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Austin, TX***Ad Valorem* Tax Problems in Consumer and Small
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***Ad Valorem* Tax Problems in Consumer and Small Business Bankruptcy Cases**

The saying goes that “nothing is sure in life except death and taxes.” That is especially so with *ad valorem* taxes. But two pieces of federal legislation—the Bankruptcy Code and the Internal Revenue Code—modify that certainty.

Ad valorem taxes are creatures of state law. So, when it comes to the interaction between these federal statutes and *ad valorem* tax collection efforts, the results vary from state to state. Some state legislatures have been more aggressive and effective than others in responding to the limitations on their tax scheme created by the application of the Bankruptcy Code. The context of this presentation is Texas law.

I. The Texas Property Tax Scheme

The beginning point for discussion must therefore be an understanding of the basics of the Texas Property Tax Code. The following are pertinent quotes from the sections of the Texas Property Tax Code most frequently cited in discussions of *ad valorem* tax issues in bankruptcy.

Section 32.01. Tax Lien.

(a) On January 1 of each year, a tax lien attaches to a property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property....

(b) A tax lien on inventory, furniture, equipment, or other personal property is a lien *in solido* and attaches to all inventory, furniture, equipment and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.

(d) The lien under this section is perfected on attachment and ...perfection requires no further action by the taxing unit.

Section 32.03. Restrictions on Personal Property Tax Lien.

(a) ... [A] tax lien may not be enforced against personal property transferred to a buyer in ordinary course of business as defined by Section 1.201 (9) of the Business & Commerce Code for value who does not have actual notice of the existence of the lien.

(b) A bona fide purchaser for value or the holder of a lien recorded on a manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community Affairs.

Section 32.04. Priorities Among Tax Liens.

(a) Whether or not a tax lien provided by this chapter takes priority over a tax lien of the United States is determined by federal law. In the absence of federal law, a tax lien provided by this chapter takes priority over a tax lien of the United States.

Section 32.05. Priority of Tax Liens Over Other Property Interests.

(b) ...[A] tax lien provided by this chapter takes priority over:
 (1) the claim of any creditor of a person whose property is encumbered by the lien;

(b-1) The priority given to a tax lien ... prevails, regardless of whether the debt, lien, future interest, or other encumbrance existed before the attachment of the tax lien.

Section 32.06. Transfer of Tax Lien.

(a-1) A person may authorize another person to pay the taxes imposed by a taxing unit on the person's real property by filing with the collector for the unit a sworn document ... (amended 2009)(See also Sec. 32.065 Contract for Foreclosure of Tax Lien and Sec. 33.445 Joinder of Tax Lien Transferee, eff. 9-1-09.)