AD VALOREM TAXES 101
Closing Issues, Rollbacks & Statutory Changes

Texas Land Title Institute
December 5, 2013

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I. TAXES AND TITLE INSURANCE

A. Coverage Provided by Title Policy

1. What is covered by the terms of the policy?
   The title policy protects against loss or damage resulting from unpaid taxes and assessments for all years prior to the date of the policy - except taxes and assessments removed from coverage by an exception.

   Note: Since title policies insure only real property, not personal property, these policies only address taxes assessed against real property.

2. What is removed from coverage by the standard Schedule B exception?
   Here is the exception, broken down into segments:

   Standby fees, taxes and assessments by any taxing authority for the year ____ and subsequent years,
   - This segment is an exception to the taxes the title agent is unwilling to insure. The blank is completed with the first year they are unwilling to insure. For example, if the agent is confident that all taxes are paid through the year 2013, the blank is completed with 2014.
   - Procedural Rule P-20 clarifies when you can insure taxes as being paid for the current year. If the lender tells the title company that taxes for the current year have been paid from an escrow account, P-20 (b) allows the Loan Policy to insure taxes as paid for the current year if there is satisfactory evidence that the taxes for the current year have been paid by the lender from a Reserve/Escrow Account held by the lender.
   - If the title company is not provided satisfactory evidence showing the taxes have been paid, then the title company may accept an indemnity from a responsible party together with a deposit of funds in an amount sufficient to pay the assessed taxes.
   - If the title company has received an indemnity and a deposit of funds, the company shall have the right to pay the taxes according to the terms of the indemnity before they become delinquent. Or, upon receipt of satisfactory proof that taxes for the current year have been paid, the title company will pay the escrowed funds to the proper party, according to the terms of the agreement.
   - If taxes for the current year have not been assessed by all taxing authorities, the title policy cannot insure that such taxes are paid.
and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership

- This segment is an exception to the consequences of “rollback taxes” which may be due for prior years because of lost eligibility for open space or agricultural valuation.

- This portion of the tax exception may be amended out of a Loan Policy or an Interim Binder, but not out of an Owner Policy (in accordance with Procedural Rule P-20). The charge for this amendment is $20 per Rate Rule R-19.

- Because the lien to secure payment of the rollback taxes arises immediately upon the change of usage or ownership, but the tax bill for these taxes normally won’t be mailed to the taxpayer until a later date, this clause cannot be deleted if the insured transaction may trigger the assessment of rollback taxes.

- Effective February 1, 2010, Procedural Rule P-20 was amended to add guidance on “insuring against rollback taxes.” See further discussion below.

but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code,

- This segment isn’t really an exception – in fact, it is an exception to the exception. This clause tells the insured that they are covered with regard to taxes for prior years resulting from a lost homestead and/or “over 65” and/or “disability” exemption. (This is often referred to as “supplemental tax coverage.”)

- Section 11.43 of the Texas Property Tax Code provides that if a property was given a tax exemption erroneously or to which is was not entitled, the taxing authority can assess the property for additional taxes for up to five (5) preceding years that would have been assessed had the property not had the exemption. The result is that additional taxes will be assessed against the property regardless of who is the owner.

Both the Owner’s and Loan Policies insure against additional taxes due if exemptions were improperly granted in previous years and therefore policy exposure is significant to title companies in this scenario. This coverage is different from the optional rollback coverage in the lender policy for additional taxes due to a change in use or ownership associated with land formerly having an agricultural or open space exemption.

- With this in mind, the closer must review the following for “red flags” that could indicate that the property is receiving an exemption to which it is not entitled:
  - Seller on the contract is not the same person as on the tax certificate,
  - A relocation company selling with exemptions shown on the tax certificate;
  - Seller’s Disclosure Notice shows property is not owner occupied;
  - Solicitation Form shows seller did not claim this property as his primary residence;
  - Sale out of an estate or by heirs with exemptions shown on the tax certificate.

- If the closer has information that indicates the property is receiving an exemption by error or for which it is not entitled, she should normally require the seller to advise the Central Appraisal District for the county where the property is located of that fact and obtain corrected tax statements before closing, where possible.
or because of improvements not assessed for a previous year.

- The last clause tells the insured that they are covered with regard to taxes for prior years resulting from improvements that were not included in the appraised value of the property (“omitted improvements”).

3. In addition, the following promulgated language may be added to the tax exception in a Loan Policy or an Interim Construction Binder (in accordance with amended Procedural Rule P-20) to assure the lender that taxes for a specified year are not yet due.

Company insures that standby fees, taxes and assessments by any taxing authority for the year ______ are not yet due and payable.

- In Texas, tax bills are mailed out on or about October 1 each year, and become “due and payable” when the bill is received by the taxpayer. Therefore, this language cannot be added to a Loan Policy or an Interim Construction Binder after the tax bills have been sent out (from around October 1 until the agent is certain that all taxes, penalties and interest for the year have been paid).

Note: If the current year’s taxes have been paid or are being paid at closing, some underwriters will allow their agents to provide the “not yet due and payable” language as to the subsequent following year.

- Agents have often been asked to add the “not yet due and payable clause” on a “piecemeal” basis – providing the coverage as to some – but not all – of the taxing authorities, depending on which taxing authorities had mailed out their tax bills. In the past, there was no rule that allowed a title agent to comply with this request. However, Procedural Rule P-20 now allows the agent to do so. See further discussion of these “piecemeal coverage,” at Section II. E., below.

B. Proration of Current Year’s Taxes

1. When a property is sold, taxes that are due or will become due on the property must be divided (“prorated”) between the buyer and the seller.

2. Normally, the buyer and seller have included provisions in their contract allocating responsibility for the payment of taxes between the pre-closing and post-closing periods. Therefore, sellers are usually liable for taxes on the property up to and including the date of closing, and buyers are usually liable for taxes on the property after closing.

   1. Paragraph 13 of the current TREC One to Four Family Residential Contract (Resale) addresses tax prorations as follows:

   Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year’s taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.
2. The TREC Farm and Ranch Contract includes an identical Paragraph 13, but goes on to add:

ROLLBACK TAXES: If this sale or Buyer’s use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Seller’s change of in use of the Property prior to closing or denial of a special use valuation on the Property claimed by Seller results in Assessments for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

3. Note: The seller doesn’t actually “pay” his portion of the taxes at closing; instead, in the settlement statement, the seller’s prorated portion of the taxes will be deducted from the sales proceeds he will receive, and a credit for these taxes will be given to the buyer.

4. If the tax bills have not yet been issued for the current year, the general rule is that the closer should use the valuation and tax rate that were used for the previous year in calculating the tax prorations.

5. However, if a house or other improvement was constructed during the past year, the escrow officer must obtain an updated valuation of the property, since the prior year’s taxes would have been based on unimproved land.

6. Any tax exemptions that were applicable to the seller but are not available to the buyer should also be taken into account.

7. The title company will normally require that a tax proration agreement be signed by the buyer and seller at closing. In this agreement, the source of the tax information used and any estimates used for prorations should be disclosed.

C. Additional Proration Considerations

1. New Construction – If the prior year’s taxes were based on an unimproved or partially improved valuation, the closer must determine the approximate status of completion on January 1 of the current year.

   a) Normally, the closer will use the assessed value for the current year, according to Appraisal District Records. The preceding year’s tax rate will be applied to the assessed value to estimate taxes for the current year. The estimated tax will then be prorated between the parties.

   b) If the current year valuation is not available look at the date of construction financing:

      i. If it appears that construction would have been substantially complete on January 1, many closers will apply the preceding year’s tax rate to the sales price to estimate taxes
for the current year – and will prorate the taxes using this estimate.

ii. Otherwise, a closer may estimate the percentage of completion which was likely on January 1; take this percentage of the sales price and apply the preceding year’s tax rate to estimate taxes for the current year – and prorate the taxes using this estimate.

2. Conveyance of portion of larger tract – “New Split”
   a) The appraisal district no longer splits out larger tracts into individual tax tracts during the tax year. All splits are done as of January 1 of the tax year.
   b) As a result, the new owner (or lender) will be unable to pay the current year’s taxes on the smaller tract, meaning that a proration at closing will not truly be effective.
   c) The closer will discuss this situation with the parties prior to closing and obtain written instructions, signed by all parties. Usually, parties agree to no proration or proration based upon estimates of the amount of taxes to be owed by the parties.

