

Property tax loophole could drive down values, appraiser says

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SAN ANTONIO - A change to the state's tax code, written by a prominent property tax agent who represents some of Texas' largest corporations, enlarges an already controversial loophole in the law that could cost Bexar County millions of dollars, county officials say.

House Bill 585 faces criticism from the county's chief appraiser, Michael Amezcuita, who says he's fighting to keep lawyers and the commercial owners they represent from taking advantage of the exception and shaving millions of dollars from their property valuations.

The bill, authored by San Antonio Rep. Mike Villarreal, a Democrat, and Austin property tax agent Jim Popp, was a cleanup bill passed in the last legislative session that made mostly administrative changes to the tax code. But it contained an amendment by Republican Rep. John Otto of Dayton that says that if a property owner wins an appeal of the property's value — through litigation, arbitration or an Appraisal Review Board hearing — the appraisal district would have a higher burden of proof if it wanted to raise the value the next year.

Amezquita already fears that the overall value of commercial properties could decline as commercial owners continue to sue for lowered values based on a set of comparables that aren't actually similar but are allowed in the law. The downward spiral could cause tax entities to increase tax rates just to generate the same income, he said.

To avoid enhancing that effect, Amezcuita is refusing to settle the Bexar Appraisal District's 419 open lawsuits, which represent \$9 billion in property valuation, unless the other party agrees to waive the provision on increased burden of proof that the state has imposed on districts.

"I'm not going to let them hold my feet to the fire and settle 2013 cases at those values," Amezcuita said. "If they want to settle, we can settle. But if we're going to settle, it's going to have this statement on it, period."

He said he'd prefer to settle the cases but worries that if he does, the district would be vulnerable next year to more litigation.

In Bexar County, the vast majority of the open litigation involves commercial properties. The 2013 value of properties in the county has already been reduced by \$1.6 billion, according to Amezcuita. Almost all those reductions were on the commercial side, he said.

Only 16 of the open 2013 lawsuits involve a homeowner, including two investment companies, five lawyers, Spurs coach Gregg Popovich and his wife, Erin, and restaurateurs Morteza and Leila Bagheri.

“It's just absolutely destroyed any semblance of equity in property tax, especially among commercial properties, and made the whole thing a cash register for the taxing agents,” said Robert Mott of Perdue Brandon Fielder Collins Mott, a firm that represents 90 appraisal districts in Texas. “Right now, it's just a runaway train that's creating enormous inequity, and it's been getting progressively worse.”

Amezquita, along with several chief appraisers in Texas, the Texas Municipal League, the Texas Conference of Urban Counties and county judges including Bexar County's Nelson Wolff, were also against HB 585.

Popp said he asked Villarreal, a financial analyst, to carry the bill because he's impressed by the representative's knowledge of the tax code and interest in equity. According to state records, Popp has contributed \$20,750 to Villarreal's campaign since 2006, either through his firm or independently.

The Otto amendment raises an appraisal district's burden of proof to “clear and convincing evidence” in changing the value of a property the year after it was set through the appeals process.

“In general, it made things easier on the people who are protesting (property values), especially tax agents,” said Dick Lavine, senior fiscal analyst for the Center for Public Policy Priorities.

Amezquita worries that HB 585 enhances the chance of disparity caused by the “equal and uniform” appeals process, which is used much more often to argue commercial property value than residential. The stipulation, written by Popp and adopted into law in 1997, states that similar properties should be valued similarly but offers no further definition.

After appealing to the appraisal review board, owners can protest their property value through binding arbitration or in district court, claiming they were erroneously valued on their market value — based on market conditions — or their property's equal and uniform value or both.

Often, commercial entities use the equal and uniform process and prove their case using a set of comparable properties.

If the protester proves the appraisal district's value was too high, the district must pay the winner's legal fees, up to \$100,000. Of the Bexar Appraisal District's \$15 million budget, about \$700,000 is reserved for litigation.

Appraisal districts often settle on a value well below what they believe to be true because they can't afford the costly process, Amezquita said.

Lavine said, “If they put it on for the full amount, we'd probably end up in court and lose because of the equity issue.”

Hundreds of entities sued the Bexar Appraisal District over their property values in 2013, including the \$133 million Marriott Rivercenter hotel, the \$210 million JW Marriott PGA resort, the \$78.4 million Hyatt Regency Hill Country resort, the \$172 million Microsoft Data Center, a dozen Target stores valued at \$96 million and H-E-B, with than \$30.6 million in warehouses.

One of the most regular protesters on appraisal districts' lists across the state is San Antonio-based Valero Energy.

According to data from the Bexar Appraisal District, Valero is involved in lawsuits representing \$140 million over the district's valuations of its \$3.4 million maintenance hangar, its \$71.3 million corporate campus, its \$21.5 million data center and \$43.9 million in a dozen Corner Stores, which Valero spokesman Bill Day said the company sold this year.

"It's predictable that for-profit businesses seek to minimize their tax liabilities," said Villarreal, whose campaign has received more than \$36,000 from Valero since 2000.

Day defended the company's approach to property tax valuations, as did Popp, who is also a Valero lawyer. He said the company files appeals that are "necessary and supportive."

Day said Valero's appraisers are more aware of what properties are worth than the appraisal district's appraisers, "which is why we are usually successful." Popp said his firm employs three chemical engineers who work on the Valero account.

"If we believe that the assessment is unfairly high, we use the same steps that are available to every taxpayer," Day said. "We are very big on paying our fair share in taxes, but we, like any other taxpayer, don't like paying an unfair amount of taxes."