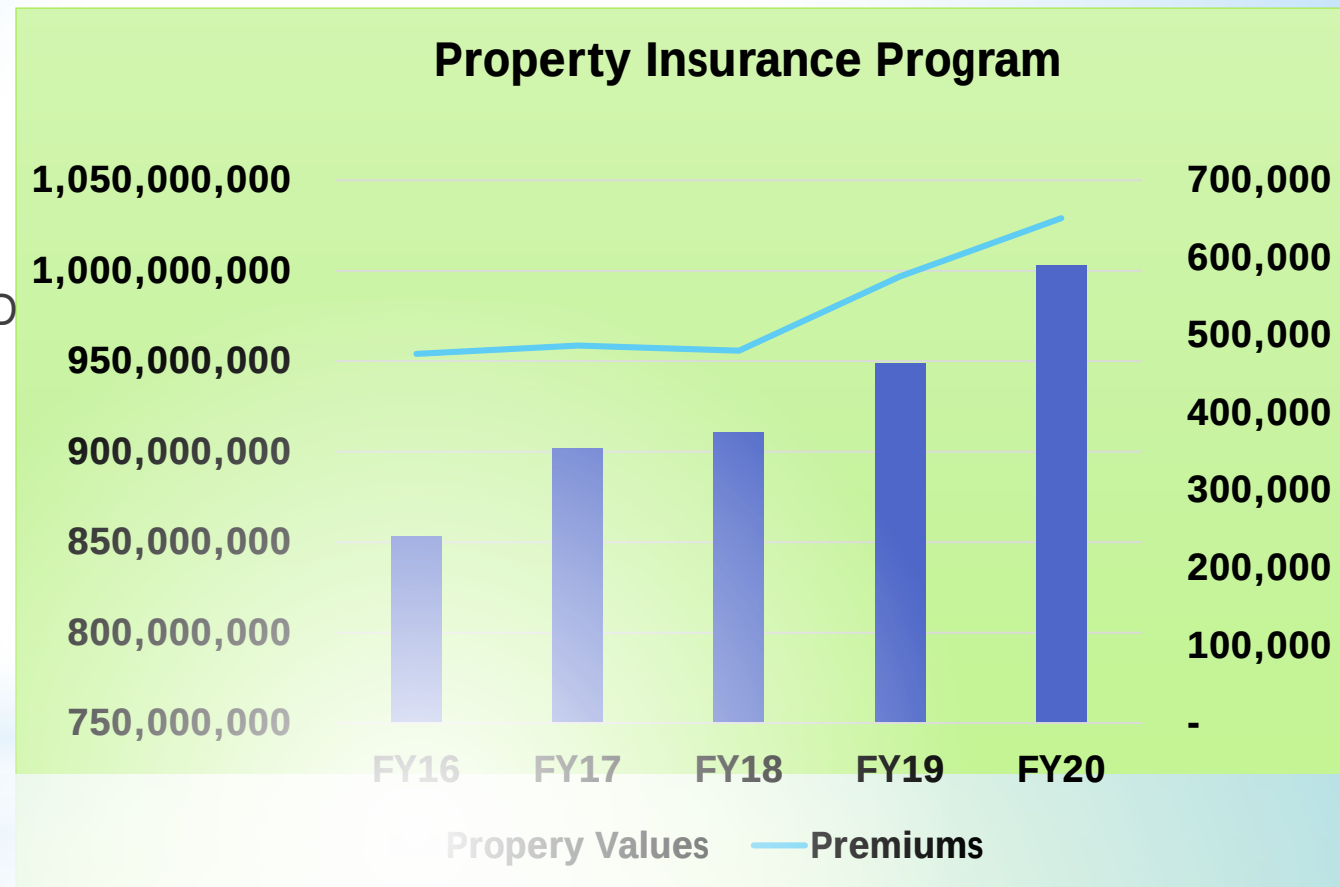
**Deductible - \$100,000
per claim**

Concerns

- * Exposure: CBJ/BRH/JSD property values surpassed \$1 billion in FY20
- * 9 claims exceeding \$50,000 from FY15 - present

Mitigation

- * Routine maintenance
- * Deferred maintenance
- * Strong maintenance programs also mitigate general liability exposures

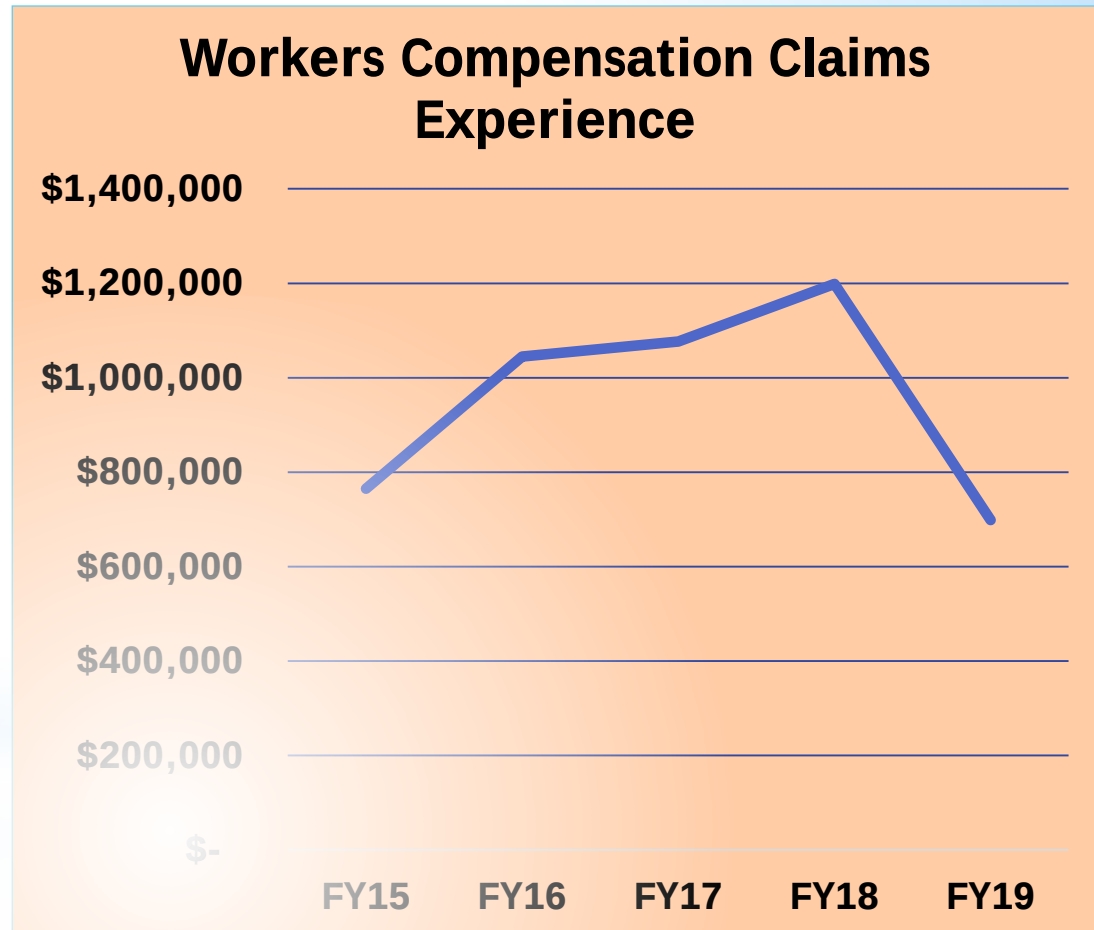


Property Insurance

Self-Insured Retention: \$1.25M

Concerns

- * Statewide trend: rising costs in spite of lower incident rates. Primary cause: increased medical costs
- * Volatile – expenses can vary greatly in any given year
- * Larger claims can grow over many years



Workers Compensation

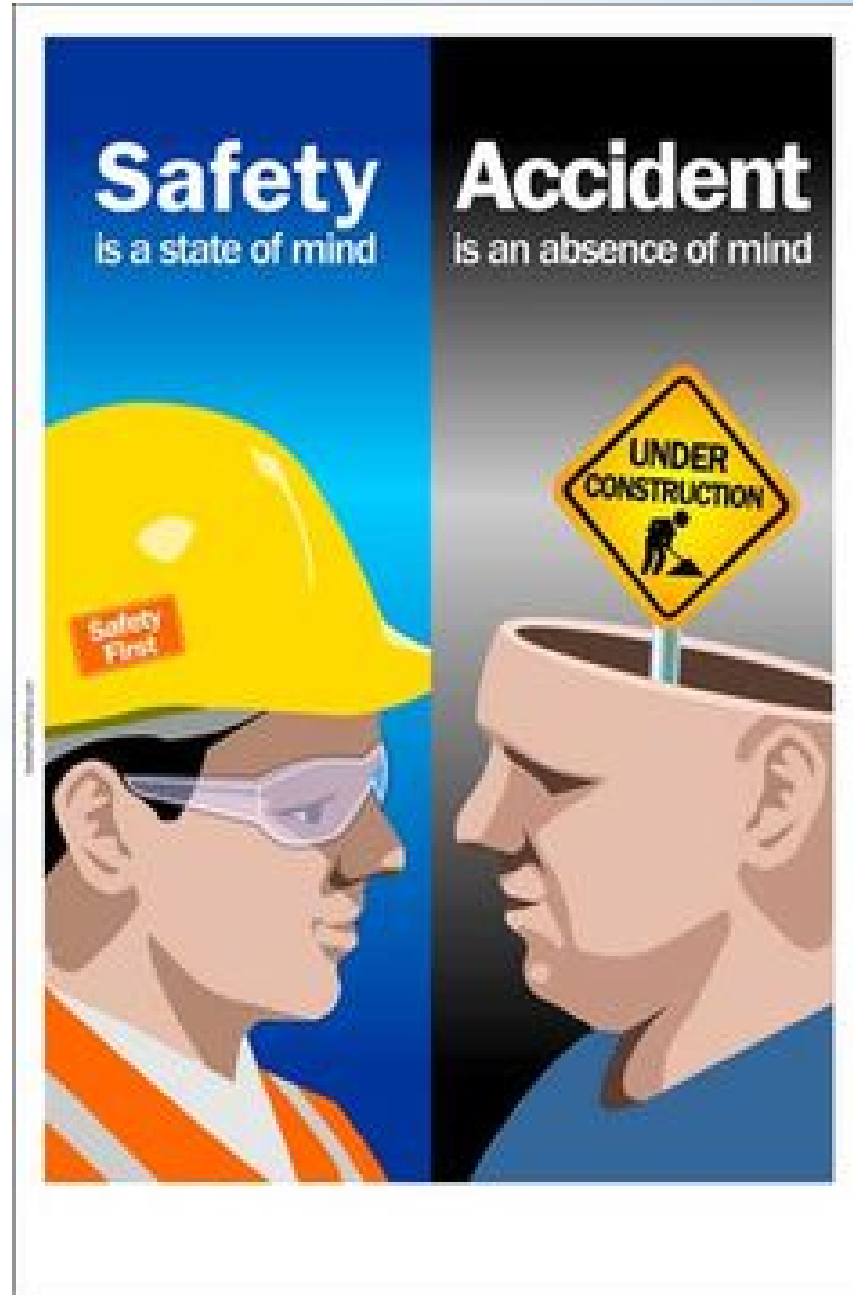
Mitigation

- * Comprehensive safety management program
- * Joint CBJ, BRH, and JSD Safety Committee promoting communication and sharing of resources between entities – breaking down silos
- * Greater emphasis on return to work/light duty programs
- * Working closely with Third Party Adjuster to manage costs

Workers
Compensation

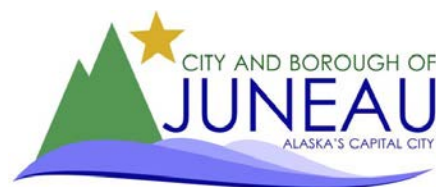
- * Create a culture of safety
- * View all incidents as preventable
- * Continually improve safety management strategies

Safety Message



Questions?

MEMORANDUM



DATE: January 6, 2020

TO: Assembly Finance Committee

FROM: Jeff Rogers, Finance Director

SUBJECT: Remote Sellers Sales Tax Uniform Code

155 Municipal Way
Juneau, AK 99801
Phone: (907) 586-5215
Fax: (907) 586-0358

Background

On November 4, 2019, CBJ passed Resolution 2872 authorizing the Manager to enter into the Alaska Intergovernmental Remote Sellers Sales Tax Agreement (the Agreement). On November 18, 2019, more than a dozen signatory communities inaugurated the Alaska Remote Sellers Sales Tax Commission (the Commission) under that agreement. On January 6, 2020, the Commission passed the Uniform Code that will govern the collection and remittance of sales taxes on remote sales. In order to begin requiring remote sellers to collect and remit CBJ sales taxes, the Assembly must adopt the Uniform Code in its entirety.

Discussion

The Uniform Code is administrative in substance and tone. It does not set sales tax rates, exemptions, or any other policy element of CBJ's current sales tax code or practice. What follows is a high-level summary of the various sections of the Uniform Code:

69.06.010 – Interpretation	Taxability broadly construed
69.06.020 – Title to Collected Sales Tax	Tax receipts property of the Commission/CBJ
69.06.030 – Imposition – Rate	Remote sellers must impose sales tax
69.06.040 – Obligation to Collect Tax	Threshold for collection is \$100,000 or 200 transactions
69.06.050 – No Retroactive Application	No retroactivity
69.06.060 – Payment and Collection	Seller must collect taxes and hold in trust
69.06.070 – Registration Requirement	Timing for registration if collection thresholds are met
69.06.080 – Tax Filing Schedule	Monthly or quarterly return filing
69.06.090 – Estimated Tax	Estimated tax may be assessed on non-filers
69.06.100 – Returns – Filing Contents	Returns include gross, nontaxable, and taxable amounts
69.06.110 – Refunds	Commission may issue refunds
69.06.120 – Amended Returns	Sellers may file amended returns
69.06.130 – Extension for Return	Commission may allow extensions
69.06.140 – Audits	Sellers subject to audit by the Commission
69.06.150 – Audit protest	Sellers may protest to the Commission
69.06.160 – Penalties/Interest for Late Filing	Sets penalties and interest for late filing
69.06.170 – Repayment Plans	Commission may allow payment plans
69.06.180 – Record Retention	Sellers must keep records for six years
69.06.190 – Cessation/Transfer of Business	Terms for business cessation/transfer
69.06.200 – Use of Information	Confidentiality of tax return information
69.06.210 – Violations	Terms for violations of this code
69.06.220 – Penalties for Violations	Penalties for violations (ranging from \$25 to \$500)
69.06.230 – Physical presence	Delineates how sellers file (locally or with Commission)
69.06.240 – Hold Harmless	Sellers protected for misfiling due to Commission errors
69.06.250 – Definitions	Common definitions
69.06.260 – Supplemental Definitions	Supplemental definitions

In principle and in practice, the Uniform Code creates the structure and “rules of the road” for CBJ’s sales tax to be imposed on remote sales. While the Uniform Code does not set rates or exemptions, the definitions and practices in the Uniform Code for remote sales must be equally applied to local sales in order to remain compliant with the *Wayfair* decision. Hence, minor amendments to CBJ’s local sales tax code may be needed in the future for alignment and consistency with the Uniform Code.

Of some interest is the mechanism envisioned for the application of CBJ’s exemptions. Exemptions fall into two broad categories, *commodity-based* and *entity based*. See the attached memo from TTR. Commodity-based exemptions are policies where a taxing jurisdiction exempts all buyers from sales tax on specific items (the exemption of airfare, for example). Commodity-based exemptions are very easily managed and implemented by the Commission through its taxability databases.

Most of CBJ’s exemptions fall into the *entity-based* category, which are policies where a taxing jurisdiction exempts certain buyers and/or certain sellers from sales tax on some or all items. Treating different buyers differently comes with inherent challenges, and the solutions may be different depending on the individual circumstances of the buyer and the seller. The Commission will establish a streamlined, statewide registration system for entity-based exemptions, which will ensure there is a process in place for non-profits, seniors and others to register their local exemption with remote vendors. This process is likely to be straightforward with some vendors and more challenging with others. However, any buyer that is compelled to pay sales tax on a remote purchase may request a refund directly from CBJ. The CBJ Sales Tax office is determining the administrative process for that refund request now, but it is likely to mirror substantially the State of Washington’s process for Alaska residents to request sales tax refunds from that state.

Remote sellers will be notified of their obligation to begin imposing, collecting, and remitting sales taxes 30 days after the Assembly adopts the Uniform Code. Tax receipts should begin to be received within 60-90 days.

Conclusion

The differential application of sales taxes on local and remote sellers continues to be a significant inequity for Juneau’s local businesses. The Assembly has taken the first steps to correcting this inequity by signing the Agreement and joining the Commission. Now, for CBJ to require the imposition, collection, and remittance of CBJ sales taxes on remote sales, it must adopt the Uniform Code.

Recommendation

I recommend that Assembly Finance Committee forward Ordinance 2020-01 containing the Uniform Code to the full Assembly for Introduction on January 13, 2020 and Public Hearing on February 3, 2020.

Memo: Entity-based and Individual Exemptions
To: Alaska Municipal League
From: TTR
Date: 12/30/19

Subject: Simplifying Municipal Sales Tax Exemptions

TTR and MUNIRevs are working with the Alaska Municipal League to simplify collection of sales taxes on remote sales into Alaska member jurisdictions.

Many cities in Alaska have exemptions for sales to specific entities (such as church, non-profit, or government) or individuals (such as seniors) or exemptions for specific types of products being purchased. In this memo, we will call specific entities and individuals “buyers.”

To claim an exemption, buyers typically fill out an exemption certificate or provide some other proof of exemption. Cities and boroughs (municipal governments) are responsible for designating the kind of certificate or documentation buyers in their community have to provide.

In some cases, buyers hand over or show exemption documentation to vendors to get an exemption. Exemption documentation typically works well for sales in the local area. Exemption documentation can get challenging when applied to online or remote purchases.

TTR and MUNIRevs are working together with the Alaska Municipal League to simplify the sales tax exemption process.

What is the normal exemption process?

The normal exemption process involves buyers filling out and providing exemption certificates or exemption documentation to each vendor they purchase from.

With a copy of the certificate or documentation on file, vendors exempt sales to the buyer in whole or in part, according to type of exemption claimed. For example, a product-based exemption may only apply to “fish,” where an entity-based exemption may apply to “churches.”

Vendors are required to store and provide exemption certificates proving which sales are tax-exempt under audit. To help collect, store, and update these documents, vendors typically use some sort of exemption certificate management system.

It varies from state to state, but typically buyers are required to re-create their exemption certificate for each vendor they purchase from. Each vendor stores its copy.

Simplifying the exemption process

TTR is making the exemption process simpler for buyers by preparing the **Exemption Certificate Registry (ECR)** for use in remote sales into Alaska Municipal League member jurisdictions.

ECR is an online system that buyers can access from any internet browser. ECR provides buyers with tools to find, create, and store exemption certificates for future use. An exemption certificate created through ECR can be reused from vendor to vendor.

Once a buyer's exemption certificates are set up in ECR, these certificates can be provided to vendors in various ways. From ECR, certificates can be emailed, downloaded, uploaded, printed, or even sent directly to vendors' exemption certificate management systems.

Vendors are still responsible for storing exemption certificates received through ECR.

ECR works for churches, governments, non-profits, wholesalers, contractors, seniors, and any other buyer that qualifies for an exemption in Alaska Municipal League member jurisdictions.

For easy access, TTR suggests placing a link to ECR on the appropriate web pages of the Alaska Municipal League.

How does ECR work?

First, TTR works with Alaska Municipal League and member jurisdictions to ensure all exemption certificates and exemption documentation needs are prepared, verified, and maintained within ECR. Then:

- Buyers create user accounts on ECR
- Buyers fill in general information typically used in exemption certificates
- Buyers fill in additional information needed for specific exemption certificates or exemption documentation needed for purchases
- Buyers use ECR functions to send pre-filled exemption certificates or exemption documentation to vendors. For each new vendor, all the buyer has to do is select the appropriate certificate or documentation and add relevant vendor information

Examples of ECR use

Example #1. Individual in a member city wants to claim a senior exemption on a purchase from a Remote Seller:

- City requires an ID showing birthday and a statement confirming 2 years residency
- Individual registers with ECR, uploads a scan or picture of their ID card, confirms birthdate, and clicks a button confirming they have residency in the city for the last two years
- Individual goes to Amazon to make a purchase
- Individual goes through the usual process on Amazon to set up an individual tax exemption
- At the appropriate point, Individual opens their ECR account and downloads exemption certificate or documentation from ECR and uploads to the Amazon website
- Having provided exemption certificate or documentation to Amazon, Individual's purchase is made exempt from tax

Example #2. Contractor in a member city makes regular purchases of exempt lumber and taxable equipment for construction from five different Remote Sellers:

- City requires an exemption certificate to be filled out for exempt lumber including business tax identification number, name, date, and address
- Contractor registers with ECR, fills in all necessary information as per city requirements, from ECR is able to fill in Remote Seller information, and sends certificates directly to all five Remote Sellers
- Having received valid and up-to-date exemption certificate from contractor, Remote Seller bills Contractor with tax only on taxable equipment portion of sale

What is expected of member municipal governments?

Member municipal governments will review and provide up-to-date information about sales tax exemptions in their sales tax codes.

Member municipal governments will work with Alaska Municipal League and TTR to ensure municipal exemptions are correctly represented in the ECR system and are kept up to date.

Where a member municipal government does not already have a refund or rebate system in place, a refund or rebate system will need to be established. Below are some guidelines to assist:

- Refund or rebate requests typically come about when buyers make a purchase and they did not know or were not prepared to claim an exemption
- Buyers who find out later that they were exempt often want to get their tax money back, so they get the appropriate form or documentation and then contact the vendor or the municipal government
- While municipal governments prefer exemption certificates to be filled in ahead of or at the time of purchase, their laws often allow buyers to claim refunds within a certain amount of time of an audit (typically 120 days)
- Make it simple up front to know about and account for exemptions at time of purchase (greatly assisted by implementation of ECR and taxability matrixes to be provided by TTR)
- Make the refund process simple—be clear about what documentation is needed for an exemption or refund

TTR is looking forward to working with the Alaska Municipal League member jurisdictions.

Please feel free to reach out to TTR or the Alaska Municipal League with any questions or concerns.

Brian Smith | Leader Government Relations
Direct: (971) 901-4020
TTR, Inc. – Get Tax Right
3850 NE Three Mile Lane McMinnville, OR 97128-9402

Remote Sales Tax Collection in Alaska Benefits Alaska

January 2020

Benefits to Local Governments

- Maintain taxing authority
- Maintain rate and exemptions
- Delegated administration to AML avoids additional or duplicative costs
- Entirely up to local government
 - Opt-in = you take advantage of Wayfair
 - Opt-out = residents don't pay sales tax
- Levels the playing field for local business – increases local economic activity
- Increased revenue for education, public safety, roads and public works
- Increases ability to respond to State cost-shifting or cuts
- Replaces revenue eroded with decrease to Community Assistance over the years

Benefits to Business

- Levels the playing field – increases local purchase potential by ensuring that local retailers aren't penalized for collecting a tax they are required to, while remote retailers have an unfair advantage in not
- These aren't new taxes – these are taxes that local residents are already paying, collected by local businesses, but not collected by remote retailers
- Keeps tax rates stable – instead of increasing taxes, applying the existing tax to remote sellers ensures that local tax rates stay stable
- Maintains current local exemptions – necessary for local control
- Local revenues improve communities – enables greater investment in local infrastructure, which supports economic activity
- On par with other states – businesses across the U.S. are complying, so Alaska is expecting similar compliance by those businesses that make sales into or within Alaska
 - This is very quickly become common practice
- Strengthens local governments – greater capacity within local governments leads to greater efficiencies
- Local taxpayers, local budgets – residents help shape annual budgets, informed by economic development

Benefits to Alaskans

- Protects residents outside boundaries – right now Alaska hasn't set up any rules of the road when it comes to remote commerce, and without a tax look up map Alaska residents may be getting taxed where they aren't supposed to
- Consistent with activities in majority of U.S. – this puts Alaska on track with the activities of other states that are benefiting from this opportunity.
- Simplifies exemptions – single point of entry and delivery for exemption certificates

Remote Sales Tax Collection: FAQ for Local Governments

January 2020

Intergovernmental Agreement

- Commits the local government to participate in the Commission
- Agrees to delegate to the Commission collection of remote sales tax
- Agrees to AML administration
- Action – pass a resolution authorizing signature to the Agreement

Alaska Remote Seller Sales Tax Commission

- Local government appoints a representative
- Annual meeting and notice of all meetings
- Governed by Bylaws
- Board of seven
 - Oversees administration
 - Approves annual budget
 - Development of the Remote Sales Tax Code

Alaska Remote Seller Sales Tax Code

- Applies the local jurisdiction's tax rate, cap and exemptions to remote sales
 - Out of state sales – if the retailer does not have a physical presence in Alaska, they are expected to comply. The Commission anticipates that this applies to between 2,500 and 3,500 retailers.
 - In-state sales – if the retailer sells into your community, collection of sales tax is expected
- Standardizes compliance – reporting, penalties, audits, late filing rules, etc.
- Criteria Threshold (otherwise known as economic nexus)
 - \$100,000 in statewide, annual gross sales; and/or
 - 200 transactions annually, in Alaska
- Hold Harmless provision
 - All retailers who use the Commission's software aren't liable for inaccurate information contained therein
- Remote vs. Physical
 - If the retailer has only a physical presence, remit to the local government
 - If the retailer has a physical presence but also remote sales, continue remitting local taxes to the local government and remote taxes to the Commission
 - If the retailer is a marketplace facilitator, remit to the Commission
 - If the retailer is a marketplace facilitator that provides services (i.e., lodging), remit to the local government
- Late filings
 - Late filing fee is paid to the Commission for administrative action
 - Interest owed on taxes collected accrues to the local government
 - Penalty of 5% a month accrues to the local government
- Common definitions

Remote Sales Tax Collection: FAQ for Businesses and Local Governments**January 2020**When does this take effect?

- The Commission has developed software that will be ready as of January 31, 2020. Upon adoption of the Remote Sales Tax Code by a local government, retailers will be notified that they should begin collection, and have 30 days to comply. As additional local governments adopt the Code, compliance will occur on a rolling basis. Assuming that the first local government adopts the Code in late January, early February, the Commission expects reporting and remittance as soon as March/April.

