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I.D.# 48757

SENATOR PAUL BETTENCOURT
DISTRICT 7

The Honorable Ken Paxton
Texas Attorney General
ATTN: Opinion Committee
P.O. Box 12548
Austin, TX 78711

Re: Expedited request for legal opinion on the application of Section 11.35(g) of the Tax Code

Dear General Paxton,

This letter serves as a formal request for your opinion regarding the application of the temporary exemption for qualified property damaged by a disaster, as set forth in Section 11.35(g) of the Texas Tax Code.

Background

On March 13, 2020, the Governor of Texas certified that the novel coronavirus (COVID-19) poses an imminent threat of disaster and declared a state of disaster for all counties in Texas. Section 11.35 of the Tax Code, which went into effect on January 1, 2020, establishes a temporary exemption to ad valorem taxes for qualified property damaged by a disaster. Under Section 11.35, if a declared disaster occurs prior to the date a taxing unit adopts their tax rate, property owners are entitled to a temporary exemption on property at least 15% damaged by the disaster. The exemption applies to both real property and business personal property.

Section 11.35(a) defines "qualified property" as consisting of: "(A) tangible personal property used for the production of income; (B) an improvement to real property; or (C) a manufactured home as that term is defined by Section 1201.003, Occupations Code, that is used as a dwelling, regardless of whether the owner of the manufactured home elects to treat the manufactured home as real property under Section 1201.2055, Occupations Code." Tex. Tax Code § 11.35(a)(1)(A)-(C). Additionally, the statute requires that qualified property must be located in an area declared by the Governor to be a disaster area and be at least 15% damaged by the disaster as determined by the chief appraiser. *Id.* § 11.35(a)(2)-(3).

On receipt of an application for an exemption authorized by Section 11.35, the chief appraiser is required to determine whether any item of qualified property that is the subject of the application is at least 15% damaged by the disaster and assign to each item of qualified property a damages assessment rating as set forth in Section 11.35(g). *Id.* § 11.35(f).

Section 11.35(g) categorizes damaged property into one of four damage assessment ratings, which is used to determine the exemption amount:

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11451 KATY FREEWAY, SUITE 209
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(713) 464-0282
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- Level 1 provides a 15% exemption for properties that are at least 15% but not more than 30% damaged. This is defined as a property that has sustained minimal damage and may continue to be used as intended.
- Level 2 provides for a 30% exemption for properties that are at least 30% but not more than 60% damaged. This is defined as a property that has sustained nonstructural damage, including damage to the roof, walls, foundation or mechanical components, or has had less than 18 inches of water inside.
- Level 3 provides for a 60% exemption for properties that are at least 60% damaged but are not a total loss. This is defined as a property that has suffered significant structural damage requiring extensive repair due to the failure of structural elements, or has had more than 18 inches of water inside.
- Level 4 provides for a 100% exemption for properties that are a total loss.

See id. § 11.35(g)(1)-(4). Section 11.35(g) makes no reference to whether property that has suffered an economic loss not associated with physical damage would qualify the exemption.

Request

Does the temporary disaster exemption, as set forth in Section 11.35(g) of the Texas Tax Code, apply to property that has suffered an economic loss not associated with physical damage to the property as a result of the disaster declared by the Governor's March 13, 2020 proclamation?

I respectfully ask that you treat this opinion request as an expedited request. The application window for property owners to apply for the temporary exemption has been open since March 13, 2020 and will last until June 26, 2020. Appraisal districts and taxpayers need immediate guidance on this issue to determine who is eligible for the temporary exemption.

Thank you for time and assistance in this matter. I would be glad to provide any additional information you may require to address the important matter to Texas taxpayers.

Sincerely,



Paul Bettencourt
Chair, Senate Committee on Property Tax

cc: Ryan Fisher, Director of Intergovernmental Relations, Office of the Attorney General