

**MORE THAN 100 REASONS TO USE P.E. PENNINGTON & CO., INC.
FOR YOUR PROPERTY TAX APPEALS**

- | | | | |
|--------------------------------------|--|-------------------------------|-----------------------------------|
| A & J Foods, Inc. | Edgewood Manor Sr. Apartments | Man Arr, Inc. | Ratliff & Sommerville, P.C. |
| A-1 Transmissions | Fas Pac Packaging, L.P. | Mathews Southwest | RBI Concepts |
| AA Applicators, Inc. | Financial Alternative Leasing | Maverick Commercial Center | Red Steel Company |
| Algonquin Realty, Inc. | First Gulf Development | McCullough Development, Inc. | Rosti (Dallas), Inc. |
| Allen-CT/BTS Ltd. | Flexlink Systems | McElreath Family Ltd. | S & D Family Partnership |
| Alloy Casting Co., Inc. | Fountain Car Wash | Michael E. Dyer Family, Ltd. | Saddock & Company, P.C. |
| American 3CI | Four Stars Plumbing | Frank J. Miles | Sammons Realty Corporation |
| American Consolidated Transportation | Ron Franco | Milestek Corporation | Sante Rehabilitation Center |
| American Foam Rubber | Frontline Property Management | Millennium Motor Cars | Saturn Square Holdings, Ltd. |
| Arcap Servicing | Gallagher Homes | Mobius Investments, LLC. | Sharp Westover Hills, L.P. |
| Asel Art Supply, Inc. | Garland Steel, Inc. | Mohammed I. Jetpuri | Gary Shultz |
| Ashford Hall, Inc. | Printice L. Gary | Monsouni, Inc. | Sierra Management Company |
| Aysha Foods, Inc. | Ali Gaziani | Montero Family Restaurants | Smallwood Summit Partners |
| BBT Corporation | The Genesis Realty, Inc. | Vincent Moran | Judith O. Smith Mortgage Group |
| Brangus, Ltd. | Glorious Sun Property Mgmt. | Manucher Nazarian, M.D. | Southern Villas Properties |
| Fred Brodsky Company | James Gray Property Mgmt. | Ken Nelson | Southwest Housing Development |
| Cadence Capital Group, Inc. | The Grinnan Companies | Next Level Transportation | Sphinx Development Corporation |
| Car Wash Headquarters | The Harper House | Norstar | Spiritas Ranch Enterprises, L.P. |
| Carleton Residential Properties | Hines Place Properties | The Oaks Bank & Trust | William Stanton |
| Jeff Cassell | Bernard Hirsh Trustee | O-Tec Computer Services, Inc. | State National Bank of West Texas |
| CCIS Tech, Inc. | Hoss Equipment Company | Oakcrest Management, Inc. | Sterling Investments, L.P. |
| CCI Manufacturing, Inc. | Hoss Equipment Nevada, Inc. | Oasis Car Wash, Inc. | Susman Development Company |
| The CEI Group | HSR Plaza, Inc. | Oji Associates, Inc. | SVI Management Corporation |
| Sumner Chase | Ibrahim Investment Corporation | Outback Steakhouse, Inc. | Lawrence E. Tabak |
| Circuit Investors | Industrial Hygiene & Safety Technology | P. O. B. Montgomery | T-Bar Fence Company, Inc. |
| CL & H Properties | Insurance Technologies Corp. | Paccar Leasing Company | Taft Forward Property Mgmt. |
| CNC Realty | Jagee Real Properties | Pace Realty Corporation | Tarpley Investments, L.P. |
| Columbia Residential | R.E. James Gravel Co. | Pappasito's Restaurants | Than Than Investments, Ltd. |
| Community Credit Union | Abdul R. Jetpuri | Paragon Industries, L.P. | Traffic Signal, Inc. |
| Cornerstone Realty Income Trust | Kaizen Foods, Inc. | James Parks | Turtle Creek Development |
| Corr-Wood Manufacturing, Inc. | James King | Pegasus Transportation Group | Tyson Management |
| CRE Technologies | Thomas Kirkland | Penthouse Key Club | UBS Realty Investors, LLC |
| Crossman Corporation | Roger Lawler | Perfect Technology Center | Van-Texas Properties, L.P. |
| Crosstimbers Capital, Inc. | Lincolnshire Associates | Cathy Phillips | Daniel Varel |
| Cutting Room Supply, Inc. | Lone Star Balloon, Inc. | G.M. Pointer Trust | Vasan Properties |
| DAFX, Inc. | Lone Star Container Corp. | Jim Privitt | Wells Fargo Business Credit |
| Dallas Aircraft Services, Inc. | The Loomis Agency | Progressive Marketing | Westcott, LLC. |
| George H. Davis | The Madison Commercial Group | Property Tax Professionals | John M. Whitfill |
| Delphi Group | M & A Texas VE, Ltd. | Provident Management, Inc. | Wilson Properties |
| Dywidag Systems International | Magellan Management, Inc. | Provident Realty Advisors | The Windmark Group |
| Edgemon Companies | | Richard Ranger | Windsor Management Company |
| | | | Zavala Properties, Inc. |

The PROPERTY

TAXPAYERS' ADVOCATE

P.E. Pennington & Company, Inc.
18 Years of Providing Property Tax Solutions

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NEW PROPERTY TAX LEGISLATION

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House Bill 182.

