Texas Wesleyan Law Review

Volume 2 | Issue 2 Article 8

10-1-1995

Correction of Errors in Texas Property Tax Rolls: The Battle for Fair Treatment

M. John Keizer

CORRECTION OF ERRORS IN TEXAS PROPERTY TAX ROLLS: THE BATTLE FOR FAIR TREATMENT

INTRODUCTION

When valuing property for *ad valorem*[1] tax purposes, Texas appraisal districts[2] are required to consider the Texas Tax Code, related state statutes, and the Texas Constitution. As one might expect, taxpayers and appraisal districts occasionally differ in their interpretations of these various statutes and provisions. For example, appraisal districts argue square footage errors are matters of judgment, while taxpayers contend these are clerical mistakes. Though the characterization of this occurrence may seem insignificant, it is of paramount importance to a taxpayer. If a square footage error is deemed a judgement error, this precludes correction for prior tax years, otherwise it is correctable.[3]

To better understand the conflicts that arise in this context, consider this scenario: A taxpayer owns a home containing 4,500 square feet. An appraisal district incorrectly states the area on the tax roll to be 5,500 square feet. The assessed value of the home, therefore, is based on an incorrect figure. It is reasonable for the appraisal district to simply correct this error because it is easily measurable. Indeed, the appraisal district should not object to adjusting the current year's tax roll under these circumstances, provided it is not yet certified. However, a problem arises when certification *has* occurred. In these circumstances, it is generally the appraisal district's position that adjustments are effective only for the subsequent tax year, not the current year.

This comment focuses on fair treatment of Texas taxpayers when a mistake is discovered in a county property tax roll. Specifically, it addresses the steps a taxpayer may take in seeking redress for such errors, focusing on two essential areas of the Texas Tax Code: section 25.25, subsection (c)(1), which pertains to clerical errors, and subsection (c)(3), which pertains to non-existent property, or property which takes a form different than that described in an appraisal roll.

I. STATUTORY AND CONSTITUTIONAL PROVISIONS

Within certain prescribed time limits, a property owner may challenge an error in the county tax rolls under Chapter 41 of the Texas

1. *Ad valorem* taxes are taxes imposed according to the value of the property. BLACK'S LAW DICTIONARY 25 (5th ed. 1983).

2. In Texas, an *appraisal district* is the department responsible for appraising property for *ad valorem* tax purposes in each Texas county.

3. TEX. TAX CODE ANN. § 1.04(18) (West 1992).

DOI: https://doi.org/10.37419/TWLR.V2.I2.7

Tax Code.[4] In accordance with this chapter, a protest must be filed before June 1 of the tax year, or 30 days after the date the notice was delivered to the property owner, whichever is later.[5] If the property owner fails to file a protest within the prescribed time, he may seek redress under section 25.25, subsections (a)-(d), which read as follows:

> (a) Except as provided by Chapters 41 and 42 of this code and by this section, the appraisal roll may not be changed.
> (b) The chief appraiser may change the appraisal roll at any time to correct a name or address, a description of property, or a clerical error that does not affect the amount of tax liability.
> (c) At any time before the end of five years after January 1 of the tax year, the appraisal review board, on motion of the chief appraiser or of a property owner, may direct by written order changes in the appraisal roll to correct:
>
> (1) clerical errors that affect a property owner's liability for a tax imposed in that year;
> (2) multiple appraisals of a property in that tax year; or
> (3) the inclusion of property that does not exist in the form or at the location described in the appraisal roll.
>
> (d) At any time prior to the date the taxes become delinquent, a property owner or the chief appraiser may file a motion with the appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value for the owner's property. However, the error may not be corrected unless it resulted in an appraised value that exceeds by more than one-third the correct appraised value. . . .[6]

Additionally, to determine whether a particular error is a *clerical error* for the purposes of section 25.25(c)(1) above requires examination of section 1.04(18) of the Texas Tax Code:

> "Clerical error" means an error:
> (A) that is or results from a mistake or failure in writing, copying, transcribing, entering or retrieving computer data, computing, or calculating; or
> (B) that prevents an appraisal roll or a tax roll from accurately reflecting a finding or determination made by the chief appraiser, the appraisal review board, or the assessor; however, "clerical error" does not include an error that is or results from a mistake in judgment or reasoning in the making of the finding or determination.[7]

Further, both Texas Tax Code provisions mentioned above are subject to Article VIII, Section 20 of the Texas Constitution, which states:

> No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value nor shall any Board of Equalization of any governmental or political

4. *See id.* §§ 41.41-.69.
5. *Id.* § 41.44(a)(1).
6. *Id.* § 25.25(a)-(d).
7. *Id.* § 1.04(18).