What about:

- Seasonal tax rate – the software will include reference applicable rate changes throughout the year, as long as there is 30 days' notice. You will need to notify the Commission of seasonal tax rates, and the Commission will need the exact dates on an annual basis. Any tax holiday that occurs throughout the year should be noticed appropriately.
- All of our product exemptions – the Commission has established a tax variability matrix that tracks all product exemptions from all taxing jurisdictions. The exemption happens automatically within the API adopted by remote retailers or accessed via the website provided by the Commission. The Commission has adopted a common set of definitions that will assist in compliance.
- Entity-based exemptions
 - Apply to:
 - Senior exemptions – based on each local government's definition of "senior", when they apply. If applicable only to certain sales, the software will accommodate that variation.
 - Goods for wholesale - – these entities should be using their State of Alaska wholesale license in their purchase, which vendors they purchase from should recognize and apply tax-free status. Wholesale purchases will count toward establishing the criteria threshold for vendors selling into the state, even though taxes will not be collected. Sales and value of exemption will be reportable.
 - Churches, nonprofits, and governments - Churches, nonprofits, and governments – these are recognized entities that are tax-free, and vendors are expected to comply with federal law on tax-free sales to these entities. Sales and value of exemption will be reportable.
 - Process:
 - Development of an Exemption Certificate Registry (ECR)
 - ECR is an online system that buyers can access from any internet browser. ECR provides buyers with tools to find, create, and store exemption certificates for future use. An exemption certificate created through ECR can be reused from vendor to vendor.
 - Once a buyer's exemption certificates are set up in ECR, these certificates can be provided to vendors in various ways. From ECR, certificates can be emailed, downloaded, uploaded, printed, or even sent directly to vendors' exemption certificate management systems.
 - Vendors are still responsible for storing exemption certificates received through ECR.
 - Buyer's responsibility - It will be up to the buyer to upload their information, including locally produced certificate, if any, into their account on the ECR. Within the ECR, the buyer will direct that information to vendors. The buyer will go through the retailer's established process to set up an individual tax exemption within their account, including to download from the ECR the correct documentation for that retailer.

- Any inaccurate sales tax collection should be taken up first with the vendor, then brought to the Commission's attention in case of a refund being necessary.
- Monthly filing – the default filing is monthly, consistent with national trends and best practice. Vendors will have the option to file quarterly but this must be approved by the Commission.
- Quarterly filing – notify the Commission if you would like reporting and remittance to occur on a quarterly basis. The Commission will hold any remittance occurring more frequently in trust for that distribution.
- Deliveries to post office boxes within our jurisdiction – these will be treated as taxable, based on the point of delivery
- Deliveries to addresses right outside our jurisdiction – the Commission has GIS-located all addresses in Alaska, such that these types of deliveries should not be taxable, and that all taxed sales are accurate. The software contractor has verified that boundary maps with the State DCRA, and each local government should notify the Commission upon adopting the Code of any discrepancies.

Changes to current code:

- Necessary - Exemption for remote sales will need to be removed, if applicable
- Optional – update your reporting requirements, definitions, etc. based on the remote sales tax code

What happens when the local government adopts the Code?

- Local government notifies the Commission by contacting Nils Andreassen at nils@akml.org
- The Program Manager will follow up, requesting that you complete a simple form that confirms rates, exemptions, sales tax boundaries, any changes to existing code, remittance preference, etc.
- The Program Manager will ask the local government to confirm all the settings in the software as accurate
- Upon receipt of the registration form, and confirmation that settings are correct, the Commission will notify remote sellers that they will need to comply within 30 days
- The Commission will send the local government representative log-in information for the Alaska Sales Tax Portal, where they can see all returns, and the calculations that go into remittance
- On a monthly or quarterly basis, and within 10 days of the last day of the month, the Commission will remit collected taxes to the local government
- The local government will confirm receipt and accuracy of the filing and remittance
- The local government should review filings, flag any they have questions about, and send the Program Manager questioned filings
- The Program Manager will review questioned filings and upon receipt of more than three of the same vendor, request an audit of their transactions for the applicable jurisdictions
- Amended filings, or refunds necessary, will be accounted for on a rolling basis



A PATHWAY TO ONLINE SALES TAX COLLECTION

1

Join the Alaska Remote Sellers Sales Tax Commission (ARSSTC)



2

Provide Current Tax Code and Verification of Boundaries



3

Pass Uniform Tax Code



\$

Receive Tax Return and Remittance of Taxes Collected

YOU WILL NEED TO

- ☐ Pass a resolution agreeing to join the Alaska Remote Sellers Sales Tax Commission (ARSSTC)
- ☐ Send your current Code and confirm that your sales tax boundaries match your municipal boundaries
- ☐ Pass ordinance adopting the Uniform Tax Code
- ☐ Review your existing Code to make sure remote sales are not exempt
- ☐ Consider aligning with Uniform Tax Code on deadlines, compliance, definitions, etc.

THE COMMISSION WILL

- ☐ Notify remote sellers of your participation with a 30-day notice to comply
- ☐ Sellers will report and remit funds monthly
- ☐ Commission remits funds to the municipality

RESULTS

- ☐ Access to all reporting for your municipality
- ☐ A likely revenue increase for you

Presented by:
Introduced:
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2020-01

An Ordinance Amending Title 69 of the City and Borough Code by Adopting the Uniform Remote Seller Sales Tax Code.

WHEREAS, the inability to effectively collect sales tax on sales of property, products or services transferred or delivered into Alaska is seriously eroding the sales tax base of communities, causing revenue losses and imminent harm to residents through the loss of critical funding for local public services and infrastructure; and

WHEREAS, the harm from the loss of revenue is especially serious in Alaska because the State has no income tax, and sales tax revenues are one of the primary sources of funding for services provided by local governments; and

WHEREAS, the failure to collect sales tax on remote sales creates market distortions by creating an unfair tax advantage for businesses that limit their physical presence in the taxing jurisdictions but still sell goods and services to consumers, which becomes easier and more prevalent as technology advances; and

WHEREAS, the failure to tax remote sales results in the creation of incentives for businesses to avoid a physical presence in the state and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the state and its cities; and

WHEREAS, the structural advantages for remote sellers, including the absence of point-of-sale tax collection, along with the general growth of online retail, make clear that erosion of the sales tax base is and has been occurring; and

WHEREAS, remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy as well as burdening local infrastructure and services; and

WHEREAS, delivery of goods and services into local municipalities rely on and burden local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

WHEREAS, given modern computing and software options, it is neither unusually difficult nor burdensome for remote sellers to collect and remit sales taxes associated with sales into Alaska taxing jurisdictions; and

WHEREAS, due to a recent decision by the United States Supreme Court and the lack of a state sales tax it is appropriate for the municipalities to collectively amend their sales tax codes to account for remote sellers who do not have a physical presence either in the State of Alaska or in a specific taxing jurisdiction, but do have a taxable connection with the State of Alaska or taxing jurisdiction; and

WHEREAS, this ordinance is not retroactive in its application; and

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales in Alaska; and

WHEREAS, amending local sales tax codes reflects the 2018 Supreme Court “*Wayfair*” decision to allow for the application of the taxing jurisdiction’s sales tax code requirements to sellers without a physical presence in the State of Alaska or taxing jurisdiction; and

WHEREAS, the intent is to levy municipal sales tax to the maximum limit of federal and state constitutional doctrines; and

WHEREAS, as part of the process to implement a remote sales tax code, the City and Borough of Juneau entered into a cooperative agreement with other local governments called the Alaska Intergovernmental Remote Seller Sales Tax Agreement (“the Agreement”) under Resolution No. 2872; and

WHEREAS, the terms of the Agreement require local governments to adopt certain uniform provisions for the collection and remittance of municipal sales tax applicable to sales made by remote sellers similar to the Streamlined Sales and Use Tax Agreement; and

WHEREAS, the Agreement further provided for the creation of the Alaska Remote Seller Sales Tax Commission for the administration and collection of remote sales tax; and

WHEREAS, the Alaska Remote Seller Sales Tax Commission adopted the Remote Seller Sales Tax Code at its meeting on January 6, 2020.

THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. New Chapter. Title 69 is amended to create a new chapter entitled CBJC 69.06 Remote Seller Sales Tax Code, to read as follows:

69.06.010 – Interpretation.

- A. In order to prevent evasion of the sales taxes and to aid in its administration, it is presumed that all sales and services by a person or entity engaging in business are subject to the sales tax.
- B. The application of the tax levied under this Code shall be broadly construed and shall favor

inclusion rather than exclusion.

- C. Exemptions from the tax levied under this Code or from the taxing jurisdiction shall be narrowly construed against the claimant and allowed only when such exemption clearly falls within an exemption defined in this Code or the taxing jurisdiction's Code.
- D. The scope of this Code shall apply to remote sellers or marketplace facilitators, delivering products or services to Member municipalities adopting this Code, within the state of Alaska.

69.06.020 – Title to Collected Sales Tax

Upon collection by the remote seller or marketplace facilitator, title to collected sales tax vests in the Commission for remittance to the taxing jurisdiction. The remote seller or marketplace facilitator remits collected sales tax to the Commission on behalf of the taxing jurisdiction, from whom that power is delegated, in trust for the taxing jurisdiction and is accountable to the Commission and taxing jurisdiction.

69.06.030 – Imposition – Rate

- A. To the fullest extent permitted by law, a sales tax is levied and assessed on all remote sales where delivery is made within the local taxing jurisdiction(s) that is a Member, within the state of Alaska.
- B. The applicable tax shall be added to the sales price.
- C. The tax rate added to the sale price shall be the tax rate for the taxing jurisdiction(s) where the property or product is sold, or service that was rendered is received, and based on the date the property or product was sold or the date the service rendered was received.
- D. An Address and Tax Rate Database will be made available to remote sellers and marketplace facilitators, indicating the appropriate tax rate to be applied.
- E. The tax assessed shall be consistent with relevant jurisdictional tax caps, single unit sales, and exemptions.
- F. When a sale is made on an installment basis, the applicable sales tax shall be collected at each payment, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered, based on the local jurisdictions' Code(s).
- G. When a sales transaction involves placement of a single order with multiple deliveries made at different points in time that are separately invoiced, the applicable sales tax shall be collected on each separately invoiced delivery, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered.

69.06.040 – Obligation to Collect Tax - Threshold Criteria

- A. Any remote seller or marketplace facilitator must collect and remit sales tax in compliance with all applicable procedures and requirements of law, provided the remote seller or marketplace facilitator has met one of the following Threshold Criteria ("Threshold Criteria") in the previous calendar year:

1. The remote seller's statewide gross sales, including the seller's marketplace facilitator's statewide gross sales, from the sale(s) of property, products or services delivered into the state meets or exceeds one hundred thousand dollars (\$100,000); or
 2. The remote seller, including the seller's marketplace facilitator, sold property, products, or services delivered into the state in two hundred (200) or more separate transactions.
- B. For purposes of determining whether the Threshold Criteria are met, remote sellers or marketplace facilitators shall include all gross sales, from all sales of goods, property, products, or services rendered within the state of Alaska.

69.06.050 – No Retroactive Application

The obligations to collect and remit sales tax required by this chapter are applicable at the effective date of the ordinance adopting the Alaska Remote Seller Sales Tax Code.

69.06.060 – Payment and Collection

Pursuant to this Code, taxes imposed shall be due and paid by the buyer to the remote seller or marketplace facilitator at the time of the sale of property or product or date service is rendered, or with respect to credit transactions, at the time of collection. It shall be the duty of each remote seller or marketplace facilitator to collect the taxes from the buyer and to hold those taxes in trust for the taxing authority of the taxing jurisdiction. Failure by the remote seller or marketplace facilitator to collect the tax shall not affect the remote seller's, or marketplace facilitator's, responsibility for payment to the Commission.

69.06.070 – Remote Seller and Marketplace Facilitator Registration Requirement

- A. If a remote seller's gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the remote seller shall register with the Commission. If a marketplace facilitator's gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the marketplace facilitator shall register with the Commission.
- B. A remote seller or marketplace facilitator meeting the Threshold Criteria shall apply for a certificate of sales tax registration within thirty (30) calendar days of the effective date of this Code or within thirty (30) calendar days of meeting the Threshold Criteria whichever occurs second. Registration shall be to the Commission on forms prescribed by the Commission.
- C. An extension may be applied for and granted based on criteria established by the Commission, based on evidence produced to describe time necessary to update software or other technical needs, not to exceed ninety (90) days.
- D. Upon receipt of a properly executed application, the Commission shall confirm registration, stating the legal name of the remote seller or marketplace facilitator, the primary address, and the primary sales tax contact name and corresponding title. The failure of the Commission to confirm registration does not relieve the remote seller or marketplace facilitator of its duty to collect and remit sales tax.
- E. Each business entity shall have a sales tax registration under the advertised name.
- F. The sales tax certificate is non-assignable and non-transferable.

69.06.080-Tax Filing Schedule

- A. All remote sellers or marketplace facilitators subject to this Code shall file a return on a form or in a format prescribed by the Commission and shall pay the tax due.
- B. Filing of sales tax returns are due monthly; quarterly filing is optional upon application and approval by the Commission, consistent with the code of the local jurisdiction.
- C. A remote seller or marketplace facilitator who has filed a sales tax return will be presumed to be making sales in successive periods unless the remote seller or marketplace facilitator files a return showing a termination or sale of the business in accordance with this Code.
- D. The completed and executed return, together with the remittance in full for the tax due, shall be transmitted to and must be received by the Commission on or before midnight Alaska Standard Time on the due date. Monthly returns are due the last day of the immediate subsequent month. Quarterly returns are due as follows:

Quarter 1 (January – March)	April 30
Quarter 2 (April – June)	July 31
Quarter 3 (July – September)	October 31
Quarter 4 (October – December)	January 31
- E. If the last day of the month following the end of the filing period falls on a Saturday, Sunday, federal holiday or Alaska state holiday, the due date will be extended until the next business day immediately following.
- F. Any remote seller or marketplace facilitator holding a remote seller registration shall file a sales tax return even though no tax may be due. This return shall show why no tax is due. If the remote seller or marketplace facilitator intends to continue doing business a return shall be filed reflecting no sales and a confirmation of the intent to continue doing business and shall continue to do so each filing period until the entity ceases doing business or sells the business. If the remote seller or marketplace facilitator intends to cease doing business, a final return shall be filed along with a statement of business closure.
- G. The remote seller or marketplace facilitator shall prepare the return and remit sales tax to the Commission on the same basis, cash or accrual, which the remote seller or marketplace facilitator uses in preparing its federal income tax return. The remote seller or marketplace facilitator shall sign the return, and transmit the return, with the amount of sales tax and any applicable penalty, interest or fees that it shows to be due, to the Commission.
- H. Remote sellers and marketplace facilitators failing to comply with the provisions of this Code shall, if required by the Commission and if quarterly filing has been chosen, file and transmit collected sales taxes more frequently until such time as they have demonstrated to the Commission that they are or will be able to comply with the provisions of this Code. Six (6) consecutive on-time sales tax filings, with full remittance of the sales taxes collected, shall establish the presumption of compliance and return to quarterly filing.
- I. The preparer of the sales tax return shall keep and maintain all documentation supporting any and all claims of exempted sales and purchases. Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase; the date of the purchase; the name of the person making the purchase; the organization making the purchase; the total amount of the purchase; and the amount of sales tax

exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that portion of the claim of exemption for which no documentation is provided.

69.06.090- Estimated Tax

- A. In the event the Commission is unable to ascertain the tax due from a remote seller or marketplace facilitator by reason of the failure of the remote seller or marketplace facilitator to keep accurate books, allow inspection, or file a return, or by reason of the remote seller or marketplace facilitator filing a false or inaccurate return, the Commission may make an estimate of the tax due based on any evidence in their possession.
- B. Sales taxes may also be estimated, based on any information available, whenever the Commission has reasonable cause to believe that any information on a sales tax return is not accurate.
- C. A remote seller's or marketplace facilitator's tax liability under this Code may be determined and assessed for a period of six (6) years after the date the return was filed or due to be filed with the Commission. No civil action for the collection of such tax may be commenced after the expiration of the six- (6-) year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the six- (6-) year period, unless the remote seller or marketplace facilitator waives the protection of this section.
- D. The Commission shall notify the remote seller or marketplace facilitator, in writing, that the Commission has estimated the amount of sales tax that is due from the remote seller or marketplace facilitator. The Commission shall serve the notice on the remote seller or marketplace facilitator by delivering the notice to the remote seller's or marketplace facilitator's place of business, or by mailing the notice by certified mail, return receipt requested, to the remote seller's or marketplace facilitator's last known mailing address. A remote seller or marketplace facilitator who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.
- E. The Commission's estimate of the amount of sales tax that is due from a remote seller or marketplace facilitator shall become a final determination of the amount that is due unless the remote seller or marketplace facilitator, within thirty (30) calendar days after service of notice of the estimated tax:
 - 1. Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs and other charges due; or
 - 2. Files a written notice with the Commission appealing the estimated tax amount in accordance with the appeal procedures.
 - 3. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment are:
 - a. The identity of the remote seller or marketplace facilitator is in error;
 - b. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or

- c. The remote seller or marketplace facilitator disputes the denial of exemption(s) for certain sales.
- F. The amount of sales tax finally determined to be due under this section shall bear interest and penalty from the date that the sales tax originally was due, plus an additional civil penalty of fifty dollars (\$50) for each calendar month or partial month for which the amount of sales tax that is due has been determined.

69.06.100 - Returns – Filing Contents

- A. Every remote seller or marketplace facilitator required by this chapter to collect sales tax shall file with the Commission upon forms furnished by the Commission a return setting forth the following information with totals rounded to the nearest dollar:
 - 1. Gross sales;
 - 2. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption;
 - 3. Computation of taxes to be remitted;
 - 4. Calculated discount (if applicable) based on taxing jurisdiction's code; and
 - 5. Such other information as may be required by the Commission.
- B. Each tax return remitted by a remote seller or marketplace facilitator shall be signed (digital or otherwise) by a responsible individual who shall attest to the completeness and accuracy of the information on the tax return.
- C. The Commission reserves the right to reject a filed return for failure to comply with the requirements of this Code for up to three (3) months from the date of filing. The Commission shall give written notice to a remote seller or marketplace facilitator that a return has been rejected, including the reason for the rejection.

69.06.110 – Refunds

- A. Upon request from a buyer or remote seller or marketplace facilitator the Commission shall provide a determination of correct tax rate and amount applicable to the transaction. In the case of an overpayment of taxes, the remote seller or marketplace facilitator shall process the refund and amend any returns accordingly.
- B. If the claimant is a remote seller or marketplace facilitator, and the tax refund is owed to any buyer, the remote seller or marketplace facilitator submits, and the Commission approves, a refund plan to all affected buyers.
- C. The Taxing Jurisdictions may allow a buyer to request a refund directly from the Taxing Jurisdiction.

69.06.120 – Amended Returns

- A. A remote seller or marketplace facilitator may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:
 - i. The amended return is filed within one (1) year of the original due date for the return; and

- ii. The remote seller or marketplace facilitator provides a written justification for requesting approval of the amended return; and
 - iii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.
- B. The Commission shall notify the remote seller or marketplace facilitator in writing (by email or otherwise) whether the Commission accepts or rejects an amended return, including the reasons for any rejection.
- C. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation, the Commission determines the figure included in the original returns are incorrect; and the Commission adjusts the return within two (2) years of the original due date for the return.
- D. A remote seller or marketplace facilitator may file a supplemental sales tax return, with supporting documentation, and the Commission may accept the supplemental return, but only in the following circumstances:
 - i. The remote seller or marketplace facilitator provides a written justification for requesting approval of the supplemental return; and
 - ii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

69.06.130 – Extension of Time to File Tax Return

Upon written application of a remote seller or marketplace facilitator, stating the reasons therefor, the Commission may extend the time to file a sales tax return but only if the Commission finds each of the following:

- 1. For reasons beyond the remote seller's or marketplace facilitator's control, the remote seller or marketplace facilitator has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
- 2. Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the remote seller or marketplace facilitator;
- 3. The remote seller or marketplace facilitator has a plan to cure the problem that caused the remote seller or marketplace facilitator to apply for an extension and the remote seller or marketplace facilitator agrees to proceed with diligence to cure the problem;
- 4. At the time of the application, the remote seller or marketplace facilitator is not delinquent in filing any other sales tax return, in remitting sales tax to the Commission or otherwise in violation of this chapter;
- 5. No such extension shall be made retroactively to cover existing delinquencies.

69.06.140 – Audits

- A. Any remote seller or marketplace facilitator who has registered with the Commission, who is required to collect and remit sales tax, or who is required to submit a sales tax return is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the remote seller or marketplace facilitator in order to determine whether appropriate amounts of sales tax revenue have been collected by the remote seller or marketplace facilitator and remitted to the Commission.
- B. The Commission is not bound to accept a sales tax return as correct. The Commission may make

an independent investigation of all retail sales or transactions conducted within the State or taxing jurisdiction.

- C. The records that a remote seller or marketplace facilitator is required to maintain under this chapter shall be subject to inspection and copying by authorized employees or agents of the Commission for the purpose of auditing any return filed under this chapter, or to determine the remote seller's or marketplace facilitator's liability for sales tax where no return has been filed.
- D. In addition to the information required on returns, the Commission may request, and the remote seller or marketplace facilitator must furnish, any reasonable information deemed necessary for a correct computation of the tax.
- E. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation or audit, the Commission determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the Commission adjusts the return within two (2) years of the original due date for the return.
- F. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the Commission may conduct investigations, hearings and audits and may examine any relevant books, papers, statements, memoranda, records, accounts or other writings of any remote seller or marketplace facilitator at any reasonable hour on the premises of the remote seller or marketplace facilitator and may require the attendance of any officer or employee of the remote seller or marketplace facilitator. Upon written demand by the Commission, the remote seller or marketplace facilitator shall present for examination, in the office of the Commission, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the demand unless the Commission and the person upon whom the demand is made agree to presentation of such materials at a different place.
- G. The Commission may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any remote seller or marketplace facilitator refuses to obey any such subpoena, the Commissioner may refer the matter to the Commission's attorney for an application to the superior court for an order requiring the remote seller or marketplace facilitator to comply therewith.
- H. Any remote seller, marketplace facilitator, or person engaged in business who is unable or unwilling to submit their records to the Commission shall be required to pay the Commission for all necessary expenses incurred for the examination and inspection of their records maintained outside the Commission.
- I. After the completion of a sales tax audit, the results of the audit will be sent to the business owner's address of record.
- J. In the event the Commission, upon completion of an audit, discovers more than five hundred dollars (\$500) in additional sales tax due from a remote seller or marketplace facilitator resulting from a remote seller's or marketplace facilitator's failure to accurately report sales and taxes due thereupon, the remote seller or marketplace facilitator shall bear responsibility for the full cost of the audit. The audit fee assessment will be in addition to interest and penalties applicable to amounts deemed to be delinquent by the Commission at the time of the conclusion of the audit.

69.06.150- Audit protest

- A. If the remote seller or marketplace facilitator wishes to dispute the amount of the estimate, or

the results of an examination or audit, the remote seller or marketplace facilitator must file a written protest with the Commission, within thirty (30) calendar days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:

1. The remote seller's or marketplace facilitator's justification for reducing or increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or
 2. The remote seller's or marketplace facilitator's reasons for challenging the examination or audit results.
- B. In processing the protest, the Commission may hold an informal meeting or hearing with the remote seller or marketplace facilitator, either on its own or upon request of the remote seller or marketplace facilitator, and may also require that the remote seller or marketplace facilitator submit to an audit, if one was not previously conducted or a more formal audit, if an estimation audit was previously performed.
- C. The Commission shall make a final written determination on the remote seller's or marketplace facilitator's protest and mail a copy of the determination to the remote seller or marketplace facilitator.
- D. If a written protest is not filed within thirty (30) days of the date of the notice of estimated tax or the result of a review, audit or examination, then the estimated tax, review, audit or examination result shall be final, due and payable to the Commission.

69.06.160 – Penalties and Interest for Late Filing

- A. A late filing fee of twenty-five dollars (\$25) per month (or quarter) shall be added to all late-filed sales tax reports in addition to interest and penalties.
- B. Delinquent sales tax bear interest at the rate of fifteen percent (15%) per annum until paid.
- C. In addition, delinquent sales tax shall be subject to an additional penalty of 5% per month, or fraction thereof, until a total of 20% of delinquent tax has been reached. The penalty does not bear interest.
- D. Penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to penalties and interest, second to past due sales tax.
- E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.
- F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the Commission, upon written application of the remote seller or marketplace facilitator accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the remote seller or marketplace facilitator, within forty-five (45) calendar days after the date of delinquency. A remote seller or marketplace facilitator may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year. The Commission shall report such waivers of penalty to the taxing jurisdiction, in writing.

69.06.170 – Repayment Plans

- A. The Commission may agree to enter into a repayment plan with a delinquent remote seller or marketplace facilitator. No repayment plan shall be valid unless agreed to by both parties in

writing.

- B. A remote seller or marketplace facilitator shall not be eligible to enter into a repayment plan with the Commission if the remote seller or marketplace facilitator has defaulted on a repayment plan in the previous two (2) calendar years.
- C. The repayment plan shall include a secured promissory note that substantially complies with the following terms:
 - i. The remote seller or marketplace facilitator agrees to pay a minimum of ten percent (10%) down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
 - ii. The remote seller or marketplace facilitator agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
 - iii. Interest at a rate of fifteen percent (15%) per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
 - iv. If the remote seller or marketplace facilitator is a corporation or a limited liability entity the remote seller or marketplace facilitator agrees to provide a personal guarantee of the obligations under the repayment plan.
 - v. The remote seller or marketplace facilitator agrees to pay all future tax bills in accordance with the provisions of this chapter.
 - vi. The remote seller or marketplace facilitator agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the Commission at the time the repayment plan is signed. The remote seller or marketplace facilitator shall be responsible for the cost of recording the tax lien.
- D. If a remote seller or marketplace facilitator fails to pay two (2) or more payments as required by the repayment plan agreement, the remote seller or marketplace facilitator shall be in default and the entire amount owed at the time of default shall become immediately due. The Commission will send the remote seller or marketplace facilitator a notice of default. The Commission may immediately foreclose on the sales tax lien or take any other remedy available under the law.

69.06.180 – Remote Seller or Marketplace Facilitator Record Retention

Remote sellers or marketplace facilitators shall keep and preserve suitable records of all sales made and such other books or accounts as may be necessary to determine the amount of tax which the remote seller or marketplace facilitator is obliged to collect. Remote sellers or marketplace facilitators shall preserve suitable records of sales for a period of six (6) years from the date of the return reporting such sales, and shall preserve for a period of six (6) years all invoices of goods and merchandise purchased for resale, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the remote seller or marketplace facilitator was obliged to collect under this chapter.