Effective: September 1, 2005.

A taxpayer may appeal an appraisal review board determination pertaining to the appraised value or market value of real property through binding arbitration if the Order Determining Protest sets a value of \$1,000,000 or less for the property. Strict compliance with the statute is essential. (A party appealing through arbitration may not also file a lawsuit appealing the appraisal review board determination.) The appeal must be filed with the appraisal district along with a fee of \$500.00 payable to the Comptroller within 45 days of the date of receipt of the Order Determining Protest.

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P.E. Pennington & Co., Inc.
is a regional firm with expertise in all types of
Commercial Real Estate, Residential Real Estate, Personal Property,
Intangible Value and out source
compliance needs.

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P.E. PENNINGTON & COMPANY, INC.
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P.E. Pennington & Company

IMPORTANT UPCOMING TEXAS TAX DATES

NOTICE OF LITIGATION WITH

FILING SUIT:..... Within 45 days of receipt of the
..... ARB Order Determining Protest

TAX RATES SET: Generally September-October

TAX BILLS MAILED: Generally October-November

JANUARY: Assessment Date January 1

JANUARY 31:..... Last day for payment of taxes:
..... • before they become delinquent
..... • for property subject to litigation
..... • for property subject to protest

JANUARY 31:..... Last day to file motion to correct
..... an incorrect appraisal

APRIL 15:..... Rendition Due Date

TAX ROLL CERTIFICATION:..... Generally July-August



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The Role Of The Property Tax Consultant in Litigation

Paul Pennington

P. E. Pennington & Co., Inc.

Prepared for the Texas Association of Property Tax Professionals

Austin, Texas (September 15, 2005)

General Overview

In the event that a valuation settlement cannot be reached during the administrative remedy, the property owner and/or manager often ask for recommendations regarding possible litigation from their property tax consultant. Since litigation support is a large practice area in the property tax consultant industry, consultants play various roles. These roles can range from *passive to intricate participation* during the litigation process. The absolute least agent participation level should include advising the client that an ARB order has been issued and the deadline for filing appeals.

In both scenarios, the consultant handles the property tax appeal through the administrative remedy, which includes protecting the taxpayer's rights and providing remedies available in the Texas Property Tax Code. In a passive role, the consultant's participation typically ends with issuance of the Appraisal Review Board's (ARB) Notice Of Final Order. At this point the property owner assumes the responsibility of appealing a protest provided by Subchapter C of Chapter 41, Section 25.25 or Subchapter B, Chapter 24. The taxpayer will retain legal representation and expert witnesses necessary to proceed with their litigation.

In the latter case the owner will rely on the consultant to become part of the litigation team, typically made up of an expert witness, attorney and the consultant. Each team member has a fiduciary relationship with the property owner and this must be understood and kept in mind. The members of the litigation team bring different areas of expertise, which are needed in order to bring a successful conclusion to a property tax lawsuit. For example, a real estate appraiser might be designated as the expert witness. In addition to preparing a market value appraisal, fair and equitable study and giving testimony, the appraiser may be asked to provide additional services, including:¹

1. *Advising an attorney on matters of standards of practice, professional code of ethics, market data sources, and industry trends*
2. *Helping frame questions for appraisal experts on either side of the case at depositions and during trial testimony*
3. *Case management*

Additionally, the appraiser can also be utilized to identify incorrect methodology, inaccurate data, and an inaccurate application used by appraisal districts.

The attorney is the captain of the litigation team and his fiduciary

relationship with the property owner trumps all other activity involved in the litigation. The relationship with all other team members is secondary to that of the relationship between the attorney and the property owner. Further, other team members must be aware not to engage in any activity that constitutes the *unauthorized practice of law*. Once litigation has been filed, the property owner will become the Plaintiff and will be the direct client of the attorney. The agent is not the attorney's client. Thus, communications between an attorney and the tax agent may or may not be confidential and may be discoverable. Privileged communications should most often be directly between the owner and attorney.

The attorney's role includes counseling the property owner on the feasibility of litigation, defining and explaining the taxpayer's rights, disputed facts, and remedies. Generally, the litigation process includes the filing of the petition, discovery of the facts (informal and formal interrogatories, requests for production, depositions, disclosure of experts, requests for admissions, etc.), motions to the court, pretrial proceedings such as case management conferences, settlement conferences, referral to mediation or arbitration, preliminary motions to allow or exclude evidence at trial, pretrial briefs, trial preparation, jury selection and instructions, trial by judge or jury, post-trial motions, and appeal of the judgment.

Consultants who participate in litigation support can be divided into two categories; *involved* and *heavily involved*. The consultant that falls in the first category will generally work as a conduit of information between the owner and the attorney. For example, the consultant would forward the attorney copies of evidence used during the administrative process, Notices of Final Order, and other general information.