3. Significant difference between assessed value and current sales price or appraisal
   a) This may be an indication that the property has been improved since the last tax office appraisal.
   b) The closer will obtain additional information from the parties and use this information to make an informed estimate on how to calculate the tax proration.

   Note: This may indicate a case of “omitted improvements” on the part of the appraisal district, resulting in a possible supplemental tax for prior years.

II. CLOSING ISSUES

A. Homestead Exemptions
   1. Many Texas tax assessor/collectors systematically compare the grantors’ names in deeds filed for record with the death records of their county. They will also review recorded deeds for sales out of estates, heirs and/or relocation companies.
   2. This approach uncovers instances in which property has been improperly taxed at a reduced value because of one or more of the homestead exemptions authorized by Texas Tax Code Sect. 11.13 (homestead, over 65, and disabled).
3. Most of these cases involve situations where the property was owned by a taxpayer who legitimately claimed a homestead exemption. Upon the death of the taxpayer, the homestead exemption remained on the land, even though the land was not conveyed out by the heirs or by the personal representative of the decedent's estate.

When a sale was eventually closed, the title company collected for whatever taxes were shown to be due, issuing a policy which insured that taxes had been paid.

4. The assessor/collector will often determine that the homestead exemption should have been removed at the end of the year of the decedent's death, and will re-assess the land at a higher value, thus increasing the taxes. The buyer (the insured under an Owner’s Policy) will eventually receive a revised or supplemental tax bill.

The assessor/collector can go back and re-assess for up to five (5) years.

5. As noted previously, the language in the standard tax exception in Schedule B, item 5 does not protect the title company from claims based on the retroactive removal of Section 11.13 homestead exemptions, but instead indicates that the insured is covered with regard to taxes for prior years resulting from a lost homestead or “over 65” or “disability” exemption.

6. The basic rules regarding homestead exemptions are as follows:

   a. Entitlement to the "standard" homestead exemption is determined by the claimant's qualification on January 1. The exemption will validly remain on the property for the entire year of the claimant's death. Texas Tax Code, §§ 11.13(a) (b), 11.42(a).

   b. The "over 65" exemption of Sect. 11.13 (c) and (d) is effective as of January 1 of the tax year in which the taxpayer qualifies for the exemption, even though the qualification date is later than January 1st. Texas Tax Code, § 11.42(c).

The over 65 exemption will also remain on the property for the entire year of the claimant's death.

Additionally, a surviving spouse who was 55 or older at the time of the death of the qualifying spouse may continue to claim the over 65 exemption in subsequent years. Texas Constitution, Art. 8, Sect. 1-a (d) and (f).

However, if an over 65 age exemption or a disability exemption applicable on January 1 terminates during that year, there appear to be two scenarios that could arise:

(1) Tax Code Section 26.10 (b) seems to state that the over 65 exemption will “drop off” only if the seller places an over 65 exemption on other property during the same calendar year. In that event, taxes on the property will be prorated by the taxing authority without the exemption(s) for that portion of the year following the termination of the age or disability exemption.
(2) Tax Code Section 26.112. indicates that, “Except as provided by Section 26.10 (b), if at any time during a tax year property is owned by an individual who qualifies for an [over 65 or disabled], the amount of the tax due on the property for the tax year is calculated as if the person qualified for the exemption on January 1 and continued to qualify for the exemption for the remainder of the tax year.”

(3) **Note:** Many closers have indicated that when an over 65 age taxpayer moves and places the over 65 exemption on their new home, the tax assessor will remove the over 65 exemption from the “old” home for the entire year, and allow the over 65 exemption on the “new” home for the entire year. So, it is important for the closer to know exactly how their local tax assessors deal with this situation.

7. **What affect does all of this have on prorations?**

a. **When the exemption claimant is alive and is the seller.**

(1) If the property was under only the general homestead exemption, most title companies pro-rate for the year of sale on the assumption that the exemption remained on the property for the entire year.

(2) If the property was also under an "over 65" exemption, a problem is presented. As noted above, Tax Code Section 26.112 and Tax Code Section 26.10 (b) provide potentially conflicting advice. Therefore, the closer appears to have two options.

- **Option One:** Pro-rate on the assumption that the over-65 exemption dropped off at the date of sale.
- **Option Two:** Pro-rate on the assumption that the over-65 exemption will remain on the property.

   If this option is chosen, most title companies will require the buyer to sign a hold harmless agreement, and will insert an exception to the potential supplemental taxes that may result from the lost exemption in Schedule B of the Owner's Title Policy.

b. **When the exemption claimant is deceased, and the sale is made during the calendar year of the claimant's death.**

Most title companies will proceed on the assumption that all exemptions remained on the property through the end of the year.

c. **When the exemption claimant is deceased, and the sale is made later than December 31st of the year of death.**

(1) If the property was only subject to the general homestead exemption: Most title companies will, after advising the parties of the potential problem, contact the collector/assessor and determine the amount of taxes due after removing the homestead exemption for all years after the year of the decedent's death. The company will then collect and pay the taxes as revised and billed.
(2) If the parties refuse to pay the additional taxes, or if the amount of additional taxes cannot be determined, the title company will normally require the buyer to sign a hold harmless agreement, and will insert an exception to the potential supplemental taxes that may result from the lost exemption in Schedule B of the Owner’s Title Policy.

Note: If the seller is the surviving spouse who has continued to reside in and claim the property as homestead since the claimant’s death, the homestead exemption will continue on the property through the end of the year of sale.

(3) If the additional amount of taxes can be determined, another option may be for the title company to collect and escrow the additional amount of taxes calculated from the date the exemption was lost to the date of closing, until the taxing authority actually charges the additional prorated tax amount. A discussion with the title company and their Underwriter will determine if this is a feasible option.

(4) If the property was also under an "over 65" exemption, there are two options for the title company.

- **Option One**: pro-rate on the assumption that the over-65 exemption dropped off at the end of the year of death; any pro-ratings should be computed based on that assumption.
- **Option Two**: pro-rate on the assumption that the over-65 exemption will remain on the property. If this option is chosen, most title companies will require the buyer to sign a hold harmless agreement, and will insert an exception to the potential supplemental taxes that may result from the lost exemption in Schedule B of the Owner’s Title Policy:

### B. ALTERNATE VALUATIONS AND ROLLBACK TAXES

1. The general rule in Texas is that real property is appraised and taxes are assessed based on the market value of the property. Vernon's Ann. Tex. Const., Art. 8, Sect. 1(b), 20.

2. The Texas Tax Code provides for several methods of "alternate valuation" by which the property is appraised not at market value, but according to its value considering the particular use to which the property is put.

The most commonly encountered type of alternative valuation is agricultural ("ag value") where property is assessed on its capacity to produce agricultural products. Texas Tax Code, §23.41(a).

When any type of alternate valuation (ag value or otherwise) is removed from the property, the property is re-assessed at market value, and additional taxes become due and payable; a lien attaches to the land to secure the payment of the taxes.

Examples of transactions in which a title company may face potential rollback tax concerns are when they are asked to insure:
- Sales of property that has an ag-use or open-space exemption to a developer for residential or commercial development;
- Sales of farmland from one farmer to another; and
- Possibly in a home equity loan transaction if the property owner has removed the ag exemption in anticipation of obtaining the home equity loan.

3. The promulgated tax exception in the Texas Mortgagee Policy of Title Insurance (Form T-2) includes the following Schedule B exception to taxes:

   Standby fees, taxes and assessments by any taxing authority for the year and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (Emphasis added)

4. The effect of the standard tax exception is that title companies have no liability under the title policy for rollback taxes resulting from removal of alternate valuations.

   Procedural Rule P-20 allows title companies to delete the "rollback exception" from a Loan Policy or a Mortgagee Title Policy Binder on Interim Construction upon the payment of the premium of $20.00 (R-19). Note that there is no authority for deleting the rollback exception in an Owner’s Title Policy.