69.06.190 - Cessation or Transfer of Business

- A. A remote seller or marketplace facilitator who sells, leases, conveys, forfeits, transfers or assigns the majority of their business interest, including a creditor or secured party, shall make a final sales tax return within thirty (30) days after the date of such conveyance.
- B. At least ten (10) business days before any such sale is completed, the remote seller or marketplace facilitator shall send to the Commission, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the remote seller's or marketplace facilitator's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.
- C. Upon notice of sale and disclosure of buyer, the Commission shall be authorized to disclose the status of the remote seller's or marketplace facilitator's sales tax account to the named buyer or assignee.
- D. Upon receipt of notice of a sale or transfer, the Commission shall send the transferee a copy of this Code with this section highlighted.
- E. Neither the Commission's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.
- F. Following receipt of the notice, the Commission shall have sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the seller of the business. If the notice is not mailed at least ten (10) business days before the sale is completed, the Commission shall have twelve (12) months from the date of the completion of the sale or the Commission's knowledge of the completion of the sale within which to begin a final sales tax audit and assess sales tax liability against the seller of the business. The Commission may also initiate an estimated assessment if the requirements for such an assessment exist.
- G. A person acquiring any interest of a remote seller or marketplace facilitator in a business required to collect the tax under this chapter assumes the liability of the remote seller or marketplace facilitator for all taxes due the Commission, whether current or delinquent, whether known to the Commission or discovered later, and for all interest, penalties, costs and charges on such taxes.
- H. Before the effective date of the transfer, the transferee of a business shall obtain from the Commission an estimate of the delinquent sales tax, penalty and interest, if any, owed by the remote seller or marketplace facilitator as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the remote seller or marketplace facilitator has produced a receipt from the Commission showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the Commission and taxing jurisdiction for the lesser of the amount of delinquent sales tax, penalty and interest due from the remote seller or marketplace facilitator as of the date of transfer, and the amount that the transferee was required to withhold.
- I. In this section, the term "transfer" includes the following:
 - 1. A change in voting control, or in more than fifty percent (50%) of the ownership interest in a remote seller or marketplace facilitator that is a corporation, limited liability company or partnership; or
 - 2. A sale of all or substantially all the assets used in the business of the remote seller or

- marketplace facilitator; or
- 3. The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the remote seller's or marketplace facilitator's gross receipts from sales, rentals or services.
- J. Subsection H of this section shall not apply to any person who acquires their ownership interest in the ongoing business as a result of the foreclosure of a lien that has priority over the Commission's sales tax lien.
- K. Upon termination, dissolution or abandonment of a corporate business, any officer having control or supervision of sales tax funds collected, or who is charged with responsibility for the filing of returns or the payment of sales tax funds collected, shall be personally liable for any unpaid taxes, interest, administrative costs and penalties on those taxes if such officer willfully fails to pay or cause to be paid any taxes due from the corporation. In addition, regardless of willfulness, each director of the corporation shall be jointly and severally liable for unpaid amounts. The officer shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility or duty to act for the corporation. This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.
- L. A remote seller or marketplace facilitator who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within thirty (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the remote seller or marketplace facilitator shall pay a penalty of one hundred dollars (\$100), plus an additional penalty of twenty-five dollars (\$25) for each additional thirty- (30-) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods.

69.06.200 – Use of Information on Tax Returns

- A. Except as otherwise provided in this chapter, all returns, reports and information required to be filed with the Commission under this Code, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:
 - 1. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
 - 2. The person supplying such returns, reports and information; and
 - 3. Persons authorized in writing by the person supplying such returns, reports and information.
- B. The Commission will release information described in subsection A of this section pursuant to subpoena, order of a court or administrative agency of competent jurisdiction, and where otherwise required by law to do so.
- C. Notwithstanding subsection A of this section, the following information is available for public inspection:
 - 1. The name and address of sellers;
 - 2. Whether a business is registered to collect taxes under this chapter;
 - 3. The name and address of businesses that are sixty (60) days or more delinquent in filing returns or in remitting sales tax, or both filing returns and remitting sales tax; and, if so delinquent, the amount of estimated sales tax due, and the number of returns not filed.

- D. The Commission may provide the public statistical information related to sales tax collections, provided that no information identifiable to a particular remote seller or marketplace facilitator is disclosed.
- E. Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers, remote sellers, or marketplace facilitators, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.
- F. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any remote seller or marketplace facilitator or agent of any remote seller or marketplace facilitator required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within thirty (30) days after the required date for that business. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that remote seller or marketplace facilitator as otherwise provided in this chapter.
- G. A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the Commission a release of tax information request signed by the authorized agent of the business.
- H. All returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection.

69.06.210 – Violations

- A. A remote seller or marketplace facilitator that fails to file a sales tax return or remit sales tax when due, in addition to any other liability imposed by this Code, shall pay to the Commission all costs incurred by the Commission to determine the amount of the remote seller's or marketplace facilitator's liability or to collect the sales tax, including, without limitation, reviewing and auditing the remote seller's or marketplace facilitator's business records, collection agency fees, and actual reasonable attorney's fees.
- B. A person who causes or permits a corporation of which the person is an officer or director, a limited liability company of which the person is a member or manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the Commission as required by this Code shall be liable to the Commission for the amount that should have been collected or remitted, plus any applicable interest and penalty.
- C. Notwithstanding any other provision of law, and whether or not the Commission initiates an audit or other tax collection procedure, the Commission may bring a declaratory judgment action against a remote seller or marketplace facilitator believed to meet the criteria to establish that the obligation to remit sales tax is applicable and valid under local, state and federal law. The action shall be brought in the judicial district of the taxing jurisdiction.
- D. The Commission may cause a sales tax lien to be filed and recorded against all real and personal property of a remote seller or marketplace facilitator where the remote seller or marketplace

facilitator has:

1. Failed to file sales tax returns for two (2) consecutive filing periods as required by the Code; or
 2. Failed within sixty (60) days of the end of the filing period from which taxes were due to either (a) remit all amounts due or (b) to enter into a secured payment agreement as provided in this Code.
 3. Prior to filing a sales tax lien, the Commission shall cause a written notice of intent to file to be mailed to the last known address of the delinquent remote seller or marketplace facilitator.
- E. In addition to other remedies discussed in this Code, the Commission may bring a civil action to:
1. Enjoin a violation of this Code. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.
 2. Collect delinquent sales tax, penalty, interest and costs of collection, either before or after estimating the amount of sales tax due.
 3. Foreclose a recorded sales tax lien as provided by law.
- F. All remedies hereunder are cumulative and are in addition to those existing at law or equity.

69.06.220 – Penalties for Violations

- A. A buyer, remote seller, or marketplace facilitator who knowingly or negligently submits false information in a document filed with the Commission pursuant to this Code is subject to a penalty of five hundred dollars (\$500).
- B. A remote seller or marketplace facilitator who knowingly or negligently falsifies or conceals information related to its business activities with the Commission or taxing jurisdiction is subject to a penalty of five hundred dollars (\$500).
- C. A person who knowingly or negligently provides false information when applying for a certificate of exemption is subject to a penalty of five hundred dollars (\$500).
- D. Any remote seller or marketplace facilitator who fails to file a return required under this chapter by the due date, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of twenty-five dollars (\$25) for the first sales tax return not timely filed. The filing of an incomplete return shall be treated as the filing of no return.
- E. A remote seller or marketplace facilitator who fails or refuses to produce requested records or to allow inspection of their books and records shall pay to the Commission a penalty equal to three (3) times any deficiency found or estimated by the Commission with a minimum penalty of five hundred dollars (\$500).
- F. A remote seller or marketplace facilitator who falsifies or misrepresents any record filed with the Commission is guilty of an infraction and subject to a penalty of five hundred dollars (\$500) per record.
- G. Misuse of an exemption card is a violation and subject to a penalty of fifty dollars (\$50) per incident of misuse;
- H. Nothing in this chapter shall be construed as preventing the Commission from filing and maintaining an action at law to recover any taxes, penalties, interest and/or fees due from a remote seller or marketplace facilitator. The Commission may also recover attorney's fees in

any action against a delinquent remote seller or marketplace facilitator.

69.06.230 – Remote Sellers with a physical presence in the taxing jurisdiction.

- A. Sellers with a physical presence in a Taxing Jurisdiction and no remote or internet-based sales shall report, remit, and comply with standards, including audit authority, of the Taxing Jurisdiction.
- B. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in a different Taxing Jurisdictions shall (i) report and remit the remote or internet sales to the Commission; and ii) report and remit the in-store sales to the Taxing Jurisdiction.
- C. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in the same Taxing Jurisdictions shall report and remit those remote sales to the Taxing Jurisdiction.
- D. Remote Sellers and marketplace facilitators that do not have a physical presence in a Taxing Jurisdiction must report and remit all remote sales to the Commission.
- E. For all purchases the tax rate added to the sale price shall be as provided in the Taxing Jurisdiction's sales tax code, based on point of delivery.
- F. A marketplace facilitator is considered the remote seller for each sale facilitated through its marketplace and shall collect, report, and remit sales tax to the Commission. A marketplace facilitator is not considered to be the remote seller for each sale or rental of lodging facilitated through its marketplace, wherein the seller is considered to have a physical presence in the Taxing Jurisdiction.

69.06.240 – Remittance of Tax; Remote Seller Held Harmless.

- A. Any remote seller or marketplace facilitator that collects and remits sales tax to the Commission as provided by law may use an electronic database of state addresses that is certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed.
- B. Any remote seller or marketplace facilitator that uses the data contained in an electronic database certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed shall be held harmless for any tax, charge, or fee liability to any taxing jurisdiction that otherwise would be due solely as a result of an error or omission in the database.
- C. Any electronic database provider may apply to the Commission to be certified for use by remote sellers or marketplace facilitators pursuant to this section. Such certification shall be valid for three years. In order to be certified, an electronic database provider shall have a database that satisfies the following criteria:
 - 1. The database shall designate each address in the state, including, to the extent practicable, any multiple postal address applicable to one location and the taxing jurisdictions that have the authority to impose a tax on purchases made by purchasers at each address in the state.
 - 2. The information contained in the electronic database shall be updated as necessary and maintained in an accurate condition. In order to keep the database accurate, the database

provider shall provide a convenient method for taxing jurisdictions that may be affected by the use of the database to inform the provider of apparent errors in the database. The provider shall have a process in place to promptly correct any errors brought to the provider's attention.

69.06.250 – Definitions

Adoption of definitions does not compel an individual municipality to exempt certain defined items. Each municipality should specifically adopt definitions necessary for consistency to implement both brick-and-mortar sales tax code and provisions related to remote sellers or marketplace facilitators. For definitions that have no applicability to brick-and-mortar sales tax code, municipality may choose either to include definitions in the definitional section of general sales tax ordinance or adopt the common definitions by reference.

“Buyer or purchaser” means a person to whom a sale of property or product is made or to whom a service is furnished.

“Commission” means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

“Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

“Goods for resale” means:

- A. the sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.
- B. Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.
- C. Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

“Marketplace facilitator” means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller's property or services through a physical or electronic marketplace operated by the person, and engages:

- (a) Directly or indirectly, through one or more affiliated persons in any of the following:
 - (i) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;

- (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;
- (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or
- (iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(b) In any of the following activities with respect to the seller's products:

- (i) Payment processing services;
- (ii) Fulfillment or storage services;
- (iii) Listing products for sale;
- (iv) Setting prices;
- (v) Branding sales as those of the marketplace facilitator;
- (vi) Order taking;
- (vii) Advertising or promotion; or
- (viii) Providing customer service or accepting or assisting with returns or exchanges.

“Member” means a taxing jurisdiction that is a signatory of the Alaska Remote Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Remote Seller Sales Tax Code.

“Monthly” means occurring once per calendar month.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual, as certified by registration with the IRS.

“Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“Physical presence” means a seller who establishes any one or more of the following within a local taxing jurisdiction:

1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;
2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the local taxing jurisdiction or engages in activities in this state that are significantly associated with the seller's ability to establish or maintain a market for its products in this state;
3. Provides services or holds inventory within the boundaries of the local taxing jurisdiction;
4. Rents or Leases property located within the boundaries of the local taxing jurisdiction.

A seller that establishes a physical presence within the local taxing jurisdiction in any calendar year will be deemed to have a physical presence within the local taxing jurisdiction for the following calendar year.

“Point of delivery” means the location at which property or a product is delivered or service rendered.

- A. When the product is not received or paid for by the purchaser at a business location of a remote seller in a Taxing Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller.
- B. When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a Taxing Jurisdiction the sale is considered to have been made in the Taxing Jurisdiction where the purchaser is present even if delivery of the product takes place in another Taxing Jurisdiction. Such sales are reported and tax remitted directly to the Taxing Jurisdiction not to the Commission.
- C. For products transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery the sale to the billing address of the buyer.

“Product-based exemptions” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Property” and **“product”** means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

“Quarter” means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

“Receive or receipt” means

- A. Taking possession of property;
- B. Making first use of services;
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include temporary possession by a shipping company on behalf of the purchaser.

“Remote sales” means sales of goods or services by a remote seller or marketplace facilitator.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other

remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.

“Resale of services” means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.

“Sale” or “retail sale” means any transfer of property for consideration for any purpose other than for resale.

“Sales or purchase price” means the total amount of consideration, including cash, credit, property, products, and services, for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller’s cost of the property or product sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

“Seller” means a person making sales of property, products, or services, or a marketplace facilitator facilitating sales on behalf of a seller.

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:

- A. Professional services;
- B. Services in which a sale of property or product may be involved, including property or products made to order;
- C. Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
- D. The sale of transportation services;
- E. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;
- F. Advertising, maintenance, recreation, amusement, and craftsman services.

“Tax cap” means a maximum taxable transaction.

“Taxing jurisdiction” means a local government in Alaska that has a sales tax and is a member of the Alaska Remote Sellers Sales Tax Commission.

“Transferred electronically” means obtained by the purchaser by means other than tangible storage media.

69.06.260 – Supplemental Definitions.

The Commission shall promulgate Supplemental Definitions that are incorporated into this Remote Seller Sales Tax Code. Supplemental Definitions are available at [_____]. Provisions of the Supplemental Definitions that are amended, deleted, or added prior to or after the effective date of the latest amendment to this chapter shall be applicable for purposes of this chapter on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

Section 4. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this ____ day of _____, 2020.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

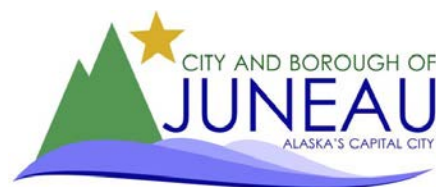
MEMORANDUM

DATE: January 6, 2020

TO: Assembly Finance Committee

FROM: Jeff Rogers, Finance Director

SUBJECT: Payment of Unreimbursed School Bond Debt FY2020 & FY2021



155 Municipal Way
Juneau, AK 99801
Phone: (907) 586-5215
Fax: (907) 586-0358

Background

At the Assembly Finance Committee meeting on December 2, 2019, the committee reviewed options for payment of the FY2020 unreimbursed school bond debt. In short, the funding sources for repayment are generally limited to the unrestricted fund balance and the restricted budget reserve. Governor Dunleavy has now also released his proposal for FY2021 budget which similarly reduces state funding for School Bond Debt Reimbursement by 50%. Payment of unreimbursed amount will be built into the Manager's FY2021 budget proposal.

Discussion

The Assembly may consider strategies to recoup these unreimbursed debt amounts from the public through the future Debt Service Mill Rate. Each 0.1 mill results in approximately \$500,000 of revenue. Hence, the amount lost in FY2020 could be recouped via a 0.1 mill increase for seven years, or a 0.7 mill increase for one year.

Chair Jones has inquired about options to recoup unreimbursed school bond debt from property tax without increasing the current Debt Service Mill Rate. Current debt service forecasts indicate that the Debt Service Mill Rate will remain flat at 1.20 from FY2020 to FY2021 but then would decline per the following chart. This decline in the Debt Service Mill Rate creates natural capacity for debt repayment, without exceeding the current 1.20 rate. Hence, a plan could be developed to fund unreimbursed school bond debt by keeping the current debt service mill rate flat. However, such a plan would reduce debt capacity for other priority projects in the next several years. Preliminary calculations indicate that 50% unreimbursed debt for all remaining school bonds could be recouped by FY2027 without increasing the debt service mill rate over 1.20 mills.

	Mill Rate StatQuo	Mill Rate Held Flat	Available Debt Mills	Annual Available Revenue	Cumulative Available Revenue	Unreimbursed Debt Payment	Cumulative Unreimbursed Debt Payments	Surplus/ (Deficit)
FY2020	1.20	1.20	0.00	\$ -	\$ -	\$ 3,550,000	\$ 3,550,000	\$ (3,550,000)
FY2021	1.20	1.20	0.00	\$ -	\$ -	\$ 3,270,000	\$ 6,820,000	\$ (6,820,000)
FY2022	1.10	1.20	0.10	\$ 500,000	\$ 500,000	\$ 2,810,000	\$ 9,630,000	\$ (9,130,000)
FY2023	1.00	1.20	0.20	\$ 1,000,000	\$ 1,500,000	\$ 1,340,000	\$ 10,970,000	\$ (9,470,000)
FY2024	0.80	1.20	0.40	\$ 2,000,000	\$ 3,500,000	\$ 540,000	\$ 11,510,000	\$ (8,010,000)
FY2025	0.60	1.20	0.60	\$ 3,000,000	\$ 6,500,000	\$ 225,000	\$ 11,735,000	\$ (5,235,000)
FY2026	0.40	1.20	0.80	\$ 4,000,000	\$ 10,500,000		\$ 11,735,000	\$ (1,235,000)
FY2027	0.40	1.20	0.80	\$ 4,000,000	\$ 14,500,000		\$ 11,735,000	\$ 2,765,000

Recommendation

I recommend the Assembly Finance Committee direct staff to draft, introduce, and set for public hearing a supplemental appropriation ordinance that would pay FY2020 reimbursed school bond debt in the amount of \$3.6 million from either: 1.) the unrestricted general government fund balance, or 2.) the Restricted Budget Reserve.

If the Committee chooses to pay from the Restricted Budget Reserve, the Manager will work with the Assembly during the FY2021/22 budget process to establish a plan to repay the reserve in accordance with Resolution 2629.

MEMORANDUM



DATE: January 6, 2020
TO: Assembly Finance Committee
FROM: Jeff Rogers, Finance Director
SUBJECT: Funding for Improvements to Centennial Hall

155 Municipal Way
Juneau, AK 99801
Phone: (907) 586-5215
Fax: (907) 586-0358

Voter-Approved Ballot Measures

In 2019, voters approved a ballot measure authorizing CBJ to seek up to \$7 million in general obligation debt to be funded by a combination of a 2% increase to the hotel-bed tax and an increase to the debt service mill rate. The 2% increase to the hotel-bed tax was enacted by another ballot measure at the same time.

New 2% Bed Tax and Bond Sizing

The Finance Department forecasts hotel-bed taxes of \$2.19 million in FY2021. Of that amount, \$486,734 will be due to the 2% increase, which is the amount intended to be allocated for renovations of Centennial Hall. CBJ's Financial Advisor, PFM, performed a preliminary bond sizing in November based on the amount of new bed tax expected, without any impact on the debt service mill rate. That exercise indicated that the new hotel-bed tax revenue would be sufficient to repay a \$5.86 million bond over 15 years (based on market conditions at that time).

1% Sales Tax Funding

Additionally, the plan for the 1% voter-approved sales tax allocates \$4.5 million for Centennial Hall improvements in FY2022 and FY2023. Regarding the timing, the Assembly could utilize a central treasury loan for the purpose of funding upgrades to Centennial Hall in advance of the sales tax receipts. In this regard, CBJ can align the availability of sales tax funding to the appropriate timing of the planned construction improvements.

Conclusion and Options

Taken together, the bond authority and the sales tax authorization—both already approved by the public—could fund improvements to Centennial Hall as follows:

- Up to \$10.36 million, without any increase to the debt service mill rate
- Up to \$11.5 million, with an increase to the debt service mill rate of approximately 0.03 mills for 15 years

As alternative options, the Assembly could choose to hold decisions about the 1% sales tax funding until FY2022/23. It could also opt to appropriate the new 2% hotel-bed tax funding annually rather than issuing a bond to be repaid by those receipts.

MEMORANDUM



DATE: January 6, 2020

TO: Assembly Finance Committee

FROM: Jeff Rogers, Finance Director

SUBJECT: Mandatory Disclosure of Real Estate Transactions

155 Municipal Way
Juneau, AK 99801
Phone: (907) 586-5215
Fax: (907) 586-0358

Background

At an Assembly Finance Committee meeting on December 4, 2019, Chair Jones requested that staff research the concept of mandatory disclosure of the sales price of real estate transactions. The State of Alaska does not require mandatory disclosure of the sales price real estate transactions, but it does not restrict or preclude home rule municipalities from an ordinance requiring mandatory disclosure.

Several documents discussing mandatory real estate disclosure are attached. The Alaska Legislative Research Report from 2014 highlights much of the factual information available. As of 2014, at least 39 states and the District of Columbia required mandatory public disclosure of the sales price of real estate transactions. Only six states (Alaska, Idaho, Louisiana, Mississippi, Texas, and Utah) are fully non-disclosure. Five states (Kansas, Missouri, Montana, New Mexico, and Wyoming) have limited disclosure in which prices are required to be reported to government entities, but those prices are not made public.

Generally, government Assessors and their professional associations endorse mandatory disclosure of the sales prices of real estate transactions. In email correspondence, the Alaska State Assessor, Marty McGee commented, "Sales disclosure laws provide assessors, the public, and the office of the State Assessor with the access to reliable information on the sales prices of real and personal property, throughout the entire spectrum of the market. Clearly, this is a substantial benefit to local assessors in the efficient and economical performance of their duties, to the public in having adequate data to formulate an appeal, and for the Office of the State Assessor (OSA) in the Full Value Determination equalization process."

Conversely, real estate industry professionals generally oppose mandatory disclosure. The attached position from the Texas REALTORS is representative of that opposition and it notes that "sales price is not necessary a good indicator of taxable value" and "it's an invasion of privacy."

Discussion

The position from the Texas REALTORS notes that property taxes would increase as a result of mandatory disclosure. The only reason that assessed values would increase as a result of mandatory disclosure is that properties are presently under-valued because of non-disclosure. Such under-valuing of certain properties likely results in inequitable assessments. Lack of information available to the Assessor inevitably results in variable accuracy/equity of assessed values.

The Assessor may under-value or over-value properties in the absence of good sales data, but it is far more likely that lack of information leads to under-valuation. As noted in several of the attachments, buyers more frequently report sale prices voluntarily to the Assessor for lower value residential properties, and they report prices for higher value residential and commercial properties less frequently. Also, buyers are more likely to report their purchase price when it is lower than the current assessment and less likely to report their purchase price when it is higher than the current assessment. These two factors may result in higher price properties being under-valued relative to lower price properties. If higher priced properties are under-valued, relative to lower priced properties,

then the owners of those higher priced properties are not paying their fair of property taxes in comparison to the owners of lower priced properties. In the lengthy attachment from the *St Mary's Law Journal* regarding Texas's non-disclosure law, Nathan Morey writes, "taxpayers are hit with unequal appraisals when their homes are valued at close to one hundred percent of their actual value, while commercial and high-end residential properties are valued at a much lower percentage." He goes on to write, "The taxpayer who lives in a mansion benefits from the local police department that patrols his street and the fire department that protects his house. The taxpayer who owns a commercial or industrial site also benefits from the public schools that prepare his future workforce for employment. Yet these property owners are paying much lower percentages of their property's market value in taxes than their middle-class residential neighbors."

Conclusion

Mandatory disclosure increases the amount of information available to the Assessor and the general public, and increased information certainly leads to more accurate—hence more equitable—property assessments. That said, concerns about privacy should also be considered. In weighing the balance between equitability and privacy, the vast majority of jurisdictions in the United States have opted for mandatory disclosure of sales prices in real estate transactions.

Recommendation

I recommend that the Assembly Finance Committee direct staff to draft an ordinance requiring mandatory disclosure of the sales price of real estate transactions for further consideration by the Assembly Finance Committee and the public at-large.



LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature
Division of Legal and Research Services
State Capitol, Juneau, AK 99801

(907) 465-3991 phone
(907) 465-3908 fax
research@akleg.gov

Research Brief

TO:
FROM: Susan Haymes, Legislative Analyst
DATE: July 22, 2014
RE: Disclosure Requirements for Real Estate Transactions
LRS Report 15.005

You asked what makes Alaska a non-disclosure state for the purpose of real estate transactions. Additionally, you asked about disclosure and non-disclosure requirements in other states.

Estimating the value of real property is important for various activities including real estate financing, listing real estate for sale, property assessments and taxation, investment analysis, and property insurance. In most states, documents must be filed with local officials, including the local property tax assessor, after a real estate transaction. In states that have laws requiring full disclosure, the sales price is recorded on the deed, or similar document and/or it is listed on the real estate transfer tax documents, which are then filed with the local assessor's office. At least 39 states and the District of Columbia require public disclosure of this information, which means that when realty is transferred, the sales price is disclosed and made available to the public as a matter of public record.¹ Typically, that information is available to the public from the local or state assessor's web site and/or office.

Alaska is one of six states that do not have a law that requires price information to be provided to a municipal, county or state government taxing entity as part of a real estate sales transaction.² Because of the absence of such a law, these states are known as non-disclosure states. Another five states require that the sales price be given to a government entity, but the information must be kept confidential and is not available to the public. These states are also sometimes referred to as non-disclosure states because they do not mandate public disclosure of real estate sales prices to the public.³

Recognizing that property owners may have an interest in obtaining sales price data from similar properties for the purpose of comparing their property tax assessment, Kansas, Montana, and Wyoming allow property owners a limited opportunity to view market data on such properties.⁴ In Wyoming, property owners who want to appeal their assessment have 30 days to review similar properties that the county assessor used to determine their property values (Wyo. Stat. § 34-1-142). Montana law also allows property owners 30 days to analyze comparable sales data, but the owner must visit the local Department of Revenue office and sign a confidentiality agreement (§ 15-7-308 MCA).⁵

¹ Disclosure laws vary somewhat among the states. Most states require that the sales price is entered on the deed and the information is public. A few states make public the amount of taxes paid on a real estate transaction. Since most transfer taxes are calculated as a percent of sale price, this information can be used to calculate the sales price.

² The six states are Alaska, Idaho, Louisiana, Mississippi, Texas, and Utah.

³ The five states are Kansas, Missouri (some counties), Montana, New Mexico, and Wyoming. In Missouri, certain counties prohibit disclosure of real estate prices. However, St. Louis County and St. Charles County, which account for 70 percent of the state's population, by county ordinance, do require public disclosure. In 2013, North Dakota, switched from a non-disclosure state to a full disclosure state (ch 95, HB 1225). The following article contains additional information, "North Dakota No Longer Clouded in Secrecy," *Bakken Construction News*, September/October 2013, <http://bakkenconstructionnews.com/ArticlePrint/North-Dakota-No-Longer-Clouded-in-Secrecy>.

