



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 9, 2020

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

**Via E-Mail**

Re: Application of the temporary 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:

We received your request for an attorney general opinion and have designated it as Request No. 0345-KP. Section 402.042 of the Government Code provides that the Attorney General shall issue an opinion not later than the 180th day after the date that an opinion request is received, unless before that deadline the Attorney General notifies the requesting person in writing that the opinion will be delayed. TEX. GOV'T CODE § 402.042(c)(2). We received your request on April 9, 2020, setting a due date for your opinion of October 6, 2020. However, we note that you have emphasized the urgency of obtaining an answer to this question and have asked that we expedite our response. Thus, will we make every effort to address your request as promptly as possible.

By copy of this letter we are notifying those listed below of your request and inviting them to submit briefing on your questions if they have a special interest or expertise in the subject matter. If you are aware of other interested parties, please forward this notice for briefing to them or let us know, so that we may notify them as soon as possible. Briefs may be submitted by e-mail to [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov). Please note that briefs and other correspondence are subject to the Public Information Act.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Virginia K. Hoelscher  
Chair, Opinion Committee

VKH/som

Attachment: Request No. 0345-KP

cc: Ms. Doris Koch, Executive Director, Texas Association of Appraisal Districts  
Ms. Susan M. Redford, Executive Director, Texas Association of Counties  
Mr. Michael Pichinson, General Counsel, Texas Association of Counties  
Ms. Joy Baskin, Director of Legal Services, Texas Association of School Boards  
Mr. Bennett Sandlin, Executive Director, Texas Municipal League  
Mr. Scott Houston, Deputy Executive Director, Policy & General Counsel, Texas  
Municipal League  
Ms. Johanna Meade, General Counsel Division, Office of the Governor

**RECEIVED**

By Opinion Committee at 3:50 pm, Apr 09, 2020



**RQ-0345-KP**

**FILE# ML-48757-20**

**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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P.O. BOX 12068  
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(512) 463-0107  
FAX: (512) 463-8810

COMMITTEES:  
SENATE COMMITTEE ON PROPERTY TAX - CHAIR  
EDUCATION  
FINANCE  
HIGHER EDUCATION

DISTRICT OFFICE  
11451 KATY FREEWAY, SUITE 209  
HOUSTON, TEXAS 77079  
(713) 464-0282  
FAX: (713) 461-0108

- 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