5. In sale transactions where the tax certificate shows that the property is currently being assessed and taxed under some alternate valuation method, a title company must consider the following:

   a. If the Tax Assessor has not delivered a bill for the rollback taxes, a title company has no authority to compute the taxes on its own, escrow the amount, and insure against the risk. It is not appropriate to collect for payment of rollback taxes unless the tax assessor has delivered a tax bill. Procedural Rule P-20 prohibits title companies from escrowing funds estimated to be sufficient to pay current taxes when the tax roll is not certified and the taxes are not paid.

   b. The tax collector has no legal authority to accept payment of rollback taxes prior to a final determination of the amount of taxes due.

   c. In 1995, the legislature enacted Sections 23.46 and 23.58 of the Texas Tax Code. These sections allow a lender to require that a borrower establish and maintain an escrow account to pay rollback taxes that may be assessed against ag value land or open space use land. Note that there does not appear to be any authority for requiring or establishing similar escrow accounts regarding the other types of alternate use valuations.

      Most lenders chose not to maintain additional escrow accounts. In the event a lender chooses not to do so, and wants the underwriter to provide the "rollback deletion," the title company cannot vary from the requirements for providing such coverage provided in P-20.
6. Procedural Rule P-20 B. (2) sets forth exactly when the “rollback deletion” or “rollback coverage” can be provided. That provision indicates that:

   A Company may not insure against rollback taxes unless:
   
a. The Company has satisfactory evidence in its file that the assessed taxes for the current year are not based on an agriculture or open-space valuation; or
   
b. (i) The rollback taxes have been assessed by all of the taxing authorities;
       (ii) The rollback taxes are collected at closing by the Company, and
       (iii) The Company will pay the roll back taxes in the ordinary course of business.

7. However, please note that Procedural Rule P-20 B.1. seems to indicate that rollback coverage can be provided post policy issuance by endorsement when any and all rollback taxes have been triggered, assessed, and paid in full.

   The first clause in P-20 B. 1. reads as follows (emphasis added):

   In connection with the issuance or amendment (after issuance) of any Loan Policy or of any Loan Title Policy Binder on Interim Construction Loan (Interim Binder), and upon payment of the premium required under Rate Rule R-19, the words: "and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership", as contained in the standard tax exception may be deleted by: . . . . “

C. RELIGIOUS ORGANIZATION PROPERTY

1. **Tax Code Section 11.201** provides that:

   - **IF** land is sold or otherwise transferred by a Religious Organization in a year in which the land receives an exemption under Section 11.20(a)(6) [i.e., land that the religious organization owns for the purpose of expansion of the religious organization's place of regular religious worship or construction of a new place of regular religious worship],
   
   - **THEN** an additional tax is imposed on the land equal to the tax that would have been imposed on the land had the land been taxed for each of the five years preceding the year in which the sale or transfer occurs in which the land received an exemption under that subsection.

2. A tax lien attaches to the land on the date the sale or transfer occurs to secure payment of the tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the tax is imposed.

3. If only part of a parcel of land that is exempted under Section 11.20(a)(6) is sold or transferred, the tax applies only to that part of the parcel and equals the taxes that would have been imposed had that part been taxed.
4. If the chief appraiser determines that such an exemption has been erroneously allowed in any 1 of the 5 preceding years, the appraiser must add the property to the appraisal roll. Texas Tax Code, §11.43(i).

5. When property which is shown as tax exempt is sold, the title company should be careful to verify that the seller was in fact entitled to the exemption.

6. Since the exemption terminates when a tax exempt entity sells, and not at the end of the year, the closer will normally prorate on that basis.

7. If the title company is required to pay taxes for the current year by the lender, they will contact the appraisal district and have them provide you with a new bill containing the rollback taxes.

8. Since the tax assessor cannot accept payment before a new bill is prepared by the appraisal district, the title company you may not be able to tender payment at closing. Therefore, it may be necessary for the title company to collect and escrow the additional tax amount until the taxing authority can calculate and charge the additional prorated tax amount for the portion of the year after sale via a supplemental tax bill.

9. Since the taxing authority will not allow the title company to pay on the prorated basis until they have a chance to do their own calculation, the additional tax amount will need to be escrowed under written escrow agreement approved by the title insurance Underwriter.

D. CHARITABLE ORGANIZATION EXEMPTION

1. Tax Code Section 26.111 provides for the proration of taxes during the course of the year in the event property is acquired or sold by a charitable organization.

2. If the property is acquired by a charitable organization that is entitled to a tax exemption during the course of the year, the taxes are to be prorated to give the organization the exemption for the portion of the year the property is owned by the organization. A proration formula is set out in the Tax Code §26.113. The closer will work with the appropriate taxing authority in implementing this proration.

3. If property that is receiving a charitable tax exemption is sold by a charitable organization to a buyer that is not entitled to the exemption (usually the case), it is advised that taxes be prorated and charged to the buyer on a non-exempt basis for the portion of the year the buyer owns the property. A formula is provided in the statute for calculating this prorated tax amount.

4. If taxes are due and payable and the title company is required to insure a lender that taxes for the current year are paid, the title company will normally pay the taxes based on what is due and payable to the tax assessor.

5. However, in the case of a sale from a charitable organization to a non-qualifying purchaser, it may be necessary for the title company to collect and escrow the additional tax amount until the taxing authority can calculate and charge the additional prorated tax amount for the portion of the year after sale via a supplemental tax bill.
6. Since the taxing authority will not allow the title company to pay on the prorated basis until they have a chance to do their own calculation, the additional tax amount will need to be escrowed under written escrow agreement approved by the title insurance Underwriter.

7. When an entity entitled to a charitable exemption acquires property, the exemption applies immediately. Texas Tax Code, §26.111. Therefore, the closer will normally prorate based on the exemption being applicable for the portion of the year the religious organization owned the property.

**E. “NOT YET DUE AND PAYABLE” COVERAGE**

1. Tax assessors are required to mail tax bills by October 1, or as soon thereafter as practicable. Texas Tax Code, §31.01(a). The question then arises: “It is possible to give the “not yet due and payable” endorsement to the Loan Policy pursuant to P-20 once any of the taxing entitles have mailed out their tax bills?”

2. Here are some general guidelines for providing “not yet due and payable closing” coverage.  Note: these guidelines may not apply to all Underwriters, so the proposed insured will have to verify what coverage is available in a particular transaction.

   a. If the taxes are current, and the taxing authority(ies) have not yet mailed out the 2013 tax bills:

      (1) The title company can provide “not yet due and payable” for 2013, and
      (2) Collect the $5.00 charge per R-24.

   b. If the 2013 tax bill has been mailed by ALL taxing authorities, but the taxpayer has not yet received the bill:

      (1) No “not yet due and payable” coverage available.
      (2) Do not collect $5.00 charge.
      (3) Some underwriters will allow the title agent to collect $5 and to provide “not yet due and payable” for 2014, but will require that the lender that there is no similar coverage available for 2013.

   c. If the 2013 tax bill has been mailed by some, but not all, of the taxing authorities and no taxes have been paid:

      (1) Insert the “not yet due and payable” clause for 2013, followed by “limiting language” set forth in P-20.C., which reads as follows:

        "Company insures that standby fees, taxes and assessments by any taxing authority for the year 2013 are not yet due and payable, as to [insert name of applicable taxing authority/authorities] only."

        Note: you insert in the brackets the name(s) of the taxing entities that have not yet sent out their tax bills.

      (2) Collect the $5.00 charge per R-24.
d. If the 2014 tax bills have been mailed by ALL taxing authorities and these bills have all been received by the property owner:

(1) If 2013 taxes are NOT being paid prior to or at closing, or if pursuant to P-20.A, the title company is accepting an Indemnity Agreement with Escrow Deposit in order to pay the taxes in the normal course of business:
   - Do not provide “not yet due and payable” for 2013; but
   - If $5 is collected, “not yet due and payable” can be provided for 2014.

(2) If the 2013 taxes are paid in full or will be paid in full at closing
   - Provide “not yet due and payable” for 2014; and
   - Collect the $5.00 charge per R-24.

F. ABATEMENTS OF TAXES ON HOMESTEADS

1. Under Tax Code Section 33.06, a person 65 or older may abate a suit to collect delinquent property taxes against his homestead.
2. The abatement remains until the person no longer owns and occupies the property as his residence homestead.
3. The tax lien remains on the property while the abatement continues, and interest accrues at 8%.
4. The taxes themselves are not abated, only the collection of taxes.
5. If a title company is handling a transaction, including a refinance, on property subject to an over 65 abatement, they will normally not insure that taxes have been paid for those years.
6. The year the title company will insert in the first blank on Schedule B, exception 5 will be the year the abatement began, assuming of course that taxes have been paid for all years prior to that.