⁴ We include the relevant laws from the three states as Attachment A.

⁵ Many Montana taxpayers have expressed concerns to legislators and DOR staff about what they consider to be an overly burdensome process to access the valuation of their property. In a recent news article, the Director of the Montana Department of Revenue announced that the department will ask the 2015 Legislature to change the law to allow real estate sales prices to be publicly disclosed. Charles S. Johnson, "Director Says Real Estate Sales Prices Should be Public," *Billings Gazette*, July 16, 2014. The article can be accessed at http://billingsgazette.com/news/state-and-regional/montana/director-says-real-estate-sales-prices-should-be-public/article_c4c795fa-84ef-59f6-be81-93df9f23e64a.html.

Many real estate agents are members of a Multiple Listing Service (MLS), a proprietary network operated by the local board of realtors. Typically, realtors who are MLS members enter the sales price into the system after a real estate transaction. Thus even in non-disclosure states, licensed real estate agents who are MLS members have access to sales prices that are entered into the MLS. However, the MLS only includes real estate transactions that involve a licensed realtor who is a member of the MLS and does not, for example, include private sales, or sales through non-member brokers. In addition, realtors may also opt not to disclose sales data. This is more common after the sale of more expensive properties such as custom-made homes or commercial properties. Additionally, some communities do not have an MLS.

In Alaska, as in other states, local assessors are required to uniformly value all property within their jurisdiction. Under AS 29.45.110, they must ensure that all values on the assessment role represent *full and true value*, which is defined as the “estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer.” According to Ron Brown, Alaska State Assessor, because local and state assessors do not have access to real estate sales data from the deed or some other transfer document, they must rely on other means to collect as much information as possible.⁶ One such method is a letter that is sent to the buyer and seller asking them to voluntarily supply information about the sale. Some people, but not all, supply the requested information. Mr. Brown notes that some buyers and sellers purposefully supply incorrect information, which must be discarded. The assessors also obtain sale prices from realtors and appraisers, and through the appeals process. Alaska assessors are able to collect a fair amount of data on residential sales, but only limited information on commercial sales. Basically, the higher the value of the property, the less likely the assessor is to get it. In practice, this means assessors are less likely to get sale prices on large custom homes and commercial transactions. Because assessors collect less information on commercial property transactions, these properties are often assessed at lower than market value. The lack of sales data makes it difficult for Alaska assessors to always determine an equitable and uniform valuation of all residential and commercial properties. Mr. Brown notes that the lack of access to real estate sales prices is the number one complaint from local assessors. In 2012, the Alaska Municipal League adopted a policy statement that, among other things, supports the “mandatory reporting of real estate transfers to assure more equitable property assessments.”⁷

Proponents of full disclosure argue that making sales price data public enables property owners to compare their property tax assessments to actual sales to better understand their own property valuation; adds confidence in the property valuation system, as assessments can be easily compared to independent sources; enables property owners to determine whether they should appeal their property valuation; and allows for more reliable and equitable appraisals and assessments. On the other hand, the main reason cited for restricting public disclosure of real estate prices is to maintain individual privacy. Given the importance of privacy to Alaskans and many others, Mr. Brown suggests an approach more similar to Kansas, Montana or Wyoming, in which local assessors can obtain real estate price data, but the information is kept confidential with some limited exceptions.⁸

We hope this is helpful. If you have questions or need additional information, please let us know.

⁶ Mr. Brown can be reached at 907.269.4605.

⁷ Alaska Municipal League, “2013 Policy Statement,” adopted November 16, 2012, p.2.

⁸ Jan Buchholz and Tricia Lynn Silva, “Push for Property Sales-Price Disclosure Will Face Stiff Opposition in Texas Legislature,” *San Antonio Business Journal*, December 28, 2012, <http://www.bizjournals.com/sanantonio/print-edition/2012/12/28/push-for-property-sales-price.html>; Laura Hancock, “Wyoming to Remain Real Estate Non-Disclosure State,” *Casper Star Tribune*, June 2, 2014, http://trib.com/news/state-and-regional/govt-and-politics/wyo-to-remain-real-estate-non-disclosure-state/article_7b967577-a1ac-5994-981a-db35ea994516.html; Montana Department of Revenue, “Public Disclosure of Real Estate Sales Price,” August 2010, http://revenue.mt.gov/Portals/9/committees/LocalGovernment_WorkingGroup/Oct13_2010/PublicDiscRealEstateSales.pdf.

K.S.A. § 79-1437f

LexisNexis (R) KANSAS ANNOTATED STATUTES

*** This document is current through the 2013 Supplement ***

*** Annotations current through October 30, 2013 ***

Chapter 79. TAXATION

Article 14. PROPERTY VALUATION, EQUALIZING ASSESSMENTS, APPRAISERS AND ASSESSMENT OF PROPERTY
GENERAL PROVISIONS

K.S.A. § 79-1437f (2013)

79-1437f. Same; disposition and use of contents thereof, to and by whom.

Except as otherwise provided by K.S.A. 79-1460, and amendments thereto, contents of the real estate sales validation questionnaire shall be made available only to the following people for the purposes listed hereafter:

- (a) County officials for cooperating with and assisting the director of property valuation in developing the information as provided for in K.S.A. 79-1487, and amendments thereto;
- (b) any property owner, or the owner's representative, for prosecuting an appeal of the valuation of such owner's property or for determining whether to make such an appeal, but access shall be limited to the contents of those questionnaires concerning the same constitutionally prescribed subclass of property as that of such owner's property;
- (c) the county appraiser and appraisers employed by the county for the appraisal of property located within the county;
- (d) appraisers licensed or certified pursuant to K.S.A. 58-4101 et seq., and amendments thereto, for appraisal of property and preparation of appraisal reports;
- (e) financial institutions for conducting appraisals and evaluations as required by federal and state regulators;
- (f) the county appraiser or the appraiser's designee, hearing officers or panels appointed pursuant to K.S.A. 79-1602 or 79-1611, and amendments thereto, and the state court of tax appeals for conducting valuation appeal proceedings;
- (g) the board of county commissioners for conducting any of the board's statutorily prescribed duties;
- (h) the director of property valuation for conducting any of the director's statutorily prescribed duties; and
- (i) a person licensed pursuant to the real estate brokers' and salespersons' act for purposes of fulfilling such person's statutory duties and providing information on market value of property to clients and customers.

History:

L. 1991, ch. 162, § 6; L. 1992, ch. 282, § 19; L. 1999, ch. 123, § 2; L. 2002, ch. 23, § 1; L. 2006, ch. 151, § 3; L. 2007, ch. 63, § 1; L. 2008, ch. 109, § 87; July 1.

15-7-308, MCA

LexisNexis (R) Montana Code Annotated*** This document is current through the 2013 Regular and Special Sessions ***

*** Annotations current through October 30, 2013 ***

TITLE 15 TAXATION
CHAPTER 7 APPRAISAL
PART 3 REALTY TRANSFER ACT

15-7-308, MCA (2013)

15-7-308 Disclosure of information restricted -- exceptions.

(1) Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

(2) The confidentiality provisions of this section do not apply to the information contained in the water right ownership update form or any other form prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the requirements of 85-2-112(3).

 History:

En. 84-7308 by Sec. 8, Ch. 528, L. 1975; R.C.M. 1947, 84-7308; amd. Sec. 45, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 167, L. 1997; amd. Sec. 2, Ch. 70, L. 2005; amd. Sec. 1, Ch. 366, L. 2007.

Wyo. Stat. § 34-1-142

Wyoming Statutes Annotated
Copyright © 2014 The State of Wyoming
All rights reserved.

* This Document is Current Through the 2014 Budget Session of the Legislature *

Title 34 Property, Conveyances and Security Transactions
Chapter 1 General Provisions
Article 1. In General

Wyo. Stat. § 34-1-142 (2014)

§ 34-1-142. Instrument transferring title to real property; procedure; exceptions; confidentiality.

(a) When a deed, contract or other document transferring legal or equitable title to real property is presented to a county clerk for recording, the instrument shall be accompanied by a statement under oath by the grantee or his agent disclosing the name of the grantor and grantee, the date of transfer, date of sale, a legal description of the property transferred, the actual full amount paid or to be paid for the property, terms of sale and an estimate of the value of any nonreal property included in the sale.

(b) No instrument evidencing a transfer of real property may be accepted for recording until the sworn statement is received by the county clerk. The validity or effectiveness of an instrument as between the parties is not affected by the failure to comply with subsection (a) of this section.

(c) This section does not apply to:

(i) An instrument which confirms, corrects, modifies or supplements a previously recorded instrument without added consideration;

(ii) A transfer pursuant to mergers, consolidations or reorganizations of business entities;

(iii) A transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of a subsidiary stock;

(iv) A transfer which constitutes a gift of more than one-half (1/2) of the actual value;

(v) A transfer between husband and wife or parent and child with only nominal consideration therefor;

(vi) An instrument the effect of which is to transfer the property to the same party;

(vii) A sale for delinquent taxes or assessments or a sale or a transfer pursuant to a foreclosure;

(d) The sworn statements shall be used by the county assessors and the state board of equalization and the department of revenue along with other statements filed only as data in a collection of statistics which shall be used collectively in determining sales-price ratios by county. An individual statement shall not, by itself, be used by

the county assessor to adjust the assessed value of any individual property.

(e) The statement is not a public record and shall be held confidential by the county clerk, county assessor, the state board of equalization the department of revenue and when disclosed under subsection (g) of this section, any person wishing to review or contest his property tax assessment or valuation and the county board of equalization. These statements shall not be subject to discovery in any other county or state proceeding.

(f) Repealed by Laws 1991, ch. 174, § 3.

(g) Any person or his agent who wishes to review his property tax assessment or who contests his property tax assessment or valuation in a timely manner pursuant to W.S. 39-13-109(b)(i) is entitled to review statements of consideration for properties of like use and geographic area available to the county assessor in determining the value of the property at issue as provided under W.S. 39-13-109(b)(i). During a review, the county assessor shall disclose information sufficient to permit identification of the real estate parcels used by the county assessor in determining the value of the property at issue and provide the person or his agent papers of all information, including statements of consideration, the assessor relied upon in determining the property value and including statements of consideration for properties of like use and geographic area which were available to the assessor and are requested by the person or his agent. The county assessor shall, upon request, provide the person or his agent a statement indicating why a certain property was not used in determining the value of the property at issue. The county assessor and the contestant shall disclose those statements of consideration to the county board of equalization in conjunction with any hearing before the board with respect to the value or assessment of that property. As used in W.S. 34-1-142 through 34-1-144:

(i) A "review" is considered the initial meetings between the taxpayer and the county assessor's office pursuant to W.S. 39-13-109(b)(i);

(ii) "Contest" means the filing of a formal appeal pursuant to W.S. 39-13-109(b)(i);

(iii) "Geographic area" may include any area requested by the property owner or his agent within the boundaries of the county in which the subject property is located.

(h) The state board of equalization shall adopt rules and regulations to implement W.S. 34-1-142 and 34-1-143 which shall include forms to be used and which shall be used by county assessors and county clerks.

HISTORY: Laws 1985, ch. 170, § 1; 1986, ch. 9, § 1; 1991, ch. 174, § 3; 1995, ch. 209, § 1; 1996, ch. 92, § 1; 1997, ch. 147, § 1; 1998, ch. 5, § 2; 2009, ch. 141, § 1; 2010, ch. 20, § 1; ch. 82, § 1.

Mary Grant

From: McGee, Marty (CED) <marty.mcgee@alaska.gov>
Sent: Wednesday, November 6, 2019 3:10 PM
To: Mary Grant
Subject: RE: Mandatory Disclosure

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Subject and summary of proposed legislation (include intent and statutory references):

- The intent of this proposal is to amend Title 29 to require the disclosure of the sales prices of real and personal property. According to AS 29.45.110, “the assessor shall assess property at its full and true value...” However, Alaska is also a non-reporting state, meaning that assessors do not have access to the sales prices of taxable real and personal property to properly determine full and true value, as required by law.
- Mandatory sales disclosure is needed to: ascertain market value as required by AS 29.45.110, and conversely to provide sufficient data for property owners to form property tax appeals. Mandatory sales disclosure is also essential to allow for sufficient market data for the Full Value Determination by the Office of the State Assessor (OSA).
- For any market-based appraisal of real estate to occur, an adequate supply of sales information is essential. Currently, assessors rely upon voluntary disclosure to ascertain sales prices which can be highly problematic. Many individuals are hesitant to divulge such information to anyone, much less the local assessor. Typically, the higher the value of the property, the less likely it is that the information will be shared. Notable examples would be properties such as: tracts of vacant land, custom homes and commercial properties.
- Voluntary disclosure of sales information of these types of properties are less common and tend to be less reliable when compared to other segments of the real estate market such as typical single family residences, townhomes or condominiums. This often results in a lack of equity in assessments between groups of properties. In other words, while the supply of sales data for single family residences may allow the assessor to evaluate these properties at close to 100% of market value, commercial properties are often valued at a significantly lesser rate. Such inequity exports a larger share of the tax liability to the owners of single family residences due to the higher level of valuation for such properties.
- Also, given that disclosure is voluntary, the assessor has little means of ascertaining the validity of information that is disclosed. In recent years it has been increasingly noted that a number of sales disclosure requests are returned to the assessor, but with clearly erroneous data. So not only must the local assessor actively solicit such data, but they must carefully screen what data they do receive for reliability.
- And conversely, because this market data is not publicly disclosed, property owners also face equal challenges in gathering the data needed to form a substantiated appeal. Providing this information, either publicly or on an as-needed basis, would provide for sufficient data for more accurate tax assessments, and possibly a correlating decrease in property tax appeals.

- Thirdly, for smaller jurisdictions with smaller real estate markets, the lack of mandated sales disclosure presents an even greater challenge in equalization of Full Value Determination calculations by the Office of the State Assessor across the state. The OSA equalizes full values across the state based upon ratio studies conducted at the local jurisdictional level, which are highly subject to swings in the number of sales within the sales database from year to year. If the number of sales in any given year changes drastically from the next, this can cause significant changes in the ratios that are used for equalization, thus causing unnecessary swings in full value determinations from year to year, particularly for smaller communities. This places them at a distinct disadvantage to larger communities with larger sales databases, whose ratios remain fairly constant due to larger pools of sales information. In summary, non-disclosure contributes to smaller sales sample sets, and thus to varying sample set sizes from year to year which causes unnecessary swings in the Full Value Determinations of smaller communities.
 - Sales disclosure laws provide assessors, the public, and the office of the State Assessor with the access to reliable information on the sales prices of real and personal property, throughout the entire spectrum of the market. Clearly, this is a substantial benefit to local assessors in the efficient and economical performance of their duties, to the public in having adequate data to formulate an appeal, and for the OSA in the Full Value Determination equalization process.
 - Note: Alaska is one of six states that do not require any form of sales disclosure, public or not. See attached report from Legislative Research Services.
-

Mary Grant

From: McGee, Marty (CED) <marty.mcgee@alaska.gov>
Sent: Wednesday, November 6, 2019 3:12 PM
To: Mary Grant
Subject: RE: Mandatory Disclosure

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

List and identify benefits and expected results of the proposal.

- More efficient, economical and equitable valuation of taxable real and personal property.
- A decreased number of appeals due to improved quality of valuations and the correlating decrease in the amount of appeals as the sales prices of all properties are fully known.
- Increased information for the consideration of buyers and sellers of real and personal property when participating in the market.

List and provide explanation of any consequences of not implementing the proposed statutory change.

- Continuation of increased expenses, inequity in valuation for local governments in establishing local property tax rolls and appeals of assessed values.
- Under valuation of property in local jurisdictions will continue causing decreased local funding of schools via the RLC. This creates increased expenditures by the SOA due to the funding formula where the State funds the shortfall.
- Continuation of decreased supply of data for State & local government and the public as to the health and direction of the market for real estate in Alaska.

List supporters of the proposal and provide explanation. Please provide via attachment any back-up that is applicable.

- In the past year, inquiries have been made to the OSA by legislative staff and local governments as to mandatory sales disclosure. In July of 2014, a report was requested and issued by Legislative Research Services on mandatory sales disclosure. A copy of this report and the associated source material is provided.
- Kenai Peninsula Borough passed resolution 2008-083 supporting the adoption of mandatory sales disclosure in the State of Alaska. See attached copy of resolution.
- At various times, local governments such as the Municipality of Anchorage, Matanuska Susitna Borough, Haines Borough have inquired as to whether they could impose mandatory sales disclosure on a local level.
- The Alaska Municipal League has adopted resolution 2009-03 requesting the legislature to enact legislation requiring mandatory sales disclosure. See attached copy.

List and describe any potential negative impacts of this legislation.

- Adoption of such legislation would require an enforcement authority that would ensure adherence. In most states, oversight is relegated to the recorder's office as the submission of the disclosure report is also a requirement for the recording of deeds.

List potential opponents of the proposal and provide detailed explanation of what those objections would be. Please provide via attachment any back-up that is applicable.

- The real estate industry, such as brokers, realtors, appraisers etc. The requirement would impose an additional requirement in closing. As well, mandatory sales disclosure would greatly diminish the value of private sales information databases held by the industry.
- Owners of vacant land, commercial property and other high value real estate.

Which other state departments will be affected by this legislation? Have you discussed the impact with the commissioners of these affected departments, and if so, do they support the proposal?

- The State Recorder's Office will be impacted as they are the logical recipient or point of contact to receive such information when deeds are recorded. Additional staffing and equipment will likely be required as well as a means of "distributing" any data that is collected.

Identify and describe any previous state or federal legislation and/or similar efforts in other states which affect or relate to this proposal.

- See attached report from Legislative Research Services. Additional data is available from the International Association of Assessing Officers – "Property Tax Policies and Administrative Practices. This publication details the sales disclosure laws of all 50 States and the Provinces of Canada. The current report (2010) is 108 pages in total, so copies provided are only of sections pertinent to mandatory disclosure. However the State Assessor's Office a complete copy is available upon demand.

Has this topic been previously introduced or discussed in the legislature, and if so, by whom?

- Mandatory sales disclosure has been discussed (off and on) in the legislature, local governments and the press for many years. However, best information is that no legislation has ever been introduced in the legislature to adopt it. One interesting bit of trivia to note is that Territorial Alaska had mandatory sales disclosure via "Revenue Stamps" for deeds prior to statehood. It is the common belief that this requirement ceased with Statehood.

If so, what was the final outcome?

- N/A

Statutes repealed by the proposal, including reference and description:

- None.

Estimated impact for Fiscal Year 2017: operating, capital, revenue generation: \$_____

Are there ongoing costs of implementation should this proposal become law: ☒ Yes ☐ No

If so, please explain.

- As noted earlier, sales disclosure would require the submission of reports for each transaction so that the data can be compiled and distributed to those entities deemed eligible have access to it.

List proposed funding sources.

- A modest recording fee for each transaction should render the program self-funding from the SOA perspective. This is the typical funding mechanism in most states and the provinces of Canada.



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

Public Disclosure of Real Estate Sales Price

August 2010

Introduction

At the April 29, 2010 meeting of the Revenue and Transportation Interim Committee (RTIC), the Department of Revenue (DOR) was asked to report on the status of public disclosure of real estate prices in Montana and other states. This report is presented in response to the committee's request.

This brief report is intended to provide background for the RTIC in response to the inquiry and information request at the April meeting. This memorandum is informational in nature and does not constitute a policy recommendation of the Department.

Executive Summary

Across the United States varying levels of government oversee property tax assessment; examples range from Montana (where the property assessment is conducted at the state level) to Connecticut (where individual townships oversee assessment). A result of this assortment is varying degrees and definitions of public disclosure with regard to real estate sales price. For the purpose of this report, public disclosure is defined as **the ability of a citizen or business to readily access realty sales price information, as a matter of public record.**

According to a 2006 article *Chronicles of Data Collection II: Non-Disclosure States*, Zillow Business Development Specialist, Drew Meyers, considered the following twelve states non-disclosure: Alaska, Idaho, Kansas, Louisiana, Mississippi, Missouri (some counties), *Montana*, New Mexico, North Dakota, Texas, Utah, and Wyoming.

Additional research, conducted by DOR, found New Mexico recently allowed public disclosure and within Missouri, both St. Louis County and St. Charles County - accounting for 70% of the state's population - require public disclosure. Additionally, a 2008 survey conducted by the International Association of Assessing Officers (IAAO) Technical Standards Committee found the District of Columbia to provide public disclosure.

This report relies on Zillow's 2006 definition of states with non-disclosure, with the removal of two states, New Mexico and Missouri. This accounting provides that **Montana is one of ten states prohibiting public disclosure of real estate sales price to its citizens**, while forty other states and the District of Columbia allow public access to this information.

What is “Public Disclosure”?

Essentially, public disclosure of real estate sales price means that when realty is transferred, the sales price is disclosed, in some manner, and made available to the public as a matter of public record, enabling citizens or businesses to readily access this information.

Around the country, states have varying degrees and methods of public disclosure ranging from the sales price being recorded on the deed, to the sales price being printed in the local newspapers, to allowing only government full access to the information (like Montana). In some places, laws vary between the different levels of government, as in the case of Missouri where roughly 70% of its citizens are required, by county ordinance, to submit sales price information which is then made available to the public.

Montana code requires the collection of Realty Transfer Certificates (RTC) which includes the sales price and related information but, the county clerk and recorder and the Department of Revenue are required to hold the information confidential, effectively blocking public access to this information.

Current Montana Law

The relevant portion of Montana code is section 15-7-308, MCA, specifically stating the information contained in the Realty Transfer Certificate (RTC) must be held confidential by the county clerk and recorder and by the Department of Revenue (DOR).

15-7-308, MCA. Disclosure of information restricted -- exceptions. (1) Except as provided in subsection (2), the certificate required by this part (realty transfer certificate) and the information contained in the certificate **is not a public record and must be held confidential by the county clerk and recorder and the department.** This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

Who Discloses and Who Doesn't?

As discussed above, forty states and the District of Columbia allow public disclosure (80%) while, ten states, including Montana, do not allow citizens to access this information (20%). A table tabulating real estate public disclosure by state is appended to this memorandum.

Why Not Disclose?

Among the reasons often cited for restricting public disclosure include an individual's right to privacy and maintaining *proprietary* information collected by the Multiple Listing Service (MLS).

As indicated by the second sentence in 15-7-308, MCA, public disclosure of real estate sales information in Montana appears to be seen as a balance of the demands of individual's privacy versus the merits of public disclosure.

Another, often cited, concern of public disclosure is the reduction of the value of information held by the Multiple Listing Service (MLS) and real estate sales and assessment professionals.

Why Disclose?

The most often cited benefit of public disclosure is providing citizens and businesses access to accurate and timely data, in turn, allowing for current property and market information to be analyzed. This leads to related benefits including:

- enabling property owners to compare their property tax assessment to actual sales and to better understand their own property valuation;
- enabling property owners to easily track their properties' appreciation and potentially reducing "sticker shock" when reappraisal occurs;
- adding confidence in the property valuation system, as assessments can be easily compared to independent sources; and
- enabling property owners to determine whether they should exercise their property valuation appeal rights.

Currently in Montana, when a taxpayer receives their assessment and has 30 days to file for a review, their options for analyzing their DOR assessed valuation include:

- comparing their property and assessment to similar property assessments by looking up tax information on the cadastral system (gis.mt.gov);
- looking up information on their county's website, if available (itax.csa-inc.net);
- hiring a professional appraiser, at an estimated cost between \$300 and \$500 per property; and
- visiting their local DOR office to sign a confidentially agreement that allows them access to the confidential comparable sales data used to value their property.

During the 2009 statewide reappraisal process, many Montana taxpayers expressed concerns to legislators and DOR staff about, what they consider to be, an overly burdensome process of receiving the comparable sales information used to access the valuation of their property.

In places allowing public disclosure, it is relatively easy for both professionals and non-professionals alike to directly access actual sales information. For example, **Zillow.com** - an industry leader in collecting, analyzing, and disseminating real estate valuation information - produces a web-based tool providing free access to: recent real estate sales, current valuation estimates, historical trends, and a variety of other related information.

Businesses like Zillow collect information on real estate location, characteristics, and sales price and then analyze this information in a fashion similar to how the DOR conducts assessments. Access to better data (timely and accurate) assists Zillow and other businesses in producing better (more accurate) products.

Similarly, if Montana taxpayers have access to real estate sales information, they too would be able to conduct their own property valuation analysis and potentially be better informed of market trends and changes in their taxes due to property appreciation and depreciation.

How Could Montana's Restriction on Disclosure be Changed?

If the legislature wishes to publically disclose Realty Transfer Certificate information, it could amend the current statute, 15-7-308, MCA, to read:

15-7-308, MCA. Disclosure of information. (1) The certificate required by this part (realty transfer certificate) and the information contained in the certificate, with the exception of social security numbers and FEIN, **is a public record**.

Summary

Montana is one of ten states prohibiting public disclosure of real estate sales prices (please see the attached chart: Real Estate Price Disclosure by State). The applicable statute, 15-7-308, MCA, specifically states, the information contained in the realty transfer certificate must be held confidential by the county clerk and recorder and by the Department of Revenue.

Among the reasons often cited for restricting disclosure include the demands of individual privacy and the ability of real estate professionals to maintain proprietary information.

An unintended consequence of restricting public disclosure is the creation of an artificial monopoly on real estate and market information.

Reasons often cited for public disclosure include: public access to free information, reduction of reappraisal "sticker shock", increased ability to understand and plan for property appreciation and depreciation, increased confidence in the property valuation system, additional transparency of the state's property assessment practice, and empowering property owners with the information to determine whether they should exercise their right to appeal DOR's property valuation.