> subdivision or taxing district within this State fix the value of any property for tax purposes at more than its fair cash market value . . . .[8]

The remainder of this article focuses on whether these statutory and constitutional provisions, as interpreted under the relevant case law, support correction of square footage errors under section 25.25(c)(1) and section 25.25(c)(3) of the Texas Tax Code.

II. Relevant Case Law

In 1990, the Corpus Christi Court of Appeals considered the issue of a tax roll mistake in *Matagorda County Appraisal District v. Conquest Exploration Co.*[9] In *Conquest,* the owner of several gas production wells sought correction of the tax roll under section 25.25 of the Texas Tax Code. The owner alleged "the working interest percentages attributed and taxed to Conquest on the appraisal roll exceeded the respective percentage working interests Conquest actually owned."[10] The owner also contended the excess working interest amounts were owned by the State of Texas and dedicated to a permanent school fund, and were thus exempt from taxation. The appraisal review board denied Conquest's request for corrections and Conquest filed suit in district court.[11] The trial court granted summary judgment for Conquest, finding exempt property interests owned by the State of Texas were attributed to Conquest in establishing the appraised value of Conquest's property.[12] The court also determined this was a clerical error that could be corrected under section 25.25 of the Texas Tax Code, and ordered the appraisal district to recalculate Conquest's property interest and correct the appraisal roll accordingly.[13]

The Corpus Christi Court of Appeals reversed, however, holding, "[a]lthough Conquest was taxed for a greater percent working interest that [sic] it owned, such error, if any existed, was judicial rather than clerical in nature because [the appraiser] prepared an accurate appraisal and gave Conquest timely notice of those values and [the] Review Board, in good faith, approved the appraisal records when it did not discover any errors contained therein."[14] The *Conquest* court defined *clerical errors* as those errors that "do not represent changes of thought or decision on the part of the appraisal review board; rather, they conform the roll to what the appraisal review board in good faith intended in approving it."[15] Consequently, the court determined the

8. Tex. Const. art. VIII, § 20.
9. 788 S.W.2d 687 (Tex. App.—Corpus Christi 1990, no writ).
10. *Id.* at 690.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.* at 695.
15. *Id.* at 693.

ownership interest reflected on the appraisal roll did not constitute a clerical error as a matter of law.[16]

In 1993, the Dallas Court of Appeals considered the same issue in *Collin County Appraisal District v. Northeast Dallas Associates.*[17] *Northeast Dallas* examined the meaning of *clerical errors* under section 25.25(c)(1), as defined by section 1.04(18),[18] and the definition of *form* under section 25.25(c)(3).[19] In *Northeast Dallas*, a taxpayer erroneously checked a box on an application for open-space valuation of land, indicating the property was owned by either a non-resident alien or foreign government.[20] Based on this information, the Collin County Appraisal District denied the open-space valuation and required the taxpayer to pay taxes based on the full market value of the property.

The taxpayer argued the error could be corrected as a clerical error under section 25.25(c)(1), or a mistake of form under section 25.25(c)(3).[21] Both motions, however, were rejected by the appraisal review board.[22] The taxpayer then sued in district court and was granted summary judgment.[23] The appraisal district appealed.