III. STATUTORY CHANGES

In August of 2013, Susan Combs, Texas Comptroller of Public Accounts, produced a publication called “Texas Property Tax Law Changes 2013.” A copy of this publication can be found at: http://www.window.state.tx.us/taxinfo/proptax/. Selected portions of the statutory changes discussed in this publication are included below.

A. General Provisions

- HB 242 amends Tax Code Section 1.07 (d) to add five notices to the list of property tax notices that must be delivered to a property owner by certified mail:
  1. Tax Code Section 23.46(c) notice that special appraisal will be removed and the rollback penalty imposed when land is diverted to nonagricultural use
from land qualifying as agricultural under Article VIII, Section1-d, Texas Constitution;

2. Tax Code Section 23.54(e) notice that a new application is required for open-space land appraisal;

3. Tax Code Section 23.541(c) notice of penalty for late filing of an open-space land appraisal application;

4. Tax Code Section 23.55(e) notice of a determination of a change of use of open-space land and the imposition of the rollback penalty; and

5. Tax Code Section 23.76(e) notice of a determination of a change of use from timber land and the imposition of the rollback penalty.


SB 1224 renames Tax Code Section 1.08 as “Timeliness of Action by Mail or Common or Contract Carrier.”

- The bill amends this section to provide that a property owner’s delivery of a required payment, report, application, statement, or other document by a specified due date is timely if it is properly addressed with postage or handling charges prepaid and is sent by common or contract carrier and either bears a receipt mark indicating a date on or earlier than the specified due date and within the specified period or the property owner furnishes proof that it was deposited with the carrier on or before the due date and within the specified period.

- Previous law provided only for delivery by regular first-class mail.

- Effective June 14, 2013, and applies only to a payment, report, application, statement, or other document or paper sent by a property owner on or after the effective date.

B. Taxable Property and Exemptions

HB 2913 amends Tax Code Section 11.13 (j) to add a beneficiary of a trust as one of the types of occupants who may qualify for a residence homestead exemption if the other legal requirements are met.

- The bill revises the definition of a “trustor” to mean a person who transfers an interest in real or personal (rather than residential) property to a qualifying trust, whether during the person’s lifetime or at death (rather than by deed or by will), or the person’s spouse.

- The bill revises the definition of a “qualifying trust” to add an instrument transferring property to the trust, or any other agreement that is binding on the trustee to the list of instruments of which one instrument must provide that the trustor of the trust or a beneficiary of the trust has the right to use and occupy as the trustor’s or beneficiary’s principal residence residential property rent free and without charge, except for taxes and other costs and expenses specified in the instrument or court order.

- Effective Sept. 1, 2013, and except as otherwise expressly provided by a trust or a will creating a trust, the changes made by this bill apply to a trust existing or created on or after the effective date. For a trust existing on
Sept. 1, 2013, that was created before that date, the changes in law made by this bill apply only to an act or omission relating to the trust that occurs on or after Sept. 1, 2013.

- **HB 97 (Chapter 122, 83rd Regular Session)** adds Tax Code Section 11.132 to require a property tax exemption equal to a disabled veteran’s disability rating (if the disability rating is less than 100 percent) on the disabled veteran’s residence homestead if the homestead was donated to the disabled veteran by a charitable organization at no cost to the disabled veteran.
  
  - The bill extends the exemption to the surviving spouse of a disabled veteran who died after qualifying for the exemption if the surviving spouse has not remarried and the property was the homestead of the surviving spouse when the disabled veteran died and remains the residence homestead of the surviving spouse. The exemption for the surviving spouse is the same percentage of the appraised value to which the disabled veteran exemption applied.
  
  - The bill provides that a surviving spouse who is qualified for the exemption is entitled to the exemption on a subsequent homestead in the same dollar amount received for the exemption on the former homestead in the last year the surviving spouse received the exemption on that homestead if the surviving spouse has not remarried. The bill requires the chief appraiser of the CAD in which the former exempt homestead was located to provide the surviving spouse a written certificate providing the information necessary to determine the amount of the exemption on the subsequently qualified homestead.
  
  - The bill defines “charitable organization,” “disability rating,” “disabled veteran,” “residence homestead,” and “surviving spouse” by reference to various sections of the federal Internal Revenue Code and the Tax Code.
  
  - The bill goes on to indicate that Subsection (c), Section 11.42, Tax Code, is amended to read as follows:
    - (c) An exemption authorized by Section 11.13(c) or (d) or 11.132 is effective as of January 1 of the tax year in which the person qualifies for the exemption and applies to the entire tax year.
  
  - The bill also amends Tax Code Section 11.43 (k) to require that a person who qualifies for an exemption under Tax Code Section 11.132 (Chapter 122, 83rd Regular Session) must apply for the exemption no later than the first anniversary of the date the person qualified for the exemption.
  
  - Effective Jan. 1, 2014, contingent on voter approval of HJR 24, and applies only to taxes imposed for a tax year that begins on or after the effective date.
  
  - Note: HJR 24 was approved by Texas voters on November 5, 2013.

- **SB 163 (Chapter 138, 83rd Regular Session)** adds Tax Code Section 11.132 to grant a total property tax exemption on the residence homestead of a surviving spouse of a member of the U.S. armed services who...
is killed in action if the surviving spouse has not remarried since the
death of the armed services member.

- The bill provides that a surviving spouse who receives this exemption is
  entitled to receive an exemption on a subsequent homestead of the same
dollar amount received for the exemption on the former homestead in the
last year the surviving spouse received the exemption on that homestead if
the surviving spouse has not remarried.

- The bill requires the chief appraiser of the CAD in which the former exempt
  homestead was located to provide the surviving spouse a written certificate
  providing the information necessary to determine the amount of the
  exemption on the subsequently qualified homestead.

- The bill defines “residence homestead” and “surviving spouse.”

- The bill goes on to indicate that Subsection (c), Section 11.42, Tax Code, is
  amended to read as follows:
  
  (c) An exemption authorized by Section 11.13(c) or (d) or 11.132 is
      effective as of January 1 of the tax year in which the person qualifies for
      the exemption and applies to the entire tax year.

- Effective Jan. 1, 2014, contingent on voter approval of HJR 62, and applies
  only to a tax year beginning on or after Jan. 1, 2014.

- Note: HJR 62 was approved by Texas voters on November 5, 2013.

HB 1287 amends Tax Code Section 11.43 (j) to create an exception to the
requirement that the Comptroller prescribed residence homestead
exemption application include a copy of the applicant’s driver’s license or
state-issued personal identification certificate.

- An applicant who is a resident of a facility that provides services related to
  health, infirmity or aging, or who is certified for participation in the address
  confidentiality program administered by the attorney general under
  Subchapter C, Chapter 56, Code of Criminal Procedure is excepted from
  the requirement.

- The bill deletes the requirement that an applicant must provide a copy of
  the applicant’s vehicle registration receipt or, if the applicant does not own a
  vehicle, an affidavit to that effect and a copy of a utility bill for the subject
  property in the applicant’s name.

- Effective Sept. 1, 2013, and applies only to an application for a residence
  homestead exemption filed with a chief appraiser on or after the effective
date.

C. Assessment

HB 97 amends Tax Code Section 26.10 (b) to provide that if the appraisal
roll shows that a residence homestead exemption under Tax Code
Section 11.132 (Chapter 122, 83rd Regular Session) - disabled veteran’s
residence homestead donated to the disabled veteran by a charitable
organization - applicable to a property on Jan. 1 of a year terminated
during the year and the owner of the property qualifies a different
property for that residence homestead exemption during the same year,
the tax due against the former residence homestead is prorated as specified.

- Effective Jan. 1, 2014, contingent on voter approval of HJR 24, and applies only to taxes imposed for a tax year that begins on or after the effective date.
- Note: HJR 24 was approved by Texas voters on November 5, 2013.

- SB 163 amends Tax Code Section 26.112 (b) to provide that if the appraisal roll shows that a residence homestead exemption under Tax Code Section 11.132 (Chapter 138, 83rd Regular Session) - homestead of a surviving spouse of a member of the U.S. armed services who is killed in action - applicable to a property on Jan. 1 of a year terminated during the year and the owner of the property qualifies a different property for that residence homestead exemption during the same year, the tax due against the former residence homestead is prorated as specified.
- Effective Jan. 1, 2014, contingent on voter approval of HJR 62
- Note: HJR 62 was approved by Texas voters on November 5, 2013.

