

**TEXAS AGRICULTURAL EXPERIMENT STATION**

A. B. CONNER, Director  
College Station, Texas

BULLETIN NO. 645

JANUARY 1944

**A SUMMARY AND APPRAISAL OF TEXAS  
REAL PROPERTY TAX LAWS**

W. ROBERT PARKS, L. P. GABBARD,  
and H. C. BRADSHAW

Division of Farm and Ranch Economics,  
Bureau of Agricultural Economics, U. S.  
Department of Agriculture, Cooperating.

LIBRARY  
Agricultural & Mechanical College of Texas  
College Station, Texas



AGRICULTURAL AND MECHANICAL COLLEGE OF TEXAS

F. C. BOLTON, Acting President

[Blank Page in Original Bulletin]

Despite the attention devoted to the general property tax over a long period of years, it is still exceedingly difficult to determine exactly what the law is. The newly elected official or the interested citizen finds that "the law" is embodied in the Constitution, the statutes, the opinions of the Attorney General and the decisions of the State and Federal Courts. It is, therefore, not surprising to find that officials and citizens alike hold widely differing views as to what the law requires as well as what the law permits.

This bulletin is designed to meet a long standing need for a brief, easily understood outline of the laws governing the real property tax in Texas. If you desire to obtain more detailed information, you may do so by consulting the references listed in the text.

Following the outline of the law, a final section is devoted to a discussion of the defects of the existing system as well as the means through which these defects may be overcome.

## CONTENTS

	Page
Introduction.....	5
Property Subject to Tax.....	5
Special Types of Property Included.....	6
Severed Mineral Rights.....	6
Insurance Companies, Banks, and Public Utilities.....	6
Property Exempt from Taxation.....	6
Constitutional and Statutory Exemptions.....	6
"Administrative Exemptions".....	7
Taxing Units and Tax Officials.....	7
Districts Permitted Assessor-Collectors.....	7
County as Agent for Other Tax Districts.....	8
State and County Tax Officials.....	8
County Assessor-Collectors and Deputies.....	8
County Commissioners Court.....	9
State Comptroller of Public Accounts.....	9
Assessment.....	10
Rendition: Taxpayer's Function.....	10
Rendition: Assessor's Functions.....	10
Assessor's Legal Obligations.....	10
Equalization, Supervision, and Review of Assessments.....	11
Function of Commissioners Court.....	11
Correction of Errors.....	11
Review of Valuation.....	12
Land Classification.....	13
Preparation of Tax Rolls.....	13
Review of Assessments by Courts of Law.....	14
Establishment of Tax Rates: Tax Limitations.....	15
State.....	15
County.....	15
School Districts.....	15
Restrictions on Tax Limitations.....	15
Payment of Current Taxes.....	16
Payment Procedure.....	16
Collection Dates.....	16
Discounts for Prompt Payment.....	16
Tax Receipts.....	16
Protection of Funds Collected.....	17
Bonding of Collector.....	17
Reports and Deposits of Funds.....	17
Protection of Taxpayer's Rights: Taxpayer's Suits and Remedies.....	18
Enjoining Collection of Tax.....	18
Payment and Recovery of Back Taxes.....	18
Collection of Delinquent Taxes.....	18
Penalties for Tax Delinquency.....	18
Establishment and Transfer of Tax Liens.....	19
Suits to Foreclose Tax Liens.....	20
Notification of Delinquency.....	20
Employment of Delinquent Tax Contractors.....	20
Institution of Suit by Taxing Unit.....	21
Citation of Defendant Parties.....	21
Defense Against Tax Suits.....	22
Judgment, Order of Sale.....	22
Tax Sales.....	22
Redemption of Property Sold for Taxes.....	23
Resale of Property Bid Off to Taxing Unit.....	24
Validation of Tax Titles.....	25
Grounds for Defeating Purchaser's Title.....	25
Limitations on Title Conveyed by Tax Deed.....	26
Statute of Limitation.....	26
Four-year Statute.....	26
Limitation Through "Peaceable and Adverse" Possession.....	26
Compensation to Defeated Tax Title Holder.....	27
Discussion of Real Property Laws With Suggestions for Improvement.....	28
Assessment and Equalization.....	28
Committees of Citizens Can Assist.....	29
More Equitable Assessments Needed.....	30
The County as a Unit for Assessment Purposes.....	31
State Agency Should Assess Utilities.....	33
State Should Equalize Assessments Among Counties.....	33
Collection of Real Property Taxes.....	35
Collection Procedures Affect Equality of Assessments.....	36
Disposal of Tax Delinquent Lands.....	36
Tax Foreclosure Suits and Clearance of Tax Titles.....	36
Recodification of Tax Laws.....	37

# A SUMMARY AND APPRAISAL OF TEXAS REAL PROPERTY TAX LAWS

By

W. Robert Parks,<sup>1</sup> L. P. Gabbard,<sup>2</sup>

and

H. C. Bradshaw<sup>3</sup>

The general property tax is the chief source of financial support for local units of government in Texas, and in addition supplied about 12 per cent of all State tax revenues in 1942. According to the State Auditor and Efficiency Expert, the total ad valorem or general property tax collections of all units of government in Texas amounted to \$155,321,637 in 1942. This sum is equal to \$24 for each man, woman, and child in the state, based on a 1940 population of 6,414,482.

One of the most important classes of property upon which the tax is levied is farm and ranch lands. The average tax per acre on farm and ranch lands has risen from 8.6 cents in 1913 to 17.9 in 1942, an increase of 108 per cent.

Despite the attention devoted to the general property tax over a long period of years, it is still exceedingly difficult to determine exactly what the law is. The newly elected official or the interested citizen finds that "the law" is embodied in the Constitution, the statutes, the opinions of the Attorney General and the decisions of the State and Federal Courts. It is, therefore, not surprising to find that officials and citizens alike hold widely differing views as to what the law requires as well as what the law permits.

With few exceptions the section which follows immediately is devoted to an outline of the laws governing the administration of real property taxes in Texas. Comments are made only when they are necessary as a means of explaining the law itself. In the final section of this bulletin, the authors present their ideas as to the good and bad features of the law, as well as the administration of the law, and call attention to changes which should be made in order to improve the administration of real property taxes in Texas.

The law reported in this bulletin is that in effect at the end of the calendar year 1941, including the statutes enacted by the 1941 legislature. Citations, unless otherwise indicated, are to **Vernon's Texas Statutes**.

## PROPERTY SUBJECT TO TAX

For the purpose of taxation, real property is construed to include the land itself, "and all buildings, structures and improvement or other fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same." All real property in Texas is subject to the ad valorem general property tax unless specifically exempted.

<sup>1</sup>Legislative Planning Analyst, Division of Land Economics, U.S.D.A.

<sup>2</sup>Chief, Division of Farm and Ranch Economics, Texas Agricultural Experiment Station.

<sup>3</sup>Economist in Farm Taxation, Division of Farm and Ranch Economics, Texas Agricultural Experiment Station.

<sup>4</sup>Art. 7146.

### Special Types of Property Included

Certain types of property, which in some states are set apart from general property and accorded special tax treatment, are specifically included under the general property tax in Texas.

#### Severed Mineral Rights

Mineral and mineral rights are treated as other real property. Ordinarily real property is taxed as a unit. However, in the case of mineral-bearing lands "where there have been severances by conveyance, exception or reservation, so that one portion of the realty belongs to one person and other portions to others, each owner should pay taxes under proper assessment against him of the portion owned by him. The fact that a portion may consist of minerals or of fractional interest therein makes no difference."<sup>5</sup> Royalty interests in oil and gas are taxable to the owner of the interest as a separate item of real property. Likewise, an oil and gas lease, regardless of the particular form of the granting or habendum clause, is taxable to the lessee as real property.<sup>6</sup>

Practice is at variance with the law, however, in the taxation of severed mineral rights. Assessor-collectors usually make no attempt to assess unproductive leases and royalties. In many cases, however, the owner will render this property for taxation at a very low figure, in order to keep his property on the tax rolls and preserve a clear title in case his interest should become productive in the future.

#### Insurance Companies, Banks, and Public Utilities

The real estate of domestic insurance companies is taxable like all other real property.<sup>7</sup> Real and personal property of a bank is taxable in the county in which the bank is located and must be rendered to the assessor of that county.<sup>8</sup> The real and personal property of railroad, telegraph, and turnpike companies must be listed in the county where they are located and are taxable by the county.<sup>9</sup> Franchises and easements to use streets for the purpose of running street cars, railroad trains, or the erection of transmission lines are real property and, as such, subject to taxation.<sup>10</sup>

#### Property Exempt from Taxation

The Texas Constitution provides for equal and uniform taxation of all property within the State.<sup>11</sup> Constitutional requirements in several States have been interpreted so as to hinder, or positively to preclude, classification or exemption of any property. However, Article 8, Sec. 2, of the Texas Constitution specifically provides for exemption of certain properties.

#### Constitutional and Statutory Exemptions

The Constitution (Article 8) provides that "three thousand dollars of the assessed value of all residence homesteads as now defined by law shall be exempt from all taxation for all State purposes." No more than 200

<sup>5</sup>Hager v. Stakes, 116 Tex. 453.

<sup>6</sup>Summers, W. L., *The Law of Oil and Gas*, 1938, Vol. 4, pp. 215, 216, 218.

<sup>7</sup>Art. 4754.

<sup>8</sup>Arts. 7165, 7166.

<sup>9</sup>Art. 7159.

<sup>10</sup>Texas and P. R. Co. v. City of El Paso, 126 Tex. 86, 85 S. W. (2d) 245 (1935).

<sup>11</sup>Constitution, Art. 8.

acres, however, can be included in a homestead.<sup>12</sup> The exemption extends only to State taxes. The legislature, in addition, has prescribed the following, among others: All property belonging exclusively to the United States, the State, or any political subdivision of the State, and used exclusively for "public purposes," with the exception of certain specific types of property designated by statute and court decisions; lands and buildings devoted entirely to education, charity and religion; lands and buildings used exclusively to teach and to demonstrate, without charge, modern and scientific methods of farming; non-profit cemeteries; non-profit art galleries and other property of Societies of Fine Arts; property of Boy Scouts; property of Texas Federation of Women's Clubs; and State office buildings of the Texas Congress of Parents and Teachers.<sup>13</sup>

#### "Administrative Exemptions"

The courts have strictly construed the exemption statutes, but they are not the only public officers engaged in the interpretation of these statutes. Day-to-day practice on the part of the assessor-collector is no less an interpretation of the law than a formal decision handed down by the courts. County assessor-collectors are generally liberal in their interpretation of the homestead exemption statute. Seldom have municipally owned power and gas lines serving adjoining rural areas been assessed by county assessors. Yet it is the opinion of the Texas Attorney General that these municipal enterprises serving other jurisdictions for a profit are not "public property used for public purposes" and are therefore taxable.<sup>14</sup> Although REA lines are not exempt from taxation under Texas laws, assessor-collectors in several counties do not attempt to tax these lines, and in others tax them only nominally—perhaps because they feel that the REA is a socially beneficial enterprise that should not be burdened by taxes in its infancy.

The liberal granting of "administrative exemptions" may make even more serious inroads into the property tax base than have the generously bestowed statutory exemptions. It is unjust, however, to criticize the liberality of the assessor-collector too severely, for the exemption statutes fail to give him sufficiently definitive methods for determining property entitled to exemption.

### TAXING UNITS AND TAX OFFICIALS

Real property is levied upon in Texas to help support all levels of government within the State and to finance a wide variety of public undertakings. State, counties, cities, and towns all depend, in varying degrees, upon the real property tax to finance their governmental functions. In addition, such special undertakings as education, drainage, water control, water improvement, and so on, are financed by the property tax or special assessments on real property.