On appeal, the *Northeast Dallas* court first verified the land was not owned by a foreigner or foreign entity, thus confirming that a mistake indeed occurred. Next, the court considered whether the error was clerical in nature,[24] who committed the error, and whether the error was correctable under section 25.25(c)(1).[25] The court stated:

> The legislative bill analysis of section 1.04(18) simply states that the purpose of the bill is to clarify the meaning of clerical error since there is no uniform definition of clerical error and interpretation is left to local appraisal review boards. . . . The bill analysis does not indicate that the legislature intended to expand previous definitions of clerical error. Nothing in the legislative history suggests that the clerical error definition includes property owner errors. If the legislature's goal was to broaden the definition of clerical error, we believe it would have specifically stated that clerical errors are not limited to those errors made by the decision-making body.
>
> . . . .
>
> Instead, we believe that section 1.04(18) refers to two types of clerical errors that the chief appraiser, the appraisal review board, or the assessor may make. Subsection (A) addresses errors of commission, while subsection (B) is directed at errors of omission. The

16. *Id.*
17. 855 S.W.2d 843 (Tex. App.—Dallas 1993, no writ).
18. *Id.* at 848.
19. *Id.* at 848-49.
20. *Id.* at 845.
21. *Id.*
22. *Id.*
23. *Id.* at 845-46.
24. *Id.* at 846-48.
25. *Id.* at 847.

> legislature intended to clarify the meaning of clerical error, not to create a new definition.[26]

Northeast Dallas further discussed the meaning of *form* under section 25.25(c)(3):

> The Texas Property Tax Code does not provide a definition or explanation of what is meant by "the inclusion of property that does not exist in the form or at the location described in the appraisal roll." Although non-existent property certainly is included by the language of section 25.25(c)(3), we are not inclined to limit the statutory language to mean only non-existent property. "Form" is defined as the "shape and structure of something as distinguished from its substance." And "form" refers "to the distinctive appearance of a thing as determined by its visible lines." We believe the term "form" in section 25.25(c)(3) does not refer to the use of the property but to the physical description of the property, which would include boundaries, shape or configuration of property.[27]

Thus, the *Northeast Dallas* court provided a definition for those circumstances involving misdescription of "the boundaries, shape or configuration of property."[28]

The *Northeast Dallas* court further reasoned, "If the appraisal district denies a property owner's application for open-space land appraisal, notice must be sent to the owner with an explanation of the reason for denial and the procedures for protesting the action."[29] Here, it is not disputed the Collin County Appraisal District complied with these procedures and the taxpayer failed to file a notice of protest under Chapter 41 within the prescribed time limits.[30]

The *Northeast Dallas* court stated, "To allow a property owner to rely on section 25.25(c)(1) to correct the appraisal roll because of a mistake he made would in effect give him two identical remedies."[31] This approach, however, fundamentally misinterprets the nature and purpose of section 25.25(c)(1). Section 25.25(c)(1) provides for the correction of *previously undiscovered* errors. A taxpayer who discovers an error after time has expired for a Chapter 41[32] protest may also file a motion under section 25.25(c)(3). This allows the roll to be corrected to prevent "the inclusion of property that does not exist in the form or at the location described in the appraisal roll."[33]

Indeed, section 25.25 recognizes such errors are not often discovered within the time frame allowed in Chapter 41.[34] Furthermore, the

---

26. *Id.* at 848 (citations omitted).
27. *Id.* at 849 (citations omitted).
28. *Id.*
29. *Id.* at 848.
30. *Id.* at 845-46.
31. *Id.* at 848.
32. TEX. TAX CODE ANN. § 41 (West 1992).
33. *Id.* § 25.25(c)(3).
34. *Id.* § 41.

statute provides an additional method for correcting such errors. Section 25.25 allows five years from January 1 of the tax year to file a motion to correct an error in the tax roll. Although the *Northeast Dallas* court asserted section 25.25 and Chapter 41 give taxpayers two identical remedies,[35] the nature of these remedies is very different. Not only are there different time limits to file a protest or motion, but section 25.25(c)(1) does not allow evidence of value to be introduced.[36] This section merely allows for the correction of errors, and logically, for any consequential adjustments in the appraisal roll for the in-date years.[37]

In addition to these time constraints and evidentiary limitations, different terminology also emphasizes the distinctions between Chapter 41 and section 25.25. Chapter 41 refers exclusively to *protests*, whereas section 25.25 refers exclusively to *motions*. This indicates the legislature perceived a difference between the two remedies. In other words, one remedy or the other is available for different circumstances. Apparently, the *Northeast Dallas* court agreed with this assessment.