- HB 709 amends Tax Code Section 26.15 (g) to authorize a taxing unit that determines a taxpayer is delinquent in ad valorem tax payments for a tax year other than the tax year for which a liability for a refund arises to apply the amount of an overpayment to the payment of the delinquent taxes under specified conditions.
  - Section 26.15(g), Tax Code, is amended to read as follows:
    - (g) A taxing unit that determines a taxpayer is delinquent in ad valorem tax payments on property other than the property for which liability for a refund arises or for a tax year other than the tax year for which liability for a refund arises may apply the amount of an overpayment to the payment of the delinquent taxes if the taxpayer was the sole owner of the property:
      1. for which the refund is sought on January 1 of the tax year in which the [those] taxes that were overpaid were assessed; and
      2. on which the taxes are delinquent on January 1 of the tax year for which the delinquent [those] taxes were assessed.

D. Tax Liens and Personal Liability

- HB 3613 amends Tax Code Section 32.015 (a) to provide that a tax lien is extinguished and canceled and the tax lien must be removed from the title records of a manufactured home when no suit to collect a personal property tax lien has been filed and the lien has been delinquent for more than four years.
  - The relevant portion of this code section now reads as follows:
    When the tax certificate showing no taxes due or tax paid receipt is filed with the department or when no suit to collect a personal property tax lien has been filed and the lien has been delinquent for more than four years, the tax lien is extinguished and canceled and shall be removed from the title records of the manufactured home.
HB 3613 also amends Occupations Code Section 1201.219, which deals with the release of tax liens filed against manufactured housing units, in numerous ways, including the following:

- **HB 3613** amends the heading of the section to “Perfection, Effect, and Release of Liens.”
- The bill amends subsection (d) by designating certain provisions as subsection (e).
- The bill adds subsection (e) to authorize a tax lien perfected with TDHCA to be released by a tax collector filing a tax lien release with TDHCA as provided or by TDHCA in the manner provided by subsection (h).
- The bill adds subsection (f) to provide that on request by any person, a tax collector is required to file a tax lien release with TDHCA if the four-year statute of limitations to file a suit for collection of personal property taxes in Tax Code Section 33.05(a)(1), has expired.
- The bill adds subsection (g) to authorize TDHCA to request that a tax collector confirm that no tax suit has been timely filed on any manufactured home tax lien more than four years in delinquency. The bill authorizes TDHCA to make this request electronically, and the bill authorizes a taxing authority to provide notice of the existence or absence of a timely filed tax suit electronically.
- The bill adds subsection (h) to require TDHCA to remove from a manufactured home’s statement of ownership and location a reference to any tax lien delinquent more than four years for which no suit has been timely filed in accordance with Tax Code Section 33.05(a)(1) if either:
  - a tax collector confirms no suit has been filed or
  - after submitting two requests to the tax collector that were sent not fewer than 15 days apart to confirm that no tax suit has been timely filed, TDHCA has not received any response from the tax collector before the 60th day after the tax collector’s receipt of the second request.
- **Effective Sept. 1, 2013.**

SB 247 amends various provisions of both Tax Code Section 32.06 and Finance Code Chapter 351. These statutes govern property tax lenders in Texas. There are quite a few new guidelines added by this Bill, including provisions that:

- prohibit property owners from signing contracts that waive rights guaranteed in this statute;
- prohibit property tax lenders from lending to seniors who have the option of deferring taxes and abating lawsuits filed to collect delinquent taxes under Tax Code, sec. 33.06;
- require honesty in advertising regulations similar to those that apply to mortgage lenders, clearly stating interest rates and distinguishing annual percentage rates;
- provide for solicitation notice requirements for a statement informing property owners that installment plans may be available to them from their local tax assessor-collector;
• eliminate property tax lenders’ ability to foreclose a tax lien through a non-judicial foreclosure process that involves getting a court order and selling the tax lien interest at a public auction;
• ensure that anyone who purchased a loan from a property tax lender would be held to the same restrictions as the original lien holder;
• prohibit property owners from signing contracts that waive or limit any requirement imposed on a transferee by this section; and
• specifically voids contracts that do not adhere to provisions in the bill.

**Effective September 1, 2013.**

### E. Delinquency

- **HB 1597** amends Tax Code Section 33.02 (a) to require that the collector for a taxing unit, on request by a person delinquent in the payment of the tax on a residence homestead, enter into an agreement with the person for payment of the tax, penalties, and interest in installments if the person has not entered into an installment agreement as provided with the collector for the taxing unit in the preceding 24 months.

• The bill modifies the requirements of an installment agreement to include the requirements that the installment agreement provide for payments to be made in equal monthly installments and extend for a period of at least 12 months.

• The bill amends subsection (b) to create an exception as provided by subsection (b-1) to the current provision that interest and penalty accrue as provided by Tax Code Sections 33.01(a) and (c) on the unpaid balance during the period of the installment agreement.

• The bill adds subsection (b-1) to provide that except as otherwise provided, a penalty does not accrue as provided by Tax Code Section 33.01(a) on the unpaid balance during the period of the installment agreement if the property that is the subject of the agreement is a residence homestead.

• If the property owner fails to make a payment as required by the installment agreement, the bill provides that a penalty accrues as provided by Tax Code Section 33.01(a) on the unpaid balance as if the owner had not entered into the agreement.

• **Effective Sept. 1, 2013, and applies only to an installment agreement for the payment of delinquent taxes entered into on or after the effective date.**

- **HB 1597** also adds Property Code Section 51.0011 to provide that notwithstanding any agreement to the contrary, a debtor is not in default under a deed of trust or other contract lien on real property used as the debtor’s residence for the delinquent payment of property taxes if two conditions are met:

  1. the debtor gave notice to the mortgage servicer of the intent to enter into an installment agreement with the taxing unit under Tax Code Section 33.02 for the payment of the taxes at least 10 days before the date the debtor entered into the agreement, and
(2) the property is protected from seizure and sale and a suit may not be filed
to collect a delinquent tax on the property as provided by Tax Code Section
33.02(d).
• The bill authorizes a mortgage servicer who receives a notice from the
debtor of the intent to enter into an installment agreement, as provided,
to pay the taxes subject to the installment agreement at any time.
• The bill provides that a mortgage servicer who receives this notice and
gives the debtor notice that the mortgage servicer intends to accelerate
the note securing the deed of trust or other contract lien as a result of
the delinquency of the taxes that are subject to the installment
agreement must rescind the notice if the debtor enters into the
agreement not later than the 30th day after the date the debtor delivers
the notice.
• Effective Sept. 1, 2013. Applies only to ad valorem taxes imposed for a
tax year beginning on or after the effective date of the Act.

HB 1913 amends current law relating to the waiver of penalties and
interest on certain delinquent ad valorem taxes by amending Tax Code
Section 33.011 (d) and adding Subsections (i) and (j)
• The bill adds subsection (i) to authorize a governing body of a taxing unit
to waive penalties and interest on a delinquent tax that relates to a date
preceding the date on which the property owner acquired the property if:
  1. the property owner or another person liable for the tax pays the tax
     not later than the 181st day after the date the property owner receives
     notice of the delinquent tax that satisfies the requirements of Tax Code
     Section 33.04(b); and
  2. the delinquency is the result of taxes imposed on omitted property
     entered in the appraisal records as provided by Tax Code Section
     25.21, erroneously exempted property or appraised value added to
     the appraisal roll as provided by Tax Code Section 11.43(i), or
     property added to the appraisal roll under a different account number
     or parcel when the property was owned by a prior owner.
• The bill adds subsection (j) to authorize the governing body of a taxing
unit to waive penalties and interest on a delinquent tax if the taxpayer
submits evidence sufficient to show that the taxpayer delivered payment
for the tax before the delinquency date to the U.S. Postal Service for
delivery by mail, but an act or omission of the postal service resulted in
the taxpayer’s payment being postmarked after the delinquency date.
• The bill also provides this authorization if the taxpayer submits evidence
sufficient to show that the taxpayer delivered payment for the tax before
the delinquency date to a private delivery service for delivery, but an act
or omission of the private carrier resulted in the taxpayer’s payment being
received by the taxing unit after the delinquency date.
• The bill amends Tax Code Section 33.011 (d) to provide that a request for
a waiver of penalties and interest under subsection (i) must be made
before the 181st day after the date the property owner making the request
receives notice of the delinquent tax that satisfies the requirements of Tax
Code Section 33.04(b).
• The bill provides that a request for a waiver of penalties and interest under subsection (j) must be made before the 181st day after the delinquency date.