#### Districts Permitted Assessor-Collectors

Counties, cities, and towns have the power to assess property situated within their boundaries.<sup>15</sup> Independent school districts are authorized to

<sup>12</sup>Art. 3833.

<sup>13</sup>Art. 7150, 7150d.

<sup>14</sup>Attorney General Opinion, No. 0-2205, June 1940.

<sup>15</sup>Arts. 7245 and 7246 give such authority to counties; Art. 977 to cities; and Arts. 1147 and 1161 to towns.

maintain their own assessor and collector.<sup>16</sup> Rural high schools, except in counties with a population between 8,500 and 8,700, may assess their own taxes; but the county collector collects all such taxes.<sup>17</sup> Taxes for the county unit school system, under which all schools are combined in a single system, are assessed and collected by an assessor-collector appointed by the county board of education, except in such counties having a population between 3,960 and 4,000.<sup>18</sup> Drainage districts may also have their own assessor-collector, if two-thirds of the persons within the district express such desire in an election.<sup>19</sup> Water control and improvement districts,<sup>20</sup> water improvement districts,<sup>21</sup> water power control districts,<sup>22</sup> fresh water supply districts,<sup>23</sup> all may have their own tax officials.

### County as Agent for Other Tax Districts

The county levies and collects a county tax upon all real property situated within its borders, and serves also as agent for levying and collecting the State property tax. In addition, the county assessor-collector acts for certain districts which are specially prohibited from assessing and collecting taxes. These include common school districts,<sup>24</sup> levee improvement districts levying real property tax,<sup>25</sup> certain navigation districts,<sup>26</sup> and water control and preservation districts.<sup>27</sup> Moreover, incorporated cities, towns or villages, drainage districts, water improvement districts, water control and improvement districts, or navigation districts, by ordinance or proper resolution of their governing boards, may avail themselves of the services of county tax assessors and collectors when the county commissioners court has made the assessor-collector's services available to the districts. For administering the taxes for one of the above districts the assessor-collector receives the compensation agreed upon by the governing body of the district and the commissioners court, which cannot exceed 1 per cent of taxes collected for the district.<sup>28</sup>

### State and County Tax Officials

The responsibility for administering the county tax system is divided between taxpayer, assessor-collector, commissioners court, and the State comptroller.

### County Assessor-Collectors and Deputies

The assessor-collector, given the dual task of assessing and collecting taxes, is elected for a two-year term at the regular biennial elections.<sup>29</sup> In counties with a population of less than 10,000 the sheriff is given the ad-

<sup>16</sup>Art. 2783b, 2783c.

<sup>17</sup>Art. 2922 .

<sup>18</sup>Art. 2724.

<sup>19</sup>Art. 8145.

<sup>20</sup>Art. 7882-3.

<sup>21</sup>Art. 7642.

<sup>22</sup>Art. 7807d.

<sup>23</sup>Organized under Art. 8263e-1.

<sup>24</sup>Arts. 2784, 2795.

<sup>25</sup>Arts. 7998, 8015.

<sup>26</sup>Those organized under Arts. 8198 and 8263h-1.

<sup>27</sup>Arts. 7871, 7873.

<sup>28</sup>Supp., Art. 1042b, as amended by ch. 235, *General and Special Laws of Texas, 1941*. Older statutes also authorize certain taxing units to transfer their assessment and collection functions to the county. Art. 7359 relates to cities, towns and villages; Art. 2792 applies to independent school districts; and 7880 relates to water control and improvement districts.

<sup>29</sup>Constitution, Art. 8, Sec. 16; *Vernon's Texas Statutes (1936)*, Art. 7245.



ditional duties of assessing and collecting taxes,<sup>30</sup> although there is no similarity between keeping the peace and assessing and collecting taxes.

To aid him in his duties, the assessor-collector may appoint deputies, with the approval of the commissioners court. For example, he may, in counties with a population of 355,000 or more, appoint technicians with special training in evaluating oil and mineral-bearing lands, industrial and manufacturing establishments, and so on.<sup>31</sup> In other counties commissioners courts sometimes contract with valuation firms to assess oil, utility and similar property. The assessor-collector may appoint deputies to aid him in collecting taxes in the larger cities and towns.<sup>32</sup> To collect delinquent taxes, tax contracts may be let to private attorneys by the commissioners court with the approval of the State comptroller.<sup>33</sup>

Prior to 1935, all county assessors and collectors were paid on a fee basis. In that year an amendment to the Constitution (Art. 16, Sec. 61) provided that county officers in all counties having a population of 20,000 or more be compensated on a salary basis. In counties with a population of less than 20,000 the commissioners courts were empowered to determine whether county officers would be paid on a fee or salary basis. (The law growing out of this constitutional amendment is embodied in Art. 3912e).  
**County Commissioners Court**

The work of the assessor-collector is reviewed by the commissioners court of the county. Sitting as the board of equalization, the court examines, corrects, and approves the assessor's lists, and raises and lowers individual assessments. The commissioners court also examines the collection records. Only after his books have been approved by the commissioners court can the assessor-collector receive his compensation.

#### **State Comptroller of Public Accounts<sup>34</sup>**

Although Texas levies a State property tax, it has no State tax commission. In the absence of a separate tax agency, the comptroller acts for the State. The comptroller's function in connection with real property taxation is chiefly the standardization of procedure among the various taxing units. To carry out this duty he is given power to prescribe and supply certain forms to be used in the assessment and collection process. From time to time, the comptroller issues a manual, entitled **Instructions for Assessors**, which furnishes assessors with statutory requirements and the comptroller's rules and regulations for assessing and collecting property tax. (Upon request, the comptroller will interpret tax statutes for the assessor-collectors.) The 14 State ad valorem tax auditors annually check county accounts and give advice to those officials seeking assistance. The comptroller's office has no authority to assess special types of real property which are especially difficult to value, such as oil or mineral-bearing lands, public utilities, and so on. Nor does the comptroller's office have the power to equalize assessments among the counties, many of which consistently undervalue the property within their borders in order to lessen their tax contribution to the State.

<sup>30</sup>Constitution, Art. 8, Sec. 16; Vernon's Texas Statutes (1936), Art. 7246a.

<sup>31</sup>Supp., Art. 7252.

<sup>32</sup>Art. 7256.

<sup>33</sup>Arts. 7335, 7335a.

<sup>34</sup>See pp. 27-28 for fuller discussion of comptroller's supervisory activities.

These, in brief, are the officials who administer the county and State property tax system. Their functions and powers will be outlined in more detail in the following discussion of the tax machinery in motion.

### ASSESSMENT

"The word 'assessment' as here used (in the Constitution) . . . evidently means the sum which has been ascertained as the apportioned part of the tax to be charged against the particular piece of property, but under our Constitution and the provisions of our statute, the word embraces more than simply the amount and includes the procedure on the part of the officials by which property is listed, valued, and finally the pro rata declared." This comprehensive view of the term "assessment," expressed by the Texas Supreme Court in *State v. Farmer*,<sup>35</sup> will be taken in the following discussion.

#### Rendition: Taxpayer's Function

Between January 1 and April 30 of each year every taxpayer is required to render under oath all property held or owned by him on January 1.<sup>36</sup> This is done at the request of the assessor-collector. The three essential things required in the listing of property are: (1) name of owner, (2) description of property, and (3) value of property. More fully, the statement must contain the abstract number, survey number, certificate number, name of the original grantee, number of acres, and value of property. City and town property must be listed by lot and block.<sup>37</sup>

In the absence of fraud or mistake, a rendition of property is binding on the owner. For example, an owner may not complain of an insufficient description of his property on the tax rolls if it corresponds with the description furnished by himself. Nor may he complain that individual tracts of land were not separately assessed, if he has rendered them as a single tract.<sup>38</sup> Even if the property is listed after April 30, if the assessor has failed to administer the oath, or if the person rendering property has failed to subscribe to the list, the assessment shall be binding "as if made in strict pursuance of law."<sup>39</sup>

#### Rendition: Assessor's Functions

Voluntary rendition is not as automatic a process as the statutes say. The functions and powers of the assessor are designed to force the taxpayer to render his property and to place limitations on his discretion in valuing it.

#### Assessor's Legal Obligations

Each year, between January 1 and April 30, the assessor is to call upon every property owner in his county and to require the owner to make a valuation of his property, under an oath administered by the assessor.<sup>40</sup> Moreover, the assessor, in his oath of office, swears to "personally view and inspect all the real estate and improvements thereon subject to taxation, lying in said county, that may be rendered to me for taxation . . .

<sup>35</sup>*State v. Farmer*, 94 Tex. 232, 59 S. W. 541 (1900).

<sup>36</sup>Arts. 7151, 7161.

<sup>37</sup>Arts. 7162, 7164.

<sup>38</sup>*French Independent School District v. Howth*, 134 Tex. 211, 134 S. W. (2d 1036 (1940)).

<sup>39</sup>Art. 7190.

<sup>40</sup>Art. 7189. Power to administer oath given in Art. 7184.

and to the best of my ability make an estimate of the cash value, the market value of such property."<sup>41</sup> In other words, the assessor is oath-bound to inspect property personally and make an independent judgment as to its value.<sup>42</sup>

If the assessor is satisfied with the valuation set by the property owner, he enters it upon his lists. However, if in his judgment the valuation is below a reasonable cash market value or the intrinsic value of property which has no market value, he must submit to the Board of Equalization not only the valuation rendered by the owner himself but also his own estimation of the value of the property.<sup>43</sup>

If the assessor sees the individual and is unable to obtain a statement as to the value of property, he has the power and duty of assessing it at its "full and true value," which assessment "shall be as valid and binding as if such property had been rendered by the . . . owner thereof."<sup>44</sup>

Each assessor is required to make an abstract of all the blocks or subdivisions of each of the cities, towns or villages of his county, in a book furnished him by the commissioners court for that purpose. Diagrams of each block or subdivision, giving number of each lot, must be included in the abstract.<sup>45</sup> If any part of the land shown in the assessor's abstract is left unrendered, he has the power to assess it to the owner, if known, or if unknown, then to "unknown owners." He must also place a value on the property.<sup>46</sup> In addition to the duty of listing all property unrendered in the current year, the assessor also has the power to assess all real property which has not been assessed or rendered for taxation for any year since 1919.<sup>47</sup>

### Equalization, Supervision, and Review of Assessments

#### Function of Commissioners Court

The commissioners court sits as a Board of Equalization on the second Monday in May, or as soon thereafter as possible before June 1.<sup>48</sup> As the Board of Equalization, it receives all of the books of the assessor for inspection, correction, equalization, and approval.

**Correction of Errors.** The Board has the supervisory power of correcting errors of assessment.<sup>49</sup> For example, erroneous descriptions of property, through fault of either owner or assessor, or valuations placed on the roll by the assessor without authority, are to be corrected by the Board. The judiciary has ruled, however, that adding to or eliminating property appearing on the rolls is not the correction of an error within the meaning of the statute.<sup>50</sup> The correct procedure is for the Board to direct the assessor to make necessary eliminations or additions.

<sup>41</sup>Art. 7214.

<sup>42</sup>Although Articles 7189, 7214, and 7191 place upon the assessor the positive obligation of calling upon the property owner and inspecting his property, it would seem from Art. 7185 that the legal requirements have been fulfilled so far as the owner is concerned when he renders his property for taxation under oath before "any officer qualified to administer same and forwards list to assessor of the county where property is taxable."

<sup>43</sup>Art. 7211.

<sup>44</sup>Art. 7193.

<sup>45</sup>Art. 7197.

<sup>46</sup>Art. 7198.

<sup>47</sup>Arts. 7207, 7336f.

<sup>48</sup>Art. 7206.

<sup>49</sup>Art. 7206.

