TEXAS CIVIL JUSTICE LEAGUE

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To: TCJL Board of Directors

From: George Christian

Date: April 17, 2018

Re: *EXLP Leasing, LLC and EES Leasing, LLC v. Galveston Central Appraisal District*

As you may be aware, on March 2 the Texas Supreme Court issued an opinion holding that Article VIII, §1(b), Texas Constitution, does *not* require the Legislature to tax property at market value. The Court held that even though the Legislature designed the Property Tax Code based on market value, nothing in the Constitution compels that result. The Court held further that the Constitution gives the Legislature broad power not only to determine how property should be valued for taxation, but also authorizes the Legislature to devise classes of property for differing tax treatment, provided such classification is not "unreasonable, arbitrary, or capricious." Finally, the Court held that the equal and uniform provision in Article VIII, §1(a), only applies to property within a class, not between classes.

The case arose from 2011 legislation (HB 2476) that prescribed a valuation method for heavy equipment inventory that included leased or rented natural gas compressors and similar equipment. HB 2476 expanded previous legislation that established similar methodology for a dealer's motor vehicle inventory, inventories of boats and outboard motors, manufactured housing, and heavy equipment held for sale. In more than 200 lawsuits across the state, appraisal districts challenged two aspects of the law, the situs provision and the valuation methodology. The districts further alleged that the statute treated compressors owned by the taxpayer differently than leased compressors, producing a dramatically lower value for leased compressors (the statute limits the taxable value of a leased inventory of compressors to 1/12 of the monthly lease amount). Several of the cases were consolidated into the Galveston CAD for purposes of appeal to the Supreme Court.

This opinion is troubling not because it upholds HB 2476 (the court could have done that without ruling that the Constitution does not require market value), but that the language in the opinion is not limited to an inventory of heavy equipment, inventory in general, or any other type or class of real or business personal property. The potential breadth of the opinion opens up the very real possibility that the Legislature could proceed on a classification scheme without a constitutional amendment. In short, the unhappy prospect of a split roll has become much more likely. For example, instead of arguing about appraisal caps, the Legislature could simply require that residential homesteads be valued according to the cost method, rather than market sales. If the Legislature did this, it would dramatically reduce home values at the expense of other property on the roll. Such an approach would be extremely difficult for members to vote against, and groups like the realtors and homebuilders could see it as a boon for home ownership. The only thing that may hold the Legislature back would be the cost to the school finance system, but lowering home values could become part of a grand bargain to lower taxes on homeowners, reduce recapture, and "fix" school finance. This is definitely something that TCJL members need to pay attention to, especially when candidates from both parties cite rising appraisals as one of the two or three top issues in their districts.

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