

State Bar of Texas
Property Tax Committee Meeting and
Legal Seminar

Overview of Property Tax Exemptions

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Presented by:

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BACKGROUND, EDUCATION AND PRACTICE

Peter G. Smith was born on September 4, 1952, in Providence, Rhode Island. He pursued his preparatory and legal education at Texas Tech University obtaining his B.A. in 1974 and J.D. in 1976. He is a member of Delta Theta Phi, Pi Sigma Alpha (Political Science Honorary), and the State Bar of Texas, State Bar of Texas Property Tax Committee.

Mr. Smith holds memberships in various professional associations including: Texas Municipal League, Texas City Attorneys Association, Texas Association of Assessing Officers, and Texas Association of Appraisal Districts. He is a member of the Advisory Board of the Institute for Local Government Studies, Center for American and International Law and frequently lectures and authors articles on ad valorem taxation, land use and municipal law.

Mr. Smith is a partner in the law firm of NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P., Dallas, Texas, with areas of expertise in economic development, ad valorem taxation, and municipal, administrative and zoning law. The law firm of NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P. is a Dallas-based full-service law firm specializing in municipal law. The firm was initially formed in 1895, making it one of Texas' oldest and most respected law firms. The firm serves as counsel for municipalities, political subdivisions and appraisal districts throughout the State. The firm's primary area of specialization has been the representation of Texas municipalities and political subdivisions in all matters.

For more than twenty-two years, Mr. Smith has represented cities and all other types of political subdivisions in all types of matters. His experience includes trial and appellate litigation with emphasis on municipal law, civil rights, employment discrimination, zoning, land use, eminent domain and public official liability, and is an approved liability defense counsel for the TML Intergovernmental Risk Pool. Currently, Mr. Smith is City Attorney for the Cities of Richardson, Coppell, DeSoto, Allen and Sachse. He is also general counsel for several economic development corporations and for the Dallas, Tarrant and Williamson County Appraisal Districts and the Denton County Transportation Authority.

Exemption Overview

Definition: An exclusion of all or a portion of the appraised market value of property from property taxation. The Texas Constitution, the Tax Code and other statutes provide an extensive array of property exemptions. The chief appraiser of the appraisal district appraises property and administers any applicable exemptions whether total or partial. The appraisal district appraises property and then applies any applicable exemptions. Both the appraised value and exemption are listed on the appraisal roll. After certification of the appraisal roll to the taxing units by the chief appraiser the tax assessor subtracts the applicable exemption amount from the appraised value to arrive at the taxable value for property for the taxing unit's tax roll.

Some exemptions are self executing while other exemptions require state enabling legislation. If the Constitution and the legislation directly exempt property the exemption is a "mandatory exemption". Where the Constitution and/or the legislation authorize taxing units to provide for an exemption, the exemption is a "local option exemption". See e.g. Tax Code, section 11.251 (Freeport); section 11.13(d) (optional residence homestead exemption); section 11.22 (historical exemption).

Rules of Construction: All real and personal property is taxable in proportion to its value unless an exemption is required or permitted by the Texas Constitution. *See* Tex. Const. article VIII, sec.1. In article VIII, section 2 of the Texas Constitution provides that "all laws exempting property from taxation other than the property mentioned in this Section shall be null and void". *See* Tex. Const. article VIII, sec.2. Thus, for an exemption to apply to property and the taxpayer, it must first be authorized by the Texas Constitution, and then the Constitutional and statutory requirements must be satisfied.

Exemptions from taxation are not favored since they shift the tax burden to other taxpayers. The burden of showing that an exemption applies is on the party who claims it. All doubts are resolved against the taxpayer in favor of taxation. *See North Alamo Water Supply Corp. v. Willacy County Appraisal District* 804 S.W.2d 894 (Tex. 1991). The burden is on the claimant to show that the property and its owner meet any requirements under the Texas Constitution and any corresponding enabling legislation. In meeting the Constitutional tests it should be noted that the enabling legislation often times does not ideally match the constitutional authorization and the courts, as they should correctly do, have construed the constitutional provisions often times strictly and often time liberally in different instances since the framers of the 1876 Constitution could not have contemplated the various scenarios presented today. The Constitution must and should be construed in conjunction with the present day. When the difference in the Constitutional authorization and state legislation is too great the courts have correctly held such exemption unconstitutional.

