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**RQ-0544-KP**

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June 11, 2024

The Honorable Ken Paxton  
Attorney General of Texas  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Dear General Paxton:

We respectfully request your opinion as to whether the law firm contracted by a taxing unit to collect delinquent taxes is entitled to collect attorney's fees, in the amount of fifteen percent (15%) of the total amount of taxes, penalties, and interest due the unit, pursuant to Texas Property Tax Code §33.48, if the following circumstances are both present;

1. alleges delinquent taxes for only the most recent calendar year; and
2. tax delinquency lawsuit is filed after February 1, but before July 1.

**Background**

The issue at hand is the interplay between Texas Property Tax Codes §§33.07 and 33.48. It is clear that Texas Property Tax Code §33.07 imposes an additional penalty of fifteen percent (15%) of the total amount of taxes, penalties, and interest due the taxing unit if taxes remain delinquent as of July 1. However, Texas Property Tax Code §33.07 carries with it a trigger date of July 1. Therefore, there can be no imposition or collection of the 15% penalty until the date specified.

On the other hand, Texas Property Tax Code §33.48 allows for the recovery of costs and expenses. One of those enumerated cost and expenses is attorney's fees, in the amount of 15 percent (15%) of the total amount of taxes, penalties, and interest due the taxing unit. This section does not contain a 'trigger' date similar to that contained within Texas Property Tax Code §33.07. Therefore, if an ad valorem tax that becomes delinquent on February 1, and the law firm files a lawsuit for the tax delinquency prior to July 1, should law firm be able to recover attorney's fees pursuant to Texas Property Tax Code §33.48?

The focus of this opinion is Texas Property Tax Code §33.48 and lawsuits filed prior to July 1. I recognize that attorney's fees pursuant to Texas Property Tax Code §33.48, and the penalty of Texas Property Tax Code §33.07 cannot both be imposed and collected.<sup>1</sup>

### **Issue Restated**

Is a taxing unit entitled to recover attorney fees in a lawsuit in the amount of fifteen percent (15%) of the total amount of taxes, penalties and interest due the taxing unit under Texas Property Tax Code §33.48 given the scenario described below?

1. The taxing unit is not seeking to recover an additional penalty for collection costs under Texas Property Tax Code §33.07 for taxes that remain delinquent after July 1 of the year in which they become delinquent;
2. The lawsuit is filed under Texas Property Tax Code §33.48 after February 1 but before July 1 of the year in which the taxes become delinquent;
3. The lawsuit was filed by a law firm that represents the taxing unit and has a contract with said taxing unit in accordance with Texas Property Tax Code §6.30; and
4. The delinquent taxes only include those accrued in the prior year.

**Example:** A law firm representing a taxing unit files a lawsuit on February 15, 2024 to collect property taxes owed by a taxpayer that became delinquent on February 1, 2024 and seeks to recover attorney fees under Texas Property Tax Code §33.48 of fifteen (15%) percent of the total amount of taxes, penalties and interest due the unit. The only taxes that are made the subject of the lawsuit are those taxes owed by the taxpayer that became delinquent on February 1, 2024. In this example, the taxing unit will not seek to recover from the taxpayer an additional penalty under Texas Property Tax Code § 33.07. In other words, the taxing unit seeks to recover attorney fees from the taxpayer under Texas Property Tax Code § 33.48 in lieu of § 33.07. The law firm that collects taxes for the taxing unit has a contract with the taxing unit in effect at the time the law suit was filed, in accordance with Texas Property Tax Code § 6.30.

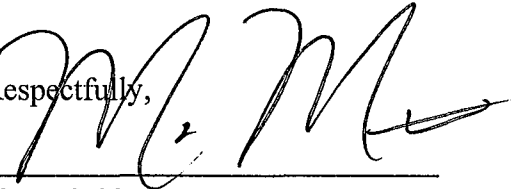
### **Request**

Therefore, we request your opinion as to whether the law firm contracted by the taxing unit to collect delinquent taxes, may in tax delinquency lawsuits that allege delinquent taxes for only the most recent calendar year (in this case, 2023), if the tax delinquency lawsuit is filed between February 1, 2024 and June 30, 2024, is entitled to collect attorney's fees, in the amount of fifteen percent (15%) of the total amount of taxes, penalties, and interest due the unit, pursuant to Texas Tax Code § 33.48.

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<sup>1</sup> Spring Branch Independent School Dist. V. Siebert, 100 S.W.3d 520 (2003); Galveston Independent School Dist. V Heartland Federal Savings and Loan, et.al., 159 B.R. 198 (1993).

I appreciate your time and consideration of this request. Because your timely response would advance needed economic development to the State of Texas, we respectfully request that your response be expedited. Please contact me if you need any additional information or if my office can be of any assistance.

Respectfully,  


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Marco A. Montemayor  
Webb County Attorney