In 1995, the Dallas Court of Appeals revisited this issue in *Dallas Central Appraisal District v. G.T.E. Directories Corp.*[38] G.T.E. sought a correction of the tax rolls reflecting the decrease in value of its property due to ground shifts that rendered its building useless. In this case, commercial worksheets[39] supporting the appraisal roll listed G.T.E.'s property as a three-story building in good condition, while the building was actually a two-story structure in poor condition. The actual appraisal roll, however, did not contain this information.[40] G.T.E. argued the property did not appear in the form described in the appraisal roll because the appraised value reflected the incorrect information contained in the underlying commercial worksheets.

The appraisal district rejected this argument, stating section 25.25(c)(3) only applies to correction of errors in the appraisal roll and does not apply to information outside the appraisal roll concerning the physical description of the property.[41] At trial, *G.T.E* obtained summary judgment based on a finding that the plaintiff's property was not in the form described in the appraisal roll under section 25.25(c)(3).[42]

---

35. *Northeast Dallas Assocs.*, 855 S.W.2d at 848.

36. TEX. TAX CODE ANN. § 25.25(c) (West 1992).

37. *Id.* This section requires a motion to be filed "[a]t any time before the end of five years after January 1 of the tax year." *Id.*

38. 905 S.W.2d 318 (Tex. App.—Dallas 1995, writ denied).

39. *Commercial worksheets* comprise the detailed information concerning each property for which a value exists on a tax roll. For example, the square footage of a property will be noted in addition to the final value which is contained in the tax roll.

40. *Id.* at 319.

41. *Id.* at 320.

42. *Id.*

The Dallas Court of Appeals, however, reversed the trial court's summary judgment, advancing a narrow reading of section 25.25(c)(3):

> To determine whether property exists "in the form . . . described in the appraisal roll," we must determine the meaning of "appraisal roll" and "form." The code defines "appraisal roll for the [appraisal] district" as "[t]he appraisal records, as changed by order of the appraisal review board and approved by the board." "The appraisal records" are defined as being in the form prescribed by the comptroller and include:
>
> (1) the name and address of the owner or, if the name or address is unknown, a statement that it is unknown;
> (2) real property;
> (3) separately taxable estates or interests in real property, including taxable possessory interests in exempt real property;
> (4) personal property;
> (5) the appraised value of land and, if the land is appraised as provided by Subchapter C, D, or E, Chapter 23 of this code, the market value of the land;
> (6) the appraised value of improvements to land;
> (7) the appraised value of a separately taxable estate or interest in land;
> (8) the appraised value of personal property;
> (9) the kind of any partial exemption the owner is entitled to receive, whether the exemption applies to appraised or assessed value, and in the case of an exemption authorized by Section 11.23 of this code, the amount of the exemption;
> (10) the tax year to which the appraisal applies; and
> (11) an identification of each taxing unit in which the property is taxable.
>
> The appraisal roll must describe the property sufficiently only to identify it or as required by the comptroller.[43]

The Dallas Court of Appeals held G.T.E. must demonstrate that the actual tax roll contained an error in the form of the property. However, G.T.E. argued it is necessary to look behind the tax roll to the commercial worksheets maintained by the appraisal district in order to determine the form of the property. G.T.E. reasoned that these documents generally contain the detailed physical description, size, and shape of the property used to determine the value of the property as described on the face of the appraisal roll. However, the Dallas Court of Appeals struck down this argument, stating, "we construe 'form' of the property to mean its identification as a type of property . . . such as real property, personal property, an improvement to real property, or some other physical description of the property on the appraisal roll, *other than its appraisal value or its use.*"[44]

43. *Id.* at 320-21 (citations omitted).
44. *Id.* at 321 (emphasis added).