Exemptions may also enjoy preferences in qualification dates or valuation. The courts have recognized that the Constitution authorizes the legislature to determine the method of arriving at market value and to specify appraisal methods.

Qualification, ownership and required use: The general rule is that the entitlement to an exemption is determined as of January 1 of the given year. The property must be used for the required use and its owner must satisfy any applicable requirements as of January 1 of the given year. There are some exceptions. Over 65 and disabled exemptions are granted if the owner

qualifies at any time during the year. Public property exemption takes effect on the date of qualification (usually date of acquisition) and taxes are prorated. If an exemption has already been granted and the organization has acquired additional property the exemption applies as of the date of exemption for a cemetery (section 11.17), charitable organization (section 11.18), youth spiritual organizations (section 11.19), religious organization (section 11.20), private school (section 11.21), miscellaneous exemptions (section 11.23) and nonprofit water supply corporations (section 11.113). In addition in some instances an organization may re-file an exemption application and correct organizational documents. See Tax Code sections 11.421-11.424 (religious, school, youth, spiritual, or charitable organizations).

The required use provisions for exemptions differ. The required use can be evidenced by the organizational documents of the claimant as well as from its actual direct use of the subject property. The use requirements vary from exclusive use, primary use, incidental use, use for, use by, to held under construction of, of for expansion. The exclusive use standard requires direct and actual use which and applies to exemptions for public property, charitable organizations, private schools and others. Primary use test requires the qualifying use of the property to be the principal use. In such instances other uses made of the property will not destroy the qualifying use. Examples include the exemptions for places of regular religious worship and residence homestead.

Some of the exemptions which contain the “exclusive use” requirement permit incidental use which does not destroy the qualifying use and the exemption. Thus, for example the property of a church or charitable organization may be used by others if the use is incidental (rental of church or charitable organization facilities for non church or charitable uses) to the qualified use. The more interesting use provision is the “property under construction” or “held for expansion”. Some exemptions permit the exemption of land that is under active physical preparation (which includes site preparation, architectural planning, soil testing) or being held for expansion for the qualifying use. See e.g. Tax Code, sections 11.18, 11.184, 11.19, and 11.20 (church may exempt land under physical preparation and land for expansion for certain limited periods of time).

It should be noted that the Texas Constitution while providing for the exemption for places of regular religious worship and institutions of “purely public charities” (charitable organizations) does not authorize an exemption for land that is being held for future use or land that is under preparation for future use. Ownership and subsidiary ownership is also a key requirement. The degrees of ownership vary among the exemptions. Some exemptions permit co ownership while others require sole ownership by the claimant. Subsidiary ownership or equitable ownership may in some instances satisfy the ownership requirement. See *Harris County Appraisal Dist. v. Southeast Texas Housing Finance Corp.*, 991 S.W.2d 18 (Tex. App. - Amarillo, 1998) (exemption under Texas Local Government Code for property owned by a housing finance non profit corporation established by a city applied to property owned by a subsidiary non profit corporation established by the housing finance corporation); *Orange County Appraisal Dist. v. Agape Neighborhood Improvement, Inc.*, 57 S.W.3d 597 (Tex. App. – Beaumont 2001, pet. denied) (exemption granted where a non profit subsidiary owned by a community housing development organization owned a affordable housing project since the subsidiary provided all of the statutory services).

Administration Process: In addition the claimant must follow any administrative process required to secure the exemption. See Subchapter C, Chapter 12, Texas Tax Code. A claimant must file an application for exemption to receive an exemption unless exempted by the Tax Code. See Tax Code, section 11.45(a). If an application is required, the failure to timely file an application bars the exemption for the given tax year, unless the Tax Code provides otherwise. The exemption

application requirement may be an annual requirement or it may be a one time requirement. *See* Tax Code, section 11.43(c) (e.g. Freeport and tax abatement require annual exemption application, residence homestead and charitable exemption do not require annual application).¹ Some exemptions require no application such as for personal property not used for the production of income, mineral interest valued at less than \$500, family supplies, farm products, farm implements, marine cargo containers, some government property and property exempt under Federal law.

