

Sales/Use/Indirect:

Texas: Manufacturing Exemption Applies to Equipment Used to Excavate TPP from Realty

Case No. 03-20-00406-CV, Tex. Ct. App. (10/7/21). Holding for the taxpayer, a Texas Court of Appeals (Court) affirmed that a taxpayer who extracts and processes coal for ultimate sale is entitled to Texas' sales and use tax manufacturing exemption on purchased excavating equipment because the following requirements were met:

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

1. The ultimate product the taxpayer offered for sale constituted tangible personal property;
2. The excavating equipment at issue was directly used or consumed in the production of the ultimate product and itself constituted tangible personal property; and
3. The excavating equipment at issue was directly used or consumed in the production and directly made or caused a chemical or physical change to the product being produced for ultimate sale (in this case, the excavators caused physical changes to the lignite coal during the production process).

In doing so, the Court rejected the Texas Comptroller of Public Account's (Comptroller) added "fourth requirement" that an input in the production process must itself be tangible personal property. The Comptroller unsuccessfully claimed that the excavators at issue were not processing personal property because the underlying lignite formation constituted real property, rather than tangible personal property, at the moment the excavators first dug into it. Please contact us with any questions.

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