• Effective Sept. 1, 2013.

• Note: This bill allows a title company to protect its insured in the case of missed taxes (omitted improvements) or improperly granted exemptions and to pay the taxes and obtain a waiver of penalties and interest as long as the request is made within 6 months of the date the property owner receives notice of the problem. However, this provision does not affect current practices for proration and payment of taxes.

F. Civil Practice and Remedies Code

HB 699 amends both Tax Code Section 51.002 (h) and Civil Practice & Remedies Code Section 34.041 (b) to provide that a commissioners court of the county may designate an area other than an area at the county courthouse where sales will take place that is in a public place within a reasonable proximity of the county courthouse as determined by the commissioners court and in a location as accessible to the public as the courthouse door.

• The bill requires the commissioners court to record that designation in the real property records of the county and this designation by a commissioners court is not a ground for challenging or invalidating any sale.

• The bill adds the requirement that a sale must be held at a designated area if the sale is held on or after the 90th day after the date the designation is recorded.

• The bill strikes the following provision: “if the commissioners court designates an area in the courthouse or another location in the county for sales, a sale must occur in that area or at that location and if the commissioners court does not designate an area in the courthouse or another location in the county for sales, a sale must occur in the same area in the courthouse that is designated by the commissioners court for the sale of real property under Property Code Section 51.002.”

• The bill also adds that a designation by a commissioners court under this section is not a ground for challenging or invalidating any sale.

• Effective Oct. 1, 2013.

G. AMENDMENTS TO THE TEXAS CONSTITUTION

Article VIII, Section 1-b

• HJR 24 amends subsection (j) to make a conforming change.
  
  o The resolution adds subsection (l) to authorize the Legislature to provide by general law that a partially disabled veteran is entitled to a property tax exemption of a percentage of the market value of his or her residence homestead that is equal to his or her disability percentage if a charitable organization donated the residence homestead at no cost to the disabled veteran.
• The resolution authorizes the Legislature to provide additional eligibility requirements.

• The resolution defines “partially disabled veteran” as a disabled veteran as described by Article VIII, Section 2(b) who is certified as having a disability rating of less than 100 percent, but a limitation or restriction on a disabled veteran’s entitlement to, or the amount of, an exemption under Article VIII, Section 2(b) does not apply to an exemption under this subsection.

• This amendment was approved by Texas voters in an election held Nov. 5, 2013.

- HJR 62 adds subsection (l) to authorize the Legislature to provide that the surviving spouse of a U.S. armed services member who is killed in action is entitled to a property tax exemption of all or part of the market value of the surviving spouse’s residence homestead if the surviving spouse has not remarried since the death of the armed services member.

- The resolution adds subsection (m) to authorize the Legislature by general law to provide that a surviving spouse who qualifies for and receives an exemption in accordance with subsection (l) and who subsequently qualifies a different property as the surviving spouse’s residence homestead is entitled to a property tax exemption of the subsequently qualified homestead if the surviving spouse has not remarried since the death of the armed services member.

- The amount of this exemption is equal to the dollar amount of the property tax exemption of the first homestead for which the exemption was received in accordance with subsection (l) in the last year in which the surviving spouse.

- Article XVI, Section 50

- SJR 18 amends subsection (k) to modify the definition of “reverse mortgage” to include that it is an extension of credit for the purchase of homestead property that the borrower will occupy as a principal residence – “Reverse Mortgage for Purchase.”

- Among other items, the prescribed written notice must include a notice that a reverse mortgage may require a homeowner who is over 65 to forgo any previously approved deferral of collection of homestead property taxes and pay property taxes on an annual basis, and

- includes a notice that a lender may foreclose the reverse mortgage and the homeowner could lose the home if the homeowner does not pay the taxes or other assessments on the home even if the homeowner is eligible to defer payment of property taxes.

- This amendment was approved by Texas voters in an election held on Nov. 5, 2013.
P-20. Standard Exception Relating to Taxes

A. Taxes for the Current Year

1. In connection with the issuance or amendment (after issuance) of any Owner's Policy, Loan Policy, or of any Loan Title Policy Binder on Interim Construction Loan (Interim Binder), an exception must be shown on Schedule B to taxes and assessments for the current tax year by any taxing authority, and the Company may not insure that taxes for the current tax year are paid, unless:

   a. Taxes are Paid or Collected at Closing. A company may insure that taxes for the current tax year are paid if:
      1. All of the taxes for the current tax year have been assessed by the taxing authorities;
      2. The Company has satisfactory evidence in its file that the assessed taxes for the current year have been paid by the owner or
      3. If all of the taxes for the current year have not been paid:
         i. The unpaid taxes are collected at closing by the Company; and
         ii. The Company will pay the taxes in the ordinary course of business.

   b. Owner's Tax Reserve/Escrow Account With Payoff Lender. A Company may insure that taxes are paid for the current tax year if:
      1. The Company has satisfactory evidence in its file that the assessed taxes for the current year have been paid by the current lender from the owner's Reserve/Escrow Account held by lender, or
      2. In the absence of satisfactory evidence in (1) above, a Company may accept:
         i. A sufficient Indemnity executed by a responsible party,
         ii. Together with a deposit of funds in an amount sufficient to pay the assessed taxes.

   3. When following provision (2) above, the Company shall:
      i. Pay the assessed taxes according to the terms of the Indemnity and before they become delinquent, or
      ii. Upon receipt of satisfactory evidence that the assessed taxes for the current year have been paid, promptly pay the escrowed funds to the proper party.
2. If all taxes for the current year have not been assessed by the taxing authorities, the Company may not insure that taxes for the current year are paid.

B. ROLLBACK TAXES

1. In connection with the issuance or amendment (after issuance) of any Loan Policy or of any Loan Title Policy Binder on Interim Construction Loan (Interim Binder), and upon payment of the premium required under Rate Rule R-19, the words: "and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership", as contained in the standard tax exception may be deleted by:

   a. Deletion of such words upon the policy or binder form, either by checking the appropriate box on a Form T-2 or T-2R or by lining through the words or by producing an electronic form with the words; or

   b. By attachment to the policy or binder of endorsement form T-30.

The deletion of the above phrase from the standard tax exception is hereafter referred to as "insure or insuring against rollback taxes".

2. A Company may not insure against rollback taxes unless:

   c. The Company has satisfactory evidence in its file that the assessed taxes for the current year are not based on an agriculture or open-space valuation; or

   d. (i) The rollback taxes have been assessed by all of the taxing authorities;

     (ii) The rollback taxes are collected at closing by the Company, and

     (iii) The Company will pay the roll back taxes in the ordinary course of business.

C. TAXES NOT YET DUE AND PAYABLE

In connection with the issuance of a Loan Policy or Loan Title Policy on Interim Construction Loan (Interim Binder), upon payment of the premium in R-24, a Company may:

1. If satisfied that all taxes, standby fees and assessments by any taxing authority for the year of the issuance of the Loan Policy or Interim Binder are not yet due and payable, add the following after the standard tax exception: "Company insures that standby fees, taxes and assessments by any taxing authority for the year _____ are not yet due and payable." The addition may be made either by checking the appropriate box on a Form T-2 or by otherwise inserting the additional words into the form.

2. If a Company determines that some, but not all of the taxes are not yet due and payable, the Company may add the following after the standard tax exception: "Company insures that standby fees, taxes and assessments by any taxing authority for the year _____ are not yet due and payable, as to [insert name of applicable taxing authority/authorities] only."
AD VALOREM TAXES 101

Lisa M. Beville
Fidelity National Title Group
Dallas, Texas

Tax Humor
Coverage Provided by Title Policy

- **What is covered?**
  - Loss or damage for unpaid taxes for all years prior to the date of policy – except taxes removed from coverage by an exception.
  - Taxes on real property only.

