

Sales/Use/Indirect:

Texas: Memo Explains Implications of Case that Exempted Equipment Used to Excavate TPP from Realty

Memorandum No. 202505004M, Tex. Comptroller of Public Accounts (5/16/25). Referencing a 2021 Texas Court of Appeals holding that a taxpayer who extracted and processed coal for ultimate sale was entitled to Texas' sales and use tax manufacturing exemption on purchased excavating equipment under the provided facts [see Case No. 03-20-00406-CV, Tex. Ct. App. (10/7/21) and *State Tax Matters*, Issue 2022-41, for more details on the ruling], a Texas Comptroller of Public Accounts memorandum explains that the effect of this ruling is that "processing" can be performed on real property. As a result, according to the memo, "activities that were previously considered to be in preparation of production may now be considered processing allowing exemptions on previously taxed equipment." To meet the exemption requirements, the memo explains that the item (e.g., equipment) must directly make or cause a chemical or physical change to the product (e.g., materials) being produced, and the product must be tangible personal property held for ultimate sale. The guidance also states that the taxability determinations in this memo will be applied prospectively beginning July 1, 2025. Moreover, "previously nontaxable materials may be treated as taxable, processed materials after July 1, 2025, because they were extracted from the earth and/or washed, dried, or separated in a manner that caused a chemical or physical change." Please contact us with any questions.

URL: <https://star.comptroller.texas.gov/view/202505004M?q1=202505004M>

URL: <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=4fa26762-594f-4908-a7b2-438019c76eaf&coa=coa03&DT=Opinion&MediaID=2468133a-0027-427b-a316-2e8ad91012c4>

URL: https://dhub.deloitte.com/Newsletters/Tax/2021/STM/211015_3.html

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