Application: The applicant is required to file a completed application form with the information required by the form. The claimant may use the form prescribed by the State Comptroller or the form provided by the appraisal district. *See* Tax Code, section 11.43(d). The forms may differ and usually the local appraisal district form requires greater information than that of the Comptroller form.²

Failure to timely file a required exemption application forfeits the right to the exemption for the given year. Although there are various deadlines, since the adoption of the tax Code the primary deadline is May 1. Also, since the Tax Code inception various late application deadlines and provisions have been enacted to provide special rules for special property owners.

- The general deadline is May 1 of the calendar year.
- Application determined by claimant's qualification on January 1 must be filed prior to May 1.
- For property that qualifies for exemptions as a cemetery (section 11.17), charitable organization (section 11.18), youth spiritual organizations (section 11.19), religious organization (section 11.20), private school (section 11.21), miscellaneous exemptions (section 11.23) over 65 and disabled residence homestead exemption (section 11.13) acquired after January 1 the application must be filed within one year after acquisition date.

Certain exemptions enjoy late application provisions. *See e.g.* Tax Code, sections 11.431, 11.433, 11.432, 11.435 and 11.439.

- Residence homestead – one year after the date the taxes became delinquent.
- Disabled veterans – earlier of one year after taxes paid or one year after taxes became delinquent.
- Religious, school, charitable organizations – December 1 of the 5th year following the year for which the exemption is sought.
- Freeport – before the date the appraisal records are approved.³

Chief Appraiser: The chief appraiser must take one of four actions on timely filed application applications *See* Tax Code, section 11.45:

- Grant the application.
- Deny the application – chief appraiser sends notice of denial and explanation of right to protest within 5 days by certified mail.

¹ Property granted exemption that requires annual application in preceding year requires the chief appraiser to send property owner notice of re-application requirement and an application form. If property granted exemption that requires one time application the exemption continues until ownership or claimant's qualifications change or the chief appraiser sends notice, an application form and requires the property owner to re-apply.

² Property located in overlapping appraisal districts requires application to be filed with each appraisal district.

³ The chief appraiser may extend the deadline upon a showing of good cause for period of 60 days. The failure or refusal to do so may be protested to the appraisal review board.

- Modify the exemption and grant as modified (e.g. grant exemption for some but not all the property sought for exemption) - chief appraiser sends notice within 5 days by certified mail and property owner may protest within 30 days after date notice is delivered.
- Disapprove and request more information – chief appraiser sends notice within 5 days and claimant must provide the information with 30 days after notice is delivered – application is deemed denied if information not furnished but, claimant may protest.

Taxes may be prorated as result of grant of exemption. Normally the grant of exemption does not result in the pro-ration of taxes since the exemption relate to and are granted as of January 1 of the given year. Taxes are prorated as of the date of qualification (taxes are in effect for part of the year) for property eligible for exemption under public property (section 11.11), cemetery (section 11.17), charitable organizations (sections 11.18, 11.181, 11.182), youth spiritual (section 11.19), religious organization (11.20), private school (section 11.21), miscellaneous exemptions (section 11.23) *See* sections 26.111, 26.113. Over 65 and disabled residence homestead exemption (section 11.13) acquired after January 1 or qualified after January 1 the exemption is retroactive to January 1.

Protest and Judicial Review: The claimant may protest to the appraisal review board the denial in whole, or in part, of an exemption. *See* Tax Code section 41.41. The claimant may also seek trial de novo review of the determination of the appraisal review board in state district court in the same manner as any other protest determination. *See* Tax Code, Chapter 42. A taxing unit may also file a challenge to the grant of an exemption by the chief appraiser prior to June 1 or within 15 days after the appraisal records are submitted to the appraisal review board. *See* Tax Code, section 41.41. The time period for protesting may depend on the action taken by the chief appraiser described above. The normal protest deadline (prior to June 1) applies to the denial or modification, and the cancellation of an exemption prior to certification for the current year.⁴ Back assessments or omitted property are subject to Tax Code, section 23.21. The burden of proof is on the claimant at the protest hearing and in subsequent judicial review in district court.

