



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2020

The Honorable Paul Bettencourt
Chair, Senate Committee on Property Tax
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. KP-0299

Re: Application of the temporary tax exemption for qualified property damaged by a disaster, as set forth in section 11.35(g) of the Tax Code (RQ-0345-KP)

Dear Senator Bettencourt:

You ask whether the temporary tax exemption in section 11.35 of the Tax Code applies to property that has suffered an economic loss, but no physical damage, as a result of the COVID-19 disaster declared by the Governor's March 13, 2020 proclamation.¹

The Eighty-Sixth Legislature adopted section 11.35 of the Tax Code in response to the physical damage Hurricane Harvey caused to property in the coastal region in 2017.² Section 11.35 creates a temporary tax exemption for qualified property damaged by a disaster, as declared by the Governor. *See* TEX. TAX CODE § 11.35. "Qualified property" includes "tangible personal property used for the production of income," "an improvement to real property," and manufactured homes meeting certain requirements. *Id.* § 11.35(a)(1). If qualified property has been "at least 15 percent damaged by the disaster," section 11.35 entitles a person "to an exemption from taxation by a taxing unit of a portion of the appraised value" of that property. *Id.* § 11.35(a), (b).³

¹*See* Letter from Honorable Paul Bettencourt, Chair, Senate Comm. on Prop. Tax, to Honorable Ken Paxton, Tex. Att'y Gen. at 1–2 (Apr. 9, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0345KP.pdf> ("Request Letter").

²*See* Senate Research Ctr., Bill Analysis, Tex. H.B. 492, 86th Leg., R.S. (2019), <https://capitol.texas.gov/tlodocs/86R/analysis/pdf/HB00492S.pdf#navpanes=0>.

³If a disaster is declared on or after the date that a taxing unit adopts the tax rates for the tax year in which the disaster occurs, a person is not automatically entitled to the exemption created by section 11.35 unless the governing body of the taxing unit lawfully adopts the exemption. *See* TEX. TAX CODE § 11.35(c)–(e).

Upon receipt of an application for an exemption under section 11.35, the chief appraiser must determine whether any item of qualified property “is at least 15 percent damaged by the disaster.” *Id.* § 11.35(f).⁴ If such a determination is made, the chief appraiser must then “assign to each such item of qualified property a damage assessment rating of Level I, Level II, Level III, or Level IV, as appropriate.” *Id.* Those levels correspond to increasing amounts of property damage in the following amounts:

(1) a Level I damage assessment rating if the property is at least 15 percent, but less than 30 percent, damaged, meaning that the property suffered minimal damage and may continue to be used as intended;

(2) a Level II damage assessment rating if the property is at least 30 percent, but less than 60 percent, damaged, which, for qualified property described by Subsection (a)(1)(B) or (C), 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;

(3) a Level III damage assessment rating if the property is at least 60 percent damaged but is not a total loss, which, for qualified property described by Subsection (a)(1)(B) or (C), 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; or

(4) a Level IV damage assessment rating if the property is a total loss, meaning that repair of the property is not feasible.

Id. § 11.35(g). Noting that section 11.35 makes no reference to property that has suffered an economic loss not associated with physical damage caused by the disaster, you question whether the temporary tax exemption could apply to such property. Request Letter at 2.

Answering your question requires a construction of the phrase “damaged by the disaster” as used in section 11.35, as only those qualified properties with at least fifteen percent damage may receive the exemption. TEX. TAX CODE § 11.35(f). “Our primary objective in construing a statute is to ascertain and effectuate the Legislature’s intent.” *Janvey v. Golf Channel, Inc.*, 487 S.W.3d 560, 572 (Tex. 2016). “We derive intent from the plain meaning of the text construed in light of the statute as a whole.” *Id.* When statutes do not define key terms, we apply their common, ordinary meaning unless a contrary meaning is apparent from the statute’s language. *Univ. of Tex.*

⁴The appraisal district board of directors appoints a chief appraiser, who serves as chief administrator of the appraisal office. *Id.* § 6.05(c). Pursuant to rules of the Texas Commission of Licensing and Regulation, appraisers may not “engage in an official act that is . . . in violation of law.” 16 TEX. ADMIN. CODE § 94.100(4) (Tex. Dep’t of Licensing & Regulation, Code of Ethics).

at *Arlington v. Williams*, 459 S.W.3d 48, 52 (Tex. 2015). To determine a statutory term's common, ordinary meaning, we typically look first to their dictionary definitions. See *Epps v. Fowler*, 351 S.W.3d 862, 866 (Tex. 2011) (“[W]e consult dictionaries to discern the natural meaning of a common-usage term not defined by contract, statute, or regulation.”).

One common usage of the term “damage” is “physical harm caused to something in such a way as to impair its value.” WEBSTER’S THIRD NEW INT’L DICTIONARY 436 (2002). Consistent with this definition and the context of section 11.35, the damage assessment categories the Legislature established in subsection (g) describe various levels of physical damage requiring repairs to return the property to its pre-disaster status. TEX. TAX CODE § 11.35(g). Level I involves “minimal damage” such that the property can continue to be used as intended. *Id.* § 11.35(g)(1). Level II involves “nonstructural damage to the roof, walls, foundation, or mechanical components” *Id.* § 11.35(g)(2). Level III involves “significant structural damage requiring extensive repair” *Id.* § 11.35(g)(3). And Level IV involves damage rendering repair of the property not feasible. *Id.* § 11.35(g)(4). In contrast to these descriptions, a purely economic loss involves no physical damage to the property. Nothing in the language of section 11.35 evidences an intent on the part of the Legislature to address non-physical damage to property by allowing an exemption in such circumstances.

Furthermore, with regard to qualified real property, the temporary exemption applies not to the value of real property as a whole, but instead only to “improvements” that suffered damage due to the disaster. *Id.* § 11.35(a)(1)(B). The Tax Code generally defines an “improvement” as “a building, structure, fixture, or fence erected on or affixed to land” or “a transportable structure that is designed to be occupied for residential or business purposes” *Id.* § 1.04(3). Had the Legislature intended to address economic losses or a general decrease in property value due to factors beyond the physical condition of the property, it could have used different language that encompassed those losses. See *Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm’n*, 518 S.W.3d 318, 337 (Tex. 2017) (observing that courts will not judicially amend a statute by adding words that are not contained in the language of the statute). Instead, the Legislature limited the real property exemption to improvements damaged by a disaster. Construing section 11.35 as a whole, a court would likely conclude that the Legislature intended to limit the temporary tax exemption in section 11.35 to apply only to property physically harmed as a result of a declared disaster.

S U M M A R Y

Section 11.35 of the Tax Code creates a temporary tax exemption for qualified property damaged by a disaster, as declared by the Governor. A court would likely conclude that the Legislature intended to limit the temporary tax exemption to apply to property physically harmed as a result of a declared disaster. Thus, purely economic, non-physical damage to property caused by the COVID-19 disaster is not eligible for the temporary tax exemption provided by section 11.35 of the Tax Code.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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