

## Section 11.35 Temporary Exemption for Qualified Property Damaged by Disaster

The temporary post-disaster exemption is based on the "damage assessment rating" and provides guidelines to the chief appraiser for selecting between the four levels (I, II, III, and IV) of damage assessment based on physical damage factors.<sup>1</sup> Additionally, the chief appraiser has discretion to decide "whether any item of qualified property that is the subject of the application is at least 15 percent damaged by the disaster."<sup>2</sup>

- **Level I** means "the property suffered minimal damage and may continue to be used as intended."<sup>3</sup>
- **Level II** "means that the property has suffered only nonstructural damage, including nonstructural damage to the roof, walls, foundation, or mechanical components, and the waterline, if any, is less than 18 inches above the floor."<sup>4</sup>
- **Level III** "means that the property has suffered significant structural damage requiring extensive repair due to the failure or partial failure of structural elements, wall elements, or the foundation, or the waterline is at least 18 inches above the floor."<sup>5</sup>
- **Level IV** means "the property is a total loss . . . repair of the property is not feasible."<sup>6</sup>

The exemption is only available to: "(A) tangible personal property used for the production of income; (B) an improvement to real property; or (C) a manufactured home." <sup>7</sup>

### **Potential Judicial Interpretation:**

Texas courts would likely avoid construing the individual descriptions of damage in sections 11.35(g)(1) and 11.35(g)(2) "in isolation from the rest of the statute."<sup>8</sup> Instead, courts will "consider the act as a whole, and not just single phrases, clauses, or sentences."<sup>9</sup> Therefore, the descriptions of types of physical damage and references to "repair" and "extensive repair" throughout section 11.35 likely indicate that the section 11.35 exemption is intended apply to properties suffering physical property damages, not economic damages like the economic damage caused by the Coronavirus. In addition, the limitation of the exemption to tangible personal property, improvements, and manufactured homes likely indicates the exemption is intended to be limited to physical property damage because the statute excludes other property types including unimproved real property and mineral interests, which could also be subject to economic damages but would likely not be subject to physical property damage.<sup>10</sup>

Additionally, a court would likely find that allowing "minimal damage" in Level I or "nonstructural damage" in Level II to include pandemic-caused economic damages would "ascrib[e] to one word a meaning so broad that it is inconsistent with its accompanying words."<sup>11</sup> Further, for Level II, the description of "nonstructural damage" lists "nonstructural damage to the roof, walls, foundation, or mechanical components."<sup>12</sup> Therefore, "nonstructural damage" would likely be interpreted with "roof, walls, foundation, or mechanical components" to mean nonstructural physical damage instead of nonstructural economic damage.

Lastly, in the separate context of insurance policies, Texas courts consistently hold that "economic damages are not property damages."<sup>13</sup> Including that a "suit alleg[ing] only economic loss . . . does not allege a property damage claim."<sup>14</sup> Courts could look to these decisions to distinguish between property damages and economic damages.

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<sup>1</sup> Tex. Tax Code § 11.35(g)

<sup>2</sup> *Id.* § 11.35(f)

<sup>3</sup> *Id.* § 11.35(g)(1)

<sup>4</sup> *Id.* § 11.35(g)(2)

<sup>5</sup> *Id.* § 11.35(g)(3)

<sup>6</sup> *Id.* § 11.35(g)(4)

<sup>7</sup> *Id.* § 11.35(a)(1)

<sup>8</sup> *Cities of Austin, Dallas, Ft. Worth & Hereford v. Sw. Bell Tel. Co.*, 92 S.W.3d 434, 442 (Tex. 2002)

<sup>9</sup> *Id.*

<sup>10</sup> See generally Tex. Comptroller of Pub. Accts., Texas Property Tax Assistance Property Classification Guide 1–2 (Feb. 2014) (listing the 20 categories of property for property tax purposes)

<sup>11</sup> *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 750 n.29 (Tex. 2006) (quoting *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 575 (1995))

<sup>12</sup> Tex. Tax Code § 11.35(g)(2)

<sup>13</sup> *State Farm Lloyds v. Kessler*, 932 S.W.2d 732, 737 (Tex. App.—Fort Worth 1996, writ denied)

<sup>14</sup> *Houston Petroleum Co. v. Highlands Ins. Co.*, 830 S.W.2d 153, 156 (Tex. App.—Houston [1st Dist.] 1990, writ denied)