Nevertheless, in his dissent, Justice Chapman echoed G.T.E.'s argument:

> I would conclude the trial court properly ordered the change in the appraisal rolls to correct the inclusion of property that did not exist in the form described in the appraisal rolls.
>
> The majority asserts that "form" means more than "appraised value." It concludes that because the only change GTE sought on the face of the rolls was the appraised value, section 25.25(c)(3) does not provide GTE a remedy. I agree that "form" means more than appraised value. That is, a taxpayer cannot resort to section 25.25(c)(3) when his only complaint is a disagreement about the appraised value of the property. Nevertheless, I believe errors in "form" can affect the appraised value. In such circumstances, I would conclude section 25.25(c)(3) provides a taxpayer a remedy notwithstanding that the actual error in "form" does not appear on the face of the rolls.[45]

Justice Chapman contended the majority's narrow construction of section 25.25(c)(3) "conflicts with our decision in *Collin County Appraisal District v. Northeast Dallas Associates* and with the legislative history of this statute."[46] Justice Chapman quoted *Northeast Dallas*:

> The Texas Property Tax Code does not provide a definition or explanation of what is meant by "the inclusion of property that does not exist in the form or at the location described in the appraisal roll." Although nonexistent property certainly is included by the language of section 25.25(c)(3), we are not inclined to limit the statutory language to mean only nonexistent property. "Form" is defined as the "shape and structure of something as distinguished from its substance." And "form" refers "to the distinctive appearance of a thing to be determined by its visible lines." We believe the term "form" in section 25.25(c)(3) does not refer to the use of the property but to the physical description of the property, which would include boundaries, shape, or configuration of property.[47]

Justice Chapman reasoned the Texas Tax Code does not require a physical description of the property to be included on the face of the appraisal rolls.[48] The physical description of the property can be found *only* on the underlying commercial worksheets. These worksheets are used to determine the appraised value which is ultimately placed on the face of the appraisal roll. Thus, the *form* of the property cannot be determined as contemplated in *Northeast Dallas* without reference to the underlying commercial worksheets. "Therefore, the

45. *Id.* at 323 (Chapman, J., dissenting) (citations omitted).
46. *Id.* (Chapman, J., dissenting).
47. *Id.* (quoting Collin County Appraisal Dist. v. Northeast Dallas Assocs., 855 S.W.2d 843, 849 (Tex. App.—Dallas 1993, no writ)) (Chapman, J., dissenting).
48. *Id.* at 324 (Chapman, J., dissenting).

physical description of the property is ultimately subsumed into an appraised value which does appear on the face of the rolls."[49]

Justice Chapman concluded section 25.25(c)(3) "provides a taxpayer a remedy when the physical description of the property on the commercial worksheets is incorrect causing an incorrect appraised value."[50] He further stated, "This interpretation of section 25.25(c)(3) is consistent with the law requiring us to resolve all doubts in the law in favor of the taxpayer and against the taxing authority."[51]

Furthermore, the *G.T.E.* majority gives only limited consideration to the legislative history of section 25.25(c)(3).[52] Subsection (c)(3) was added in 1989 following Senate Bill 379.[53] The purpose of this addition was to allow "an appraisal review board to remove property from the appraisal roll which no longer exists in the form or at the location described in the appraisal roll."[54] Justice Chapman considered the legislative history of section 25.25(c)(3):

> I also disagree with the majority's conclusion that the legislative history of section 25.25(c)(3) is irrelevant. The majority's rationale is premised on the fact that section 25.25(c)(3) does not give a taxpayer a remedy when the only change sought on the face of the appraisal rolls is the appraised value. The statutory amendment permitting a taxpayer to change the appraisal rolls was intended to provide taxpayers a remedy when a business had "gone out of business." However, whether a business is "in" or "out of" business is not required to be included in the appraisal rolls. Therefore, the mere fact that the form of the property sought to be changed is not literally in the rolls does not preclude relief.[55]

III. ANALYSIS

When an appraisal district makes an error in the square footage of a property, the time for a protest is controlled by Chapter 41 of the Texas Tax Code. If an error is not of sufficient magnitude to qualify for an adjustment under section 25.25(d) and does not exceed one-third of the correct appraised value, the delinquency date for payment of the taxes may pass without correction to the tax roll.[56]

---

49. *Id.* (Chapman, J., dissenting).