<sup>50</sup>Galveston County v. Galveston Gas Co., 72 Tex. 509, 10 S. W. 583 (1889).

The Board has authority to compel the assessor to carry out his duties honestly and correctly. To insure that "all surveys and parts of surveys of lands in his county, and all the lots and blocks of the cities or towns of his county are rendered for taxation," the assessor must secure from the Board a certificate stating this to be true, before the commissioners court issues a draft on the county treasury and the Comptroller on the State Treasury in payment for assessing State and county taxes.<sup>51</sup> If the Board finds the assessor's books "erroneous and imperfect," it is to order them corrected either by the assessor or a second person. If another person corrects the assessor's lists, the Board is to deduct as much as it deems proper from the assessor's compensation to pay the second person.<sup>52</sup> If the assessor knowingly fails to fix the value of property rendered for taxes at the value set by the Board, his failure constitutes malfeasance and is cause for his removal from office. The removal suit is to be filed by the Attorney General and is to be conducted in the district court of the county of the officer's residence.<sup>53</sup>

**Review of Valuation.** The Board of Equalization has the more subjective function of determining whether property has been correctly evaluated and of raising or lowering the valuations on the assessor's rolls. Members of the commissioners court, when acting as a Board of Equalization, swear "not to allow any taxable property to stand assessed on the tax rolls . . . at any sum which I believe to be less than its true market value or if it has no market value, then its real value" . . .<sup>54</sup> In carrying out this function, the Board must call before it persons who best know the value of the property in question.<sup>55</sup> In determining the valuation, the Board is to consider what the property could have sold for at any time within 6 months previous to January 1 of the year for which the property was rendered.<sup>56</sup> Whenever the Board finds it necessary to raise the assessment of an individual's property, it must order the county clerk to notify the renderer in writing that it desires to raise the value of his property. Moreover, 10 days before the convening of the Board, the county clerk is to publish in a county newspaper the date of the meeting, or is to have notices to this effect printed and posted.<sup>57</sup>

In 1939, the commissioners court acting in the capacity of a Board of Equalization was given the power to lower the assessed valuation of property, regardless of a previous fixing of values, and without a separate valuation by the assessor. The Board has the duty of lowering valuations: (1) if property, rendered or unrendered, current or delinquent, appears to have been assessed at a valuation greater than that placed upon other property in such locality of similar value, or out of proportion to the taxable value of such property; (2) if, because of the depreciation in the value of certain property, an adjustment of assessed value would be "equitable and expedient;" (3) if, because of long delinquency, the accumulated delinquent taxes with penalties, interest and cost make their collection inequitable and confiscatory. To have the original assessment re-

---

<sup>51</sup>Art. 7201.

<sup>52</sup>Art. 7225.

<sup>53</sup>Art. 7216.

<sup>54</sup>Art. 7215.

<sup>55</sup>Art. 7212.

<sup>56</sup>Art. 7211.

<sup>57</sup>Art. 7206.

opened and reconsidered by the Board, the owner or his agent need only make application to the Board. The Board is to hear testimony from "competent and disinterested witnesses and may make such personal and independent investigations as seem necessary and expedient."<sup>58</sup>

The above statute providing that "any previous fixing of values of such property of the year involved shall not be *res adjudicata* as to the particular case" is of doubtful constitutionality. Although the courts have not decided upon its constitutionality, the Attorney General has ruled that the statute is unconstitutional, because it gives the commissioners court power to scale down any value fixed in years gone by. (Opinion No. 930, 1939). The effect of this statute would be to deprive the valuations annually made by the Board of Equalization of any finality whatever. Under this statute an assessment would never be final. It, therefore, contravenes the Constitution, which clearly contemplates that each year's assessment should have sufficient finality and definiteness to support action to collect taxes based upon it. Although the Attorney General adjudged this particular statute invalid because of its broad scope, he was of the opinion that the Constitution would not "prevent the legislature's investing such Boards of Equalization with power to review their own findings, if such power of review is kept within due bounds."

**Land Classification.** To facilitate an equitable distribution of the tax burden, the Board of Equalization has the duty of classifying improved and unimproved land into three classes. The first class of improved land is to include "the better quality of lands and improvements, the second to embrace the second quality of lands and improvements, and the third class to embrace lands of but small value or inferior improvements." Similar classifications are to be used for unimproved land.<sup>59</sup> "The classification statute has been said to be mandatory; but in well considered decisions it has been held that the omission of the Board to classify lands as prescribed is not of itself ground for holding that a raising of the owner's rendered value was illegal."<sup>60</sup>

In short, the Board of Equalization is the review and control body on the county level. Not only does it have the duty of ascertaining whether the assessor-collector has kept his books honestly and correctly, but it has the difficult task of eliminating assessment inequalities as between classes of property and between properties within the same class. Due to the fact that the rendition submitted by the taxpayer is usually not overtly questioned by the assessor, the equity and justness of the whole tax system depends upon the actions of the Board of Equalization.

**Preparation of Tax Rolls.** When his lists have been inspected, corrected, and approved by the Board of Equalization, the assessor has the task of preparing rolls of both rendered and unrendered property, in accordance with forms furnished by the Comptroller.<sup>61</sup> Having completed the rolls, and having signed an oath as to his attempt to get a correct and full list of real and personal property, the assessor is required to return them once again to the Board, on or before August 1.<sup>62</sup> After the Board of

<sup>58</sup>Supp., Art. 7345d.

<sup>59</sup>Ibid., Art. 7206.

<sup>60</sup>Texas Jurisprudence, Vol. 40, pp. 134-135.

<sup>61</sup>Art. 7218.

<sup>62</sup>Art. 7222.

Equalization has examined the rolls, prepared in triplicate, the copies are distributed to the collector of taxes, the Comptroller, and the county clerk, who files his copy for public inspection.<sup>63</sup>

If, after the regular rolls have been prepared, it comes to the collector's attention that certain taxable property does not appear on the rolls, he must assess such property and enter it upon a supplemental tax roll, made by him. The supplemental roll is to be scrutinized by the Board of Equalization, and triplicate copies are to be prepared and distributed in the same manner as in the regular roll.<sup>64</sup>

### Review of Assessments by Courts of Law

The Board of Equalization is a quasi-judicial body. Therefore, the value it fixes on taxable property is *res adjudicata* and is not reviewable by the courts on the mere claim that it is excessive.<sup>65</sup>

Although the general principle is well established that findings of fact by the Board of Equalization are final, the court will review cases in which an error of law was allegedly committed. An error of law may exist when: (1) the Board acted without jurisdiction; (2) an illegal procedure, such as the adoption of a wrong method or principle of establishing value was followed; (3) the property in question was fraudulently overassessed in comparison with other property in the taxing district.<sup>66</sup>

The taxpayer seeking intervention by the court generally charges that the valuation was "arbitrary, discriminative and fraudulent." Through constant usage these terms have become so nearly synonymous that it would be impracticable, if not impossible, to attempt completely to distinguish them. "Fraudulent," of course, implies a dishonest motive. Therefore, the intention of the Board is an important factor. If, through a conscious failure on the part of the Board to exercise its discretion impartially, an excessive valuation is made, the assessment may be annulled. Strictly speaking, any method of assessment which results in discrimination is contrary to the "equality and uniformity" clause of the Constitution. To prove discrimination, however, it is necessary to show that other property was systematically undervalued, causing the plaintiff to bear a disproportionate share of the tax load. Arbitrariness, regardless of fraudulent intent, is ground for review and annulment of an assessment. Examples of arbitrary action on the part of the Board include the rejection of pertinent evidence and failure to give taxpayer an opportunity to be heard and to submit evidence against an assessment increase.<sup>67</sup>

A survey of pertinent decisions justifies the conclusion that the court may review the Board of Equalization's work upon a number of grounds. Precedent can be easily mustered for reviewing the case or refusing to do so.

<sup>63</sup>Arts. 7219, 7220, 7224.

<sup>64</sup>Art. 7209.

<sup>65</sup>Texas & P. Ry. Co. v. City of El Paso, 85 S. W. (2d) 245, (1935).

<sup>66</sup>Hinkson v. Lorenzo Independent School District (Civ. App.) 109 S. W. (2d) 1008. See also Galveston County v. Galveston Gas Co., 72 Tex. 509, 10 S. W. 583, (1889); Rowland v. City of Tyler, (Com. App.) 5 S. W. (2d) 756, (1928); City of West University Place v. Home Mortgage Co., (Civ. App.) 72 S. W. (2d) 361, (1934); Bracken v. Van Zandt County, (Civ. App.) 74 S. W. (2d) 540, (1934).

<sup>67</sup>Texas Jurisprudence, Vol. 40, pp. 159-164. See also Brundrett v. Lucas, (Civ. App.) 194 S. W. 613, (1917); Weatherly Independent School District v. Hughes, (Civ. App.) 41 S. W. (2d) 445, (1931); Ward County v. Wentz, (Civ. App.) 69 S. W. (2d) 571, (1934); Richardson v. State, (Civ. App.) 53 S. W. (2d) 508, (1932).

## Establishment of Tax Rates: Tax Limitations

### State

State tax rates are determined annually by the Automatic Tax Board composed of the Governor, Comptroller and State Treasurer.<sup>68</sup> The State tax on property, exclusive of taxes for payment of the public debt and for maintenance of public schools,<sup>69</sup> may not exceed 35 cents on \$100.00 valuation,<sup>70</sup> 35 cents for school purposes,<sup>71</sup> and 7 cents for aid to confederate veterans.<sup>72</sup> Thus, the total State rate is limited to 77 cents.

### County

County tax rates are determined by the commissioners court<sup>73</sup> in accordance with the limitations established by the Constitution. County tax rates, exclusive of those for debt purposes may not exceed 80 cents per \$100.00 of assessed valuation, except as noted below. Of the 80-cent rate, 25 cents may be used for general fund purposes; 25 cents for the erection of permanent improvements; 15 cents for the jury fund; and 15 cents for road and bridge funds. In addition, a tax of 15 cents on the \$100.00 valuation is authorized by the legislature for road maintenance—on approval of the electors of the county.<sup>74</sup>

### School Districts

In each independent school district, the tax rate is determined by the board of school trustees. The tax rate for independent school districts is limited to \$1 per \$100 assessed valuation,<sup>75</sup> except for a few districts which, under special acts, may use a rate amounting to as much as \$1.50.

In each common school district, the tax rate is determined by an election, or by the trustees and the county superintendent, in case no election is held. Following the determination by either of these methods, the county superintendent certifies the rate for all such districts to the commissioners court of the county. The latter agency sets the tax levy by entering an order on its minutes setting forth the tax rate in each district.<sup>76</sup>

### Restrictions on Tax Limitations

In interpreting these provisions, the courts have held that these restrictions are not applicable to special assessments on abutting property to pay for street improvements.<sup>77</sup> There are several other restrictions on the application of these limitations. Taxes exceeding the limits imposed by Art. 8, Sec. 9, of the Constitution may be levied by any political subdivision of the State for the purposes enumerated in Art. 3, Sec. 52, namely: irrigation, navigation, flood control, and surfacing of roads. Again, Art. 11, Sec. 7, permits levies in excess of the prescribed limits for sanitary purposes and sea walls on the Gulf of Mexico by counties and cities bordering on the Gulf.

<sup>68</sup>Art. 7041.

<sup>69</sup>Constitution, Art. 7, Sec. 3.

<sup>70</sup>Ibid., Art. 8, Sec. 9.

<sup>71</sup>Ibid., Art. 7, Sec. 3.

<sup>72</sup>Ibid., Art. 3, Sec. 51.

<sup>73</sup>Art. 7045.

<sup>74</sup>Constitution, Art. 8, Sec. 9.

<sup>75</sup>Vernon's Texas Statutes (1936), Art. 2784.