Real Estate Public Disclosure by State

	<u>Public Disclosure</u>	<u>Prohibit Disclosure</u>
1	Alabama	Alaska
2	Arizona	Idaho
3	Arkansas	Kansas
4	California	Louisiana
5	Colorado	Mississippi
6	Connecticut	Montana
7	Delaware	North Dakota
8	Florida	Texas
9	Georgia	Utah
10	Hawaii	Wyoming
11	Illinois	
12	Indiana	
13	Iowa	
14	Kentucky	
15	Maine	
16	Maryland	
17	Massachusetts	
18	Michigan	
19	Minnesota	
20	Missouri	
21	Nebraska	
22	Nevada	
23	New Hampshire	
24	New Jersey	
25	New Mexico	
26	New York	
27	North Carolina	
28	Ohio	
29	Oklahoma	
30	Oregon	
31	Pennsylvania	
32	Rhode Island	
33	South Carolina	
34	South Dakota	
35	Tennessee	
36	Vermont	
37	Virginia	
38	Washington	
39	West Virginia	
40	Wisconsin	
41	District of Columbia	

Notes and Supplementary Material

1. Zillow Blog: Chronicles of Data Collection II: Non-Disclosure States
<http://www.zillow.com/blog/chronicles-of-data-collection-ii-non-disclosure-states/2006/05/11/>
2. Zillow.com
 - a. An easy to use real estate valuation estimator
 - b. <http://www.zillow.com/wikipages/What-is-a-Zestimate/>
3. Should Home Sale Prices Stay Secret? - MSN Real Estate – Post 2007
 - a. A discussion of asymmetric information, agent's viewpoint, and market efficiency.
 - b. <http://realestate.msn.com/article.aspx?cp-documentid=13107736>
4. Real Estate Sales Information Not Public in All States – Mortgage News Daily - June 7, 2007
 - a. A simple discussion of public real estate information
 - b. http://www.mortgagenewsdaily.com/672007_Real_Estate_Records.asp
5. More Dallas Home Sales Prices Kept Secret - The Dallas Morning News – June 18, 2009
 - a. Discussion surrounding costs and benefits of disclosure and the breakdown of MLS and asymmetric information
 - b. <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/061809dnbusmlsprices.42e728f.html>
6. State and Provincial Ratio Study Practices: Results of 2008 Survey – Technical Standards Committee of the International Association of Assessing Officers – Journal of Property Tax Assessment & Administration, Volume 6, Issue 2 – Post 2008
 - a. The results of a US and Canadian Survey regarding state assessment practices
 - b. http://www.iaao.org/uploads/Ratio_Survey_Article.pdf



Sales Price Disclosure

Issue

Some appraisal districts, cities, and counties argue for full disclosure of all real estate sales prices to establish the value of real property in Texas.

There are numerous problems with basing value, especially taxable value, on the sales price of a real property. In many cases, central appraisal districts (CADs) do not consider seller concessions, which can lead to artificially high tax-appraisal values in the year-of-purchase and beyond.

There is also a problem with subdivisions that feature unequally sized lots or custom-built homes. Another issue concerns farm and ranch properties where improvements like trade fixtures and livestock are included in the sales price.

Additional difficulties arise with commercial properties, which may include a business and/or trade fixtures, value of long-term leases, and properties where mineral rights are included or excluded from the sale.

What does this mean for the real estate industry?

According to conservative estimates, sales-price disclosure will lead to a more than \$250 million property-tax increase for Texas property owners.

High property taxes are already a barrier to homeownership and the relocation of businesses to Texas. Increasing property taxes would be a disincentive to homeownership and enterprise, hurting the real estate market and the Texas economy.

The Texas REALTOR® position

Our association opposes all legislative efforts to require the disclosure of sales-price information because:

- Sales price is not necessarily a good indicator of taxable value
- It's an unnecessary invasion of privacy
- It could pave the way for a new real estate transfer tax in Texas, as most states that require sales-price disclosure use it to compute tax liability for the transfer of real estate

Legislative outlook

Central appraisal districts may seek full sales-price disclosure of all real estate transactions in Texas. This includes residential, commercial, industrial, raw land, and farm and ranch.

The Texas Legislature has consistently stated expanding government intrusion into the private lives of Texans is not an option.

Historical perspective

The appraisal process we know today was created by the Legislature in 1979 and was fully implemented in January 1982. Mandatory sales-price disclosure was part of the debate then and has been ever since. Prior to a central appraisal process, each local taxing jurisdiction valued real property separately. The city could have one value on their books while the county had a completely different value.

Since 1982, real property in Texas has been subject to a local property tax administered at the local-taxing-jurisdiction level. CADs are tasked with appraising real property for *ad valorem* taxation purposes. Many of these appraisal districts have called upon the Legislature to pass sales-price disclosure to enable districts to adequately appraise real property.

In 2006, Gov. Perry created the Texas Task Force on Appraisal Reform (TTFAR), and the final report stated, “Most appraisal districts do not have the internal capacity to analyze complex financial or commercial transactions.”

During the 81st Texas Legislature in 2009, lawmakers passed comprehensive appraisal reform in the form of numerous bills aimed at reforming the process. Specifically, the Legislature passed HB 8, which enacted a Methods and Procedures Audit on all 253 appraisal district in Texas. The comptroller’s office was tasked with implementing the bill and has completed the audits.

In 2009, the 81st Texas Legislature also passed (and voters approved) a constitutional amendment which allows for uniform appraisal standards to be used in all appraisal districts.

The Texas Comptroller of Public Accounts, in the most recent report on appraisal districts and appraisals, stated that all real property in Texas is being valued at 99% of market value. Based on this official report, it can hardly be determined that real property appraisals in Texas are inaccurate.

RECENT DEVELOPMENT

UNEQUAL AND UNFAIR: WHY TEXAS SHOULD REQUIRE MANDATORY SALES PRICE DISCLOSURE TO RECONCILE THE TEXAS PROPERTY TAX CODE WITH THE TEXAS CONSTITUTION

NATHAN MOREY

I. Introduction	554
A. How Much Is a Parking Lot Worth?.....	554
B. In Texas, Nothing Is Certain but Death and Unequal Taxation	556
II. Background	562
A. Market Value	563
1. Market Value Defined	564
2. Market Value Versus Sales Price.....	565
3. Multiple Listing Service	567
B. Before the Texas Property Tax Code	569
C. The Texas Property Tax Code.....	571
1. Appraisal Districts and the Appraisal Process ...	572
2. Protesting an Appraisal.....	574
III. Analysis	577
A. Constitutional Challenge	578
B. New Legislation Requiring Mandatory Sales Price Disclosure	583
IV. Conclusion	591

I. INTRODUCTION

“All real property . . . shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.”¹ “It is not for taxing authorities to decide what property shall escape taxation; that right lies alone with the people in the writing of their Constitution and with the Legislature in the enactment of laws.”² “The legislature has no power to sanction discrimination between taxpayers by taking away defenses.”³ The language quoted above, from the Texas constitution and the Supreme Court of Texas, might lead one to believe that all taxpayers pay the government an equal percentage of their property’s actual value each year. This, however, is not the case in the great State of Texas.

A. *How Much Is a Parking Lot Worth?*

In 2008, the City of Dallas negotiated for the purchase of an 8.34-acre tract of downtown real estate, which at the time was being used as a parking lot. The city agreed to a purchase price of \$42 million; however, that same property was valued at only \$7.3 million by the Dallas Central Appraisal District for tax purposes.⁴ In other words, the city was prepared to pay the owner a figure almost six times greater than that which contemporaneously appeared on the tax rolls. At least four other independent appraisals were conducted on the property, valuing the land from \$29 million to over \$40 million.⁵ Shortly after the city publicly

1. TEX. CONST. art. VIII, § 1(b).

2. *Whelan v. State*, 155 Tex. 14, 22, 282 S.W.2d 378, 382–83 (1955).

3. *Id.* at 23, 282 S.W.2d at 383.

4. Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City’s Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936; Dave Levinthal & Rudolph Bush, *Council Delays Vote on Land Purchase: Some Members Worry Flawed Appraisals Have Inflated Price*, DALLAS MORNING NEWS, Apr. 24, 2008, at 1B, available at 2008 WLNR 7621429; Dave Levinthal & Suzanne Marta, *Vote Planned on Parcel for Convention Hotel: Facility Could Give City a Boost in Competing for Conventions*, DALLAS MORNING NEWS, Feb. 9, 2008, at 1D, available at 2008 WLNR 2554841; Terrence Stutz, *State Senate Hearing: Price Disclosure on Real Estate Is Urged: Dallas Officials Say Rule Would Aid Appraisals, Tax Collection*, DALLAS MORNING NEWS, June 17, 2008, at 6B, available at 2008 WLNR 11429840.

5. Dave Levinthal & Rudolph Bush, *Council Delays Vote on Land Purchase: Some Members Worry Flawed Appraisals Have Inflated Price*, DALLAS MORNING NEWS, Apr. 24, 2008, at 1B, available at 2008 WLNR 7621429; Dave Levinthal & Suzanne Marta, *Vote Planned on Parcel for Convention Hotel: Facility Could Give City a Boost in Competing for Conventions*, DALLAS MORNING NEWS, Feb. 9, 2008, at 1D, available at 2008 WLNR 2554841. The purpose behind this transaction was to acquire land for a city-financed hotel

2010]

RECENT DEVELOPMENT

555

announced the price that it was willing to pay for the small tract, the Appraisal District reappraised the property at \$36.5 million for the new tax year, while also raising the appraised values of many other downtown properties.⁶ This adjustment would not have taken place had the above transaction been between two private parties.⁷ However, because the bargaining process with the city was public information, the Appraisal District had new data on which to base its appraisal; data which otherwise would have been unavailable.

Properties similar to the small Dallas parking lot are not the only types of real estate in Texas that are regularly appraised below the value they actually sell for on the open market. While “mid-range residential” homes are consistently appraised at—or close to—the prices for which they actually sell, “high-end residential” properties are appraised at much lower values when compared with their respective sales prices.⁸ Although the

near the Dallas Convention Center. Dave Levinthal & Suzanne Marta, *Vote Planned on Parcel for Convention Hotel: Facility Could Give City a Boost in Competing for Conventions*, DALLAS MORNING NEWS, Feb. 9, 2008, at 1D, available at 2008 WLNR 2554841. Two of the independent appraisals valued the property at over \$40 million and were used by the city to justify the proposed sales price. *Id.* The other two appraisals of \$29 million and \$33 million were commissioned by the owner of a private hotel, against which the city-financed hotel would compete. Dave Levinthal & Rudolph Bush, *Council Delays Vote on Land Purchase: Some Members Worry Flawed Appraisals Have Inflated Price*, DALLAS MORNING NEWS, Apr. 24, 2008, at 1B, available at 2008 WLNR 7621429.

6. Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936. Although their values did not increase as dramatically as the land the city wished to buy, several other downtown properties were appraised with an increase of over 50% between their value on the 2007 tax roll and the 2008 tax roll. Rudolph Bush & Kevin Krause, *Why Did This Parking Lot Jump in Appraised Value from \$7.5 Million to \$36.5 M?: City Defends Deal, but Critics Skeptical of New Assessment*, DALLAS MORNING NEWS, May 4, 2008, at 1A, available at 2008 WLNR 8329061.

7. Cf. Steve Brown, *How Much Is It Worth?: Land Costs Vary from Block to Block, Sometimes Dramatically*, DALLAS MORNING NEWS, May 3, 2008, at 1D, available at 2008 WLNR 8328998 (“Buyers and sellers jealously guard values in hopes of holding down tax liabilities. . . . In Texas, property sales prices are not public information.”).

8. See TEX. ASS'N OF APPRAISAL DISTS., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? 2–48 (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (documenting sales price and appraisal data from several appraisal districts throughout Texas and showing the difference between the sales price and appraisal value of “mid-range residential” and “high-end residential” properties); see also Rick Casey, *The Real Property Tax Conspiracy*, HOUSTON CHRON., June 22, 2008, at B1, available at 2008 WLNR 11825437 (“[V]ery expensive houses and commercial properties almost always sell for considerably more than the amount listed on the tax rolls.”); Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping*

difference between the appraised value and the sales price varies depending on the individual property, some “high-end residential” properties have been appraised as low as thirty percent of the sales price for which they later sold.⁹

B. *In Texas, Nothing Is Certain but Death and Unequal Taxation*¹⁰

The discrepancy between the cash value of a piece of land when it is sold and its appraisal value is not uncommon in Texas.¹¹ Commercial property and high-end residential real estate are often undervalued by appraisal districts throughout the state.¹² Because

College Affordable Among Lawmakers' Goals, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (“[A]ppraisals and tax bills for million-dollar homes and business properties are often artificially low . . .”). See generally CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT 78–79 (1991) (opining that a tax assessment is “not a good indicator of asking price or market value”).

9. See TEX. ASS'N OF APPRAISAL DISTS., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (indicating that a property in Austin County was appraised at \$617,040 in 2006 just before selling for \$2,092,598 that same year); see also Rick Casey, *The Real Property Tax Conspiracy*, HOUSTON CHRON., June 22, 2008, at B1, available at 2008 WLNR 11825437 (explaining that the sales prices of commercial properties and expensive houses are almost always higher than the amount the tax rolls reflect).

10. Cf. Letter from Benjamin Franklin to Jean-Baptiste Leroy (Nov. 13, 1789), reprinted in JOHN BARTLETT, FAMILIAR QUOTATIONS 310 (Justin Kaplan ed., 16th ed. 1992) (“Our new Constitution is now established, and has an appearance that promises permanency; but in this world nothing can be said to be certain, except death and taxes.”).

11. See Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (pointing out the artificial nature of certain appraisals and tax bills); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (reporting that some taxpayers' properties are valued near market value while other properties are valued far below market value); TEX. ASS'N OF APPRAISAL DISTS., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (documenting the gap between property appraisal values and sales prices); see also Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (referring to a study by the Texas Association of Appraisal Districts that estimates there is over \$300 billion worth of taxable property that is not assessed).

12. A recent study estimated that in 2004 all commercial property in Texas was valued at \$178,577,672,798 by local county appraisal districts while the estimated true value was \$297,629,454,663. MICHAEL A. AMEZQUITA, BEXAR APPRAISAL DIST., RECOMMENDATIONS FROM BEXAR APPRAISAL DISTRICT (on file with the *St. Mary's Law Journal*). The same study found that all single-family residential property state wide

2010]

RECENT DEVELOPMENT

557

Texas counties, cities, and school districts depend on local ad valorem¹³ property taxes for revenue,¹⁴ this widespread problem

was valued at \$638,031,599,296 by appraisal districts, while the estimated true value was \$750,625,410,936. *Id.* Although commercial properties are appraised at approximately 60% of the value that they sell for on an open market, single-family residential properties are valued at 85% of the value that they bring in an open market. *Id.*; see Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 892 (1973) (delineating the results of a 1970 study showing that commercial and industrial property in Houston and Harris County was, by and large, appraised at much lower values than residential property); Rick Casey, *The Real Property Tax Conspiracy*, HOUSTON CHRON., June 22, 2008, at B1, available at 2008 WLNR 11825437 (claiming that high-end homes and commercial real estate “almost always sell for considerably more than the amount listed on the tax rolls”); Jonathan Gurwitz, *Homeowners Paying Up for Commercial Undervaluation*, SAN ANTONIO EXPRESS-NEWS, Sept. 5, 2007, at 09B, available at 2007 WLNR 17325679 (listing several commercial properties in Bexar County that sold for prices far greater than their appraised value for tax purposes); see also Steve Blow, *We Won’t Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (asserting that the chief appraiser of the Dallas Central Appraisal District claimed that “state law tie[d] his hands and works to keep commercial property undervalued”).

13. See BALLENTINE’S LAW DICTIONARY 39 (3d ed. 1969) (defining “ad valorem tax” as “[a] tax of a fixed proportion of the value of the property to be charged, an appraisal being a prerequisite to the determination of the amount of the tax”); BLACK’S LAW DICTIONARY 1496 (8th ed. 2004) (defining “ad valorem tax” as a “tax imposed proportionally on the value of something (esp. real property), rather than on its quantity or some other measure”); Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 887 (1982) (“Ad valorem is defined as ‘according to value.’”); see also CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 423 (4th ed. 1985) (“Accordingly, ad valorem taxes are taxes which are assessed on real property, the tax being based on the property’s fair market value.”). See generally CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 423 (4th ed. 1985) (“[T]he most fundamental concepts of ad valorem taxation are often questioned.”); *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335 (1958) (arguing that ad valorem taxation is criticized because of its “inefficiencies and inequities”).

14. Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 887 (1982); Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 885 (1973); see CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 424 (4th ed. 1985) (“The bulk of ad valorem taxes are paid at the county and local tax levels.”); SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, TAXPAYERS’ RIGHTS, REMEDIES AND RESPONSIBILITIES 1 (2008), <http://www.window.state.tx.us/taxinfo/proptax/remedy08/96-295-08.pdf> (“[P]roperty tax is the largest funding source for local services in Texas.”); see also Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 516–17 (2004) (asserting that Texas’s Robin Hood scheme encourages some appraisal districts to intentionally undervalue property in order for the local independent school district to receive more state funds); Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1378 (1962) (advancing that in many states there is an incentive to undervalue property in order for local government to receive more state aid).

of under-appraising properties has led to a growing concern that revenue is being lost and that the tax burden is being unequally shouldered by middle-class homeowners.¹⁵

To illustrate this problem, imagine two properties on opposite sides of a street. The actual value of each property is \$100,000. However, property A is appraised at one hundred percent of its actual value, while property B is appraised at only sixty percent. If a one percent ad valorem property tax is levied on the two properties, then the owner of property A will pay a tax of \$1,000, while the owner of B will pay only \$600. If both property owners consume taxpayer-funded services, then the burden is being unequally shared between them. Imagine then that the owner of property A is a middle-class residential homeowner and the owner of property B is a commercial property owner. In this situation, the homeowner ends up paying more money than the commercial property owner for use of the same public services.

The root cause of this frequent under-appraisal of commercial and high-end residential property is the use of a privately-owned real estate database,¹⁶ the Multiple Listing Service (MLS), by the appraisal districts charged with valuing property for taxation.¹⁷

15. See Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 ("In Texas, where property taxes are the primary means of taxation, that means commercial property owners are shifting a huge chunk of the tax burden to homeowners."); Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (proclaiming that "middle-income homeowners" pay for the difference of artificially low appraisals for "million-dollar homes and business properties" when the tax bill comes due); see also MICHAEL A. AMEZQUITA, BEXAR APPRAISAL DIST., RECOMMENDATIONS FROM BEXAR APPRAISAL DISTRICT (on file with the *St. Mary's Law Journal*) ("Our current system favors owners of commercial and high-end homes over owners of middle to [low-end] homes (typical home owners)."). See generally Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 511 (2004) (proposing that lack of sales disclosure causes "tax revenue leakage").

16. See SHAHRI MASTERS, THE EVERYTHING GUIDE TO BEING A REAL ESTATE AGENT 3-4 (2006) (explaining that an MLS is used by realtors for the purpose of sharing property listings); Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 510 (2004) (noting that an MLS is privately owned and contains sales data). See generally CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT 76 (1991) (recognizing that most contemporary realtors use an MLS).

17. See Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (declaring that an MLS allows residential properties to be appraised at close-to-market value); Rudolph Bush &

2010]

RECENT DEVELOPMENT

559

The Texas Property Tax Code (the Tax Code) defines “market value” and lays out the terms for how an appraisal district should go about valuing property, but it does not give appraisers the ability to obtain sales data on real estate when it is sold.¹⁸ To gain access to sales data, appraisal districts, along with private appraisers and real estate brokers, enlist the help of their local MLS.¹⁹ Because an MLS is more likely to contain sales data on

Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (stressing that the Dallas Central Appraisal District “relies heavily on sales prices” from the MLS and that undervaluation of commercial property is due to a lack of information); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (claiming that appraisals are unequal due to the “vast amount of information” readily available concerning residential property, including MLS and real estate advertisements); see also MICHAEL A. AMEZQUITA, BEXAR APPRAISAL DIST., RECOMMENDATIONS FROM BEXAR APPRAISAL DISTRICT (on file with the *St. Mary's Law Journal*) (asserting that there are readily available market data on homes valued under \$250,000). See generally TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 19 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (contending that many appraisers in Texas claim that a lack of sales data keeps them from appraising property accurately).

18. See TEX. TAX CODE ANN. § 22.24(d) (Vernon 2008) (establishing that a taxpayer may, but is not required to, disclose market value when submitting a rendition); Edward Klierer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 890 (1982) (claiming that prior to the adoption of the Tax Code, a property owner was required to disclose the value of taxable property and that after adoption of the Code the disclosure of the value of property was optional); Steve Brown, *How Much Is It Worth?: Land Costs Vary from Block to Block, Sometimes Dramatically*, DALLAS MORNING NEWS, May 3, 2008, at 1D, available at 2008 WLNR 8328998 (reiterating that “property sales prices are not public information” in Texas); see also Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 890 (1973) (suggesting that although rendition of property was required under state law prior to the Tax Code, many tax assessors likely ignored the rendition procedure because of limited resources, the inability to subpoena a taxpayers records, and the enormity of the task).

19. See Tex. Att'y Gen. OR99-0420 (1999) (unpublished informal letter ruling), available at <http://www.oag.state.tx.us/opinions/openrecords/49cornyn/orl/1999/htm/or199900420.htm> (discussing Comal County's status on the New Braunfels/Canyon Lake Area Board of Realtors' MLS as it pertained to the Open Records Act); see also Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (noting that an MLS enables appraisal districts to value residential properties close to market value); Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (stating that the Dallas Central Appraisal District “relies heavily on sales prices that it obtains through an agreement with the Multiple Listing Service”). See generally CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE

middle-class residential properties than it is to contain similar data for commercial properties or high-end residential properties, appraisal districts are more likely to appraise the former at close to market value, while a lack of probative data leads to the under-appraisal of the latter.²⁰

Although the Texas constitution allows for the taxation of all property,²¹ this Recent Development will focus on the taxation of

PROFIT 25 (1991) (claiming that MLSs are “in use across the nation”).

20. See Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (“[C]ommercial sales information is rarely made public in Texas.”); Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (reporting that State Representative Mike Villarreal, Democrat-San Antonio, maintains that “appraisers do not have access to price information for commercial and high-end residential properties”); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (stating that appraisal districts have access to a “vast amount” of data concerning residential property but that data concerning commercial property are “scant”); MICHAEL A. AMEZQUITA, BEXAR APPRAISAL DIST., RECOMMENDATIONS FROM BEXAR APPRAISAL DISTRICT (on file with the *St. Mary's Law Journal*) (proposing that the cause of the appraisal disparity between commercial and residential property is attributed to the lack of available data on “commercial, multi-family, industrial, offices, retail and land for development”).

21. See TEX. CONST. art. VIII, § 1(b) (declaring that all real and tangible personal property “shall be taxed in proportion to its value”); TEX. TAX CODE ANN. § 11.01(a) (Vernon 2008) (“All real and tangible personal property that this state has jurisdiction to tax is taxable unless exempt by law.”); *City of Arlington v. Cannon*, 153 Tex. 566, 570, 271 S.W.2d 414, 416 (1954) (“The deliberate adoption of a plan for the omission from the tax rolls of a large volume of property, personal or real, is in direct contravention of constitutional and statutory provisions for equality and uniformity of taxation.”); *Norris v. City of Waco*, 57 Tex. 635, 642 (1882) (opining that “there can be but little question” that all property, except that made exempt by the legislature, “must be taxed in proportion to its value”); see also *Parker County v. Spindletop Oil & Gas Co.*, 628 S.W.2d 765, 768 (Tex. 1982) (holding a tax plan invalid because it assessed oil and gas rights at a different rate than other property); *Whelan v. State*, 155 Tex. 14, 20–21, 282 S.W.2d 378, 382 (1955) (explaining that despite “the practical difficulties and problems to be encountered,” holding that bank deposits are not taxable would “fly in the very face of the Constitution and the Statutes of this state” and further noting that the legislature has specifically included bank deposits within the definition of “property”); *Sam Bassett Lumber Co. v. City of Houston*, 145 Tex. 492, 494, 198 S.W.2d 879, 880 (1947) (stating that just because the City of Houston failed to tax similar property elsewhere, does not, by itself, prove that the taxation of “goods, wares and merchandise” is excessive); *Briscoe Ranches, Inc. v. Eagle Pass Indep. Sch. Dist.*, 439 S.W.2d 118, 122 (Tex. Civ. App.—San Antonio 1969, writ ref'd n.r.e.) (indicating that the appellant introduced evidence in the district court of more than \$9 million in deposits held by two banks located within the district and that the tax assessor had attempted to discover those deposits, but that the banks refused to furnish information about the deposits, claiming that the law required confidentiality); *Bergert v. Alexander*, 297 S.W.2d 895, 898 (Tex. Civ. App.—Amarillo 1957, writ ref'd n.r.e.)

2010]

RECENT DEVELOPMENT

561

real property.²² Specifically, this Recent Development will explore the weaknesses of the Tax Code to show why discrepancies occur between middle-class residential and other types of real estate, and why the Code is unable to correct those discrepancies.

Not only must taxing units²³ operate within the boundaries of the Tax Code, but they are first and foremost bound by the equality and uniformity requirements of article VIII of the Texas constitution.²⁴ This Recent Development will examine why Texas courts are unable to adequately remedy these unequal appraisals and discuss recent attempts in the Texas Legislature to reform the ongoing problem of unequal appraisals by requiring mandatory sales price disclosure to appraisal districts.²⁵

(recognizing that the equality and uniformity provisions of the Texas constitution are violated when personal property and improvements on land are excluded or assessed without regard to value). *See generally* Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 889 (1973) (acknowledging the impossibility of discovering all taxable personal property and that attempting to do so would be politically and socially offensive).

22. *See* TEX. TAX CODE ANN. § 1.04(2) (Vernon 2008) (defining “real property” as land, improvements to land, mines and quarries, minerals, timber, and various security interests).

23. *See id.* § 1.04(12) (defining a “taxing unit” as an entity “that is authorized to impose and is imposing ad valorem taxes on property even if the governing body of another political unit determines the tax rate for the unit or otherwise governs its affairs” and listing several examples such as cities, counties, school districts, and hospital districts).

24. TEX. CONST. art. VIII, § 1; *Spindletop*, 628 S.W.2d at 767; *Dallas County v. Dallas Nat’l Bank*, 142 Tex. 439, 441, 179 S.W.2d 288, 289 (1944); *Lively v. Mo., K. & T. Ry. Co. of Tex.*, 102 Tex. 545, 558–59, 120 S.W. 852, 856 (1909); *see Cannon*, 153 Tex. at 570, 271 S.W.2d at 416 (“[T]he deliberate adoption of a plan for the omission from the tax rolls of a large volume of property, personal or real, is in direct contravention of constitutional and statutory provisions for equality and uniformity of taxation.”).

25. *See* Jonathan Gurwitz, *As Property Taxes Climb, Don’t Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, *available at* 2007 WLNR 17148824 (reiterating that legislation requiring mandatory sales price disclosure was introduced but not passed during Texas’s 80th legislative session); Terrence Stutz, *State Senate Hearing: Price Disclosure on Real Estate Is Urged: Dallas Officials Say Rule Would Aid Appraisals, Tax Collection*, DALLAS MORNING NEWS, June 17, 2008, at 6B, *available at* 2008 WLNR 11429840 (discussing the efforts of the City of Dallas in lobbying the legislature to approve mandatory sales price disclosure). *See generally* Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 886 (1973) (describing some of the criticisms of the taxation of property, including claims that it “cast[s] a disproportionate burden on those who are least able to pay,” undermines necessary public works, and is no longer a viable source of revenue).