The evolution of the exemption of public property leased for private commercial enterprises

A recent Texas Attorney General Opinion regarding whether property owned by a 4B development corporation and leased for private commercial enterprise is exempt from property taxation has given rise to the continuing issue of whether public property leased or used for private commercial enterprise should be exempt from taxation. *See* Texas Attorney General Opinion No. GA–0522 (2007) (Under the terms of section 4B of the Development Corporation Act projects used for private commercial enterprise would be eligible for exemption) (property under by 4B Development Corporation leased to a developer and then sub leased for private build-to-suit commercial tenants). In order to understand the evolving nature of whether public property used for private commercial enterprise should be exempt from taxation, it is essential to examine Texas Local Government Code, section 380.001 and the Development Corporation Act of 1979, article 5190.6 Texas Revised Civil Statutes regarding the promotion of economic development.^{5 6 7}

⁴ The chief appraiser may remove an erroneously granted exemption for property that does not require an annual exemption application for any of the 5 preceding years and add the property to the appraisal roll under section 25.21. *See* tax Code, section 11.43(i).

⁵ The Development Corporation Act of 1979, Art. 5190.6 of the TEX. REV. CIV. STAT. (“Act”) authorizes municipalities to form nonprofit corporations (4A and 4B Development Corporations) to promote the creation of new and expanded industry and manufacturing, industrial and commercial, or retail activities through the imposition of local sales and use tax. The Development Corporations are separate corporate entities with a board of directors appointed by the creating municipality. The sales tax for both Section 4A and 4B Development Corporations may be used to

The stated purpose and intent of the Development Corporation Act is to promote economic development by providing means to secure and retain business and commercial enterprises that will create jobs. See Tex. Rev. Civ. Stat. Ann. Art. 5190.6 § 3. The Development Corporation Act authorizes eligible cities to create non-profit corporations to undertake and finance authorized projects. The development corporations have all the powers granted by the Development Corporation Act and the Texas Non-Profit Corporation Act. Such corporations are not separate political subdivisions but hold property for the benefit of the sponsoring city that created the corporation. The corporations are authorized to purchase, sell, lease and finance land and buildings and other facilities for an authorized project. Section 4B (k) of the Development Corporation Act expressly exempts property owned by a 4B development corporation including and taxes for any leasehold interests in its property. The statute provides that for all constitutional and statutory purposes that 4B projects are owned, used and held for public purposes for an on behalf of the eligible city that created the corporation and are exempt from taxation under Tax Code, section 11.11. There is no corresponding provision under the Development Corporation Act that expressly exempts property owned by a 4A development corporation including and taxes for any leasehold interests in its property. It should be noted that section 4B of the Development Corporation Act and its corresponding provisions under the statute was enacted subsequent to section 4A of the Development Corporation Act. If for all constitutional and statutory purposes that section 4B projects are owned, used and held for public purposes for an on behalf of the eligible city that created the corporation and are exempt from taxation under Tax Code, section 11.11 it necessarily follows even in the absence of an express legislative declaration, that so for all constitutional and statutory purposes that section 4A projects are owned, used and held for public purposes for an on behalf of the eligible city that created the 4A corporation and are exempt from taxation under Tax Code, section 11.11. Moreover, there is no express Constitutional authorization for section 4B (k) of the Development Corporation Act exempting property owned by a 4B development corporation including and taxes for any leasehold interests in its property.

encourage development and redevelopment. Traditionally, Section 4A sales tax proceeds have been used to facilitate manufacturing and industrial activities by funding the acquisition of land, buildings, and equipment for projects such as industrial manufacturing facilities, distribution and warehouse facilities, business related airports, port related facilities, recycling facilities and closed or realigned military bases. In addition 4A sales tax proceeds have been spent to promote commercial and retail business activities for property located within a designated development area. Traditionally, Section 4B sales tax has been used to fund the acquisition of land, buildings, or equipment for professional and amateur sports facilities, park facilities and events, entertainment and tourist activities and affordable housing. Section 4B is broader than Section 4A and permits sales tax proceeds to be spent on land, buildings, equipment, improvements constituting a “project” including manufacturing and industrial facilities, recycling facilities, distribution centers, small warehouse facilities, air or water pollution control facilities, development or redevelopment of closed military bases and facilities related to these projects, entertainment, tourist and convention facilities, public parks and related improvements; public safety facilities which would promote new or expanded business enterprises; related commercial facilities including restaurants, concessions and parking facilities; streets, roads and other area transportation facilities; related water and sewer utilities, site improvements, and beach remediation along the gulf of Mexico, sewer utilities, site improvements and beach remediation, drainage and demolition facilities, affordable housing and other improvements which promote new or expanded business activities.