<sup>76</sup>Art. 2795.

<sup>77</sup>City of Ft. Worth v. Bobbitt, 121 Tex. 14.

## PAYMENT OF CURRENT TAXES

### Payment Procedure

#### Collection Dates

The county assessor-collector of taxes has the power and duty of collecting all taxes assessed upon the county and State tax lists and certain special tax districts, as previously stated.<sup>78</sup> Possession of the tax rolls gives him "full and sufficient authority" to receive and collect taxes levied.<sup>79</sup> The collector begins the collection procedure, upon the order of the Board of Equalization, on October 1, or as soon as possible thereafter. His first step, if so ordered by the Board, is to post notices in at least three public places in each voting or justice precinct stating the time and place taxpayers are to meet him to pay their taxes. Such notices must be posted at least 20 days previous to the date set. The collector must remain in each designated place at least two days.<sup>80</sup> If the taxpayer fails to pay in his precinct at the appointed time, he must come to the office of the collector to pay.<sup>81</sup> Some of the smaller counties have an informal arrangement whereby all taxpayers in the county come to the collector's office to pay their taxes. Payments can be made at any time before January 31 of the next succeeding year for which taxes were assessed.<sup>82</sup> If, however, a property owner has paid one-half of the taxes levied on his property on or before November 30, he may pay the remainder, without penalty, on or before June 30 of the following year.<sup>83</sup> In cases where common school district taxes are collectible from the same roll with any other tax, any taxpayer of any common school district may pay one-half or all of such a tax prior to payment of any other tax.<sup>84</sup>

#### Discounts for Prompt Payment

As an inducement to prompt payment of taxes, the voters of the State adopted in 1937 Section 20 of Article 8 of the Constitution, providing for discounts. In 1939, the legislature allowed the following discounts on the payment of all county and State ad valorem taxes: 3 per cent if paid 90 days before the date they would otherwise become delinquent; 2 per cent if paid 60 days before they would otherwise become delinquent; 1 per cent if paid 30 days before they would otherwise become delinquent. If taxing units other than the State and county wish to allow these discounts, they may do so by the passage of a resolution or ordinance to that effect. These discounts, however, are not applicable to split payment of taxes.<sup>85</sup>

#### Tax Receipts

Upon receiving payment, the collector or his deputy is to issue a tax receipt, stating the specific amount of State, county, and district taxes; the year or years for which taxes are levied; number of acres of land in each separate tract; number of abstract; name of original grantee; name

<sup>78</sup>Art. 7254.

<sup>79</sup>Art. 7253.

<sup>80</sup>Supp., Art. 7255.

<sup>81</sup>In towns of 7,000 or more, collector may appoint a deputy to collect taxes. In all counties having a population of more than 70,000 and containing one or more towns or cities, other than county seat, with population in excess of 1,000, collector may appoint a deputy in each of these towns. Art. 7256.

<sup>82</sup>Art. 7336.

<sup>83</sup>Art. 7336.

<sup>84</sup>Art. 7336e.

<sup>85</sup>Supp., Art. 7057d.



of city or town; total value of property assessed. The duplicate is to be recorded in the county clerk's office, being filed in the same manner as a deed to land and entered in a tax receipt record.<sup>86</sup>

### Protection of Funds Collected

#### Bonding of Collector

The State attempts to hold the collector of taxes accountable for the honest disposition of monies he receives by requiring him to give bond before entering upon his duties as assessor-collector. The bond he gives for the State tax must be equal to 10 per cent of the State taxes levied in the county as shown by the last preceding assessment; but the bond is not to exceed \$50,000. The bond must be based upon unencumbered real estate of three "good and sufficient sureties" to be approved by the commissioners court and the Comptroller, and the bond deposited in the Comptroller's office.<sup>87</sup> As a prerequisite to collecting county taxes, the collector must give a similar bond, approved by commissioners court, to the county judge.<sup>88</sup> In either case a bonding company may be used in place of individuals. The collector may be required to furnish new bonds or additional security when, in the opinion of the commissioners court or of the Comptroller, it is advisable. If he fails to do this, the collector may be suspended from office by the commissioners court and later removed in a suit initiated by the Attorney General.<sup>89</sup> If the collector appoints deputies, he may require from them such bonds as he considers necessary to protect himself. For he is always liable and accountable for the conduct of his deputies.<sup>90</sup>

#### Reports and Deposits of Funds

Public funds are also protected by the requirement that once a week the collector pay 90 per cent of all funds collected for the county and State to the county and State Treasurers respectively. The commissioners court or the Comptroller may ask the collector at any time for a sworn statement as to the amount of money collected during the current month, and for a report on the amount of taxes in the county depository belonging to the county and State. They may direct that 90 per cent of such funds be transferred to the county or State Treasury.<sup>91</sup> At the end of each month, the collector pays over to the State and county treasurers funds collected during the month, exempting such amounts as he is allowed as his commission. On or before July 1 of each year the collector is required finally to adjust and settle his accounts, and turn over all balances belonging to the State and county.<sup>92</sup>

The Comptroller or commissioners court may also require a sworn oath from the depository as to the amount of funds in its hands under control of the tax collector. Failure of the collector to make remittances as described above or to render statements demanded within three days of date due constitutes a misdemeanor and is punishable by a fine, not to exceed \$200.<sup>93</sup>

<sup>86</sup>Supp., Art. 7258.

<sup>87</sup>Supp., Art. 7247.

<sup>88</sup>Supp., Art. 7249.

<sup>89</sup>Art. 7248.

<sup>90</sup>Supp., Art. 7252.

<sup>91</sup>Supp., Art. 7249a.

<sup>92</sup>Art. 7260; Supp., Art. 7261.

<sup>93</sup>Art. 7249a.

The collector must also prepare, on forms furnished by the Comptroller, a monthly report on both State and county tax collections. This report is to be an itemized account showing each and every ad valorem, poll, and occupational tax collected during the month. It also is to contain a statement showing the full disposition of all taxes collected. The correctness of the report is to be verified by the county clerk or county auditor, who checks it against tax receipt stubs which the collector also submits to him. The report, thus certified by the clerk or the auditor, is forwarded by the collector to the Comptroller and the commissioners court.<sup>94</sup> Thus, it is seen that the responsibility for seeing that the above provisions are correctly and honestly executed by the collector, is shared by the commissioners court and the Comptroller.

### Protection of Taxpayer's Rights: Taxpayer's Suits and Remedies

#### Enjoining Collection of Tax

It is a well established principle that an injunction against the collection of a tax will not be granted where there are adequate remedies at law. From court decisions it can be discovered that an injunction is available on several particular grounds: (1) that the tax is unconstitutional; (2) that the tax was added to the rolls by the Board of Equalization rather than the assessor; (3) that the collector attempted to collect on a valuation higher than the plaintiff rendered, without authorization by the Board of Equalization to make the increase; and (4) that the property is outside the jurisdiction of the taxing authority.<sup>95</sup>

#### Payment and Recovery of Back Taxes

When a tax has been illegally assessed against a person, he may pay the tax under protest. Mere protest, however, will not support a recovery of the amount paid unless the payment is "involuntary."<sup>96</sup> Generally speaking, a payment is involuntary when made to prevent loss of title to property or the casting of a cloud upon the title by a threatened proceeding of sale for taxes.<sup>97</sup>

A suit for recovery of a tax paid may be brought against the taxing authority itself, if the money has already been paid over by the collector,<sup>98</sup> on the ground that the taxing authority assumed responsibility for the legality of the assessment by transmitting the tax rolls to the collector.<sup>99</sup>

## COLLECTION OF DELINQUENT TAXES

### Penalties for Tax Delinquency

Property becomes tax delinquent when (1) taxes levied upon it are not paid in full on or before January 31 of the next succeeding year for which they were assessed, when one-half of taxes were not paid on or before November 30; or (2) if, the first half being paid on or before November 30, the second half is not paid by June 30 of the following year.<sup>100</sup>

<sup>94</sup>Art. 7260; Supp., Art. 7261.

<sup>95</sup>Texas Jurisprudence, Vol. 40, p. 139. See also Rowland v. City of Tyler, (Com. App.) 5 S. W. (2d) 758, (1928); Court v. O'Conner, 65 Tex. 334 (1886).

<sup>96</sup>Continental Land & Cattle Co. v. Board, 80 Tex. 489, 16 S. W. 312, (1891).

<sup>97</sup>Galveston Gas Co. v. County of Galveston, 54 Tex. 287, (1881).

<sup>98</sup>Austin National Bank v. Sheppard (Com. App.) 71 S. W. (2d) 242, (1934).

<sup>99</sup>Galveston County v. Galveston Gas Co., 72 Tex. 509, 10 S. W. 583 (1889).

<sup>100</sup>Art. 7336.

Once property becomes tax delinquent, penalties begin to accrue. If a property owner does not pay one-half of his tax before November 30, and then fails to pay his full tax before February 1, the following penalty is imposed upon him: During February, 1 per cent of amount of his taxes; March, 2 per cent; April, 3 per cent; May, 4 per cent; June, 5 per cent; and on and after July 1, 8 per cent. If a person has paid one-half of his taxes on or before November 30, and then fails to pay the remainder by June 30, a penalty of 8 per cent accrues on the unpaid portion of his taxes. Moreover, all delinquent taxes bear interest at the rate of 6 per cent per annum from the date of their delinquency. Penalties and interest, when paid by the delinquent taxpayer, are to be distributed to State, county, and district in proportion to taxes due each taxing unit.<sup>101</sup>

One of the most demoralizing features of the delinquent tax collection procedure is the legislative practice of periodically remitting penalties and interest on overdue taxes. This unnecessary leniency on the part of the legislature removes all incentive for payment of taxes when due. As a matter of fact, those taxpayers who "skimp and save" to pay their taxes every year are severely penalized for their thrift and honesty. Moreover, assessor-collectors are almost unanimous in their condemnation of this legalized method of encouraging delinquency. The task of collection, a difficult one under the best conditions, becomes almost an impossibility when the taxpayer discovers that he will suffer no punishment for nonpayment.

#### Establishment and Transfer of Tax Liens

All taxes upon real property constitute a superior lien on that property until they have been paid. Although a taxpayer may have made an assignment of his property for payment of debts, or although his property may have been levied upon by creditors, unpaid taxes remain the first lien upon the property. If property comes into the hands of an assignee, any unpaid taxes must be paid by him.<sup>102</sup>

Although a lawful assessment is prerequisite to a lien,<sup>103</sup> back taxes assessed upon property, which the assessor has failed to list for any one year or more, constitute a lien for every year he has failed to assess such property.<sup>104</sup> In order that a lien for taxes may attach, in assessing it the land must be so described that the parcel on which the lien is claimed is identifiable.<sup>105</sup> If a taxpayer does not render his several tracts as a unit, a lien cannot be attached on them as a single tract. Thus, the owner may free part of his lands from liens by paying taxes on individual tracts.<sup>106</sup>

The delinquent taxpayer has the legal right to have the tax lien upon his property transferred to a private person by allowing such a person to pay his taxes. It is the duty of the collector to transfer to any person who pays the taxes due on real property, at the formal written request of the owner, tax liens held by the State, county or subdivisions. The provisions for the transference of tax liens are designed to protect the property owner in such transactions. The collector makes the transfer only upon the

<sup>101</sup>Art. 7336.

<sup>102</sup>Art. 7269.

<sup>103</sup>State v. Farmer, 94 Tex. 232, 59 S. W. 541, (1900).

<sup>104</sup>Art. 7172.

<sup>105</sup>Slaughter v. City of Dallas, 101 Tex. 315, 107 S. W. 88, (1908).

