

# The Phony \$5 Billion

*Some groups and taxing units contend that \$5 billion in property taxes are unassessed because of an alleged “loophole” in state law, often called “equal and uniform.” In this brief, we analyze the validity—or invalidity—of this claim and examine exactly what “equal and uniform” is.*

## Things to Know

- In Texas, central appraisal districts estimate the market value of property for tax purposes.
- Taxpayers may protest appraisals if they believe the assigned values do not reflect the market value of the property or if the assigned value is high relative to comparable properties.
- Article VIII, Section 1(a) of the Texas Constitution states that “taxation shall be equal and uniform.” This “E&U” provision provides the basis for a value appeal based on inequity relative to other properties.
- Critics contend that certain property owners have exploited the E&U remedies in statute. They contend, commercial properties are under-valued by \$180 billion—equating to \$5 billion in property taxes statewide.
- The basis for the \$5 billion claim is flawed—based on statewide extrapolations of faulty analysis.
- In fact, E&U is the most cost-effective remedy that all taxpayers have to ensure they are fairly taxed. The real losers if E&U statutes are repealed would be Texas homeowners, as residential properties are responsible for 2/3 of all value protests.

Texas property must be appraised for tax purposes at its market value before any exemptions and other adjustments are applied. Taxpayers have the right to protest their appraisals if they believe their property is unfairly valued.

Texas law gives taxpayers two grounds on which to protest the value their local appraisal district assigns their property:

1. *market value*—the assigned value does not reflect the actual market value of the property, or
2. *equal and uniform* (E&U)—the value of their property differs from similar properties.

A *market value* protest may be as simple as the owner pointing out hidden damage or deterioration of property or it may involve providing information of recent sales of comparable properties to indicate what the subject property is worth.

An *equal and uniform* protest may be filed if the owner believes the property is unequally valued relative to similar properties. Rather than hiring costly professional appraisers, values may be gathered from the appraisal rolls for similar properties to demonstrate that the assigned value for the subject property is high relative to comparable properties. The law sets basic standards for E&U protests. The selection of comparable properties must comply with generally accepted appraisal methods and techniques.

Some contend that E&U claims have resulted in the gross under-valuation of properties across the state, resulting in a \$5 billion statewide loss to property tax

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revenues; however, these estimates fail to hold up under close scrutiny.

In 2006, the Texas Association of Appraisal Districts (TAAD) reported that commercial property owners had used E&U appeals to reduce values by \$180 billion, thus cutting property taxes by \$5 billion. The estimate was a statewide extrapolation of litigation pending in Bexar County and assumed that all pending commercial property judicial appeals would be determined 100 percent in favor of taxpayers—a result that never occurred.

Far from being an automatic “win” for property owners, cases dealing with market values and E&U are impartially decided by judges and juries. Value reductions determined by the courts in 2016 amounted to less than 1% of the total appraised value of property statewide.

A second estimate, limited to City of Austin properties, was derived by the Aegis Group in 2015. It concluded that Austin commercial properties were under-valued by an average of 47 percent—an amount that coincidentally would result in roughly a \$5 billion tax loss if applied statewide.

The Travis Central Appraisal District (TCAD) analyzed the Austin report and found a number of serious flaws.

- The study was not objective, as the City’s request for proposal *specifically instructed* bidders to find that commercial properties were under-valued; bidders suggesting otherwise would not be considered.
- The authors failed basic math, calculating percentage differences incorrectly and overstating the study’s conclusions.
- The sales data was incorrectly adjusted for the time of the sale—a huge error in a dynamic market given that property is taxed on its value as of January 1 of each year.
- The study also relied on real estate listings rather than actual sales prices—meaning values were based on the owners’ asking prices, not the final selling prices.
- The study claimed that the lack of available sales data hampered TCAD in correctly valuing property—a contention the consultant made based on sales data that was in fact available.
- The study authors did not appraise a single property, nor did they review any actual sales contracts.

Drawing from the report, the City of Austin challenged its tax roll values for commercial property, but the case was dismissed on jurisdictional grounds by the Third Court of Appeals. Other taxing units have attempted similar challenges in the last few years, claiming that certain categories of property were incorrectly valued; however, not one of these challenges has been successful (except for a 2018 challenge by the City of Cotulla in La Salle County).

Appraisal districts are reviewed every year by the Comptroller of Public Accounts. In one year the Comptroller reviews the district’s appraisal procedures and operations. In the alternating year the Comptroller reviews the actual values of the district’s properties. The Comptroller’s studies have generally found that appraisal districts typically hit the mark. There may be minor deviations from market value for some categories of property, but they are isolated and are usually quickly corrected.

The real difficulty in appraising commercial properties in Texas may be more a function of a dynamic real estate market. Before Hurricane Harvey, commercial property values in the Houston central business district were increasing at roughly a 50% annual clip. In Travis County, commercial appraisals have increased about 30% annually.

Critics claim that E&U creates a “race to the bottom” as property owners “cherry-pick” under-appraised properties as “comparables” to argue for an E&U value reduction. But in fact, the values on the comparable properties are either determined or agreed to by the appraisal district. If the district believes these comparable values are in error, it alone has the ability to correct them.

Critics also claim that E&U remedies create a special “loophole” for commercial property owners. In fact, these remedies are available and used by all property owners—especially homeowners. Two-thirds of all value protests are filed concerning single-family residences. If E&U is repealed, homeowners will suffer most. Their only recourse will be to hire expensive professional appraisers to prepare opinions of value and analyze comparable property to ensure equality and uniformity of appraisal—a cost beyond justification for most property owners.