50. *Id.* (Chapman, J., dissenting).

51. *Id.* (quoting Bullock v. Statistical Tabulating Corp., 549 S.W.2d 166, 168 (Tex. 1977)) (Chapman, J., dissenting).

52. *Id.* (Chapman, J., dissenting).

53. Act of June 14, 1989, 71st Leg., R.S., ch. 829, 1989 Tex. Gen. Laws 3787 (codified at TEX. TAX CODE ANN. § 25.25(c)(3) (West 1992)).

54. Brief for Appellee at 12, G.T.E. Directories Corp. v. Dallas Cent. Appraisal Dist., 905 S.W.2d 318 (Tex. App.—Dallas 1995, writ denied).

55. G.T.E. Directories Corp. v. Dallas Cent. Appraisal Dist. 905 S.W.2d 318, 324 (Tex. App.—Dallas 1995, writ denied) (Chapman, J., dissenting) (citations omitted).

56. TEX. TAX CODE ANN. § 25.25(d) (West 1992). Taxes must be paid by the delinquency date, which is ordinarily January 31st of the year following the tax year in question. *Id.*

Further, if there is an error in square footage, the error must either be a clerical error or lead to a clerical error. The definition of clerical error under section 1.04(18)(A) is "an error that is or *results from* a mistake or failure . . . in computing or calculating."[57] It therefore follows that if the square footage is incorrect, then the appraised value on the tax roll must also be incorrect, and if the correct square footage is substituted, the appraised value must reflect that change. Final appraised value is derived by multiplying the square footage by the price per square foot and making other consequential adjustments such as depreciation. Thus, an appraised value based on an error in square footage is the type of clerical error that results from a mistake or failure in computing or calculating. This theory relies on section 25.25(c)(1), which provides for adjustment of clerical errors.

However, before section 25.25(c)(1) can be applied to square footage errors, the following must be determined: 1) whether an error is clerical in nature; and 2) whether a taxpayer or an appraisal district made the error. To determine if an error is clerical in nature, it is necessary to look first to the definition of clerical error contained in Texas Tax Code section 1.04(18). Under section 1.04(18)(B), a square footage error is an error "that prevents an appraisal roll or a tax roll from accurately reflecting a finding or determination made by the chief appraiser . . . ."[58] The finding or determination is the *price per square foot*, not the square footage itself.

At the present time, no case involving incorrect square footage has been heard by a Texas appellate court. However, under *Northeast Dallas* such an error would likely qualify as a clerical error that could be corrected under section 25.25(c)(1) because it is clerical in nature, and not an error of judgment.

However, if the error is not a clerical error, it could likely be corrected under section 25.25(c)(3). The appraisal roll could be corrected under this section because the property does not exist in the form described in the appraisal roll. This situation arises, for example, when the boundaries, shape, or configuration of property are incorrect because they all require measurement in order to be defined in a particular case.

In these instances, a taxpayer pays more tax than if the property had been correctly appraised. A taxpayer seeking redress under section 25.25(c)(1) or section 25.25(c)(3) is not attempting to obtain an adjustment to the market value as represented by the price per square foot. A taxpayer is merely attempting to obtain an adjustment to the tax roll to reflect the correct information and obtain any adjustment necessary to make the tax roll accurate.

57. *Id.* § 1.04(18)(A) (emphasis added).
58. *Id.* § 1.04(18)(B).

Appraisal districts may argue no adjustments are available under section 25.25(c)(1) because an adjustable error "does not include an error that is or results from a mistake in judgment or reasoning in the making of the finding or determination."[59] Moreover, appraisal districts may contend square footage errors are errors of judgment. This assertion, however, is incorrect because square footage is the one factor in the appraisal field which is patently measurable and does not require a change unless there is a physical alteration to the property.