- **What is removed from coverage by standard exception–Schedule B, Item 2:**
  - Standby fees, taxes and assessments by any taxing authority for the year ____ and subsequent years,
  - and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership,
  - but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code,
  - or because of improvements not assessed for a previous year.
Schedule B, Exception #5

- Standby fees, taxes and assessments by any taxing authority for the year ____ and subsequent years,

- This segment is an exception to the taxes the title agent is unwilling to insure.
- If the title agent is confident that all taxes are paid through the year 2013, the blank is completed with the year 2014.

Schedule B, Exception #5

- P-20. Standard Exception Relating to Taxes
  - A. Taxes for the Current Year
    1. the Company may not insure that taxes for the current tax year are paid, unless:
      a. Taxes are Paid or Collected at Closing, or
      b. Owner's Tax Reserve/Escrow Account With Payoff Lender,
         - satisfactory evidence in title company file, or
         - sufficient Indemnity executed by a responsible party, together with a deposit of funds in an amount sufficient to pay the assessed taxes.
    2. If all taxes for the current year have not been assessed by the taxing authorities, the Company may not insure that taxes for the current year are paid.
Schedule B, Exception #5

- and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership.

- This segment excepts and removes from coverage “rollback taxes” that may be triggered by a change of use or ownership of a property with an open space or ag use valuation.

- However, P-20 B allows the deletion of this clause from a Loan Policy or ICB (but not an OTP) under certain circumstances.

Rollback Tax Coverage – P-20 B.2.

2. A Company may not insure against rollback taxes unless:
   a. The Company has satisfactory evidence in its file that the assessed taxes for the current year are not based on an agriculture or open-space valuation; or
   b. (i) The rollback taxes have been assessed by all of the taxing authorities
      (ii) The rollback taxes are collected at closing by the Company, and
      (iii) The Company will pay the roll back taxes in the ordinary course of business.
Schedule B, Exception #5

- **but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code,**

  - This segment is an exception to the exception.
  - It tells the insured that they **are** covered with regard to any supplemental taxes resulting from a homestead, “over 65” and/or “disability” exemption that was applied to the property in previous years but for which the property was not entitled.

Schedule B, Exception #5

- If the tax office discovers that a property no longer qualifies for an exemption, the tax office may remove the exemption and issue a supplemental tax bill.
- Interest and penalties will also be due.
- The same is true for missed improvements.
Schedule B, Exception #5

- Because supplemental taxes are covered by the title policy, the escrow officer must review the tax certificate for exemptions that might lead to supplemental taxes.

- Red flags to look for are:
  - Seller on the contract is not the same person as on the tax certificate,
  - A relocation company is selling with exemptions shown on the tax certificate;
  - Sale out of an estate or by heirs with exemptions shown on the tax certificate.

Schedule B, Exception #5

- If the escrow officer believes that taxes for prior years were paid with a disallowed exemption, she must “blow the whistle,” or ask the seller to do so, and require that the supplemental taxes be paid in order to avoid a tax loss.
Coverage Provided by Title

- or because of improvements not assessed for a previous year.

- The assessor can go back 5 years and assess taxes on property that was omitted from the tax rolls.
- So, this last clause tells the insured that they are covered with regard to taxes for prior years resulting from “omitted improvements”.

Schedule B, Exception #5

- The following clause may be added to the tax exception in a Loan Policy or ICB to assure the lender that taxes for a specified year are not yet due and payable.
- P-20 (C) Amendment to add coverage:
  - Company insures that standby fees, taxes and assessments by any taxing authority for the year ________ are not yet due and payable.
Proration of Current Year’s Taxes

- At closing, Taxes must be divided between the buyer and the seller based on the fractional portion of the year that each owns the property.
- The seller doesn’t actually “pay” the taxes.

Prorations

- Normally, the buyer and seller will include provisions in the sales contract, allocating responsibility for the payment of taxes.
  - See paragraph 13 of the TREC One to Four Family Residential Contract (Resale) on page 4 of the paper; and
  - See additional provision re: Rollback Taxes at Paragraph 13 of the TREC Farm and Ranch Contract on page 5 of the paper.
Prorations

- If the tax bills have not been issued, the proration should be based on the valuation and tax rate that were used for the previous year.
- If improvements were added during the year, an updated valuation must be obtained for use in the proration.
- Any tax exemptions that were applicable to the seller but are not available to the buyer should also be taken into account.

Tax Proration Agreement

- A Tax Proration Agreement is normally signed by the buyer & seller at closing to disclose and acknowledge:
  - The source of the information used to make the proration calculation; and
  - The continuing liability of the parties for the payment of taxes on the property.
Additional Proration Considerations

- New Construction
- "New Split"
- Significant difference in assessed value and sales price or appraisal

Residence HS – General Criteria

- Entitlement to the "standard" homestead exemption is determined by the claimant's qualification on January 1.
- The exemption terminates on December 31 of the year of the homestead claimant’s death.
**Over 65 – General Criteria**

- Effective as of January 1 of the year in which the taxpayer qualifies, regardless of when that occurs during the year.
- This exemption remains on the property for the entire year of the claimant’s death.
- A surviving spouse who was 55 or older at the time of the death of the qualifying spouse may continue to claim the over 65 exemption in subsequent years.

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**Over 65 – General Criteria**

- Tax Code Section 26.10 (b) seems to indicate that the over 65 exemption will “drop off” only if the seller places an over 65 exemption on other property during the same calendar year.
- Section 26.10 (b) goes on to provide that, in that event, taxes on the property will be prorated by the taxing authority without the exemption(s) for the portion of the year following the termination of the age or disability exemption.
Over 65 Exemption

- Tax Code Section 26.112. indicates that, “Except as provided by Section 26.10 (b),” if a taxpayer qualifies for an over 65 or disabled exemption at any time during a tax year, the amount of the tax due is calculated as if the person qualified for the exemption on January 1 and continued to qualify for the remainder of the tax year.

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- Example: Sam owns Property #1, and he turned 65 on 2-14-13. But, on 11-12-13, he sold Property #1, and the next day he bought Property #2.
  - Property #1 – Sam turned 65 in calendar year 2013, so he will qualify for Over 65 exemption as of January 1, and that exemption will “drop off” on November 13.
  - Property #2 – Sam purchased the property when he was 65, so he qualifies for the Over 65 exemption for the entire year.
Over 65 Exemption

The dilemma for the closer is to know how their local taxing authorities deals with a situation like Sam’s.

- Many closers say that when an over 65 age taxpayer moves and places the over 65 exemption on their new home, the tax assessor will remove the over 65 exemption from the “old” home for the entire year, and allow the over 65 exemption on the “new” home for the entire year.

Over 65 Proration Examples

- There are 3 proration examples in your paper at pages 8 & 9. But, what it often boils down to for the closer is two options:
  - Option #1: Pro rate on the assumption that the over 65 exemption will terminate on the date of sale.
  - Option #2: Pro rate on the assumption that the exemption will not terminate upon the sale and require the Buyer to sign a hold harmless agreement.
Alternate Valuations

- **Market Value**
  - All property must be appraised and taxed at its market value as of January 1st.
  - MV = the price a willing buyer would pay a willing seller when there is no pressure on either party to act.

- **Agricultural Appraisal**
  - Land that is designated as “agricultural use” is appraised at its value based on the land’s capacity to produce agricultural products.

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Alternate Valuations

- When the special valuations are removed due to change of ownership or change in use of the property:
  - the property is re-assessed at market value,
  - the additional taxes that would have been due “but for” the ag-use valuation become due and payable, and
  - a lien attaches immediately to the land to secure the payment of the taxes.
Alternate Valuations

- Examples of transactions that may trigger rollback taxes:
  - Sale of property that has an ag-use or open-space exemption to a developer;
  - Sales of farm land from one farmer to another; and
  - Possibly, a home equity loan if the property owner has removed the ag exemption in anticipation of obtaining the loan.

Ag-use Valuation

- A tax lien for the “rollback taxes” attaches immediately upon the sale or change in use.
- However, any rollback taxes, interest and/or penalties are not assessed immediately and cannot be collected and paid until a bill is sent to the taxpayer.
If no bill has been issued for the rollbacks, P-20 prohibits title companies from escrowing and insure the lender against the rollback taxes.

The lender can require a borrower to establish separate escrow accounts to protect the lender from the risk.