II. BACKGROUND

Article VIII, section 1(a) of the Texas constitution mandates that “[t]axation shall be equal and uniform.”²⁶ Section 1(b) requires that “[a]ll real property and tangible personal property in this State . . . shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.”²⁷

In *Harris County Appraisal District v. United Investors Realty Trust*,²⁸ the Fourteenth Court of Appeals in Houston ruled that “it is unfair, and constitutionally prohibited, to require one taxpayer to pay a tax based on market values if other taxpayers are paying a rate that is lower than the market value of their properties.”²⁹ The court addressed the tension between the two constitutional requirements of article VIII and resolved the conflict in favor of equality and uniformity.³⁰ The Fourteenth Court of Appeals was not, however, in uncharted territory. Nearly eighty years earlier, the United States Supreme Court³¹ handed down a similar ruling

26. TEX. CONST. art. VIII, § 1(a). *But see Whelan*, 155 Tex. at 18, 282 S.W.2d at 380 (“Exact uniformity and equality of taxation is an unattainable ideal.” (citing *Rosenburg v. Weekes*, 67 Tex. 578, 586, 4 S.W. 899, 901 (1877))); *Norris*, 57 Tex. at 642 (stating that while taxation must be equal, the benefit received from the government resulting from the same taxation need not be equal).

27. TEX. CONST. art. VIII, § 1(b); *see* TEX. TAX CODE ANN. § 11.01 (Vernon 2008) (“All real and tangible personal property that this state has jurisdiction to tax is taxable unless exempt by law.”); Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 887–88 (1982) (contending that unless excluded by statute, all property is valued and taxed according to market value). *See generally* Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1377–78 (1962) (arguing that the equality requirement and the market value requirement are “closely intertwined” and together intended to promote equality in taxation).

28. *Harris County Appraisal Dist. v. United Investors Realty Trust*, 47 S.W.3d 648 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

29. *Id.* at 654.

30. *Id.*; *see also* *Lively v. Mo., K. & T. Ry. Co. of Tex.*, 102 Tex. 545, 558, 120 S.W. 852, 856 (1909) (“[T]axation cannot be in the same proportion to the value of the property, unless the value of all property is ascertained by the same standard.”).

31. The Supreme Court of Texas has noted the similarity between the Fourteenth Amendment to the United States Constitution and section 1 of article VIII of the Texas constitution. *See* U.S. CONST. amend. XIV, § 1, cl. 4 (mandating that states give all persons “equal protection of the laws”); TEX. CONST. art. VIII, § 1 (requiring equality and uniformity in taxation); *Lively*, 102 Tex. at 558–59, 120 S.W. at 856 (asserting that the Fourteenth Amendment of the United States Constitution, section 1 of article VIII of the Texas constitution, and other similar provisions in other state constitutions have the same application); Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 909 (1973) (stating that both the federal and Texas constitutions are

2010]

RECENT DEVELOPMENT

563

in *Sioux City Bridge Co. v. Dakota County*.³² The court held that “where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.”³³

A. Market Value

At the center of this taxation conundrum is the difficulty of establishing market value.³⁴ When multiple professional appraisers examine a single piece of property, they often use different valuation methods and arrive at different conclusions as to the property’s value.³⁵ These different conclusions and their

violated by “the omission of property from the tax rolls, the unequal treatment of different classes of property within the same taxing jurisdiction, and the unequal treatment of like property within the state”); Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1375 (1962) (noting the commonality between equality and uniformity provisions of state constitutions and the Equal Protection Clause of the Fourteenth Amendment). The United States Supreme Court has ruled on equality and uniformity in taxation on several occasions. See *Nordlinger v. Hahn*, 505 U.S. 1, 10, 18 (1992) (stating that state legislation may discriminate in cases where it furthers a “legitimate state interest” and that a California provision allowing seniors’ homes to be appraised at lower values advanced such an interest (citing *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439–41 (1985))); *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946) (stating that the Equal Protection Clause “protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class”); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 446 (1923) (holding that a property owner who has been taxed at a higher percentage is entitled to a reduction to the lower percentage that other property owners enjoy). But see *Nashville, Chattanooga & St. Louis Ry. v. Browning*, 310 U.S. 362, 368 (1940) (holding that a state may classify property types and tax different classes at different rates).

32. *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923).

33. *Id.* at 446. In *Sioux City Bridge*, the owner of a railroad bridge objected to the appraisal of the bridge at 100% of its market value while other property in the district was only valued at 55% of its market value. *Id.* at 443–44. The Court held that the Fourteenth Amendment of the United States Constitution required the railroad bridge to be reappraised at the lower rate. *Id.* at 446–47.

34. See *Whelan v. State*, 155 Tex. 14, 18, 282 S.W.2d 378, 380 (1955) (“Exact uniformity and equality of taxation is an unattainable ideal.” (citing *Rosenburg v. Weekes*, 67 Tex. 578, 586, 4 S.W. 899, 901 (1877))); Steve Brown, *How Much Is It Worth?: Land Costs Vary from Block to Block, Sometimes Dramatically*, DALLAS MORNING NEWS, May 3, 2008, at 1D, available at 2008 WLNR 8328998 (emphasizing the wide variances in the valuations of real estate in downtown Dallas); see also *Whelan*, 155 Tex. at 20–21, 282 S.W.2d at 382 (bemoaning the difficulty in taxing bank deposits).

35. See Steve Brown, *How Much Is It Worth?: Land Costs Vary from Block to Block, Sometimes Dramatically*, DALLAS MORNING NEWS, May 3, 2008, at 1D, available at 2008 WLNR 8328998 (stating that litigation makes buyers and sellers reluctant to disclose information pertaining to real estate transactions and that appraisals vary as a result);

respective methods are frequently left for the courts to sort out.³⁶

1. Market Value Defined

The true market value of a property is difficult to establish and is often controversial.³⁷ Section 1.04(7) of the Tax Code defines “market value” as:

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 of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable 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.³⁸

Dave Levinthal & Rudolph Bush, *Council Delays Vote on Land Purchase*, DALLAS MORNING NEWS, Apr. 24, 2008, at 1B, available at 2008 WLNR 7621429 (referring to two private appraisals, one for \$29 million and the other for \$33 million, conducted on the same piece of Dallas real estate on which the city intended to build a hotel); Dave Levinthal & Suzanne Marta, *Vote Planned on Parcel for Convention Hotel*, DALLAS MORNING NEWS, Feb. 9, 2008, at 1D, available at 2008 WLNR 2554841 (referring to three different valuations on the same piece of Dallas real estate on which the city intended to build a hotel: one by the Dallas Central Appraisal District for \$7.5 million and two independent appraisals valuing the property at over \$40 million). See generally Silas J. Ely, *Applied Techniques of Appraisal*, in THE MCGRAW-HILL REAL ESTATE HANDBOOK 30-1, 30-4 (Robert Irwin ed., 1984) (listing four different methods of appraising real estate: the market comparison method, the allocation or abstraction method, the development method, and the land residual method); *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 344-47 (1958) (discussing various types of assessment techniques).

36. See *City of Harlingen v. Sharboneau*, 48 S.W.3d 177, 182 (Tex. 2001) (Baker, J., concurring) (stating that the “subdivision development” method of appraisal is not among the appraisal methods recognized by Texas law and should not be admissible in a condemnation proceeding); *Houston R.E. Income Props. XV, Ltd. v. Waller County Appraisal Dist.*, 123 S.W.3d 859, 864 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (stating that a court may rely on both the market data method and the income method in appraising a property).

37. See *Whelan*, 155 Tex. at 18, 282 S.W.2d at 380 (“Exact uniformity and equality of taxation is an unattainable ideal.” (citing *Rosenburg*, 67 Tex. at 586, 4 S.W. at 901)). See generally CHARLES J. JACOBUS, *TEXAS REAL ESTATE LAW* 423 (4th ed. 1985) (“[T]he most fundamental concepts of *ad valorem* taxation are often questioned.”).

38. TEX. TAX CODE ANN. § 1.04(7) (Vernon 2008); see also *Sharboneau*, 48 S.W.3d at 182 (defining “market value” as “the price the property will bring when offered for sale by one who desires to sell, but is not obliged to sell, and is bought by one who desires to buy, but is under no necessity of buying” (quoting *State v. Carpenter*, 126 Tex. 604, 606, 89 S.W.2d 979, 980 (1936))). See generally BALLENTINE’S LAW DICTIONARY 778 (3d ed.

2010]

RECENT DEVELOPMENT

565

Market value is typically determined by using any combination of three traditional methods: the market approach, the cost approach, and the income approach.³⁹ The market approach compares a particular property with other properties for which sales data are available.⁴⁰ The cost approach calculates value by estimating the cost of identical vacant land and improvements.⁴¹ Finally, the income approach is used to value commercial and industrial real estate by considering the income and expenses that a property generates when compared to other investments.⁴²

2. Market Value Versus Sales Price

Market value should not be confused with the sales price of real property.⁴³ While the sales price in a routine transaction is often the result of the type of bargaining described in section 1.04(7) of the Code, it is not an absolute indication of market value.⁴⁴

1969) (defining “market value” as “[t]he price for which an article is bought and sold in the ordinary course of business” and “[o]f real estate:—the highest price obtainable in the open market for cash”); BLACK’S LAW DICTIONARY 1587 (8th ed. 2004) (defining “fair market value” as “[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm’s-length transaction; the point at which supply and demand intersect”); CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE ’90S WITH LESS STRESS AND MORE PROFIT 73 (1991) (defining “fair market value” as “the closing price, the highest price a ready, willing, and able buyer will pay and the lowest price a ready, willing, and able seller will accept” (emphasis omitted)).

39. Silas J. Ely, *Principles of Appraisal*, in THE MCGRAW-HILL REAL ESTATE HANDBOOK 28-12 (Robert Irwin ed., 1984).

40. *Id.*; see also *id.* at 28-1 (claiming that the market approach is the most direct and important approach in valuing property).

41. *Id.* at 28-13; see also *id.* (stating that the cost approach is normally limited to the appraisal of new buildings and public properties).

42. Silas J. Ely, *Principles of Appraisal*, in THE MCGRAW-HILL REAL ESTATE HANDBOOK 28-13–28-14 (Robert Irwin ed., 1984).

43. See *id.* at 28-3 (pointing out the difference between market price and market value by stating that market price is “simply the amount actually paid” while market value is the “highest price in terms of money which a property will bring in a competitive and open market under all conditions requisite to a fair sale”); see also BLACK’S LAW DICTIONARY 1226 (8th ed. 2004) (defining “price” as “[t]he amount of money or other consideration asked for or given in exchange for something else; the cost at which something is bought or sold”); BLACK’S LAW DICTIONARY 1586 (8th ed. 2004) (defining “value” as “[t]he significance, desirability, or utility of something”).

44. See TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (claiming that sales price alone is inadequate to establish market value).

Depending on the circumstances of the transaction—such as whether it involved a forced sale, condemnation by the government, or sale at auction following a foreclosure—the actual sales price of the property might be much lower than market value.⁴⁵ In some instances where property is purchased through financing, the sales price might be higher depending on the interest rate obtained by the buyer.⁴⁶ Nonetheless, sales price is one of a few tools that appraisers use to determine the value of real property.⁴⁷

Sales price may be introduced as evidence of market value either before an appraisal review board or a reviewing district court during an appraisal protest.⁴⁸ In *Bailey County Appraisal District v. Smallwood*,⁴⁹ a property owner appealed an appraisal review board's finding that his property was worth \$55,000 for tax purposes.⁵⁰ A jury found in favor of the property owner, who based his claim solely on the property's purchase price of \$25,000.⁵¹ The Appraisal District appealed, but the Seventh Court of Appeals in Amarillo upheld the trial court's ruling that purchase price alone is probative evidence "tending to support the

45. See Silas J. Ely, *Applied Techniques of Appraisal*, in THE MCGRAW-HILL REAL ESTATE HANDBOOK 30-1, 30-4 (Robert Irwin ed., 1984) (stating that the terms of the sale affect the price).

46. See TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (stating that lower interest rates and less buyer liability often result in higher sales prices).

47. See Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 891 (1973) (claiming that assessors often appraise the property of large businesses by negotiating because an accurate valuation is too difficult); Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1393 (1962) (stating that recent sales are not always representative if statistical sampling is not employed); TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf ("Sales price disclosure alone does not provide the information an appraisal district needs to establish a market value.").

48. See TEX. TAX CODE ANN. § 41.44 (Vernon 2008) (permitting a property owner to present evidence in front of an appraisal review board); SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, TAXPAYERS' RIGHTS, REMEDIES AND RESPONSIBILITIES 6 (2008), <http://www.window.state.tx.us/taxinfo/proptax/remedy08/96-295-08.pdf> (describing to a taxpayer how to protest).

49. *Bailey County Appraisal Dist. v. Smallwood*, 848 S.W.2d 822 (Tex. App.—Amarillo 1993, no writ).

50. *Id.* at 823.

51. *Id.* at 823–24.

2010]

RECENT DEVELOPMENT

567

jury finding on fair market value.”⁵²

3. Multiple Listing Service

An MLS is a resource that subscribing members, usually real estate agents and private appraisers, use to gain access to information concerning a specific housing market, thereby allowing real estate brokers to instantly analyze all listed properties for sale in a general area by location and sales data.⁵³ Most importantly, an MLS allows appraisers to verify the actual sales price and date of a particular real estate transaction brokered by a member for the purpose of appraising similar real estate.⁵⁴ Due to the nature of the real estate market, sales data are more readily available for some types of property than others. The vast majority of properties listed on an MLS are middle-class single-

52. *Id.* at 825; see *Sagemont Plaza Shopping v. Harris County Appraisal Dist.*, 30 S.W.3d 425, 427 (Tex. App.—Corpus Christi 2000, pet. denied) (holding that the most recent purchase price of a property was sufficient evidence to establish market value). *But see City of Harlingen v. Sharboneau*, 48 S.W.3d 177, 186 (Tex. 2001) (finding that the price a buyer “could hypothetically afford to pay” and still make a profit upon resale is not necessarily what a buyer “would pay in the competitive, risk-filled marketplace of the real world”). See generally CAROLYN JANIK, *HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT* 73 (1991) (defining “fair market value” as “the closing price, the highest price a ready, willing, and able buyer will pay and the lowest price a ready, willing, and able seller will accept” (emphasis omitted)).

53. See CHARLES J. JACOBUS, *TEXAS REAL ESTATE LAW* 550 (4th ed. 1985) (defining “multiple listing” as “an agreement among brokers who belong to the Multiple Listing Service that all listings will be placed on a mutually available list, that all brokers may sell any property on the list, and that the commission will be split in a predetermined fashion”); SHAHRI MASTERS, *THE EVERYTHING GUIDE TO BEING A REAL ESTATE AGENT* 4 (2006) (“An MLS is an organization that’s formed for the purpose of sharing listings, which you’ll likely find to be internet based.”); SHAHRI MASTERS, *THE EVERYTHING GUIDE TO BEING A REAL ESTATE AGENT* 153 (2006) (detailing the information usually available on an MLS); see also CAROLYN JANIK, *HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT* 13 (1991) (describing the relationship among realtors who are members of an MLS). See generally *id.* at 76 (contending that “[e]very competent real estate office keeps records” of the sales prices of comparable properties).

54. See SHAHRI MASTERS, *THE EVERYTHING GUIDE TO BEING A REAL ESTATE AGENT* 153 (2006) (relating that while each MLS system is somewhat unique, most of them have the common features of “sales price, the date sold, the type of financing that was used, and who sold it” in addition to how many days it has been on the market). See generally CAROLYN JANIK, *HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT* 5 (1991) (proclaiming that realtors allow their colleagues to access the properties that they are selling through an MLS); *id.* at 13 (asserting that when a property is sold on an MLS, the commission is usually split down the middle between the agent who posted the property and the agent who sold it via the MLS).

family houses.⁵⁵ Many appraisal districts have joined with local real estate agents and private appraisers in local MLS boards to gain access to this data.⁵⁶ Because middle-class homes are likely to be listed on an MLS,⁵⁷ the market data method is usually the easiest and most likely choice of appraisal method in valuing these

55. See Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (referring to statements by Texas State Representative Mike Villarreal, Democrat-San Antonio, who claims that sales data on most homes valued under \$300,000 can be found on a local MLS, while sales data of commercial real estate and more expensive residential properties are largely unavailable); REAL ESTATE CTR. AT TEX. A&M UNIV., REAL ESTATE MARKET OVERVIEW 2008 DALLAS-FORT WORTH-ARLINGTON 26 (2008), <http://recenter.tamu.edu/mreports/DallasFWAr1.pdf> (showing that throughout different regions of the Dallas/Fort Worth/Arlington area, the number of homes that sold on an MLS for over half a million dollars was never more than 8% of all homes sold in the area during 2007).

56. See Tex. Att'y Gen. OR99-0420 (1999) (unpublished informal letter ruling), available at <http://www.oag.state.tx.us/opinions/openrecords/49cornyn/orl/1999/html/or199900420.htm> (recounting a scenario in Comal County where homeowners filed an open records request to gain access to sales figures through the local appraisal district—which was a member of the local MLS—but were denied the disclosure based on the district's contention that the data are property of the local MLS and not the government); Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (stating that data from an MLS allows appraisal districts to keep residential properties valued at close to market value); Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (stating that the Dallas Central Appraisal District “relies heavily on sales prices that it obtains through an agreement with the Multiple Listing Service”); Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (claiming that because of listings in the MLS, Bexar County appraisers have access to 95% of residential properties under \$300,000); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (“A vast amount of information is available to appraisers with regard to residential home sales from the Multiple Listing Service . . .”).

57. See Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (noting that most homes worth less than \$300,000 in Bexar County are listed on the local MLS); REAL ESTATE CTR. AT TEX. A&M UNIV., REAL ESTATE MARKET OVERVIEW 2008 DALLAS-FORT WORTH-ARLINGTON 26 (2008), <http://recenter.tamu.edu/mreports/2008/DallasFWAr1.pdf> (showing that throughout different regions of the Dallas/Fort Worth/Arlington area, the number of homes that sold on an MLS for over half a million dollars was never more than 8% of all homes sold in the area during 2007). See generally CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT 166 (1991) (arguing that the MLS is the most widely used database by real estate brokers and that if a seller wants maximum market exposure for a property, it should be listed on an MLS).

2010]

RECENT DEVELOPMENT

569

properties.⁵⁸ Meanwhile, because less data are available on an MLS concerning the sales prices of commercial properties, the income method is more likely to be used in the appraisal of those properties.⁵⁹

Under the Tax Code, a property owner must file a rendition with the appraisal district where the property is located.⁶⁰ A rendition is a statement that identifies taxable property within an appraisal district.⁶¹ However, the property owner is not required to disclose the market value of his or her property when submitting that rendition.⁶² There is a growing belief that renditions in Texas should include more information—specifically, the most recent sales price.⁶³

B. Before the Texas Property Tax Code

Prior to 1982, taxing units maintained their own tax rolls.⁶⁴

58. See TEX. TAX CODE ANN. § 23.013 (Vernon 2008) (“If the chief appraiser uses the market data comparison method of appraisal to determine the market value of real property, the chief appraiser shall use comparable sales data and shall adjust the comparable sales to the subject property.”).

59. See *id.* § 23.012 (outlining the requirements for “income method” appraisals); Silas J. Ely, *Principles of Appraisal*, in THE MCGRAW-HILL REAL ESTATE HANDBOOK 28-13–28-14 (Robert Irwin ed., 1984) (describing the income approach and the circumstances under which it is ideal).

60. See Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 889–90 (1982) (discussing renditions and stating that disclosing market value or sales price is optional under the Tax Code).

61. *Id.* at 890.

62. See TEX. TAX CODE ANN. § 22.01(b) (Vernon 2008) (requiring a person to submit a rendition of any “taxable property that he owns or that he manages and controls as a fiduciary on January 1”); *id.* § 22.24(d) (establishing that a property owner is not required to disclose a “good faith estimate of the market value of the property”); Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 890 (1982) (emphasizing that the Tax Code requires a taxpayer to file a rendition prior to May 1 and that disclosing market value is optional).

63. See Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers’ Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (reporting on pending legislation requiring mandatory sales disclosure); Terrence Stutz, *State Senate Hearing: Price Disclosure on Real Estate Is Urged: Dallas Officials Say Rule Would Aid Appraisals, Tax Collection*, DALLAS MORNING NEWS, June 17, 2008, at 6B, available at 2008 WLNR 11429840 (reporting on the City of Dallas’s efforts to lobby the legislature for mandatory sales disclosure).

64. See Edward Kliever III & Scott E. Breen, *The New Property Tax Code and*

Cities, counties, and school districts redundantly valued the same properties within their overlapping territories.⁶⁵ Each taxing unit maintained its own board of equalization, which heard disputes concerning the appraised value of taxable property within the unit's jurisdiction.⁶⁶ Under this system, taxing units acted as the appraiser of value, the initial arbiter of disputes, and the collector of taxes.⁶⁷

Before the adoption of the Tax Code, to avoid falling victim to an unfair tax scheme, a taxpayer had to prove that a tax scheme was "discriminatory, arbitrary, that there was omitted property or that the property was valued in excess of its market value."⁶⁸ "[A] mere difference in judgment" about a property's value or "isolated instances" of other property being valued at disproportionate values was insufficient grounds on which a property owner could prevail.⁶⁹ To obtain relief, a property owner had to show

Perfecting the Appeal: The Taxpayer's Perspective, 13 ST. MARY'S L.J. 887, 889 (1982) (noting that before the Tax Code "there were approximately 3,000 different taxing jurisdictions" in Texas that maintained tax offices); *see also* *Aycock v. Travis County*, 255 S.W.2d 910, 911–12 (Tex. Civ. App.—Austin 1953, writ ref'd) (recognizing in the statement of facts that Travis County used prior assessments made by the City of Austin, where much of the taxable property in Travis County is located, in formulating its own assessments).

65. *See* Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 894 (1973) (indicating that Texas used to have overlapping taxing units); *see also* *Aycock*, 255 S.W.2d at 911–12 (noting Travis County's use of assessments made by the City of Austin).

66. *See* Edward Kliewer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 891 (1982) (stating that prior to the Tax Code, each taxing unit had its own board of equalization); *see also* *City of Arlington v. Cannon*, 153 Tex. 566, 568, 271 S.W.2d 414, 415 (1954) (noting that the City of Arlington had its own board of equalization); *Dallas County v. Dallas Nat'l Bank*, 142 Tex. 439, 440, 179 S.W.2d 288, 289 (1944) (indicating that the Dallas County Commissioners Court also served as a board of equalization for Dallas County); *State v. Houser*, 138 Tex. 28, 30, 156 S.W.2d 968, 969 (1941) (noting that Lamar County and the Paris Independent School District shared both a taxing unit and a board of equalization); Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 892 n.47 (1973) (stating that "[e]very type of taxing district is entitled to have its own board of equalization" to correct unequal assessments).

67. *See* Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 892–93 (1973) (accusing county boards of equalization of abusing the system and creating "rampant inequalities" in violation of constitutional and statutory requirements).

68. Edward Kliewer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 897 (1982).

69. *Dallas Nat'l Bank*, 142 Tex. at 441, 179 S.W.2d at 289; *see* *State v. Whittenburg*,

2010]

RECENT DEVELOPMENT

571

substantial injury.⁷⁰ Substantial injury was established when a taxpayer could prove his taxes would have been substantially lower had other property in the district been appraised at market value.⁷¹ Property owners could fight the government's attempt to collect a tax that was unequal or excessive, even during a delinquency proceeding.⁷²

C. The Texas Property Tax Code

The Texas Property Tax Code⁷³ was adopted by the state legislature in 1979 and became effective January 1, 1982.⁷⁴ The Tax Code established independent appraisal districts as subdivisions of the state in all counties within Texas.⁷⁵ The

153 Tex. 205, 210, 265 S.W.2d 569, 573 (1954) (stating that “mere errors in judgment” or a mere disagreement between the finder of fact and a board of equalization is an insufficient basis for relief); *Houser*, 138 Tex. at 33, 156 S.W.2d at 971 (finding that the trial court and the board of equalization had a “difference in judgment or opinion” and that the trial court erred in voiding the assessment of the board of equalization); *Exps. & Traders Compress & Warehouse Co. v. City of Marlin*, 130 S.W.2d 860, 862 (Tex. Civ. App.—Waco 1939, writ dismissed) (stating that a court may not void an assessment just because a jury finds a property to be worth a different amount than the board of equalization found).

70. *Whelan v. State*, 155 Tex. 14, 22–23, 282 S.W.2d 378, 383 (1955); *Cannon*, 153 Tex. at 570, 271 S.W.2d at 417; *Whittenburg*, 153 Tex. at 210, 265 S.W.2d at 573; *Bynum v. Alto Indep. Sch. Dist.*, 521 S.W.2d 656, 659 (Tex. Civ. App.—Tyler 1975, writ refused n.r.e.); *Warren Indep. Sch. Dist. v. S. Neches Corp.*, 405 S.W.2d 100, 103 (Tex. Civ. App.—Beaumont 1965, writ refused n.r.e.).

71. *Whelan*, 155 Tex. at 22–23, 282 S.W.2d at 383; *Whittenburg*, 153 Tex. at 214, 265 S.W.2d at 575; *Bynum*, 521 S.W.2d at 660; *see also Bynum*, 521 S.W.2d at 660 (holding that there was no substantial injury when the appellant could not establish that his taxes would have been lower if other properties were appraised at market value).

72. *Bynum*, 521 S.W.2d at 659; *see also Whelan*, 155 Tex. at 22–23, 282 S.W.2d at 383 (noting that a taxpayer must prove substantial injury if he waits until an unequal plan of taxation is put into effect).

73. *See TEX. TAX CODE ANN.* § 1.01 (Vernon 2008) (“This title may be cited as the Property Tax Code.”).

74. Act of May 26, 1979, 66th Leg., R.S., ch. 841, §§ 1.01–63.339, 1979 Tex. Gen. Laws 2217, 2217–332 (amended 2009) (current version at *TEX. TAX CODE ANN.* §§ 1–43 (Vernon Supp. 2009)); CHARLES J. JACOBUS, *TEXAS REAL ESTATE LAW* 424 (4th ed. 1985); Edward Kliewer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 888 (1982).