<sup>106</sup>State Mortgage Corp. v. Ludwig, 121 Tex. 268, 48 S. W. (2d) 950 (1932).

written request of the owner; and he must certify in writing that such a transaction has occurred. Both written documents should be filed with the county clerk. For the lien holder to charge more than 8 per cent interest on taxes, penalty, interest and costs paid by him is declared to be usury, and is punishable as such. The lien holder cannot foreclose for at least 12 months from the date of payment of the taxes. At any time after 6 months from date of payment of the tax, the holder of a prior lien has the right to extinguish the lien by paying the tax lien holder the amount paid by him, plus the accrued interest and the expenses of recording the lien. After 12 months from the date of filing the transfer of the lien with the county clerk, and in accordance with the time agreed upon by the owner of the property and holder of the tax lien, the holder may sue to foreclose the lien. The proceeds of the sale are to be applied first on court costs, and secondly on the judgment, including interest, and attorneys' fees (not to exceed 10 per cent). If there is a balance left, other lien holders are to be paid in the order of their priority. Any remaining balance is returned to the owner of the property.<sup>107</sup>

### Suits to Foreclose Tax Liens

The judicial sale, i.e., the sale of property after the tax lien has been foreclosed by court action, is the only method now used by the State, county, or other taxing units in Texas to sell delinquent real estate for taxes.<sup>108</sup>

### Notification of Delinquency

During the month of July of each year, the county tax collector is required to mail notices to the tax roll addresses of all owners of delinquent lands, giving a statement of the amount of taxes due the State or county and a description of the lots or parcels upon which taxes are delinquent. The collector's notice also warns the delinquent taxpayer that if the amount of taxes, interest, and penalties set forth in the notice is not paid within 30 days, suit will be brought to foreclose the tax lien. If the person notified pays the amount specified in the notice before the institution of suit, the tax collector gives him a receipt, and proceedings to foreclose are not entered.<sup>109</sup>

### Employment of Delinquent Tax Contractors

Although the county attorney is required by statute to file suit for collection of State and county taxes, other statutes permit the employment of a private attorney to perform this task, with the approval of the Comptroller and the Attorney General. Thus, in many counties the institution

<sup>107</sup>Art. 7345a. Provision is made for redemption by the owner in case of foreclosure and sale. Moreover, this statute does not abridge the property owner's rights to contract for the payment of his delinquent taxes on terms other than those prescribed above.

<sup>108</sup>Another method of sale known as summary sale, i.e., seizure and sale of property by an administrative officer without a suit in court, was formerly used in Texas. In 1929, summary sale of delinquent real estate was forbidden by law. Art. 7328a. In 1932, an amendment to the Texas Constitution (Art. 8, Sec. 13) directed the legislature to provide "for the speedy sale without the necessity of a suit in court, of a sufficient portion of all lands and other property for the taxes due thereon . . ." Since the legislature has not seen fit to comply with this constitutional directive, it is extremely doubtful that taxing units now have authority to employ the summary sale method. The meaning of the constitutional amendment was before the Texas Supreme Court in the case of Mexia Independent School District v. City of Mexia—123 Tex. 95, 135 S. W. (2d) 118, 1939—but the court's decision did not clarify the applicability of the summary sale method.

<sup>109</sup>Art. 7324.

and prosecution of tax foreclosure suits have been turned over to private attorneys appointed on a contract-commission basis.<sup>110</sup>

### Institution of Suit by Taxing Unit

The State, county, city, town or other district with authority to levy and collect taxes may bring suit for the collection of delinquent taxes. The governmental unit instituting suit for the foreclosure of a tax lien may implead as defendant all other units of government claiming taxes due on the property in question. If the other units concerned are not made defendants, the suing unit must notify the other units concerned that suit is being brought, the court having jurisdiction, and give a description of the property. These notices are to be sent to the county tax collector when the State and county taxes are delinquent on the property and to the tax collector of the other units of government involved.<sup>111</sup>

### Citation of Defendant Parties

Except for certain special requirements, tax foreclosure suits must be conducted in the same manner and must observe the same requirements as ordinary foreclosure suits in private litigation.<sup>112</sup>

All persons known to have a legal interest in the real property involved should be joined as defendants to the suit. It is necessary, for example, that the owner and record lien holders be made parties to the suit.<sup>113</sup> According to judicial interpretation, certain other interested persons are "proper" but not "necessary" parties. Included in the category of "proper" parties are minor heirs of the tax debtor,<sup>114</sup> and the wife of the tax debtor in a suit to foreclose the lien on the marital homestead, unless the wife is a record joint owner.<sup>115</sup> From cases elucidating this nice distinction between parties it can be deduced that, although better practice would suggest the joining of both "necessary" and "proper" parties as defendants, the suit and the subsequent judgment are not nullified by failure to make merely "proper" persons parties to the suit.

Parties having an interest in the property against which the foreclosure suit is sought must be personally notified of the pending suit. If, however, the owners are unknown to the attorney prosecuting the suit, they may be notified once a week for two consecutive weeks through a newspaper published in the county in which the property is located. The same procedure is applicable to the notification of nonresidents and of unknown heirs of a deceased former owner. Among other things, the published notice must show the names of all plaintiffs, interveners and de-

<sup>110</sup>Arts. 7335, 7335a.

<sup>111</sup>Supp. Art. 7345b, as amended by Ch. 534, *General and Special Laws of the State of Texas* (1941). Although the provisions of this article supplement other statutes and repeal only those portions of former statutes which conflict with it, the provision for notification of all other interested governmental units imposes upon the suing unit an additional requirement to those required by Art. 7328, which provides for foreclosure of tax liens individually by governmental units. *Willacy County Water Control and Improvement District No. 1 v. Lewis* (Civ. App.) 119 S. W. (2d) 159, (1938).

<sup>112</sup>Supp. Art. 7345b as amended by Ch. 534, *General and Special Laws of the State of Texas*, (1941).

<sup>113</sup>Art. 7328, as amended by Ch. 303, *Laws*, (1941).

<sup>114</sup>*Baldwin v. State* (Civ. App.) 95 S. W. (2d) 1354 (1936).

<sup>115</sup>*Harris v. Mayfield* (Com. App.), 260 S. W. 835 (1924).

fendants, the court in which the suit is pending, date for appearance, a brief general description of the property, and the amount of taxes due each intervener and plaintiff, exclusive of costs, penalties and interest.<sup>116</sup>

As prerequisite to giving notice by publication, the prosecuting attorney must make affidavit to the effect that he has made the diligent search required by the courts and that the names and addresses of the owners or nonresidents are "unknown to the attorney . . . and after inquiry cannot be ascertained."<sup>117</sup>

### Defense Against Tax Suits

According to statutory provisions, the only defenses against a suit for the collection of delinquent taxes are: that the taxes sued for have been paid; that the defendant did not own the land at the time suit was filed; and that the taxes for which suit is brought are in excess of the legal limit, in which case the defense extends only to the amount of the excess.<sup>118</sup> From court decisions, however, the following defenses appear to be available in addition to the limitations enumerated in the above statute: lack of power to impose tax; land not within the boundaries of the taxing unit; and land exempt from taxes.<sup>119</sup>

### Judgment, Order of Sale

The court's foreclosure judgment in favor of the taxing units must contain the court's estimate of the property's value, called the "adjudged value," as of the date of the trial. The judgment must also be accompanied by an order of sale, which specifies the details of the forthcoming sale.<sup>120</sup>

### Tax Sales

On the date specified by the court order the property is offered for sale. The sale, however, may be postponed by the sheriff, or other officer in charge of the sale, in order that there may be competition.<sup>121</sup>

When the court order specifically directs that the property be offered for sale by separate tracts and lots, the order must be complied with.<sup>122</sup> Moreover, the owner is authorized by law to request, at any time before the sale, that the property be divided and sold in separate parcels or tracts. When so divided, only the number of subdivisions necessary to satisfy the judgment can be sold.<sup>123</sup> In this case, a separate lien attaches to each parcel or tract of land upon which taxes are delinquent. Thus, unless

<sup>116</sup>Supp., Art. 7345b, as amended by Ch. 534, **General and Special Laws of State of Texas**, (1941). In addition to Art. 7345b, Art. 7342, as amended by Ch. 303 of the **General and Special Laws of the State of Texas** (1941) deals with citation of unknown owners. As indicated in Art. 7345b, Arts. 2021 to 2034 are applicable when defendant is resident of State, and Art. 2038 applies when defendant is nonresident. In so far as they do not conflict, these statutes are cumulative, and constitute the many technicalities necessary to correct citation.

<sup>117</sup>Supp., Art. 7342, as amended by Ch. 303, **General and Special Laws of the State of Texas** (1941). See also *State v. Bagby's Estate* (Civ. App.), 126 S. W. (2d) 687 (1939).

<sup>118</sup>Art. 7329.

<sup>119</sup>*Conklin v. City of El Paso*, (Civ. App.) 44 S. W. 879 (1897); *State v. Davidson* (Civ. App.) 280 S. W. 292 (1926).

<sup>120</sup>Supp., Art. 7245b, as amended by Ch. 534, **General and Special Laws of the State of Texas** (1941).

<sup>121</sup>*Weinfield v. Cocke*, (Civ. App.) 60 S. W. (2d) 842 (1933).

<sup>122</sup>*Mills v. Pitts*, 121 Tex. 196, 48 S. W. (2d) 842 (1932).

<sup>123</sup>Art. 7328.

the owner has neglected to render his property separately, several tracts of land cannot be sold as a unit.<sup>124</sup>

The law provides that real property sold for taxes may not be sold for less than the adjudged value placed upon the property by the court, or the aggregate amount of judgments against the property, whichever is less. A taxing unit having a claim against the property can, however, "purchase" the property for less than either of these amounts.<sup>125</sup> "Purchase" by a taxing unit does not involve a monetary transaction. Rather, it is merely the "bidding in" of property, a bookkeeping device.

A sale is not complete until the amount of the bid has been paid.<sup>126</sup> The sheriff makes a tax deed to the purchaser or to whatever person the purchaser may direct.<sup>127</sup> The net proceeds of the sale must be distributed to all taxing units found by the court to have a lien on the property, in proportion to the amount of their respective tax liens as established in the judgment of the court. Proceeds over and above the costs of suit and sale and other expenses necessary to discharge the judgment must be paid to the "parties legally entitled to such excess."<sup>128</sup>

The law is complete and specific in its requirements that suit should be filed against delinquent property owners and, upon an order of foreclosure, that such property should be sold for taxes. Nowhere does it give the option of foreclosing or not foreclosing. Nevertheless, in actual practice foreclosure suits and sales of delinquent property are the exceptions rather than the rule.

### Redemption of Property Sold for Taxes

For a period of two years following the sale, the owner, his heirs, assigns or legal representative can redeem the property.<sup>129</sup> The term "owner" has been construed to include all who have any interest, right or title in the land,<sup>130</sup> such as, mortgagees and lienholders under a trust deed.

An amendment to Article 8 of the Constitution in 1932, provides for redemption payments as follows:

"Section 13. (1) Within the first year of the redemption period upon the payment of the amount of money paid for the land, including one (\$1.00) dollar tax deed recording fee and all taxes, penalties, interests and costs paid plus not exceeding twenty-five (25%) per cent of the aggregate total;

"(2) Within the last year of the redemption period upon the payment of the amount of money paid for the land, including one (\$1.00) dollar tax deed recording fee and all taxes, penalties, interests and cost paid plus not exceeding fifty (50%) per cent of the aggregate total."

<sup>124</sup>State Mortgage Corp. v. Ludwig, 121 Tex. 268, 48 S. W. (2d) 950 (1932).

<sup>125</sup>Supp., Art. 734b, as amended by Ch. 534, General and Special Laws of the State of Texas, (1941).

<sup>126</sup>Buckholts v. Alsup, (Civ. App.) 56 S. W. (2d) 301.