As noted previously, P-20 B makes it clear that a title company can only provide “rollback coverage” if:

1. There was no ag exemption on the property to start with; or
2. The rollback taxes have been assessed and billed by all taxing entities and the title company collects the taxes at closing and will pay them in the “ordinary course of business.”
Title Insurance Concerns

- However, P-20 B.1. seems to indicate that rollback coverage can be provided at a later date by endorsement when any and all rollback taxes have been triggered, assessed, and paid in full.
- The first sentence of P-20 B.1. reads as follows: “In connection with the issuance or amendment (after issuance) of any Loan Policy. . . .”

Religious Organization Property

- Property owned by a religious organization (“R.O.”) is tax exempt.
- There may be an assessment and rollback when certain church property is sold.
  - Only applies to land which the church owns for the purpose of ‘expansion of the … place of worship or for construction of a new place of … worship.’
- The rollback period is 5 years per Tax Code Section 11.201.
Religious Organization Property

- When property shown as tax exempt is sold, the title company should verify that the seller was entitled to the exemption; if not, additional taxes could be due.
- Since the exemption terminates when a tax exempt entity sells, and not at the end of the year, the closer will normally prorate on that basis.

Religious Organization Property

- If the title company is required to pay taxes, they will contact the appraisal district and request a new bill containing the rollback taxes.
- Since the tax assessor cannot accept payment before a new bill is prepared, the title company may collect and escrow the additional tax amount until the taxing authority can issue the supplemental tax bill.
"Not Yet Due and Payable"

- Tax bills are supposed to go out by Oct. 1.
- So, from Jan. 1 to Sept. 30, the title company can normally provide the “not yet due and payable” coverage in a Loan Policy or ICB.
- From Oct. 1 – Dec. 31, the decision as to whether this coverage can be provided is made on a case by case basis.

Schedule B, Exception #5

- The following clause may be added to the tax exception in a Loan Policy or ICB to assure the lender that taxes for a specified year are not yet due and payable.
- P-20 (C) Amendment to add coverage:
  - *Company insures that standby fees, taxes and assessments by any taxing authority for the year ________ are not yet due and payable.*
“Not Yet Due and Payable”

- **Scenario #1**: Tax certificate shows taxes paid through 2012 and no tax bills for 2013 taxes have been mailed by any taxing authority:
  - Except to 2013 taxes on the policies; and
  - At the request of the lender, title company may add “not yet due and payable” language, completing the blank with the year 2013.

“Not Yet Due and Payable”

- **Scenario #2**: Tax certificate shows taxes paid through 2012 and some taxing authorities have mailed tax bills for 2013:
  - Except to 2013 on the policies;
  - At the request of the lender, add “not yet due and payable” language, insert 2013 in the blank, and modifying the language to indicate which taxes are “not yet due” in the following manner:
    - Company insures that standby fees, taxes and assessments by any taxing authority for the year 2013 are not yet due and payable, as to [insert name of entity that has not mailed bills] only.
**“Not Yet Due and Payable”**

- **Scenario #3** - Tax bills for 2013 taxes have been mailed by all taxing authorities and have been received by the taxpayer.
  1. Except to 2013 on the policies;
  2. Title company may not add “not yet due and payable” for 2013 because taxes for 2013 are due.
  3. Note: Some title companies allow “NYD&P” for 2014 at this point.

**Abatements of Taxes on Homestead**

- A taxpayer 65 or older may abate a suit to collect delinquent taxes.
- This does not constitute payment, and the tax lien remains on the property.
- Company will not insure that taxes have been paid if they have not in fact been paid.
### Statutory Changes

- “Texas Property Tax Law Changes 2013” was published in August of 2013 by the Texas Comptroller.
- This publication can be found at: [http://www.window.state.tx.us/taxinfo/proptax/](http://www.window.state.tx.us/taxinfo/proptax/).
- Selected portions of the publication are discussed in this presentation.

### Statutory Changes

- HB 242 added five notices to the list of property tax notices that must be delivered to a property owner by certified mail.
- Each of these notices have to do with special application, valuation and rollback issues involving ag use, open land and timber special use valuations.
Taxable Property & Exemptions

- HB 2913 amends Tax Code §11.13 (j) to add a beneficiary of a trust as one of the types of occupants who may qualify for a residence homestead exemption.

  *Effective Sept. 1, 2013, and except as otherwise expressly provided by a trust or a will creating a trust, the changes made by this bill apply to a trust existing or created on or after the effective date.*

- HB 97 ([Chapter 122, 83rd Regular Session](https://www.capitol.texas.gov/Docs/HJCR/83rd Requests/83rd Regular Session/) adds Tax Code §11.132 to require a property tax exemption equal to a disabled veteran’s disability rating (if the disability rating is <100%) if the HS was donated to the disabled veteran by a charitable organization at no cost to the veteran.

  The exemption is effective as of January 1 of the tax year in which the person qualifies for the exemption and applies to the entire tax year.
Taxable Property & Exemptions

- The exemption extends to the surviving spouse of a disabled veteran who died after qualifying for the exemption if:
  - the surviving spouse has not remarried and
  - the property was the homestead of the surviving spouse when the disabled veteran died.
- The exemption for the surviving spouse is the same percentage of the appraised value to which the disabled veteran exemption applied.

Taxable Property & Exemptions

- A surviving spouse who is qualified for the exemption is entitled to the exemption on a subsequent homestead in the same dollar amount received for the exemption on the former homestead if the surviving spouse has not remarried.
- Taxes will be prorated accordingly.
SB 163 (Chapter 138, 83rd Regular Session) adds Tax Code §11.132 to grant a total property tax exemption on the residence homestead of a surviving spouse of a member of the U.S. armed services who is killed in action if the surviving spouse has not remarried since the death of the armed services member.

The exemption is effective as of January 1 of the tax year in which the person qualifies for the exemption and applies to the entire tax year.

A surviving spouse who receives this exemption is entitled to receive an exemption on a subsequent homestead of the same dollar amount received for the exemption on the former homestead if the surviving spouse has not remarried.

Taxes will be prorated accordingly.

Tax Liens and Personal Liability

- HB 3613 amends Tax Code §32.015 (a) to provide that a tax lien is extinguished and the tax lien must be removed from the title records of a MHU when no suit to collect a personal property tax lien has been filed and the lien has been delinquent for more than four years.
- Corresponding changes were made to related sections of the Occupations Code.
- **Effective Sept. 1, 2013.**

Delinquency

- HB 1597 amends Tax Code §33.02 (a) to require that the tax collector enter into an installment agreement with a person who is delinquent in paying taxes on a residence homestead, if the person has not entered into an installment agreement in the preceding 24 months.
  - **Effective Sept. 1, 2013, and applies only to an installment agreement for the payment of delinquent taxes entered into on or after the effective date.**
Delinquency

- HB 1597 also adds Property Code §51.0011 to provide that notwithstanding any agreement to the contrary, a debtor is not in default under a deed of trust or other contract lien on real property used as the debtor’s residence for the delinquent payment of property taxes if two conditions are met:
  1. the debtor gave notice to the mortgage servicer of the intent to enter into an installment agreement with the taxing unit at least 10 days before entering into the agreement, and
  2. the property is protected from seizure and sale and a suit may not be filed to collect a delinquent tax on the property because the debtor is current in all obligations under the installment agreement.

Delinquency

HB 1913 amends current law relating to the waiver of penalties and interest on certain delinquent ad valorem taxes by amending Tax Code §33.011 (d) and adding Subsections (i) and (j).

New §33.011(i) authorizes a taxing unit to waive penalties and interest on a delinquent tax that relates to a date preceding the date on which the property owner acquired the property if:

1. the property owner or another person liable for the tax pays the tax not later than the 181st day after the date the property owner receives notice of the delinquent tax; and

2. the delinquency is the result of taxes imposed on omitted property, erroneously exempted property, or property added to the appraisal roll under a different account number or parcel when the property was owned by a prior owner.
Delinquency

- New §33.011(j) authorizes the taxing unit to waive penalties and interest on a delinquent tax if the taxpayer submits evidence sufficient to show that the taxpayer delivered payment for the tax before the delinquency date to the U.S. Postal Service for delivery by mail, but an act or omission of the postal service resulted in the taxpayer’s payment being postmarked after the delinquency date.

Delinquency

- A request for a waiver of penalties and interest under either subsection (i) or (j) must be made before the 181st day after the date the property owner making the request receives notice of the delinquent tax.