75. *TEX. TAX CODE ANN.* § 6.01 (Vernon 2008); *see also id.* § 6.02(a) (defining the boundaries of an appraisal district as identical with the boundaries of the county in which the district is located). Though appraisal review boards replaced boards of equalization after 1982, their functions were basically the same: ensure fair market valuation as well as equal and uniform taxation. Edward Kliewer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 891–

purpose of the appraisal district is to value all taxable property within its jurisdictional limits so that multiple taxing units within a county (school districts, water districts, municipalities, etc.) can levy an ad valorem property tax based on a single valuation.⁷⁶ In addition to article VIII, section 1(b) of the Texas constitution, which requires property to “be taxed in proportion to its value,” section 23.01, requires appraisal districts to appraise property at market value.⁷⁷ Furthermore, the Tax Code strictly outlines the procedures and remedies for property owners who wish to challenge their appraisals.⁷⁸

1. Appraisal Districts and the Appraisal Process

The Tax Code established appraisal districts to determine the value of taxable property in Texas.⁷⁹ Appraisal districts are overseen by a board of directors⁸⁰ who appoint both a chief

92 (1982); *see also* CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 424 (4th ed. 1985) (stating that the Tax Code was adopted to “clarify some of the conflicts we had in the law prior to the Property Tax Code being passed”).

76. *See* TEX. TAX CODE ANN. § 6.01(b) (Vernon 2008) (“[An appraisal] district is responsible for appraising property in the district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the district.”); CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 425 (4th ed. 1985) (recognizing that appraisal districts were created to standardize the appraisal process and to “require[] all school districts, levee districts, water districts, and other taxing authorities to use the same appraised value on the property”).

77. TEX. CONST. art. VIII, § 1(b); TEX. TAX CODE ANN. § 23.01(a) (Vernon Supp. 2009).

78. *See* TEX. TAX CODE ANN. § 41.44 (Vernon 2008) (stating the amount of time allowed to file a notice of protest); *id.* § 41.47 (setting forth the parameters within which an appraisal review board must operate in a protest hearing); *id.* § 42.01 (granting a property owner the right of appeal to a district court in the event an appraisal review board issues an adverse ruling); *id.* § 42.09 (stating that the Tax Code’s remedies are exclusive); *id.* § 42.23 (defining the scope of judicial review for the appeal of a protest); TEX. TAX CODE ANN. § 42.26 (Vernon 2008) (listing the remedies for unequal appraisal).

79. TEX. TAX CODE ANN. § 6.01(b) (Vernon 2008); Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 889 (1982). *But see Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 340–41 (1958) (commenting that reforms attempting to consolidate the appraisal process have been “sporadic” and have had “dubious success”).

80. TEX. TAX CODE ANN. § 6.03(a) (Vernon 2008); *see also* CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 425 (4th ed. 1985) (recognizing that appraisal districts are overseen by a board of directors comprised of at least five members, each serving a term of two years).

2010]

RECENT DEVELOPMENT

573

appraiser⁸¹ and the members of the appraisal review board.⁸² The chief appraiser and his subordinates set the initial valuation of taxable property,⁸³ while the appraisal review board hears disputes initiated by property owners and taxing units.⁸⁴

Although the taxing units located within a county appoint the board of directors of that county's appraisal district, the legislature laid the foundation for a more independent appraisal process in the Tax Code.⁸⁵ Section 1.15 prohibits a taxing unit from employing appraisers for the purpose of taxation,⁸⁶ while section 6.412 prohibits employees, officers, and elected officials of taxing units from serving on an appraisal review board.⁸⁷

Section 23.01 of the Tax Code requires that property be appraised "at its market value as of January 1"⁸⁸ and that "each property shall be appraised based upon the individual characteristics that affect the property's market value."⁸⁹ The Tax Code allows the chief appraiser to base the appraisal on "cost data obtained from generally accepted sources,"⁹⁰ the potential of the

81. TEX. TAX CODE ANN. § 6.05(c) (Vernon 2008).

82. *Id.* § 6.41(d).

83. *See id.* § 6.05(d) (authorizing the chief appraiser to maintain a staff of "professional, clerical, and other personnel"); *id.* § 6.05(e) (allowing the chief appraiser to delegate duties to employees).

84. *Id.* § 41.01(a)(1), (2).

85. *See* TEX. TAX CODE ANN. § 6.03(a) (Vernon 2008) (limiting the circumstances in which employees and officers of taxing units are eligible to serve on the board of directors of an appraisal district). *See generally* SHAHRI MASTERS, THE EVERYTHING GUIDE TO BEING A REAL ESTATE AGENT 28 (2006) (suggesting that an appraiser who works for a real estate broker would operate under a cloud of impropriety).

86. TEX. TAX CODE ANN. § 1.15 (Vernon 2008). The Tax Code provides for one exception—an appraisal district may contract out appraisal duties to a taxing unit. *Id.* §§ 1.15, 6.05(b). If such a contract is entered into, then the chief appraiser of the appraisal district shall be the assessor for the taxing unit. *Id.* § 6.05(c); *see also id.* § 6.03(a) (forbidding a county assessor-collector from serving on the board of directors of an appraisal district if "the board enters into a contract under Section 6.05(b) or if the commissioners court of the county enters into a contract under Section 6.24(b)").

87. *Id.* § 6.412(c). *But see* TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 15 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (opining that the current system is still "at risk of being tilted" in favor of taxing units because they are the very entities that appoint the appraisal district's board of directors who, in turn, appoint both the chief appraiser and the appraisal review board).

88. TEX. TAX CODE ANN. § 23.01(a) (Vernon Supp. 2009).

89. *Id.* § 23.01(b).

90. *Id.* § 23.011 (Vernon 2008); *see* BALLENTINE'S LAW DICTIONARY 277 (3d ed. 1969) (defining "cost" as "[t]he amount of money, services, or property required to obtain

property to generate current and future income,⁹¹ and the “comparable sales data” of other properties.⁹² Appraisal districts value property based on its individual characteristics using the most appropriate method, which varies depending on the property.⁹³

2. Protesting an Appraisal

Under the Tax Code, a property owner may still challenge an appraisal based on excessive or unequal valuation,⁹⁴ but there are many statutory requirements that the owner, the appraisal review board, and the courts must abide for the property owner to obtain relief. The Tax Code defines when a protest can be made, what

a thing or to build a structure”); BLACK’S LAW DICTIONARY 373 (8th ed. 2004) (defining “cost approach” as “[a] method of appraising real property, based on the cost of building a new structure with the same utility, assuming that an informed buyer would pay no more for the property than it would cost to build a new structure having the same usefulness”); CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE ’90S WITH LESS STRESS AND MORE PROFIT 77 (1991) (suggesting that calculating the replacement cost can be achieved by taking some measurements of the foundation and square footage of residential property and then obtaining a construction estimate from a local home builder).

91. TEX. TAX CODE ANN. § 23.012 (Vernon 2008). *See generally* BLACK’S LAW DICTIONARY 779 (8th ed. 2004) (defining “income approach” as “appraising real property based on capitalization of the income that the property is expected to generate”).

92. TEX. TAX CODE ANN. § 23.013 (Vernon 2008); *see* Rudolph Bush & Kevin Krause, *Why Did This Parking Lot Jump in Appraised Value from \$7.5 Million to \$36.5 M?: City Defends Deal, But Critics Skeptical of New Assessment*, DALLAS MORNING NEWS, May 4, 2008, at 1A, available at 2008 WLNR 8329061 (noting that the Dallas Central Appraisal District used the sales data from eleven properties to appraise one downtown property); *see also* CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE ’90S WITH LESS STRESS AND MORE PROFIT 78 (1991) (claiming that tax assessments can be a useful tool in appraising a property if they are assessed at 100% and if properties in the neighborhood have been recently sold). *See generally* BLACK’S LAW DICTIONARY 990 (8th ed. 2004) (defining “market approach” as “appraising real property, by surveying the market and comparing the property to similar pieces of property that have been recently sold, and making appropriate adjustments for differences between the properties, including location, size of the property, and the dates of sale”); CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE ’90S WITH LESS STRESS AND MORE PROFIT 75–76 (1991) (stating that appraisers use the market-data method of evaluation by keeping records of sales prices of comparable properties).

93. *See* TEX. TAX CODE ANN. § 23.0101 (Vernon 2008) (requiring a chief appraiser to “consider the cost, income, and market data comparison methods” when determining the value of property); *see also* Houston R.E. Income Props. XV, Ltd. v. Waller County Appraisal Dist., 123 S.W.3d 859, 864 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (providing that a court may rely on both the market data method and the income method in appraising a property).

94. TEX. TAX CODE ANN. § 41.41(a) (Vernon 2008).

2010]

RECENT DEVELOPMENT

575

the owner must prove to be granted relief, the scope of review for a district court reviewing the decision of an appraisal review board, and possible remedies that a district court may grant if an owner proves that he has been subjected to an excessive or unequal appraisal.⁹⁵

In a hearing before the appraisal review board, the appraisal district must establish “the value of the property by a preponderance of the evidence.”⁹⁶ If it fails to do so, the board shall rule in favor of the protesting property owner.⁹⁷ If the board determines that there are errors in the appraisal records, then it is authorized to make changes “that are necessary to conform the records to the requirements of law.”⁹⁸

In the event of an adverse ruling by the appraisal review board, a property owner may appeal to a district court.⁹⁹ “Review is by

95. See *id.* § 41.44 (stating the amount of time allowed to file a notice of protest); *id.* § 41.47 (stating the parameters within which an appraisal review board must operate in a protest hearing); *id.* § 42.01 (granting a property owner the right of appeal to a district court in the event an appraisal review board hands down an adverse ruling); *id.* § 42.09 (stating that the Tax Code’s remedies are exclusive); TEX. TAX CODE ANN. § 42.23 (Vernon 2008) (defining the scope of judicial review for the appeal of a protest); *id.* § 42.26 (listing the remedies for unequal appraisal); see also SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, TAXPAYERS’ RIGHTS, REMEDIES AND RESPONSIBILITIES 5 (2008), <http://www.window.state.tx.us/taxinfo/proptax/remedy08/96-295-08.pdf> (“Most appraisal districts will informally review your protest with you to try to resolve your concerns.”).

96. TEX. TAX CODE ANN. § 41.43(a) (Vernon 2008); see also *Warren Indep. Sch. Dist. v. S. Neches Corp.*, 405 S.W.2d 100, 104–05 (Tex. Civ. App.—Beaumont 1965, writ ref’d n.r.e.) (holding that a taxpayer had been denied due process of law when a board of equalization did not allow the taxpayer to cross-examine witnesses and stating that despite the informal nature of a taxpayer protest in front of the board, a taxpayer “must be giv[en] a reasonable opportunity to develop the facts upon which the protest is based”); *Bergert v. Alexander*, 297 S.W.2d 895, 898 (Tex. Civ. App.—Amarillo 1957, writ ref’d) (stating that boards of equalization (the predecessors to current appraisal review boards) are quasi-judicial in nature and holding a tax assessment invalid when a board of equalization did not allow a protesting taxpayer the opportunity to present evidence).

97. TEX. TAX CODE ANN. § 41.43(a) (Vernon 2008); see also *Bergert*, 297 S.W.2d at 898 (holding that a board of equalization’s actions in not allowing a property owner to present evidence as to his true property value was unconstitutional). But see TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 15 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (claiming that appraisal review boards often do not abide by the law and rule in favor of an appraisal district without requiring it to meet the statutory burden of proof).

98. TEX. TAX CODE ANN. § 41.47(b) (Vernon 2008).

99. *Id.* § 42.01(1)(A).

trial de novo”¹⁰⁰ and “[a]ny party is entitled to trial by jury on demand.”¹⁰¹ Section 42.26(a) of the Tax Code allows a district court to grant relief to a plaintiff who can establish that the appraisal ratio¹⁰² of his property “exceeds by at least ten percent the median level of appraisal of a reasonable and representative sample of other properties in the appraisal district” or “the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.”¹⁰³ In doing so, the Tax Code has placed a statutory minimum on the traditional substantial injury requirement.¹⁰⁴

The Tax Code has also restricted property owners from challenging a taxing unit during the tax collection process.¹⁰⁵ In other words, prior to the adoption of the Tax Code, a property owner could challenge a taxing unit after he had received a tax bill,¹⁰⁶ while under the Tax Code, a property owner is required to challenge the actions of the appraisal district within a specified window of time¹⁰⁷ and must prove that the property is overvalued

100. *Id.* § 42.23(a).

101. *Id.* § 42.23(b).

102. See SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, THE PROPERTY VALUE STUDY AND HOW TO PROTEST iv (2008), <http://www.window.state.tx.us/taxinfo/proptax/protest07/96-304-07.pdf> (defining “appraisal ratio” as the “ratio of an individual property’s appraised value shown on the appraisal roll to its market value”).

103. TEX. TAX CODE ANN. § 42.26(a)(1) (Vernon 2008).

104. Edward Kliewer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 898 (1982).

105. TEX. TAX CODE ANN. § 42.09(a)(2) (Vernon 2008).

106. See Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 903–04 (1973) (stating that a taxpayer may attack an assessment during the collection process or as a defense to a suit for delinquent taxes and that “Texas courts have not imposed any uniform procedural penalty on taxpayers who delay in attacking their assessments”).

107. See TEX. TAX CODE ANN. § 41.44(a) (Vernon 2008) (requiring a notice of protest to be filed “before May 1 or not later than the 30th day after the date the notice to the property owner was delivered” in cases where the property is a homestead and “before June 1 or not later than the 30th day after the date that notice was delivered to the property owner” for most other properties); see also Steve Brown, *Tax Appraisals Are a Hot Topic*, DALLAS MORNING NEWS, May 12, 2006, at 3D, available at http://www.dallasnews.com/sharedcontent/dws/bus/columnists/sbrown/stories/DN-recol_12bus.ART.State.Edition1.22ceb9d9.html (stating that taxpayers must protest by May 31 and describing the chaotic scene in the Dallas Central Appraisal District’s office during this time).

2010]

RECENT DEVELOPMENT

577

by a certain percentage.¹⁰⁸

III. ANALYSIS

The problem in Texas is simple: the state's constitution sets a standard that its statutory provisions cannot satisfy. On one hand, the Texas constitution requires equality in taxation,¹⁰⁹ while on the other, the Tax Code does not give appraisal districts the necessary tools to achieve that result.¹¹⁰ While the constitution requires property to be appraised according to value,¹¹¹ real world transactions indicate that this is not happening.¹¹²

If appraisal districts are, in fact, appraising commercial and high-end residential property as accurately as the existing Tax Code permits, then reform must come from either the courts or the legislature. While an attack on the constitutionality of the appraisal process and the Tax Code might seem appealing, such an action would be difficult to maintain due to the language of the Tax Code itself, which places the source of these unequal appraisals—lack of commercial and high-end residential sales

108. See TEX. TAX CODE ANN. § 42.26(a) (Vernon 2008) (requiring a protesting property owner to prove that the property value under dispute is at least 10% greater than “a reasonable and representative sample of other properties in the appraisal district”).

109. TEX. CONST. art. VIII, § 1(a).

110. See Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (reporting that Ken Nolan, Chief Appraiser for the Dallas Central Appraisal District, claimed that “state law ties his hands”); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (suggesting that taxpayers blame inadequate statutory provisions—rather than appraisal districts—for unequal appraisals). See generally *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 384 (1958) (claiming that “[r]eal estate taxation has long suffered from the legislatures' abdication of their responsibilities” and that courts and appraisal districts “manipulate empty statutory intonations on ‘value’ in order to implement policies of their own selection”).

111. TEX. CONST. art. VIII, § 1(b).

112. See TEX. ASS'N OF APPRAISAL DISTS., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? 1–48 (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (showing data from several Texas counties that establish unequal appraisals); see also *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 339 (1958) (“Hence that well-intended commonplace—the statutory or constitutional requirement that every assessment be made at a uniform proportion of the realty's ‘full value.’ Despite adjurations of this sort, local assessors habitually disregard the prescribed proportion of ‘full value’ and assign lower values to most property.”).

data—beyond the reach of both courts and appraisal districts.¹¹³ The legislature has designated the remedies within the Tax Code as exclusive, an indication that it intends to constrain the courts' participation in the appraisal process, limiting their remedial action to the specific provisions of the Tax Code.¹¹⁴ Because such an attack on the Tax Code is so problematic, the surest way to bring about equality and uniformity to ad valorem taxation is to pass new legislation requiring mandatory sales price disclosure in Texas.

A. *Constitutional Challenge*

“The Legislature may not authorize that which the Constitution prohibits.”¹¹⁵ In the case of the Tax Code, the statutory provisions are facially constitutional, but the results they produce plainly offend the equality and uniformity clauses. The Code's deficiencies hit middle-class taxpayers twice. First, taxpayers are hit with unequal appraisals when their homes are valued at close to one hundred percent of their actual value, while commercial and high-end residential properties are valued at a much lower percentage.¹¹⁶ Second, as disadvantaged as appraisal districts are in valuing various types of property, the average tax-paying homeowner is even less sophisticated in property appraisal and has

113. See *infra* Section A (discussing the problematic aspects of a lawsuit challenging the constitutionality of the Tax Code provisions).

114. Cf. TEX. TAX CODE ANN. § 41.44(a)(1) (Vernon 2008) (requiring a filing of protest before May 1 or within thirty days after the property owner receives notice of an appraisal increase); *id.* § 42.26(a) (delineating the available remedies for the victim of an unequal appraisal); *id.* § 42.09 (stating that the remedies of the Tax Code are exclusive and denying taxpayers the ability to use protest as a defense to a taxing unit's collection of delinquent taxes).

115. *Maier v. Lasater*, 163 Tex. 356, 354 S.W.2d 923, 925 (1962).

116. See Terrence Stutz, *State Senate Hearing: Price Disclosure on Real Estate Is Urged: Dallas Officials Say Rule Would Aid Appraisals, Tax Collection*, DALLAS MORNING NEWS, June 17, 2008, at 6B, available at 2008 WLNR 11429840 (noting Dallas County Chief Appraiser Ken Nolan's concession that a disparity exists between residential and commercial appraisals); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (noting Bexar County Chief Appraiser Michael Amezcuita's claim that commercial property is appraised below market value).

2010]

RECENT DEVELOPMENT

579

even fewer tools at his or her disposal to mount a *meaningful* protest.¹¹⁷

A litigant may challenge a statute as unconstitutional with either a facial challenge or an as-applied challenge.¹¹⁸ Under a facial challenge, a taxpayer must show that the statute in question always operates in an unconstitutional manner.¹¹⁹ Because the substance of the Tax Code basically echoes article VIII of the Texas constitution, a facial challenge against any statute within the Code is not likely to succeed. Section 23.01 of the Tax Code has the same essential requirements as the constitution in that they both require taxation of property according to value.¹²⁰ Otherwise stated, the constitution requires the equal taxation of property according to value, while the Tax Code requires *all* property to be appraised at one hundred percent of its *market* value. Certainly there are plenty of instances where the Tax Code and its appraisal process work perfectly—namely the appraisal of middle-class residential property.

An as-applied challenge requires a court to consider the statute as it “operates in practice against [a] particular plaintiff.”¹²¹ A plaintiff attacking a statute must overcome a presumption that “the Legislature intended for the law to comply with the United States and Texas Constitutions, to achieve a just and reasonable result, and to advance a public rather than a private interest.”¹²²

117. Of course, it is not impossible to protest the appraised value of residential property. A study by the Texas Association of Appraisal Districts indicates that even among middle-class residential properties, there is some variation in the appraised value versus the market value, which would qualify a taxpayer for relief under section 42.26(a). TEX. ASS'N OF APPRAISAL DISTs., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (publishing sales prices, appraised values, and appraisal ratios of a sample of properties throughout several Texas counties). However, the data a taxpayer would need to challenge the unequal appraisal of commercial real estate in his county are largely elusive.

118. See *Kareney v. State*, 281 S.W.3d 428, 435 (Tex. Crim. App. 2009) (Cochran, J., concurring) (summarizing the difference between facial and as-applied challenges).

119. *Wilson v. Andrews*, 10 S.W.3d 663, 670 (Tex. 1999).

120. Compare TEX. TAX CODE ANN. § 23.01(a) (Vernon 2008 & Supp. 2009) (“[A]ll taxable property is appraised at its market value.”), with TEX. CONST. art. VIII, § 1(b) (“All real property . . . shall be taxed in proportion to its value.”).

121. *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 381 (Tex. 2002).

122. *Id.*

The first hurdle for a taxpayer bringing an as-applied challenge against the Tax Code is section 42.09, which states that the remedies outlined in the Tax Code are exclusive.¹²³ This provision seems to indicate a legislative intent to limit a taxpayer's ability to protest an appraisal and streamline the ad valorem tax process from property appraisal to tax collection. Furthermore, it could be argued that the Tax Code's specific protest procedures and remedies are a legislative effort to prevent courts from creating their own remedies for unequal appraisals. Specifically, the pre-Tax Code case law allowed a taxpayer to challenge an unequal appraisal as late as a delinquency proceeding, while the Tax Code requires a protest to be initiated soon after the appraisal, specifies the administrative and judicial remedies, and states that those remedies are exclusive.¹²⁴

If the Eleventh Court of Appeals's decision in *Brooks v. Bachus*¹²⁵ serves as any indication, the Tax Code should be able to withstand constitutional scrutiny.¹²⁶ In *Brooks*, the appellant attempted to enjoin the Erath County Appraisal Review Board from certifying the tax rolls after he failed to exhaust his administrative remedies under the Tax Code.¹²⁷ Brooks argued that the Tax Code arbitrarily deprived him of his right to judicial review.¹²⁸ The Eleventh Court of Appeals in Eastland held that

123. TEX. TAX CODE ANN. § 42.09 (Vernon 2008).

124. Compare TEX. TAX CODE ANN. § 41.44(a)(1) (Vernon 2008) (requiring a residential property owner to file notice of protest before May 1 or within thirty days of receiving notice of an appraisal increase), *id.* § 42.26(a) (specifying the remedies for unequal appraisal), and *id.* § 42.09 (designating the remedies of the Code as exclusive and generally prohibiting taxpayers from using a protest as a defense to a taxing unit's attempt to collect delinquent taxes), with *Whelan v. State*, 155 Tex. 14, 17, 282 S.W.2d 378, 379 (1955) (providing a pre-Tax Code example where the Supreme Court of Texas allowed a taxpayer to protest during a delinquency proceeding). See generally Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 898 (1982) (referring to the remedies in the Tax Code as an "attempt[] to define what was previously an undefined injury").

125. *Brooks v. Bachus*, 661 S.W.2d 288 (Tex. App.—Eastland 1983, writ ref'd n.r.e.).

126. In *Robstown Independent School District v. Anderson*, the Supreme Court of Texas seemed to endorse the Eastland Court of Appeals's conclusion that a protesting taxpayer is limited to the provisions of the Tax Code. See *Robstown Indep. Sch. Dist. v. Anderson*, 706 S.W.2d 952, 953 (Tex. 1986) ("Any assessment after the effective date of the code must be protested before the appraisal review board or the defense of non-ownership is waived." (citing *Brooks*, 661 S.W.2d 288)).

127. *Bachus*, 661 S.W.2d at 289.

128. *Id.*

2010]

RECENT DEVELOPMENT

581

the Tax Code, “by its detailed provisions, meets the challenged requirement of due process.”¹²⁹ Other courts of appeals have followed the Eleventh Court of Appeals’s lead and held that a taxpayer wishing to challenge an unequal appraisal must abide by the provisions of the Tax Code if he desires relief.¹³⁰

Even if a taxpayer follows the provisions of the Tax Code through the administrative process and into a district court, the average protestor would have a difficult time basing a protest on under appraised commercial property. In *Harris County Appraisal District v. United Investors Realty Trust*,¹³¹ the Fourteenth Court of Appeals examined a district court’s ability to grant a taxpayer relief under section 42.26.¹³² The court observed that while section 42.26(a) required an independent appraisal by the protestor,¹³³ section 42.26(d)¹³⁴ did not require an independent appraisal.¹³⁵ In arriving at this conclusion, the court held that the equality of an appraisal was more important than whether that appraisal reflected market value.¹³⁶

While *United Investors Realty Trust* seems to be a victory for the protesting taxpayer, it does nothing to address the problem of unequal appraisals of commercial and high-end residential real estate. The Fourteenth Court of Appeals was able to grant relief because an inequality existed *within* the Harris County tax rolls, whereas the problem of unequal appraisals is based on data *not*

129. *Id.* at 290.

130. See *Watson v. Robertson County Appraisal Review Bd.*, 795 S.W.2d 307, 311 (Tex. App.—Waco 1990, no writ) (“The courts have regularly held that failure to follow Tax Code procedures will result in loss of the right to challenge the administrative decision in district court.” (citing *Bachus*, 661 S.W.2d at 290; *Dallas County Appraisal Dist. v. Lal*, 701 S.W.2d 44, 46 (Tex. App.—Dallas 1985, writ ref’d n.r.e.); *Rockdale Indep. Sch. Dist. v. Thorndale Indep. Sch. Dist.*, 681 S.W.2d 225, 227 (Tex. App.—Austin 1984, writ ref’d n.r.e.); *Poly-America v. Dallas County Appraisal Dist.*, 704 S.W.2d 936, 937 (Tex. App.—Waco 1986, no writ))).

131. *Harris County Appraisal Dist. v. United Investors Realty Trust*, 47 S.W.3d 648 (Tex. App.—Houston [14th Dist.] 2001, no pet.).

132. *Id.* at 649.

133. *Id.* at 653.

134. This provision is now located in section 42.26(a)(3). See TEX. TAX CODE ANN. § 42.26(a)(3) (Vernon 2008) (“[T]he appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.”).

135. *United Investors*, 47 S.W.3d at 653.

136. *Id.* at 654.

located in the tax rolls. Accordingly, if a taxpayer wanted to protest the undervaluation of commercial property in his district, he would have to conduct an independent appraisal of commercial property within the district. And if appraisal districts cannot accurately value commercial property, how is a less sophisticated homeowner to do the same?

Unfortunately, the pre-Tax Code case law does not provide any additional help. *Whelan v. State*¹³⁷ provides a good illustration of the pre-Tax Code remedies but also demonstrates why those remedies, while more favorable to the protesting taxpayer, still do not adequately address the contemporary concern with unequal appraisals. In *Whelan*, the Supreme Court of Texas announced that taxing authorities may not decide what property is included on tax rolls.¹³⁸ The suit was initiated by the State of Texas and “other taxing units” for delinquent and unpaid taxes.¹³⁹ *Whelan* asserted as a defense that oil and gas leases and cattle were assessed arbitrarily.¹⁴⁰ Additionally, *Whelan* attempted to introduce the absence of bank deposits on the government’s tax rolls as evidence; however, the district court prevented him from doing so.¹⁴¹ On appeal, the Government did not deny the presence of those bank deposits within its jurisdiction.¹⁴² The court stated that regardless of the “practical difficulties and problems” in taxing property such as a bank deposit, “to hold that they are not taxable would require us to fly in the very face of the Constitution and the Statutes of this state” and “[t]his no court is at liberty to do.”¹⁴³ The supreme court ordered a retrial with these instructions:

If the answers of the jury show that the assessed valuation of petitioners’ properties is grossly excessive, or if the answers to the other issues satisfy the court that petitioners have suffered substantial injury by reason of the other actions of the taxing

137. *Whelan v. State*, 155 Tex. 14, 282 S.W.2d 378 (1955).