The *heavily involved consultant* takes his participation to another level, as does his counterpart with the appraisal district staff. Their clients might ask for recommendations regarding legal representation, real and/or business personal property appraisers or other expert witnesses. Typically, the consultant will have a thorough understanding of the litigation process and ideally have experience dealing with the district's litigation staff. The agent should have extensive experience in methodology used for different types of properties. Additionally, possessing knowledge from prior settlements and the type of support documentation by the district is essential. The *heavily involved consultant* will also have strong working relationships with real estate appraisers (MAI's), business personal property appraisers (ASA's), and attorneys specializing in property tax litigation. The consultant generally has a very good understanding of the methodology and the typical range of values for the various classes of properties assessed by the appraisal district. Having settled values through the Appraisal Review Board process, the consultant has knowledge of a fair market value and a fair and equitable value based on other settlements for the tax year in question. This knowledge is very useful to the team during the settlement process.

Professional relationships with the district's staff can be a tangible asset in pursuing a settlement. As Otto Von Bismarck once said: *"Politics is the art of the possible."* This is also true of the goal of most property tax litigation. The goal is to obtain fair and equitable treatment through professional negotiations. Compromise of issues that are negotiable should always be pursued through good faith negotiations. When either the litigation team and/or the district's staff in good faith can no longer pursue negotiations, the matter should proceed to a trial.

Real World Example

The following is typical of our participation in litigation:

In 2004 we advised our client that their office showroom was the highest valued office showroom built in the 1980's in the City of Irving. The lease in place on the subject supported the extremely high value, however we argued to the district that the lease was dated and did not reflect current market rental rates. The staff disagreed and the property was taken to the ARB. After reviewing our income pro-forma and our fair and equitable analysis and the evidence of staff, the ARB ruled to sustain the district's 2004 value. After the suit was filed, a settlement conference was set up to discuss the property. During the settlement conference our team discussed the fact that the single tenant lease entered into in the late 1990's was not indicative of current market rental rates. Additionally, a fair and equitable study clearly showed that the subject was not being treated fairly in comparison to comparable properties as brought out earlier informally. The result of this two-prong approach was a valuation reduction of approximately 31%. It should be noted that the 2004 value was carried over to 2005, therefore creating a two-year benefit to the client.

Conclusion

The consultant's role is to present suggestions to their clients if the target value is not achieved during the administrative remedy. If litigation is pursued the consultant can become an important member of the litigation team. Interacting with other team members, the consultant should pursue a fair and equitable settlement for the property owner, and always keep his fiduciary relationship with his client.

¹ As defined in The Appraisal of Real Estate, Twelfth Edition

² Harris County (TX) Appraisal District (HCAD) v. United Investors Realty Trust. The value followed the guidelines set forth in Article VIII, Section 1 of the Texas Constitution of the Texas Tax Code (Section 42.26 a3, Vernon Supp. 2000)

NEW PROPERTY TAX LEGISLATION

Continued from Page 1

The Comptroller shall keep 10% of the fee to offset its costs. The Comptroller shall provide a list of arbitrators from which the parties may mutually select an arbitrator. If the parties fail to do so, the Comptroller shall select the arbitrator. The taxpayer may represent himself or herself at the hearing, or may use the services of an attorney, an appraiser, a real estate broker or salesperson, or a tax consultant. The appraisal district may be represented by an appraisal district employee. The arbitrator is required to rule on the appeal within 20 days of the date of the hearing. If the taxpayer substantially prevails, the Comptroller shall refund the portion of the arbitration fee not kept by the Comptroller, and the appraisal district shall pay that same amount to the Comptroller. If the taxpayer does not prevail, the Comptroller shall refund to the taxpayer any amounts remaining after the arbitrator and the Comptroller have been paid. Arbitration awards are enforceable under the Civil Practices and Remedies Code, but the arbitration results are not otherwise appealable. The taxpayer is

required to pay the tax amount not in dispute to preserve the appeal. Failure to do so will result in the dismissal of the appeal.

House Bill 809.

Effective: January 1, 2006.

A person who operates one or more cars or trucks in connection with their occupation or profession (and who also uses the same vehicle of vehicles for personal activities) is not required to render those vehicles for taxation.

House Bill 1984.

Effective: January 1, 2006.

Notices of appraised value shall state the percentage of increase or decrease in appraised value for a property from the current tax year to the fifth preceding tax year. Tax bills shall also be required to state the percentage of increase or decrease in appraised value for a property from the current tax year to the fifth preceding tax year and the tax differential for the same period. Through December 31, 2011, if this information is unavailable, the tax bill must state that this date is unavailable.

Senate Bill 541.

Effective: September 1, 2005.

Other than aerial photographs depicting five or more separately owned buildings, photographs, sketches and floor plans of residential real property may not be posted on the internet.

*Is your firm receiving
the most advantageous property
tax valuation?*

*Is it time to consult a
property tax professional?*

REMINDER

**EFFECTIVE 9/1/2003 - BUSINESS PERSONAL
PROPERTY RENDITIONS ARE MANDATORY IN TEXAS**