⁶ Leasehold interests in 4A and 4B Development Corporation projects are exempt from property taxes. See, Article 5190.6 §4B(R) TEX. REV. CIV. STAT.

⁷ In, *Gaunt v Amarillo Economic Development Corporation*, 921 S.W.2d 884 (Tex.App.--Austin 1996, no writ), the Austin Court of Appeals held that a 4A Development Corporation is not limited to funding only projects as defined by the Development Corporation Act. The Court found that Section 4A sales tax proceeds could be expended to promote any activity that reasonably constituted economic development. In *Gaunt*, the Court concluded that the Amarillo Economic Development Corporation was authorized to enter into a contract with American Airlines, Inc. to make payments to the airlines to continue jet service to the city

Section 380.001 of the Texas Local Government Code provides express statutory authority for municipalities to provide economic development incentives consisting of loans and grants of city funds, use of city personnel, facilities and services with or without charge for economic development.⁸

A city may use Section 380.001 as authority to purchase or lease real property to a business to promote economic development; to provide financing for the purchase or lease of property; to waive or reduce impact or other development fees; to provide a refund of sales tax or property taxes; to provide the equivalent of Freeport or to construct roads, sewers or other infrastructures or provide financing for the same. In addition, the city can provide its personnel, equipment and facilities for economic development projects.⁹

In providing an economic development incentive pursuant to Section 380.001, the city contracts with the recipient of the grant to condition the incentive upon the creation of employment, construction of improvements, certain development, continued operations for a stated period, or other public consideration. The city should usually provide for the recapture of the grant or loan amount if the recipient does not fulfill the conditions of the grant. Any grant or loan must be approved by the city council, and should be included in the city budget or funded through a budget amendment, by bonds or other authorized proceeds. Some cities include in their budget a specific allocation for Section 380.001 grants and have issued bonds for such purposes.¹⁰

Section 380.001 is the enabling legislation for Section 52(a), which the electoral voted to add to the Constitution in 1987. Section 52(a) provides as follows:

“Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purpose, for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state. Any bonds or other obligations of a county, municipality, or other political subdivision of the state that are issued for the purpose of making loans or grants in connection with a program authorized by the legislature under this section and that are payable from ad valorem taxes must be

⁸ The city should have guidelines, policies or programs which describe the available economic development incentives and the criteria for eligibility in the same way the city does in adopting tax abatement guidelines. The program may be administered by city personnel or by contract with another entity such as the chamber of commerce or a Section 4A Development Corporation. The statute does not specifically address how the program is to be administered but it should be specific to include the conditions and safeguards discussed above. Prior to providing an economic development incentive, city should consult with its financial advisor and ensure that the incentive does not conflict with any bond, or state or federal grant or program.

⁹ Although Section 380.001 does not expressly authorize a city to finance an economic development incentive through the issuance of debt or bonds, a home-rule city can derive such authority from its charter. A home-rule city may issue bonds to extent provided in the city charter assuming that the bonds have been first authorized by voters in election held on the issue. If the city charter is silent, a home-rule city must find other statutory authority that allows the issuance of bonds or debt to finance the economic development incentive. A general law city, however, may not issue debt without specific statutory authority. A general law city can only fund economic development programs through current city funds unless there is other specific legislative authority.

¹⁰ Home-rule cities, in providing economic development incentives, are subject to city charter limitations. Although home-rule cities are authorized to take any action not prohibited by the Texas Constitution or Statutes, the city charter may restrict such programs. General law cities are limited by state law and therefore must rely on a specific statute that authorizes the action. However Section 380.001 should provide such authority.

approved by a vote of the majority of the registered voters of the county, municipality, or political subdivision voting on the issue. A program created or a loan or grant made as provided by this section that is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the political subdivision does not constitute or create a debt for the purpose of any provision of this constitution. An enabling law enacted by the legislature in anticipation of the adoption of this amendment is not void because of its anticipatory character.”