<sup>127</sup>Art. 7330.

<sup>128</sup>Supp., Art. 7345b, as amended by Ch. 534, General and Special Laws of the State of Texas (1941).

<sup>129</sup>Supp., Art. 734b, as amended by Ch. 534, General and Special Laws of the State of Texas (1941).

<sup>130</sup>Jackson v. Maddox (Civ. App.), 117 S. W. 185 (1909).

In 1937 the legislature fixed the redemption rates at the maximum provided by the amendment.<sup>131</sup>

The purchaser cannot take possession of the property until the redemption period has expired. Judgments in suits to foreclose tax liens must provide for the issuance of a writ of possession to the purchaser within 20 days after the termination of the redemption period.<sup>132</sup>

#### Resale of Property Bid Off to Taxing Unit

When one of the taxing units party to the foreclosure suit "purchases" the land to hold it for the benefit of itself and the other units adjudged to have a lien against the property, the purchasing unit may offer the land for sale. It cannot, however, sell the land for less than its adjudged fair value, or the aggregate judgments against it, without the written consent of the other units concerned.<sup>133</sup>

If the purchasing unit fails to sell the land within six months after the expiration of the redemption period, the sheriff, upon the written request of any taxing unit holding a lien, offers the land for sale to the highest bidder at the county courthouse. Notice of the forthcoming sale must be given in the regular manner prescribed for the sale of real estate under execution. The notice of sale must include a description of the land, the date of its purchase and the taxing unit that purchased it, the price paid for the land by the purchasing taxing unit, the date and place of the forthcoming sale, and that the land will be sold to the highest bidder.<sup>134</sup>

At the sale, which is to be conducted in the manner of the sale of real estate under execution, the sheriff is required to reject all bids which he considers insufficient. In the event that no bids are accepted by the sheriff, the property is to be later readvertised and again offered for sale. Acceptance of the bid by the sheriff is conclusive proof of the sufficiency of the bid, and the courts will not entertain an action to set aside the sale except on grounds of fraud or collusion.<sup>135</sup> The sheriff deducts from the proceeds all expenses incurred in the sale and original suit, and then prorate the remainder among the taxing units participating in the original

<sup>131</sup>Supp., Art. 7345b, as amended by Ch. 534, **General and Special Laws of the State of Texas** (1941). The above constitutional provision relates to redemption directly from the purchaser. The legislature, however, has provided that any person having the right to redeem the land sold for taxes may do so, within the two-year period, by paying the amount prescribed by law to the county tax collector, provided the person seeking to redeem makes affidavit that he cannot locate the purchaser of his property or that the purchaser is a nonresident of his county, or that he cannot agree with the purchaser on the amount of redemption money. Upon payment in this manner the tax collector must give a receipt to the redeemer, and upon the purchaser's demand, pay to the purchaser the redemption money. Art. 7284.

According to court interpretation, redemption is not effected by a mere tender of the redemption money. But if the purchaser refuses the money when offered, the owner may institute suit to enforce his right to redeem. In a case of this nature, the burden of proof is upon the owner to show that he tendered the money to the purchaser within the two-year redemption period. *Blanton v. Nunley* (Civ. App.), 119 S.W. 881 (1909); *McGraw v. Potts* (Civ. App.) 27 S. W. (2d) 550 (1930); *Washington v. Giles* (Civ. App.) 258 S. W. 900 (1924).

<sup>132</sup>Supp., Art. 7345b, as amended by Ch. 534, **General and Special Laws of the State of Texas** (1941).

<sup>133</sup>*Ibid.*

<sup>134</sup>*Ibid.*

<sup>135</sup>**Fraud** or collusion will not be lightly presumed, even when the price accepted by the sheriff seems unreasonably low. For example, a prevention of fraud is not created by the sale of real property worth approximately \$800.00, and encumbered by liens for delinquent taxes aggregating \$250.00 which accrued prior to the taxes for which the foreclosure suit was brought, for a price of \$100.00. *Robinson v. State* (Civ. App.), 143 S. W. (2d) 629 (1940).



judgment in proportion to the established amount of their tax liens against the property.

The present law contemplates that all delinquent real estate shall be advertised and put up for sale again and again until it eventually finds its way back into private ownership—if not at a price that will bring in tax arrearages, then at whatever lesser figure will move it back into private hands. This system does not make provision for the disposal of land that no private purchaser wants to buy, nor for the proper handling of properties that remain delinquent for a very long period of time before some purchaser finally appears on the scene. On the other hand, this system permits tax-forfeited properties to be sold off at a fraction of their true worth, thus depriving the taxing units of substantial revenues that could otherwise be realized.

### Validation of Tax Titles

#### Grounds for Defeating Purchaser's Title

The Constitution (Art. 8, Sec. 13) provides that the purchaser's deed to property sold for taxes, and not redeemed during the two-year redemption period, "shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud." Texans who have gambled on the validity of tax titles, however, well know that this guarantee of "good and perfect title" is not reliable. There is always the strong likelihood, if the property is of any considerable value, that some person entitled to do so may later prosecute a successful suit in trespass to try title. If the purchaser at a tax sale desires a marketable title to the land, he is almost compelled to bring an expensive court action to clear his title at some time after the expiration of the redemption period. So numerous are the possibilities of defeating a tax title that oil companies, for example, ordinarily refuse to purchase land that has been sold for taxes.

The reason that tax titles must generally be regarded as anything but "good and perfect" is that the courts have usually insisted that all technicalities in the process leading to the final taking of title must have been literally fulfilled. These technicalities are numerous and exacting; and the chances that some misstep will have occurred are legion.

It is not possible to give an exhaustive list of all technical errors that the courts at one time or another have deemed sufficient to upset a tax title; but it is possible to mention some of the most common grounds. Such grounds as illegal assessment of the tax, that the taxes alleged to be delinquent had actually been paid, that the foreclosure suit had not been heard in a court of competent jurisdiction, or that the judgment or sale was erroneous, are easily understandable.<sup>186</sup> But more frequently the issues resolve around alleged defective citation of interested parties.

<sup>186</sup>An erroneous foreclosure judgment or an improperly conducted tax sale may defeat the tax title. For example, a judgment ordering foreclosure of several tracts of land as a single unit is erroneous, unless the owner failed to render his tracts of land separately. *State Mortgage Corp. v. Ludwig*, 121 Tex. 268, 48 S. W. 941 (2d) (1932). Likewise, the sheriff's failure to follow the instructions of the court in the conduct of the sale may prove fatal to the purchaser's title. In the words of the Texas Supreme Court, "Nothing is better settled than that the authority of the sheriff to pass . . . title at a sale under foreclosure by decree of court rests upon the decree and the order of sale . . . If the decree and the order of sale fail to authorize such a sale as the sheriff undertook to make, no title passes thereby." *Mills v. Pitts*, 126 Tex. 196, 48 S. W. (2d) 950 (1932).

### Limitation on Title Conveyed by Tax Deed

In 1941 the legislature provided that "the term 'all liens and claims for ad valorem taxes' shall never be construed to include assessments for maintenance and operation purposes on a pro rata basis per acre against irrigable lands authorized by law to be made by water improvement districts, or water control and improvement districts, and no judgment foreclosing such liens and claims for ad valorem taxes shall ever prejudice the collection of said assessments or the liens securing same."<sup>137</sup> Thus, if the land acquired at a tax sale is subject to a lien for taxes held by a water improvement district, or water control and improvement district, the purchaser's title is still encumbered by that lien.

### Statute of Limitation

If some years after the date of purchase, court action is sought to break the purchaser's title to the property, he may plead the protection of any one of the 5 statutes of limitation which is applicable to the particular case. None of the statutes of limitations, however, applies exclusively to tax title cases.

**Four-year Statute.** The limitation statute most frequently relied upon by claimants under a tax title in a suit of trespass to try title is the four-year statute.<sup>138</sup> It provides that, "Every action other than for the recovery of real estate, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same has accrued and not afterward." In respect to tax titles, the period of limitation begins to run two years after the tax deed is recorded, which would ordinarily be the date on which the redemption period expires.<sup>139</sup>

Neither this nor any of the other statutes present an absolute bar to an attack upon a tax title after the specified period has run. In the words of the court: "If . . . the judgment is absolutely void no period of time under any statute of limitation could give the judgment validity."<sup>140</sup> Furthermore, limitation does not begin to run against an interested party who had no knowledge of the suit until the time that he should have known of the proceedings by the exercise of reasonable diligence."<sup>141</sup> The court, therefore, determines in each individual case presented to it, if and when the statute of limitation began to run against the unnotified party who institutes the suit.

**Limitation Through "Peaceable and Adverse" Possession.**<sup>142</sup> Four statutes of limitation, falling under this heading and providing different periods of limitation, are applicable to tax title cases. In general, the 3-year, 5-year, 10-year, and 25-year statutes of limitation<sup>143</sup> provide that suits to recover real estate from a person who is in peaceable and adverse pos-

<sup>137</sup>Supp., Art. 7345b, as amended by Ch. 534, General and Special Laws of the State of Texas (1941).

<sup>138</sup>Art. 5529.

<sup>139</sup>Texas Jurisprudence, Vol. 40, p. 309.

<sup>140</sup>Mote v. Thompson (Civ. App.) 156 S. W. 1105 (1913). Here the judgment was void for want of jurisdiction on the part of the court having given the tax judgment.

<sup>141</sup>Harrison v. Orr (Com. App.) 296 S. W. 871 (1927); Robinson v. State (Civ. App.) 143 S. W. (2d) 629 (1940).

<sup>142</sup>"Peaceable possession" is possession that is acquiesced in by all persons, including rival claimants. "Adverse possession" is "the actual, open, and notorious possession and enjoyment of real property . . . continued for a certain length of time, held adversely and in denial and opposition to the title of another claimant . . ." *Black's Law Dictionary* (2nd Ed.).

<sup>143</sup>Arts. 5507, 5509, 5510, and 5519, respectively.

session of the property must be brought within the specified time after the accrual of the action and not afterward. Although the specific requirements for claiming under the statutes vary somewhat, oftentimes the holder of a tax title is in position to claim title under two or three of these statutes simultaneously. Payment of all taxes before they become delinquent is also a strong circumstance in "peaceable and adverse possession."

These statutes of limitation undoubtedly afford some protection to the purchaser at a tax sale who intends to hold, occupy, and cultivate or otherwise use the land for a number of years. As has already been pointed out in the discussion of the four-year statute of limitation, the protection is by no means perfect. Moreover, these statutes are of no benefit to the purchaser who wishes to secure a marketable title immediately upon the termination of the redemption period. What appears to be needed is a statute of limitation, applicable to tax titles exclusively, which would have the effect of absolutely barring all suits to defeat a tax title after the expiration of a certain prescribed period.

#### Compensation to Defeated Tax Title Holder

If a purchaser's tax title is defeated, he may file claims in court for compensation for the improvements he made upon the property in "good faith" while he was in possession.<sup>144</sup> The court decides whether he was an "innocent purchaser" and if the improvements were made in "good faith," and what compensation is due him. Although he may have been innocent from the layman's point of view, he is by no means certain of being awarded compensation for the improvements he made.

The defeated tax title holder may also file claims for the recovery of the amount he paid for the property. That he cannot be at all sure of recovering his original investment, however, has been plainly stated by the courts<sup>145</sup>: "The mere fact a party pays money upon the purchase of property at a tax sale does not entitle him to recovery of the amount paid, when years later he is unsuccessful in an attempt to establish his title in an action of trespass to try title."

