

**SOAH DOCKET NO. 304-09-4487.PVS  
TCPA HEARING NO. 108-905-108**

<b>HIDALGO I.S.D.,</b> <b>Petitioner</b>	§ § § § § § § §	<b>BEFORE THE STATE OFFICE</b>   <b>OF</b>   <b>ADMINISTRATIVE HEARINGS</b>
<b>v.</b>		
<b>TEXAS COMPTROLLER OF PUBLIC ACCOUNTS,</b> <b>Respondent</b>		

**PROPOSAL FOR DECISION**

The Hidalgo Independent School District (“Petitioner”) filed a protest petition with regard to the Property Value Study (“PVS”) conducted by the Property Tax Advisory Division (“PTAD”) of the Comptroller of Public Accounts (“Comptroller”). Petitioner contests Category F. In this Proposal for Decision, the Administrative Law Judge (“ALJ”) does not recommend any changes to the PVS.

**I. PROCEDURAL HISTORY, NOTICE & JURISDICTION**

On May 27, 2009, Comptroller Staff (“Staff”) referred the cases to the State Office of Administrative Hearings. The hearing in this contested case was consolidated with the hearing in Edcouch-Elsa ISD(Docket No. 304-09-4485.PVS) which was convened on June 25, 2009, in Austin, Texas, before Administrative Law Judge Peter Brooks. The two hearings were consolidated. Petitioner was represented by Richard Talbert of Weslaco, Texas. The Comptroller was represented by Assistant Attorney General Karen Pettigrew. The record closed on the same day.

The recommendations in this proposal for decision are made under the authority of Chapter 403, Texas Government Code, Chapter 23, Texas Property Code, and 34 Tex. Admin. Code § 9.4301 et. seq. There are no disputed issues regarding notice or jurisdiction.

## II. REASONS FOR DECISION

### A. Evidence Submitted

The PTAD presented the testimony of Amado “Moe” Trevino, Supervisor of South Texas Area. The PTAD offered into evidence the materials from Marshall and Swift, including the table of local modifiers for the United States.

Petitioner presented the testimony of Rolando Garza, Chief Appraiser of the Hidalgo County Central Appraisal District. Petitioner offered the following into the record:

1. Copies of selected Property Tax Code statutory provisions;
2. Excerpts from treatise on Cost Approach;
3. Marshall & Swift valuation Service, introduction;
4. Marshall & Swift description of cost multipliers;
5. Marshall & Swift Table of Local Modifiers for the United States;
6. Hidalgo County CAD CARDS on selected Category F commercial properties;
7. Hidalgo County CAD Calculator Cost form for selected Category F commercial properties;
8. Photographs of selected Category F commercial properties; and
9. Table of local modifiers developed for selected properties.

### B. Analysis and Recommendation

#### Category F – Local Modifier

Petitioner protests that the PTAD erred in their appraisals on all Category F properties by not adjusting the local modifier as required by the Texas Property Code, Marshall and Swift and Uniform Standards of Professional Appraisal Practices. Petitioner contends that the Category F properties sold in the Hidalgo ISD clearly show that an additional modifier is required to calculate “market value.” Petitioner concludes that it is the responsibility of the PTAD to calculate this local modifier if it is to use the Marshall & Swift Guide to estimate the market value of property in the Hidalgo Independent School District.

The PTAD acknowledges that it normally calculates a category wide local modifier for residential properties in order to adjust the cost based appraisals developed from use of the

Marshall & Swift cost tables. The local modifier is in addition to the zip code multiplier that is built-in to the Marshall & Swift program, which generates a local multiplier for each zip code in the United States. The built-in zip code multiplier reduces the cost based appraisal to reflect the local costs. For example, in the case of residential properties located in La Villa, Texas, (also located in Hidalgo County) the field appraiser enters its zip code, 78562, yielding a .79 multiplier, which modifies the national cost tables, thus, in effect reducing the appraisals for La Villa residential properties by 21%. An additional local modifier is developed to further reflect the local market conditions. The local modifier is calculated by computing the ratio of the properties sales price to the Marshall & Swift cost based appraisal, which already has a built-in zip code multiplier. This local modifier is applied to all appraisals in Category A.

The PTAD generally declines to develop a category-wide local modifier for commercial properties because Category F (commercial real property) is made up of a wide variety of different kinds of properties (subsets) that serve widely varying functions. While residential properties serve the same basic function and differences in construction can be accounted through adjustments for size, amenities and age, such a category wide comparison is not possible with commercial real properties. The PTAD's witness, Mr. Trevino, estimated that there were at least fifty subsets of Category F commercial real properties. For example office buildings cannot be meaningfully compared to storage warehouses nor may retail centers be compared to distribution warehouses. A local modifier would have to be developed for each subset of commercial properties because each subset serves a different function and has its own characteristics. The PTAD asserts that these differences cannot be adjusted to allow meaningful comparisons between subsets of commercial real properties. The PTAD, however, claimed that it could not develop a local modifier for any subset of Category F given the small number of sales of any commercial properties that occur within the district in any given year.

The PTAD refused to accept the local modifier of 70% that Petitioner, in its original protest, requested should be applied to all Category F properties. The 70% modifier advanced by Petitioner was based originally on 4 sales. Petitioner subsequently modified its initial analysis by adding three commercial properties. The apartment building included in the original four properties was dropped leaving a total of 6 sales. The remaining 6 properties consisted of an

office/ warehouse, a dry cleaner, a warehouse, a lounge, a strip office center/ bank, and retail strip center. Petitioner performed an appraisal of the 6 sales and developed a modifier for each of the properties based on the ratio of the sale price to the appraisal. Mr. Trevino estimated that the median local modifier, taking into account the additional properties, is approximately 60%, lower than the original 70% modifier proposed by Petitioner. Mr. Garza testified that the actual median local modifier was approximately 58%. The PTAD did not dispute the mechanics of Petitioner's calculations. The dispute centers on the fundamental premise whether it is possible for the PTAD to arrive at a representative category- wide modifier applicable to all Category F commercial real properties.

Petitioner's witness established the unique characteristics of the Hidalgo ISD market and economy. Petitioner pointed out the limitations in the Marshall & Swift cost tables. There are 5 construction types within Category F, but the same local modifier applies to all commercial properties located in a specific zip code regardless of construction class or subset. Petitioner, however, did not offer any expert testimony that proves the failure to develop such a local modifier invalidates the sample, and, ultimately, negatively affects the ratio study. Petitioner has also not offered any expert testimony establishing that the development of a category wide local modifier comports with generally accepted statistical sampling techniques. The PTAD has an obligation to determine the taxable value of property according to "generally accepted standard valuation, statistical compilation, and analysis techniques." TEX. GOV'T CODE ANN. §§403.302(b). The PTAD's concern that local modifiers would have to arise out of each subset of truly comparable commercial real properties has not been refuted by Petitioner.

The ALJ finds that the PTAD's position is reasonable. Its witness has identified legitimate concerns that would preclude the development of a category wide local modifier for all commercial real properties. The ALJ concludes that the PTAD has met its burden to prove the accuracy of its findings. *Id.*

Consequently, the ALJ does not recommend any changes to the PVS.

**SIGNED July 2, 2009.**

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**PETER BROOKS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**