

## Sales/Use/Indirect:

### Texas High Court Denies Reviewing Case that Exempts Equipment Used to Excavate TPP from Realty

*Order No. 21-1007*, Tex. (petition for review denied 9/30/22). The Texas Supreme Court denied the Texas Comptroller of Public Accounts' (Comptroller) petition for review of a Texas Court of Appeals ruling from 2021 [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], which held 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. In 2021, the Texas Court of Appeals held that the taxpayer at issue qualified for exemption because the following requirements were met:

**URL:** <https://www.txcourts.gov/supreme/orders-opinions/2022/september/september-30-2022/>

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

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211015\\_3.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211015_3.html)

1. The ultimate product the taxpayer offered for sale constituted tangible personal property (TPP);
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 Texas Court of Appeals had rejected the Comptroller's added "fourth requirement" that an input in the production process must itself be tangible personal property. Among its arguments, the Comptroller unsuccessfully had 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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