Section 52(a) did not authorize the legislature to create statewide economic development programs, but authorized the legislature to delegate such responsibilities to counties, municipalities, or other political subdivisions. Section 52(a) envisioned that a county, municipality, or other political subdivision could issue bonds to pay for its economic development program.

Section 52(a) was intended by the legislature, and by the voters who adopted it, to create exceptions to the pre-existing constitutional prohibitions on the lending of public credit. *See* TEX. ATTY. GEN. OP. JM-1227 (1990); House Research Organization’s Special Legislative Report, 1987 Constitutional Amendments and Referendum Propositions, August 17, 1987 (specifically mentioning the provisions of Article III, Sections 51 and 52, and Article XI, Section 3, as constitutional impediments that Section 52(a) was intended to overcome); see also Texas Legislative Council Information Report No. 87-2, *Analyses of Proposed Constitutional Amendments and Referenda Appearing on the November 3, 1987 Ballot*, September 1987.

Section 52(a) expanded the constitutional definition of public purpose to include economic development and diversification, elimination of unemployment and underemployment, stimulation and growth of agriculture, and the expansion of state transportation and commerce. *ATTY. GEN. OP. JM-1255* (1990).¹¹ However, Section 52(a) did not change the requirements that public resources and powers be used for “the direct accomplishment of a public purpose” and that transactions using such resources and powers contain sufficient controls “to insure that the public purpose be carried out.” The author of House Bill 3192, which proposed Section 380.001 of the Local Government Code, stated before the House Committee on Urban Affairs that this enactment would be the enabling legislation for Article III, Section 52(a). Hearings on H.B. 3192 before the House Committee on Urban Affairs, 71st Leg. (May 15, 1989) (testimony of Representative McCollough, author) (copy on file with House Committee Coordinator). By enacting Section 380.001, the legislature authorized municipalities to perform any of the functions that Article III, Section 52(a) permitted the legislature to delegate. Section 380.001 of the Local Government Code implements Article III, Section 52(a) and is therefore constitutional. *See* TEX. ATTY. GEN. OP. DM-185 (1992).

Thus, if the promotion of economic development constitutes a public purpose, publicly owned property and leased or used by private entities for private commercial enterprise which promotes economic development, stimulates growth, creates or maintains employment, increases property tax revenue and state and local sales tax constitutes a public purpose. If a horse racing track or

¹¹ The Texas Attorney General opined in reference to a project in which the City of Marlin contractually agreed with the Texas Department of Commerce to reimburse the Department of Commerce a pro rata portion of the Department of Commerce’s loan to the private entity if the private entity failed to provide the jobs it represented it would provide in its application to the Department of Commerce that the legislature and the voter’s intended Section 52(a) to create exceptions in the lending of public credit, but did not by itself authorize a municipality to lend credit; it authorized the legislature to enact laws that do so. Thus, the Texas Attorney General concluded the legislature had to enact enabling legislation to authorize the proposed transaction between the Texas Department of Commerce and the City of Marlen.

professional baseball or football stadium funded by local city sales tax and leased to private entities for private commercial enterprise is exempt from taxation it necessarily follows that other publicly owned land and buildings leased for private commercial enterprise should also be exempt from taxation. In the current day of economic development competition the State and local governments seek ways in which to attract and encourage business relocation and expansion. The time is ripe for the courts to get in step with the demands of economic development and recognize in an appropriate case that public property used by, or leased for, private commercial enterprise should be exempt from taxation including any resulting leasehold interest. Local governments are forced to grant tax abatement or other incentives to offset any property taxation that results, whether a taxable leasehold interest or otherwise, in order to compete locally, regionally and nationally.