A recent case decided by a Texas Court of Civil Appeals is illustrative of the unfair burden placed upon the purchaser of tax delinquent property in an action to recover the amount paid for the property.<sup>146</sup> Land belonging to A was delinquent. Suit was brought to foreclose the tax lien, and the land was subsequently purchased by B at the tax sale. Later, in a suit in trespass to try title, A was successful in defeating B's tax title on the ground that A, the record owner, was not personally notified of the original suit to foreclose the tax lien. Having thus been defeated in his title, the purchaser, B, filed a claim for recovery of the amount he had paid for the property at the sale and subsequent taxes he had paid on it. In support of his claim, he testified that he believed that "he was obtaining good title to the property, and believed that he had good title thereto at the time he paid the additional taxes thereon." B's claims for recovery were denied by the court on the grounds that, although he was

<sup>144</sup>Arts. 7393, 7394.

<sup>145</sup>Watson v. Tamez, (Civ. App.) 136 S. W. (2d) 645 (1940).

<sup>146</sup>American Realty Corporation v. Tinkler, (Civ. App.) 107 S. W. (2d) 627 (1937).

a "good faith" purchaser, he was not entitled to reimbursement by A, for A's record of ownership was recorded in the courthouse and B should have known this before he purchased the land owned by A.

Under the law, the purchaser at a tax sale is expected to reexamine the attorney's work and to ascertain whether all necessary parties were properly cited. But the owner of the property is expected to make no inquiries. In the case under discussion, A did not claim that the assessment against his land was irregular nor that the taxes due under this assessment were not delinquent. Therefore, it can be assumed that A knew that his taxes were delinquent. The incongruous thing is the court's holding that because B had not investigated the public deed records to discover that the record owner had not been cited in the suit under which the tax sale was ordered, B lost his entire investment. But A, for his part, although failing to investigate the delinquent tax rolls (also public records) which plainly showed that suit had been instituted to foreclose the tax lien on his land, escaped all payment of taxes, penalties and interest on his land.

## DISCUSSION OF REAL PROPERTY LAWS WITH SUGGESTIONS FOR IMPROVEMENT

### Assessment and Equalization

The laws governing the administration of taxes on real property in Texas will allow sound and efficient administration. As in other phases of government, however, the responsible officials must be honest, well informed and conscientious if reasonably good results are to be secured.

It is worthy of note that the county assessor-collector has the authority—indeed he has the duty—of placing a value on any property which he believes the taxpayer has rendered for an improper value. This aspect of the law has not been emphasized sufficiently in previous publications which have discussed the real property tax system.

Furthermore, the Commissioners Court as the Board of Equalization has the authority and the duty to require the assessor-collector to place fair and equitable values on all properties within the county. In case the assessor-collector does not carry out his responsibility, the Board of Equalization can refuse to approve the tax rolls, and in the last analysis, the Board can compel compliance with its wishes.

As the governing board of the county, the Commissioners Court has the responsibility of maintaining continuing control over the assessor-collector. The assessor-collector must give bond, and the Commissioners Court must approve the monthly reports of tax collections. These powers are sufficient to secure orderly and efficient conduct of the assessor-collector duties, if they are really exercised by the Court.

In conducting his office, the assessor-collector has sufficient legal authority to secure the information needed to make a complete and accurate assessment of all property in the county. Information on the sales prices of lands and buildings can be secured from the county clerk's office, and over a period of years an accurate map and plat system can be installed as an aid to the conduct of the office. While some officials have regarded the preparation of accurate maps locating and describing the

lands by plats, as an extremely costly procedure which could not be carried out by the regular office force, this need not be true. Some of the best systems in Texas have been installed by regular county employees under the supervision of the assessor-collector. Careful attention to the work of the office over a period of years will provide much of the information needed.

#### Committees of Citizens Can Assist

With further respect to the assessment of property, the assessor-collector could secure a great deal of assistance through the use of unpaid committees in assessing property in the respective communities. If these committee members were given appointments as deputy assessors, signed rendition sheets could be secured as provided by law. Even though the committee members were not appointed as deputies, appraisals secured by this means could be used by the assessor-collector to very good advantage.

Similar committees could be used to great advantage by the Board of Equalization in passing on individual assessments. In Young County, Texas, the Board of Equalization has utilized the findings of appraisal committees on both farm and ranch lands and city properties. In addition, similar but different committees have been used in passing on the valuations of other properties which had not been appraised by the committees which functioned prior to equalization. The Young County Board of Equalization is enthusiastic about the good results obtained through these committees and expects to continue the practice.

In this connection, it is worth noting that the use of such committees could eliminate the practice of employing large numbers of special assessing deputies who are paid at the rate of 15 cents per rendition, and consequently must do the work hurriedly in order to make decent wages. Though most of these deputies have had little training for the job, this has little effect, for even a well trained man could not afford to take the time to study the properties and arrive at values based on adequate information at the rate of 15 cents per rendition.

It is also true that the use of committees to assist the Board of Equalization could go a long way towards eliminating the criticisms which are often made of the equalization process. Critics maintain that the Commissioners Court has not accepted the responsibility which is placed upon it by law and that, therefore, the equalization process has been ineffectively handled. The explanation usually offered is that the members of the Commissioners Court, like the assessor-collector, are elected, and have a deep-seated fear of antagonizing the voters. To the extent that this is true, there seems to be a tendency to leave the valuations alone unless the taxpayer registers a complaint. Under these circumstances, the taxpayer who protests year after year may get relief, but those who do not like to complain get no relief even though their assessments may be out of line. As a means of improving the work of equalization, it has been suggested that the Commissioners Court be relieved of the duty of equalizing property but that the Court appoint a committee of citizens to act as a Board of Equalization. This proposal has merit, but there is no assurance that a Commissioners Court would always be able or willing to appoint the best

qualified men for service on such boards or that such men would accept if named. And as stated earlier, the use of advisory committees could make the work of the Commissioners Court as the Board of Equalization more effective.

In point of fact, the best assessors continue the work of assessing throughout the year and do not try to confine it to the few months during which the law specifies that property shall be viewed. In other words, such assessors collect information from all possible sources and arrange it in usable form so that it will be readily available during the period from January to April when signed renditions must be obtained from the owners.

This leads to another point, which is that no useful purpose seems to be accomplished by requiring that the owner submit a value for his property. Too often the assessor-collector is encouraged to accept such renditions as they are submitted even though he knows they are too low or too high. In these instances the assessor disregards the law which requires him to place his own valuation on such properties, and excuses his negligence on the grounds that the taxpayer should be blamed. The solution, if any, would seem to be to specify that the assessor was responsible for each valuation placed on the tax rolls, i.e., that it was in fact the assessor's valuation and not one submitted by the taxpayer and merely allowed to stand by the assessor-collector. Of course the taxpayer should always have the right to submit his idea as to what the valuation should be, but the assessor-collector would merely take that into consideration. Such a change should have the effect of fixing responsibility upon the assessor, whereas it is now divided between the taxpayer and the assessor. It should make the assessor "a real assessor" and not just a receiver of rendition sheets—as is sometimes charged.

### **More Equitable Assessments Needed**

The need for improvements in the equality of assessments is evidenced by numerous studies which indicate that small properties are usually valued proportionately higher than large properties in the same counties. A recent study in Young County shows that farms selling for \$2,400 or less were assessed at 70 per cent or more of the sales price, whereas farms selling for \$3,700 or more were assessed at 40 per cent or less of the sales price. Similar trends were found in each of the six major production areas of the county, and were also found in each of the cities studied. Apparently it is a universal tendency of assessors, and perhaps of citizens as well, to think of the total dollars assessed instead of reducing the assessment to a similar amount per acre regardless of the number of acres rendered by the individual.

One means of improving the equality of assessments has already been discussed, namely, the use of committees of citizens in the several communities. Such citizens are familiar with the properties around them and have demonstrated their ability to establish a high degree of equality in appraising properties.

Another and perhaps more fundamental means of improving the conduct of assessing lies in the provision of better qualified officials and deputies. The constitution and the laws prescribe no qualifications as to

training and experience, and consequently the election of well qualified assessor-collectors is largely a matter of chance.

One suggestion which is often made is that candidates for assessor-collector be required to possess a certain amount of training and experience in tax work, and that they be required to demonstrate their ability by passing an examination before their names are placed on the ballot. This suggestion is worthy of real consideration. A constitutional amendment would be required before such a change could be put into effect. It is also often suggested that the term of the assessor-collector should be increased from two to four years thereby giving these officials a longer period in which to learn their duties before they are obliged to campaign for reelection.

With respect to the deputies appointed by the elected assessor-collector, the legislature could pass a law requiring that they possess certain training and experience and that they pass an examination in order to become eligible for appointment. If such a procedure were inaugurated, it might develop that persons contemplating a race for the assessor-collector's office would want to take these examinations as a means of demonstrating ability to handle the job.

At the same time, it must be admitted that assessor-collectors can appoint qualified deputies insofar as the limitations on salaries will permit such persons to be obtained. For example, it would be possible for an assessor-collector to appoint a lawyer as a deputy in order that all legal phases of the work might be properly carried out. Such a deputy could also assist in collecting delinquent taxes as well as in other duties of the office. Further, the assessor-collector could appoint an engineer as a deputy in charge of the assessment of oil, utility and similar properties such as cotton gins, elevators, flour mills and ice plants. Such properties constitute a large percentage of the valuation, in many counties, and there is no doubt that such a deputy could assist materially in improving the assessments involved.

Because they do not have one or more deputy assessors who possess engineering training, many counties, as well as school districts, follow the practice of employing firms of appraisal engineers who recommend the values to be placed on oil, utility and similar properties.

It has been mentioned that limitations on the salaries which can be paid might make it impossible for some counties to employ qualified deputies who possessed legal or engineering training or who possessed other well rounded training in tax work. This is especially true in the smaller counties in which the sheriff serves as assessor-collector and usually appoints only one or two deputies. In these instances, the deputy in charge of assessing and collecting is forced to carry out a wide range of duties for which he is paid a relatively small salary. While the volume of work may not be too burdensome, the deputy needs to possess as much ability as those in larger counties—if he is to do his work well.

#### **The County as a Unit for Assessment Purposes**

At this point another possibility arises. It will be recalled that many small cities as well as independent school districts employ their own as-

essor-collectors—who must, therefore, assess and collect taxes from a portion of the same property on which county and state taxes are paid to the county assessor-collector.

Since the volume of work is small in many of these cities and school districts, it is often performed by the employment of temporary or part time help or by giving these duties to someone who already has a full time job. In either case, it is unlikely that the job of assessing and collecting will be handled with anything approaching maximum efficiency. Moreover the division of assessing and collecting duties among three or more officials operating within the same general area is a source of confusion and aggravation to many taxpayers.

For these reasons, it has often been suggested that the county assessor-collector be charged with the duty of assessing and collecting the taxes for all units of government within the county. Under such a system, the taxpayer would pay all taxes at the courthouse, and the county would distribute the collections to the cities, schools, and other units of government for which they were collected. While the duplication of work would be eliminated to a large extent, it is not clear that any substantial reduction in costs would accrue to the local governments affected. Necessarily the county would have to deduct a fee from the collections for other governments in order to pay for the services involved.

Nevertheless it is reasonable to suppose that some reduction in cost should be secured for the same quality of service which the cities and school districts are now providing for themselves. If the quality of service was increased, the additional cost might absorb the entire dollar and cents saving.

A more important possibility is that the additional volume of collections handled by the single agency would make it possible for that agency to employ qualified deputies and to develop an accurate map and plat system and the other "aids" which a well arranged tax office must possess in order to make an equitable assessment and a good collection record.

Despite the advantages of the single collection agency within each county, it would not be feasible under the present constitutional limitations on tax rates. Independent school districts except in special cases, are limited to a tax rate of \$1 per \$100 of assessed valuation. Consequently, it has been necessary for many districts to assess property at a higher level than the county uses, in order to raise the amount of taxes needed for operating purposes and the retirement of debt. Hence, it would be necessary to adopt a constitutional amendment before the single collection agency could be utilized in all cases. Or as an alternative the state would have to supplement local taxes through some form of aid in order to compensate the school districts (or the cities) for any reductions in tax revenues occasioned by the change.

