

Sales/Use/Indirect:

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

Letter No. 202506001M, Tex. Comptroller of Public Accounts (6/13/25). 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], an updated Texas Comptroller of Public Accounts memorandum [see *State Tax Matters*, Issue 2025-20, for details on the original version of this memo] explains that an implication 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.

URL: <https://star.comptroller.texas.gov/view/202506001M?q1=202506001M>

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

URL: https://dhub.deloitte.com/Newsletters/Tax/2025/STM/250523_16.html

The guidance also states that the taxability determinations in this updated memo will be applied prospectively beginning October 1, 2025 (previously, July 1, 2025). Moreover, previously nontaxable materials may be treated as taxable, processed materials after October 1, 2025 (previously, 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.

— Chris Blackwell (Austin)
Senior Manager
Deloitte Tax LLP
cblackwell@deloitte.com

Robin Robinson (Austin)
Senior Manager
Deloitte Tax LLP
rrobinson@deloitte.com

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at www.deloitte.com.