138. *Id.* at 22, 282 S.W.2d at 382–83 (“It is not for taxing authorities to decide what property shall escape taxation; that right lies alone with the people in the writing of their Constitution.”).

139. *Id.* at 17, 282 S.W.2d at 379.

140. *Id.* at 17–18, 282 S.W.2d at 379.

141. *Id.* at 20, 282 S.W.2d at 381–82.

142. *Whelan*, 155 Tex. at 20, 282 S.W.2d at 382.

143. *Id.* at 20–21, 282 S.W.2d at 382.

authorities complained of, the assessments of petitioners' properties of the years 1950, 1951 and 1952 should be cancelled without prejudice to the right of taxing authorities to accept petitioners' taxes on the basis of the valuations at which petitioners rendered their properties or to proceed under the [law].¹⁴⁴

While *Whelan* demonstrates the pre-Tax Code era's flexibility in allowing a taxpayer to assert a constitutional defense against a taxing entity's attempt to collect delinquent taxes, it also shows why the legislature more precisely defined a taxpayer's remedies in the current Tax Code. If courts did "cancel[] without prejudice" a taxing authority's attempt to collect a delinquent tax based on a series of unequal appraisals, appraisal districts would be forced to go back to square one and reappraise the same properties with the same tools that led to the unequal appraisal in the first place.

B. *New Legislation Requiring Mandatory Sales Price Disclosure*

The equality and value requirements of article VIII of the Texas constitution and the market value statutory requirements of the Tax Code are hardly unique in the United States.¹⁴⁵ Texas,

144. *Id.* at 26, 282 S.W.2d at 385; *see* *Aycock v. Travis County*, 255 S.W.2d 910, 914 (Tex. Civ. App.—Austin 1953, writ ref'd) (stating that the district court should have enjoined Travis County from collecting taxes when it used assessments that were largely based on the city of Austin's tax rolls but valued other property under a different basis).

145. *See* ARK. CONST. art. XVI, § 5(a) (requiring property to be taxed "according to its value" and that taxation be "equal and uniform throughout the State"); CAL. CONST. art. XIII, § 1 (stating that "[a]ll property is taxable and shall be assessed at the same percentage of" its "full" and "fair market value"); FLA. CONST. art. VII, § 2 ("All ad valorem taxation shall be at a uniform rate within each taxing unit."); KAN. CONST. art. XI, § 1(b) (requiring a "uniform and equal basis of valuation and rate of taxation of all property subject to taxation"); LA. CONST. art. VII, § 18(a) (stating that ad valorem taxation shall be assessed at "a percentage of its fair market value" and "shall be uniform throughout the state"); ME. CONST. art. IX, § 8 ("All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof."); N.M. CONST. art. VIII, § 1(a) (requiring that property taxes "shall be in proportion to the value thereof" and "shall be equal and uniform upon subjects of taxation of the same class"); OKLA. CONST. art. X, § 5(B) ("Taxes shall be uniform upon the same class of subjects."); TEX. CONST. art. VIII, § 1 (requiring taxation to be "equal and uniform" and "in proportion to its value"); WASH. CONST. art. VII, § 1 (stating that "[a]ll taxes shall be uniform upon the same class of property" and "[a]ll real estate shall constitute one class"); Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1375 (1962) ("All states require that real property . . . be assessed equally, that is, at full value or a uniform percentage thereof.").

however, is among a minority of states that levy an ad valorem tax but do not require the disclosure of the sales price to the appraisal district or any of the local taxing authorities at the time of the sale.¹⁴⁶

Each state typically requires different levels of disclosure.¹⁴⁷ Some states, such as Louisiana,¹⁴⁸ grant extensive powers to their assessors, allowing them to look into not only the transactional history of the property, but also the property owner's books and insurance records.¹⁴⁹ Not only would an appraiser operating under Louisiana's statutory regime have more access to sales price documentation, but he would have information to appraise the value of commercial property using the income approach to valuation.

Other states, such as Arkansas,¹⁵⁰ do not require actual disclosure of the sales price, but do allow an assessor access to real

146. See Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 510 (2004) (considering Kansas, Mississippi, Texas, Utah, and Wyoming as nondisclosure states); Jeremy Smoot & Paul Welcome, *Reap the Rewards from Sales Price Disclosure*, ASSESSMENT J., Summer 2003, at 5, 6 (claiming that twelve states, including Texas, do not require sales price disclosure); Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (stating that Texas is "one of few states left" that does not require disclosure of sales prices); TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (claiming that thirty-five states, as of 2007, require sales price disclosure, but only half of those use the disclosed price for ad valorem tax assessment).

147. TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (claiming that some states require disclosure for ad valorem tax valuations, while others collect only a one-time tax at the time the real estate transaction is made).

148. See generally LA. CONST. art. VII, § 18(a) (stating that ad valorem taxation shall be assessed at "a percentage of its fair market value" and "shall be uniform throughout the state").

149. See LA. REV. STAT. ANN. § 47:1957(C) (2008) (granting an assessor the right to inspect the books, accounts, and amount insured of the property owner); *id.* § 47:1958(B) (stating that an assessor shall "inquire into the purchase price paid for real property" and "acquaint himself with any sales or transfers of property of like description or value made or effected in the vicinity, within the year or years next preceding the listing for assessments then being made").

150. See generally ARK. CONST. art. XVI, § 5(a) (requiring property to be taxed "according to its value" and that taxation be "equal and uniform throughout the State").

2010]

RECENT DEVELOPMENT

585

property transfer tax records.¹⁵¹ Rather than being levied periodically like Texas's ad valorem property tax, a real property transfer tax is assessed at the time of transfer and is usually based on a percentage of the full consideration or sales price paid for the property.¹⁵² If an assessor has access to both the percentage and the amount paid under the real property transfer tax, then the sales price can be determined.¹⁵³ In other words, if a transfer tax is five percent of the sales price and the transfer tax collected was \$5,000, then the sales price of the property in question would be \$100,000.

There have been at least three attempts—three house bills and three senate bills—in recent years to enact legislation that would require sales price disclosure.¹⁵⁴ Although there has been some variation in the complexity and language of the proposed bills, the basic disclosure requirement has remained consistent.¹⁵⁵ The

151. See ARK. CODE ANN. § 26-60-106 (2008) (requiring the levy of a real estate transfer tax based on the “full consideration” paid for the real estate); *id.* § 26-60-108(b)(2) (giving county assessors and the public access to information concerning the real estate transfer tax).

152. See TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (stating that some states collect one-time “transfer fees” during the sale).

153. Arkansas law requires the levy of two real property transfer taxes under section 26-60-105 of title 26 of the Arkansas Code: a general tax of \$1.10 per every \$1,000 of purchase price and a special tax of \$2.20 for every \$1,000 of purchase price for parks, preservation of natural resources, and tourism. ARK. CODE ANN. §§ 26-60-105, 15-12-103 (2008). The tax is assessed at the time the property is sold and is based on the transaction's “full consideration.” *Id.* § 26-60-106. The buyer of the real property is required to complete an affidavit indicating the parties to the transaction, the sales price or “full consideration,” and the date of the sale. *Id.* § 26-60-107(a)(2)(A)(v). The information on the affidavit then becomes accessible by both the public and county tax assessors. *Id.* §§ 26-60-107(d)(1)(B)(ii), 26-60-108(b)(2).

154. Tex. S.B. 444, 81st Leg., R.S. (2009); Tex. H.B. 133, 81st Leg., R.S. (2009); Tex. S.B. 270, 80th Leg., R.S. (2007); Tex. H.B. 133, 80th Leg., R.S. (2007); Tex. S.B. 243, 79th Leg., R.S. (2005); Tex. H.B. 399, 79th Leg., R.S. (2005).

155. See Tex. S.B. 444, 81st Leg., R.S., § 1 (2009) (proposing to add section 12.0012(a) to the Property Code: “A person may not file for record or have recorded in the county clerk's office an instrument conveying real property under a contract for sale unless the instrument discloses the sales price of the property”); Tex. S.B. 270, 80th Leg., R.S., § 1 (2007) (proposing to add section 12.0011(a) to the Property Code: “A person may not file for record or have recorded in the county clerk's office an instrument conveying real property under a contract for sale unless the instrument discloses the sales price of the property”); Tex. S.B. 243, 79th Leg., R.S., § 2 (2005) (proposing to add section 22.61 to the Tax Code: “Not later than the 10th business day after the date of closing on the

most recent senate bill from the regular session of the 81st Legislature offered the simplest proposal: "A person may not file for record or have recorded in the county clerk's office an instrument conveying real property under a contract for sale unless the instrument discloses the sales price of the property."¹⁵⁶ The companion bill in the house attempted the same result; however, instead of requiring that the sales price appear on the actual instrument of conveyance, the disclosure would be contained on an attached "sales price disclosure form."¹⁵⁷ Additionally, the house bill would also give the purchaser the option of disclosing additional information surrounding the sale, such as whether the sale was financed or whether the sale of real property was a component of a larger transaction.¹⁵⁸

conveyance of real property, the transferee or a person acting on behalf of a transferee shall file a real property conveyance report as provided by this subchapter disclosing information regarding the conveyance of the property"); Tex. S.B. 243, 79th Leg., R.S., § 2 (2005) (proposing to add section 22.65(a)(6) to the Tax Code which would require a transferee to include purchase price on the real property conveyance report section described in section 22.61); Tex. H.B. 133, 81st Leg., R.S., § 1 (2009) (proposing to add section 12A.001 to the Property Code: "Except as provided by this section, a person may not file for record or have recorded in the county clerk's office an instrument conveying real property under a contract for sale unless the instrument is attached to a sales price disclosure form as described by this chapter"); Tex. H.B. 133, 80th Leg., R.S., § 2 (2007) (proposing to add section 22.61(a) to the Tax Code: "[T]he purchaser or grantee of real property under a recorded deed conveying an interest in the real property shall file a sales price disclosure report with the chief appraiser of the appraisal district established for the county in which the property is located"); Tex. H.B. 399, 79th Leg., R.S., § 3 (2005) (proposing to add section 22.61(a) to the Tax Code: "Except as provided by Subsection (d), on the sale of real property the purchaser of the property or a person acting on behalf of the purchaser shall file a sales price disclosure report with the chief appraiser of the appraisal district established for the county in which the property is located").

156. Tex. S.B. 444, 81st Leg., R.S. (2009).

157. Tex. H.B. 133, 81st Leg., R.S. (2009).

158. The complete list of relevant information that a purchaser could optionally include under this bill is:

- (1) the method used to finance the sale, including cash, seller financing, and third-party financing;
- (2) whether the sale involved property other than real property and the type of property involved in the sale, whether tangible or intangible, and if so, the portion of the sales price allocated between real property and other property;
- (3) whether the sale involved property located in more than one county and if so, the portion of the sales price or other consideration allocated to the portion of the property located in each county;

2010]

RECENT DEVELOPMENT

587

Critics of mandatory sales price disclosure¹⁵⁹ emphasize that sales price is not always the most accurate way to establish the market value of a piece of real property.¹⁶⁰ But if this is so, why are appraisal districts regularly using an MLS to obtain sales data on properties for market comparison? The fact that private appraisers and real estate brokers use an MLS as a tool to determine the market value of real estate is a testament to the effectiveness of sales price as an appraisal tool.¹⁶¹ Also apparent

-
- (4) whether the sale was part of a combined sale of real property investments and, if so, the portion of the combined sales price allocated to the property subject to Section 12A.001;
 - (5) whether the sale involved a tax deferred exchange under Section 1031, Internal Revenue Code of 1986 (26 U.S.C. Sec. 1031), and applicable regulations;
 - (6) whether the sale was a sale of an entire business or business unit;
 - (7) a statement that the sales price is provisional and a correct sales price will be submitted in an amended sales price disclosure form on or before the first anniversary of the date the initial sales price disclosure form is filed; and
 - (8) a description of any unusual or extraordinary terms of the sale or transfer that affected the amount of the sales price.

Tex. H.B. 133, 81st Leg., R.S., § 1 (2009) (proposing to add section 12A.002(b) to the Property Code).

159. A prominent critic of sales price disclosure is the Texas Association of Realtors. See TEX. ASS'N OF REALTORS, 2009 PUBLIC POLICY STATEMENTS: LEGISLATIVE PRIORITIES FOR THE 81ST TEXAS LEGISLATURE 12 (2009), <http://recenter.tamu.edu/speeches/TM040709S1095.pdf> ("The Texas Association of Realtors opposes all efforts to require the disclosure of sales-price information.").

160. See TEX. CONSERVATIVE COAL. RESEARCH INST., SALES PRICE DISCLOSURE: A \$250 MILLION TAX HIKE ON HOMEOWNERS (2006), http://www.txccri.org/publications/Sales_Price_Disclosure_LP.pdf (claiming that sales price disclosure actually limits an appraisal district's ability to value property); TEX. ASS'N OF REALTORS, 2009 PUBLIC POLICY STATEMENTS: LEGISLATIVE PRIORITIES FOR THE 81ST TEXAS LEGISLATURE 12 (2009), <http://recenter.tamu.edu/speeches/TM040709S1095.pdf> (arguing that Florida repealed its disclosure law because it did not lead to accurate appraisals); TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (embracing mandatory sales price disclosure but warning that "[s]ales price disclosure alone does not provide the information an appraisal district needs to establish a market value").

161. See Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (opining that data from an MLS allows appraisal districts to keep residential properties valued at close to market value); Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (reporting that the Dallas Central Appraisal District "relies heavily on sales price[s] that it obtains through an agreement with the Multiple

is the fact that the properties for which appraisers have the most sales price data are the same properties that appraisers most accurately value, while the properties for which appraisal districts lack sales data—commercial and high-end residential—are the properties that are more often undervalued.¹⁶²

The most recent house bill would have taken at least one step to ease the fears of those who believe that sales data alone are insufficient to appraise real property. The house bill provides that “sales data disclosed under this chapter may not be used as the sole basis by the chief appraiser for increasing the appraised value of real property described in a sales price disclosure form.”¹⁶³ This provision would have two consequences: (1) appraisal districts would have to base the appraisal on more than one factor, and (2) in the event of a protest, an appraisal district would be required to support its appraisal with evidence in addition to the disclosed sales price.¹⁶⁴ Another element in the recent house bill that would have eased the fear of basing appraisals only on sales price is a list of eight optional factors that the purchaser could include on the disclosure form.¹⁶⁵ In the event that a purchaser obtained the property under circumstances in which the sales price did not adequately reflect the actual value, he would have the

Listing Service”); Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (claiming that Bexar County appraisers have access to 95% of all residential properties valued under \$300,000 because they are listed in the MLS); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (stating that a “vast amount of information is available to appraisers with regard to residential home sales from the Multiple Listing Service”).

162. See Terrence Stutz, *State Senate Hearing: Price Disclosure on Real Estate Is Urged: Dallas Officials Say Rule Would Aid Appraisals, Tax Collection*, DALLAS MORNING NEWS, June 17, 2008, at 6B, available at 2008 WLNR 11429840 (citing a study by the Texas Association of Appraisal Districts finding that commercial property was undervalued by 40% while residential property was undervalued by only 15%).

163. Tex. H.B. 133, 81st Leg., R.S., § 1 (2009) (proposing to add section 12A.006 to the Property Code).

164. See Tex. H.B. 133, 81st Leg., R.S., § 1 (2009) (proposing to add section 12A.007(b) to the Property Code which would give a district court the authority to “order the appraisal district to comply with the applicable law” in the event a protester brings suit under section 12A.007(a)).

165. For the complete list of optional information, see *supra* note 158.

2010]

RECENT DEVELOPMENT

589

opportunity to give the appraisal district notice of such circumstances.

Another argument against mandatory sales price disclosure is that it intrudes on the privacy of the property owner.¹⁶⁶ While this argument might have merit under certain circumstances, it has relatively little merit in Texas, because most appraisal districts have public records that allow any person with a computer to access the appraised value of all property on the tax rolls.¹⁶⁷ It would be an odd proposition indeed to claim that publication of the sales price was a violation of privacy while publication of the appraised value was not.

Louisiana's requirements, as described above, might cause a property owner some reasonable apprehension, given that Louisiana's statute gives appraisers considerable access to information that otherwise would be private, specifically the taxpayer's "books and accounts" and the property's "insured value."¹⁶⁸ However, none of the proposed house or senate bills would grant an appraisal district in Texas such broad access to this information.

Finally, sales price disclosure opponents claim that reform will cause a tax hike.¹⁶⁹ The most obvious response to this criticism is that appraisal districts do not tax; that authority is left to school districts, municipalities, counties, and their various subdivi-

166. Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 510 (2004) ("The most basic defense of real estate price nondisclosure lies in common-law privacy arguments.").

167. For examples of how appraisal districts publish the appraised value of property within their jurisdiction, see the following websites: Dallas Central Appraisal District, Find Property by Name, <http://www.dallascad.org/SearchOwner.aspx> (last visited Feb. 28, 2010); Bexar County Appraisal District, Search Options, <http://www.bcad.org/ClientDB/PropertySearch.aspx?cid=1> (last visited Feb. 28, 2010); Harris County Appraisal District, Real Property Record Search, <http://www.hcad.org/records/real/default.asp> (last visited Apr. 16, 2010).

168. See LA. REV. STAT. ANN. § 47:1957(C) (2008) (granting an assessor the right to inspect the books, accounts, and amount insured of the property owner); *id.* § 47:1958(B) (stating that an assessor shall "inquire into the purchase price paid for real property" and "acquaint himself with any sales or transfers of property of like description or value made or effected in the vicinity, within the year or years next preceding the listing for assessments then being made").

169. TEX. CONSERVATIVE COAL. RESEARCH INST., SALES PRICE DISCLOSURE: A \$250 MILLION TAX HIKE ON HOMEOWNERS 2-3 (2006), http://www.txccri.org/publications/Sales_Price_Disclosure_LP.pdf.

sions.¹⁷⁰ These taxing units answer to the voters within their respective boundaries. To suggest that merely giving appraisal districts better tools to more accurately appraise property would lead to a tax increase is disingenuous because it fails to account for the fact that the elected representatives of taxing units raise and levy taxes regardless of the fairness (or unfairness) of the appraisals on which those taxes are based.

Furthermore, the purpose of this Recent Development is neither to engage in economic speculation as to exactly how sales price disclosure would affect the amount of tax revenue collected by Texas nor to advocate for or against a particular economic policy towards taxation. The purpose of this Recent Development is to examine the best way to reconcile the Tax Code with the Texas constitution. Certainly the legislature can figure out better ways to use the Tax Code to incentivize business and economic growth than to allow the ad valorem tax to be administered in such a non-uniform and unequal manner. That being said, it seems clear that such reform would, at the very least, cause a shift in the tax burden from the middle-class homeowners to the commercial and high-end residential owners.¹⁷¹

Without sales price data, appraisers face a tough challenge in accurately assessing the fair market value of all property in a district.¹⁷² Robert P. Berrens of the University of New Mexico

170. See TEX. TAX CODE ANN. § 26.05(a) (Vernon 2008) (“The governing body of each taxing unit . . . shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted.”).

171. See Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (reporting on Texas State Representative Mike Villarreal’s push for sales price disclosure as a way to prevent unequal taxation between “middle-income homeowners” and the owners of “million-dollar homes and business properties”).

172. See Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 889 (1973) (noting the difficulty from the perspective of an appraiser of accurately valuing property because the taxpayer is “generally under no practical compulsion to reveal the full extent of his holdings”); TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 19 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (noting testimony from appraisal districts claiming that they could do a better job of valuing property with more information). But see *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 336–37 (1958) (“The local officials who are responsible for making assessments often occupy positions of unique

2010]

RECENT DEVELOPMENT

591

and Michael McKee of the University of Tennessee argue that sales price disclosure has an added benefit to the tax-paying public. Sales price disclosure reduces an appraisal district's administrative burden since homeowners are more likely to challenge their appraisals in a climate where there is consistent undervaluing and overvaluing and inequality.¹⁷³ As further evidence, appraisal offices in Kansas have seen a steady decline in protests and appeals since instituting a version of sales price disclosure.¹⁷⁴

Realistically, no single method ensures an accurate appraisal; instead, data must be collected from a variety of different sources depending on the type of property being assessed.¹⁷⁵ The more tools that appraisers have at their disposal, the more accurately they can value any given piece of property.¹⁷⁶

IV. CONCLUSION

The taxpayer who lives in a mansion benefits from the local police department that patrols his street and the fire department that protects his house. The taxpayer who owns a commercial or industrial site also benefits from the public schools that prepare his future workforce for employment. Yet these property owners are paying much lower percentages of their property's market value in taxes than their middle-class residential neighbors.

autonomy, partly because they may enjoy political independence from local spending authorities, and partly because they invariably function under imprecise state legislation which leaves them free to devise their own valuation standards.”).

173. Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 511–12 (2004).

174. Jeremy Smoot & Paul Welcome, *Reap the Rewards from Sales Price Disclosure*, ASSESSMENT J., Summer 2003, at 5, 6.

175. See Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1394 (1962) (“If statistically sound sampling techniques are employed, care taken to keep the data up to date, efforts made to discover actual market prices through use of questionnaires and other methods, and sample appraisals added in areas lacking a significant annual turnover of property, the sale-ratio method can, at a relatively modest cost, fulfill a state's obligation to provide an adequate indication of prevailing assessment levels.”); CAROLYN JANIK, *HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT* 73 (1991) (defining “fair market value” as “the closing price, the highest price a ready, willing, and able buyer will pay and the lowest price a ready, willing, and able seller will accept” (emphasis omitted)).

176. See TEX. ASS'N OF APPRAISAL DISTS., *WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS?* (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (concluding that more access to sales data will allow appraisals to more accurately reflect true value).

One of the most basic functions of government in the United States is the protection of life, liberty, and property.¹⁷⁷ Because liberty is not easily quantifiable and because all taxpayers presumably have only one life, the only thing that truly differentiates citizens is the amount of property they own. Thus, a person who owns more property benefits from more government protection and therefore should pay a greater portion of the tax pie. When a person wealthy in property does not pay his or her fair share of taxes to the government to protect that property interest, it follows *a fortiori* that that person is handing his or her tax burden over to the rest of society at large.

It is clear that appraisal districts and taxing units in Texas are implementing a system of taxation that is unequal and unfair and that this implementation is occurring on a statewide basis. Middle-class homeowners in Texas are shouldering a disproportionate tax burden when compared with that carried by commercial and high-end residential property owners. With no state income tax and a state and local sales tax capped at 8.25%, Texas depends heavily on local ad valorem property taxes to fund the capital improvements and operations of counties, municipalities, and school districts.¹⁷⁸ When the Dallas Central Appraisal District reappraised several pieces of downtown commercial real estate in the aftermath of the city's negotiations to buy an expensive downtown parking lot, that reappraisal shed light on the ugly reality that property owners in the central business district were receiving the benefit of government services without paying their fair share of the bill.

The procedural requirements and remedies outlined in the

177. See U.S. CONST. amend. XIV, § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law.”); TEX. CONST. art. I, § 19 (“No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”).

178. Edward Kliewer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 887 (1982); see also Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 885 (1973) (“Most communities across the country rely substantially on the property tax to support public services including police and fire protection, sewage disposal, roads, hospitals, and public schools.”); SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, TAXPAYERS' RIGHTS, REMEDIES AND RESPONSIBILITIES (2008), <http://www.window.state.tx.us/taxinfo/proptax/remedy08/96-295-08.pdf> (stating that the “property tax is the largest funding source for local services in Texas”).

2010]

RECENT DEVELOPMENT

593

Texas Property Tax Code appear to be inadequate when viewed against the backdrop of multiple studies that indicate the regular inequality of appraisals.¹⁷⁹ While the Tax Code has made substantial improvements in the creation of more independent, accountable appraisal districts, it has failed to deal with the true problem—the extraordinarily difficult task of determining the value of property. For the most part, appraisal districts are no better at the job of valuing property than their pre-Tax Code predecessors. A stark and obvious exception to this is the ability of an appraisal district, with the help of an MLS, to accurately appraise a middle-class residential property. The benefit of using sales price data to appraise homes is most convincing when one considers that the properties most accurately valued are the same for which sales data are most easily accessed by appraisal districts.

One thing is abundantly clear: the State of Texas must equip appraisal districts with the necessary tools to discover the market data sorely needed to equalize appraisals throughout the state. As it stands, many homeowners are stuck between a rock and a hard place or, perhaps better said, between an unequal appraisal and an inadequate Tax Code.

179. See MICHAEL A. AMEZQUITA, BEXAR APPRAISAL DIST., RECOMMENDATIONS FROM BEXAR APPRAISAL DISTRICT (on file with the *St. Mary's Law Journal*) (indicating the unequal appraisals of commercial and residential real estate); TEX. ASS'N OF APPRAISAL DIST., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (indicating the unequal appraisals of high-end and middle-class real estate). See generally Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1384 (1962) (claiming that the protest and appeal process is the “weakest spot in the whole property tax structure”).

Enrollment and Funding Update

	Budget	12/17/2019
ADM	4542	4590.26
Multiplied by various school formulas		
School Adjusted ADM	5350.66	5396
District Cost Factor	1.145	1.145
	6126.51	6178.42
Special Needs Factor	1.2	1.2
	7351.81	7414.1
CTE Factor	1.015	1.015
	7462.09	7525.31
Intensive Count x 13	1105	1248
Correspondence Count x 0.90	31.5	26.78
District Adjusted ADM	8598.59	8800.09

Foundation Calculation

Basic Need (AADM x \$5930)	\$ 50,989,639	\$ 52,184,534
Required Local Contribution	(14,508,530)	(14,508,530)
State Aid	36,481,109	37,676,004
Quality Schools Grants (ADM*16)	137,577	140,801
FY20 LOG (estimate)	1,000,000	1,016,893
Total State Aid	\$ 37,618,686	\$ 38,833,699

Increase in Foundation funding **\$ 1,215,012**

Local Contribution Calculation

CBJ Full & True Value for Budget Year	5,474,917,000	5,474,917,000
Multiplied by 2.65 mills		
Required Local Contribution	\$ 14,508,530	\$ 14,508,530

Determination of Cap

23% of Basic Need	11,727,617	12,002,443
23% of Quality Schools	31,643	32,384
23% AADM LOG (\$30m in FY20)	230,000	233,885
Additional allowable local contribution	11,989,260	12,268,712

Maximum Local Appropriation (Cap)	\$ 26,497,790	\$ 26,777,242
-----------------------------------	---------------	---------------

Increase in available Cap **\$ 279,452**

Total **\$ 1,494,465**