 Brief

The Constitutional Spending Limitation Is Not a Barrier to Property Tax Relief

In 1978, some 84 percent of Texas voters cast their ballots in favor of the *Texas Tax Relief Act*, a constitutional amendment that included a provision limiting the growth in state spending to the growth in the state's economy. This provision is codified in Article VIII, Section 22 of the Texas Constitution. Unfortunately, loopholes in the amendment and lax enforcement policies have frustrated the intent of the legislators and voters who approved it. In the past 10 years, state spending has increased 125 percent, and the budget for the 2006-07 biennium approved by the 79th Legislature represents an 18 percent increase.

Now, some in Austin are remarkably contending that the amendment prevents using most or all of the estimated \$8.2 billion surplus for property tax relief. How can it be that an amendment designed to limit spending, and thereby control taxes, could prevent the Legislature from giving the surplus back to the taxpayers? In fact, there is no genuine constitutional barrier to using most or all of the surplus to buy down local property taxes.

First, the language of the entire amendment viewed in context and the legislative history demonstrate that the spending limitation was not intended to limit property tax relief. The amendment was entitled the *Texas Tax Relief Act* and there were several other provisions in the amendment, in addition to the spending limitation, that expressly limited property taxes. Second, at most only the difference between the amount of money appropriated to local school districts that is not offset by lowering the statewide \$1.50 cap could possibly be construed as spending. Even under this approach, most or all of the \$8.2 billion surplus can be constitutionally used to buy down school property taxes without violating the spending limitation for the 2006-07 biennium. Finally, the Texas Supreme Court surely would not have recommended this solution of buying down local school property taxes with state revenue if it were unconstitutional.

The Amendment and the Current Biennium

The spending limitation, as set forth in Article VIII, Sec. 22 (a) of the Texas Constitution, provides:

In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

A key feature of the amendment is that it applies only to funds raised from general tax revenues, which excludes billions in federal funds and funds dedicated under the Constitution, such as nearly all of the gas tax. After this amendment was approved by voters, the Legislature in 1979 enacted implementing legislation now codified in Section 316 of the Government Code. This bill delegated to the Legislative Budget Board (LBB) the task of calculating the maximum amount that may be spent under the limitation.

In 2004-05, appropriations from non-dedicated tax revenue totaled \$49.9 billion. The LBB adopted an 11.34 percent projected growth rate in personal incomes for 2006-07, the lowest of five estimates it received. Adding 11.34 percent to the \$49.9 billion spent in the 2004-05 biennium results in a \$55.6 billion threshold for the 2006-07 biennium. As of today, appropriations from non-dedicated tax revenue for the 2006-07 biennium total \$53 billion. Accordingly, the Legislature during this special session may spend no more than \$2.6 billion from general revenues and still comply with the spending limitation threshold set by the LBB. Due to modest increases in federal funds, the Legislature can constitutionally spend a total of approximately \$3 billion during the special session.

What the Big Spenders Are Saying

Those who advocate spending most of the surplus, rather than giving it back to taxpayers, are arguing that a property

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tax cut would actually amount to spending. In a white paper distributed to legislators, it is contended that school property taxes cannot be bought down by more than 17 cents without violating the constitutional spending limitation. The implicit claim is that because a school property tax cut would be paid for by appropriating funds to the Texas Education Agency (TEA), which in turn would send the funds to school districts to offset lost property tax revenues, such appropriations count against the constitutional limit.

The Constitutional Spending Limit Does Not Constrain Property Tax Relief

Intent of the Amendment Was to Limit Spending and Lower Taxes

The historical context and legislative debate of the amendment clearly demonstrate that the intent was to limit government spending and, by so doing, limit the tax burden on Texans. The 1978 amendment was part of a national grassroots effort to rein in taxes and spending. Howard Jarvis, the architect of the similar Proposition 13 in California, came to Texas to rally citizens for the amendment. The amendment was actually entitled the *Texas Tax Relief Act*.

In fact, the original House version of the amendment actually limited property tax revenue increases to five percent of the previous year and required a two-thirds vote by the local governing body to override it. Although this provision was dropped, the final version of the amendment included a homestead exemption, an agricultural property tax exemption, a ban on a statewide property tax appraisal, and a requirement that household goods not be counted in local appraisals. Clearly, the Legislature's intent was to limit spending, and therefore the need for higher taxes, not to prevent tax cuts. It is inconceivable that 84 percent of Texans in 1978 would have voted for an amendment that would have prevented their taxes from being lowered.

The current procedure being discussed for buying down school property taxes involves lowering the \$1.50 cap and appropriating some of the surplus to the TEA, which would then reimburse school districts for the lost property


tax revenue. As long as this appropriation is legally tied to lowering of the cap, the legislative intent of the 1978 amendment suggests that it is properly interpreted not to limit such property tax relief.

At most, only the difference between the amount of funding sent to the TEA to replace lost revenues from local property taxes and the guaranteed amount by which school property taxes would be cut based on the new cap could be considered spending subject to the limitation. Some difference is necessary under the Texas Supreme Court's jurisprudence to avoid a statewide property tax, but this calculation would still allow the vast majority of the surplus to be used for property tax cuts, assuming that a new cap of \$1.30 or less is part of the plan.

Supreme Court's Ruling Requires a Substantial Property Tax Cut and Lowering of the Cap

In its most recent school finance decision, the Texas Supreme Court ruled that the Texas has a *de facto* statewide property tax because too many school districts must tax at the cap in order to provide the constitutionally mandated educational program. Accordingly, the Court has virtually required a substantial buying down of school property taxes with state funding. Surely, the Court would not have ordered the Legislature to violate the Constitution.

Conclusion

In 1978, Texans voted overwhelmingly for the spending limitation amendment because they wanted to rein in government spending and, by so doing, prevent their tax burden from continuing to escalate. Texans have been battered by mounting property taxes fueled by skyrocketing appraisals. Since 1999, the local property tax burden has swelled by over 74 percent while Texans' personal incomes have only risen by 35 percent. The spending limitation does not present a barrier to using most or all of the surplus to buy down school property taxes. Claiming that the *Texas Tax Relief Act* prevents tax relief turns the Constitution on its head and is a poor excuse not to give Texans their money back. 

¹See <http://www.cato-institute.org/pubs/pas/pa-213.html>.

²Legislative Budget Board Technical Memo on Implementation of Constitutional Limitation on Spending. Available at http://www.lbb.state.tx.us/Notice/Technical_Memo.pdf.

³See Hartman, David, Restraining Growth of Texas State Government Spending, Lone Star Foundation, October 8, 2000.

⁴See Bill File for C.S.H.J.R. 1, Second Special Session, 1978, Legislative Reference Library.

⁵See *Neeley v. West Orange-Cove CISD*, 176 SW3d 746 (Tex. 2005).

⁶Texas Comptroller for Public Accounts 1999 and 2005 property tax studies, available at <http://www.window.state.tx.us/taxinfo/proptax/archives.html>.