Article VIII, section 1 of the Texas Constitution provides that all real and tangible personal property is taxable unless exempt as required or permitted by the Texas Constitution. Article VIII, section 2 provides that the legislature may, by the general laws, exempt from taxation public property used for public purposes. Also article IX, section 9 of the Texas Constitution provides that the property of counties, cities and towns, owned and held only for public purposes and all other property devoted exclusively to the use and benefit of the public shall be exempt from taxation. This provision extends to the property of any governmental agency. See *Lower Colorado River Authority v. Chemical Bank & Trust*, 190 S.W.2d 48, 50 (Tex. 1945); *Leander Independent Sch. Dist. v. Cedar Park Water Supply Corp.*, 479 S.W.2d 908, 911-913 (Tex. 1972). Article VIII, section 2(a) authorizes the legislature to exempt only public property used for public purposes. See *Leander Indep.*, 479 S.W.2d. 908; *North Alamo Supply Corp., v. Willacy County Appraisal Dist.*, 804 S.W.2d 894, 899 (Tex. 1991) (stating that statutory definitions and standards cannot replace constitutional requirements). Pursuant to article VIII, section 2(a) the legislature enacted Tax Code, section 11.11. Tax Code, section 11.11 provides that property owned by this state or a political subdivision is exempt from taxation if the property is used for public purposes. See *Hays County Appraisal Dist., v. SW. Tex. State Univ.*, 973 S.W.2d 419 (Tex. App. – Austin 1998, no pet.) (University building and parking lot leased to private attorneys and commercial tenants not entitled to exemption).

The Texas Supreme Court has held that public property is used for public purposes if it used primarily for the health, comfort, and welfare of the public. See *A & M Consolidated Indep. Sch. Dist., v. City of Bryan*, 184 S.W.2d 914, 915 (Tex. 1945). It is not essential that the property be used for governmental purposes. It is sufficient if it be property which all of the public has a right to use under proper regulations. The courts have held that property used for the private commercial enterprises of a lessee is not used primarily for the health, comfort, and welfare of the public. See *Beaumont v. Fertitta*, 415 S.W.2d 902, 908-909 (Tex. 1967); *Gables Realty Ltd. P'ship v. Travis Cent. Appraisal Dist.*, 81 S.W.3d 869, 870 (Tex. App. - Austin 2002, pet denied) (state owned building leased to private entity not entitled to exemption); *Grand Prairie Hosp. Auth. v. Dallas County Appraisal Dist.*, 730 S.W.2d 849, 851 (Tex. Civ. App. – Dallas 1987, writ ref'd n.r.e.) and *Grand Prairie Hosp. Auth. v. Travis Appraisal Dist.*, 707 S.W.2d 281, 284 (Tex. Civ. App. – Fort Worth 1986, writ ref'd n.r.e. (hospital office building leased to private physicians not entitled to exemption); *City of San Antonio ex rel. v. Bastrop Cent. Appraisal Dist.*, 2006 WL 2986248 (Tex. App. – Austin 2006) (the property of CPS energy, a municipal utility owned by San Antonio, was back assessed and not exempt because it leased its lignite reserves to Alcoa, Inc. for the exclusive use and benefit of Alcoa although with the right of CPS to repurchase extracted lignite from Alcoa-CPS ceased using the property for public use when it leased the property).

Although the Texas Attorney General in *Tex. Att’y Gen. Op. No. GA-0522 (2007)* declined to construe article III section 52-a to expand the definition of public purpose for tax exemption purposes it is clear that article III, section 52-a by its very terms directly exempts from taxation property used for economic development purposes and expands the definition of public purposes for which the legislature may exempt such property pursuant to article VIII, section 2. The time is ripe for the courts to reach such conclusion and modify the historical and antiquated definition of public purpose “if it used primarily for the health, comfort, and welfare of the public”.