Additionally, appraisal districts may contend such errors are not adjustable under section 25.25(c)(3). Although at the present time no case has been litigated specifically regarding correction of square footage errors, such cases will inevitably arise. Some appraisal districts currently contend errors using either section 25.25(c)(1) or section 25.25(c)(3) are not correctable.[60] These districts try to limit the use of section 25.25(c)(3) when correcting errors involving non-existent property.[61] However, this is contrary to the holding in *Northeast Dallas*. The *Northeast Dallas* court stated, "We believe the term 'form' under section 25.25(c)(3) does not refer to the use of the property but to the physical description of the property. . . ."[62] Under *Northeast Dallas,* the term *form* includes the shape and structure of something, as distinguished from its substance. Thus, it is reasonable to conclude the term *form* does in fact apply to square footage errors.

This, in addition to legislative history, indicates there is little support for arguments that restrict the use of section 25.25(c)(3) to non-existent property. To the contrary, there is considerable evidence that the Texas Legislature intended to allow for a wider class of changes to the appraisal roll than merely changes to non-existent property. If the Texas Legislature intended a narrow interpretation of this subsection, it would have limited the statutory language to "does not exist" rather than adding "in the form or at the location described."[63]

When courts use a narrow interpretation of either *clerical error* or *form*, it prevents a taxpayer from correcting square footage errors. Under such narrow constructions, there remains little purpose to these sections apart from allowing the removal of non-existent property from a tax roll, which is a relatively rare occurrence, and for the correction of non-judgment errors. Such narrow interpretations limit the potential for tax refunds, and call into question appraisal districts' motivation.

In contrast, a broad interpretation of the terms *clerical error* and *form* is more appropriate considering legislative intent. A broad view

59. *Id.*
60. *See, e.g.*, Tarrant Appraisal Review Bd., Hearing No. 9472048 (Jan. 19, 1995).
61. *Id.*
62. Collin County Appraisal Dist. v. Northeast Dallas Assocs., 855 S.W.2d 843, 849 (Tex. App.—Dallas 1993, no writ).
63. TEX. TAX CODE ANN. § 25.25(c)(3) (West 1992).

is further supported by Article VIII, Section 20 of the Texas Constitution, which states:

> No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value nor shall any Board of Equalization of any governmental or political subdivision or taxing district within this State fix the value of any property for tax purposes at more than its fair cash market value. . . .[64]

This constitutional mandate supports a broad view of sections 25.25(c)(1) and 25.25(c)(3) because it ensures that at least for a five-year period,[65] no property can be assessed at more than 100% of fair cash market value. Any other construction violates this constitutional provision.

IV. CONCLUSION

Based on the text of section 25.25(c)(1), which allows for the correction of the roll to negate the effect of a clerical error, and section 1.04(18), which defines *clerical error*, it is arguable that a tax roll can be adjusted to correct a square footage error in compliance with the five-year statutory limit. This view is supported by *Northeast Dallas*, where the court held "the legislature intended section 25.25(c)(1) to allow for the correction of clerical errors generated by the appraisal district"[66] and Article VIII, Section 20 of the Texas Constitution, which provides "[n]o property . . . in this State shall ever be assessed . . . at a greater value than its fair cash market value."[67]

An equally persuasive argument for adjusting square footage errors is section 25.25(c)(3), which allows for the adjustment of the roll where "the property is not in the form or at the location described in the roll."[68] This theory is supported by *Northeast Dallas*, where the court stated, "we are not inclined to limit the statutory language to mean only nonexistent property. 'Form' is defined as the 'shape and structure of something as distinguished from its substance.'"[69]

In view of the increasing interest in this topic and several pending lawsuits, it is likely more definitive guidance will be forthcoming from the courts as the battle for fair treatment continues between taxpayers and the taxing authorities.

M. John Keizer

---

64. TEX. CONST. art. VIII, § 20.
65. TEX. TAX CODE ANN. § 25.25(c) (West 1992).
66. *Northeast Dallas Assocs.*, 855 S.W.2d at 848.
67. TEX. CONST. art. VIII, § 20.
68. TEX. TAX CODE ANN. § 25.25(c)(3) (West 1992).
69. Collin County Appraisal Dist. v. Northeast Dallas Assocs., 855 S.W.2d 843, 849 (Tex. App.—Dallas 1993, no writ).