Even so it would be possible for the advantages of the single agency system to be secured—insofar as equality of assessments is concerned—without changing the Constitution. This might be done through a cooperative procedure agreed upon by all local governments within the county. Under such an arrangement, the county and the various cities, independent school and other districts would pool their information in arriving at the



100 per cent value of each piece of property in the county. Then each unit would apply its own level of assessment to each of the 100 per cent values so determined. This practice would go a long way towards insuring equality of assessments.

#### **State Agency Should Assess Utilities**

Although many improvements could be made by the local officials without changing the Constitution or the laws, other improvements can hardly be secured without some action on the State level. For example, it has been stated that the employment of engineers as deputy assessors in charge of valuing utility, oil and similar properties would be a real step forward. But it has been admitted that the smaller counties can hardly be expected to pay the salaries necessary to employ men possessing such qualifications. Moreover, the engineers in the larger counties would find it extremely difficult to value the property of utilities such as pipe lines which run through several counties. In other words, the engineer would have to determine the value of the entire pipe line installation in all counties before he could be sure that he had valued the portion within his county correctly.

For these reasons, it is recommended that a State agency be given the duty of assessing the utility and similar properties which may cross the boundaries of several counties and other local governments within those counties. The values arrived at would then be prorated to the various units of government in proportion to the amount of such property within each unit. Necessarily each unit of government and each company would be entitled to a full explanation of the procedures followed by the State agency; would have the benefit of equalization hearings; and could appeal to the courts for relief in case of abuse.

At the present time, the various State agencies receive much information which is of value in determining the valuation of utilities, but such information is exceedingly difficult to use because most of it is not organized for the use of assessors. Under the circumstances a relatively small staff could bring together the necessary information and determine and prorate the valuations. The total cost of such a set up would undoubtedly be considerably less than the total amounts which local governments are paying appraisal engineering firms each year.

#### **State Should Equalize Assessments Among Counties**

One of the most troublesome weaknesses in the real property tax system is that no method has been prescribed for the equalization of taxes as between counties. Since the State ad valorem taxes are levied against the assessment used for county purposes, competitive under-assessment of properties has arisen as a means of reducing the State taxes as much as possible. This procedure has meant a considerable loss of revenue to the State, has caused serious inequalities as between the assessment of similar properties in different counties and has been particularly costly to the small counties which must assess at a relatively high level of true value in order to secure enough taxes for the operation of county government.

Unlike Texas, most states have provided machinery for the equalization of assessments as between individual counties—thereby attempting to

place all counties on the same level. This need not mean an increase in taxes since the tax rate in any county could be changed sufficiently to keep the actual tax payments at the same total amount for the county. One of two alternatives could be followed in Texas in providing equalization machinery. One alternative would be to place the duties upon the State Comptroller of Public Accounts on the grounds that such duties would be a logical addition to those already performed by that office. A second alternative would be to create a board of three or more qualified persons of which the State Comptroller as one member would be the chairman. The other members should be appointed by the Governor.

In either case, the staff utilized for the collection of information needed for the purposes of equalization would be placed in the State Comptroller's office. Such a staff would be required to spend considerable time in the counties in order to determine the level of assessments which was actually being used. For example, the sales prices of lands and buildings would be checked against the assessment made by the county. In addition appraisals made by the Federal Land Bank, insurance companies, and committees of citizens might all be utilized in determining the level of assessment.

On the basis of these data, the State agency would arrive at the total valuation of all properties within the county. But in doing so, farm lands, city properties, oil wells, and utilities would be considered separately. Thus in determining that the total assessment in a particular county was too high or too low, the State agency would also determine whether the change in value indicated should be applied to all properties or to farm lands, oil properties or other properties within the county. Further, by making use of land use planning data, including appraisals made by committees of citizens, changes in valuation could be applied to different sizes of farms or city properties, as measured by dollars. Thus the long standing practice of over-valuing small properties and under-valuing large properties could be partially or wholly eliminated by this means.

At the same time it should be understood that in carrying out such duties, the State agency would not be allowed to dictate to the county officials the assessed value to be placed on any particular piece of property. The changes made by the State agency would apply to all the property of the county or to particular classes and sub-classes of property. The county assessor-collector or the Board of Equalization would make the application to the properties affected by changing the assessments sufficiently to bring the total assessed valuations of the particular classes of property, and therefore of the entire county to the total sum specified by the State agency.

The field men used by the State agency in accumulating the information for purpose of equalization would be available to assist local officials in making the changes—but only in so far as the size of the staff and the time available would permit. In reality a small staff working exclusively on this problem could accomplish a great deal in bringing together the necessary information. But if the staff was also assigned the job of assisting local officials by preparing manuals of instruction, outlines of procedures followed in the counties making the most equitable assessments,

and of holding schools of instruction at convenient points over the state, the size of the staff would need to be increased considerably. Nevertheless, it would not be necessary to provide a huge staff in order to go a long way towards the equitable assessment of all properties in the State. This is true because the majority of the county officials want to do a good job and many of them are succeeding. These county officials could and would assist the State employees a great deal by making their experiences available to all concerned, and by helping in the conduct of training schools for assessor-collectors.

Even though the State did not accept the responsibility of equalizing assessments between counties, it would be well for the State to provide a staff to assist local officials. The improvement in equality of assessments which could be secured through the work of such a staff would certainly be worth the expense involved.

### Collection of Real Property Taxes

The assessor-collector has sufficient authority to collect the taxes levied. Although the law merely provides that certain notices must be given the taxpayer, it does not prohibit the use of additional notices and other collection devices. The collector may send additional notices to individual taxpayers, publish advertisements in newspapers, and make personal calls if he desires to do so.

The assessor-collector who makes a real effort to collect taxes will find it necessary to use several methods of informing the taxpayers and will take advantage of the opportunities so afforded to explain his duties to the citizens affected. The results obtained by such collectors include the collection of a high percentage of current taxes and consequently, the taxpayer is saved the additional cost of penalties and interest which are added to the taxes after they become delinquent.

While county officials have the authority to collect delinquent taxes as outlined on pages 18-28, it is sometimes deemed advisable to contract with an attorney to make such collections. These contracts have served a useful purpose in that large amounts of taxes have been collected, but they are ordinarily quite expensive to the taxpayer. The penalties and interest from which the delinquent tax contractor is paid, could have been avoided if the taxes had been collected prior to delinquency. Under the law the fees paid delinquent tax contractors cannot exceed 15 per cent of the collections, and they usually range from 10 to 15 per cent in the various counties having such contracts.

In many instances the contractors have done little except to send notices to all delinquents—a procedure which could have been carried out as well by county officials. For this reason, the use of such contracts is often criticized on the grounds that only the easy collections are made, and the remainder stay on the delinquent tax rolls. Hence, little permanent improvement is secured.

In a few counties special versions of the standard delinquent tax contracts have been worked out which eliminate some of the objectionable features. In these counties, an attorney has been employed at a fixed salary to devote his full time to the job. While the standard contract (as pro-

vided by the State Comptroller and the Attorney General) is used, the contract provides that the attorney is to receive 15 per cent or less of the tax collections, but not to exceed a certain fixed sum per month.

In the beginning the cost of collections will be low, but as the contract continues and taxes become harder and harder to collect, the cost of collections, as measured by the percentage of tax collections used for that purpose, will increase since the salary of the delinquent tax collector is fixed. This is as it should be.

In case the contractor is allowed a fixed percentage of the collections, as the ordinary contract provides, his earnings will be extremely high while the first and easiest collections are being made, but will decline as the volume of collections decrease. Thus, on a monthly basis, the contractor is paid the most for making the easiest collections and is paid progressively less as the collections decrease. This situation is intensified by the fact that the work required increases as the collections decrease. Hence, the contractor often neglects to work his contract after the "cream is skimmed off."

### Collection Procedures Affect Equality of Assessments

The importance of good collection procedures is not confined to collections alone, for they offer a real opportunity of improving the equality of assessments as between individuals and properties. For example, it is often stated that some individuals allow their taxes to go delinquent because they believe their property has been assessed too high as compared with the properties owned by their neighbors. To the extent that this situation and similar situations exist, a real effort to collect will undoubtedly bring the facts to light and provide the information needed to correct any inequalities revealed.

### Disposal of Tax Delinquent Lands

The procedure for collecting delinquent taxes and disposing of tax delinquent lands—that is, the institution and prosecution of suits to foreclose tax liens, the sale of property, and the clearance of tax titles—is unsatisfactory in that: (1) it is slow and needlessly complicated; (2) it is too expensive; (3) it is ineffective, because it does not result in collection of a high percentage of delinquent taxes.

### Tax Foreclosure Suits and Clearance of Tax Titles

Not only are foreclosure suits and sales, which are the instruments for returning property to the tax rolls, infrequent; but they are slow, costly and needlessly complicated. To make the procedure simple, relatively inexpensive, and effective, the following remedy is suggested.

To the end that tax foreclosure suits be made simpler, less expensive and more binding, it is recommended that the legislature adopt a strict *in rem* procedure for tax foreclosure suits. This procedure is based upon the theory that proceedings are against the tax delinquent land itself, rather than its owner or others having an interest in it. Thus, rather than personally notifying every person having an interest in the land, it suffices to publish a notification in the county newspaper. On the proper assumption that a taxpayer knows when his property is delinquent and can

be presumed to have enough interest in it to keep track of its status, all interested persons are held to be notified by the mere publication of the newspaper statement. More specific notification must, however, be given to the last owner of record; but this requirement can be satisfied by mailing him a copy of the newspaper notice to his last known address. All interested parties, upon petition, would be entitled to have their rights adjudicated at the subsequent foreclosure suit.

Foreclosure suits for all taxing districts would be brought by county officials and would be instituted in the name of the State. To permit other units to bring suit would make the *in rem* procedure unworkable and unfair, for the taxpayer would only be able to discover if suit were being brought against his delinquent property by constantly investigating in their several locations the records of all of the taxing units having a lien on his property.

The foreclosure suit would not occur until the property had been delinquent for a specified period, for example, three years. The State would then receive a fee simple title to the property and the rights and equities of all other parties would be forever foreclosed. Thus, the two-year redemption period following the sale of property would no longer be available to the owner in its present form. Loss of the post-sale redemption privilege would in no way discriminate against the owner, for he would be allowed instead a period of grace, comparable with the redemption period, in which he could pay his taxes, plus penalties and interests, and forestall the original suit against his land. The period of grace would come before rather than after the foreclosure suit. If the period of grace occurred before rather than after the foreclosure suit, taxing units would receive the redemption penalties which now go to tax purchasers, and delinquent property holders could redeem their properties without paying the costs of a tax foreclosure suit and sale.

#### **Recodification of Tax Laws**

Statutes on assessment, equalization, and collection are many and confused. The Texas legal codes contain a surprisingly large number of laws, passed at different times and located in different places in the code, which bear directly or indirectly upon the assessment and collection of taxes. These laws taken together impose a host of duties upon local officials, but the laws so conflict and overlap that it is almost impossible for a person without legal training to make "heads or tails" of them. Since the assessor cannot be expected to be a trained lawyer as well as a property appraiser and clerk, it is important that the tax laws be so phrased and so organized that he (and the taxpayer as well) can refer to them with some assurance of finding the correct instructions, stated in an understandable manner.

It is recommended, therefore, that the tax laws be recodified, that is, that they be reclassified, and brought together; that the laws which have been amended by subsequent acts of the State Legislature be revised accordingly, and that laws which have been repealed be stricken from the code. The last recodification was carried out in 1925.