In construing the state constitution the courts must examine the literal text and give effect to its plain meaning. However, such construction should not be in a vacuum or in isolation of other constructions made of the same provision. Even though the Texas courts have not addressed whether article III, section 52-a expands the definition of public purpose for tax exemption purposes it is unmistakable that “public purpose” includes the promotion of economic development otherwise public funds could not be loaned to, or expended on behalf of, private entities for private commercial enterprises, loan its property or personnel to promote economic development or issue debt for the same purposes, if it were not a public purpose. Article III, section 52-a by its very terms created exceptions to the pre-existing constitutional prohibitions against the use of public funds and resources to aid private persons and promote economic development. *See House Research Org. Bill Analysis, Tex. H.J. Res. 5, 70th Leg., R.S. (1987)* at 1-2 (stating that the amendment is “necessary to override current constitutional provisions that might be construed as prohibiting economic development investments by state or local governments that aided individual companies”); *Texas Legislative Council, Analysis of Proposed Constitutional Amendments and Referenda 14 (Sept. 1987)* (stating that the proposed amendment would resolve questions under article III, section 51 and 52 and make it clear that public funds could be used to make loans and grants to private businesses to aid economic development). Thus, regardless of whether the Texas Attorney General recognizes that economic development is a public purpose a reasonable and logical interpretation of article VIII, section 52-a dictates that such provision has expanded the definition of public purpose for tax exemption purposes.

The time is right for the courts to recognize that public property used for economic development is for a qualified public purpose regardless of the exclusivity of the use. Otherwise Tax Code, section 11.11 which exempts property owned by the state or its political subdivisions use for public purposes is rendered meaningless. Since subsidiary ownership and equitable title have satisfied various exemption ownership requirements public property that is owned by 4A and 4B development corporations or other organizations controlled by local government or which hold property for the benefit of local government should be exempt from taxation.

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Peter G. Smith was born on September 4, 1952, in Providence, Rhode Island. He pursued his preparatory and legal education at Texas Tech University obtaining his B.A. in 1974 and J.D. in 1976. He is a member of Delta Theta Phi, Pi Sigma Alpha (Political Science Honorary), and the State Bar of Texas, State Bar of Texas Property Tax Committee.

Mr. Smith holds memberships in various professional associations including: Texas Municipal League; Texas City Attorneys Association; Texas Association of Assessing Officers; and Texas Association of Appraisal District. He is a member of the Advisory Board of Municipal Legal Studies Center, Southwestern Legal Foundation and frequently lectures and authors articles on ad valorem taxation and municipal law.

Mr. Smith is a partner in the law firm of NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P., Dallas, Texas, with areas of expertise in economic development, ad valorem taxation, municipal law, administrative and zoning law. The law firm of NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P. is a Dallas based full service law firm specializing in municipal law. The firm was initially formed in 1895, making it one of Texas' oldest and most respected law firms. The firm serves as counsel for municipalities, political subdivisions and appraisal districts throughout the State. The firm's primary area of specialization has been the representation of Texas municipalities and political subdivisions in all matters.

For over forty years, the firm has represented cities and all other types of political subdivisions in all types of matters. Mr. Smith's experience includes trial and appellate litigation with emphasis on municipal law, civil rights, employment discrimination, zoning, land use, eminent domain and public official liability; and is an approved liability defense counsel for the TML Intergovernmental Risk Pool. Currently, Mr. Smith is City Attorney for the Cities of Richardson, Coppell, DeSoto, Allen, Gun Barrel, and Sachse. He is also general counsel for the Dallas, Chambers and Wichita Central Appraisal Districts.

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The law firm of NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P. is a Dallas based full service law firm specializing in municipal law and ad valorem taxation. The firm was initially formed in 1895, making it one of Texas' oldest and most respected law firms. The firm serves as counsel for municipalities, political subdivisions and appraisal districts throughout the State. The firm's primary area of specialization has been the representation of Texas political subdivisions in all matters.

For over forty years, the firm has represented cities and all other types of political subdivisions in all types of matters. Our litigation experience includes cases in both State and Federal Courts with appeals argued to the Texas and United States Supreme Courts.

Through its statewide representation of political entities, the firm has wide and varied experience with all phases of the law applicable to political subdivisions including appraisal districts. The firm has made numerous appearances before State administrative bodies and has actively lobbied for the passage or denial of many legislative proposals for political subdivisions.

Although relatively small in comparison to other urban-based full service firms, our practice has been streamlined to exclusively fit the needs of our public sector clients without the need of additional attorneys, paralegals and support staff necessary for legal services unrelated to the representation of political subdivisions. As a result, our attorneys are seasoned municipal and ad valorem tax attorneys with the trial and appellate experience necessary for the representation of today's political subdivisions and appraisal districts, making NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P. the premier municipal law firm in Texas.