

Texas Tax Code §11.35: Disaster-Related Property Tax Exemption Best Practices

Section 11.35 of the Texas Tax Code

In 2019, the Texas Legislature passed a temporary exemption for qualified property damaged by a disaster, namely Section 11.35 of the Texas Tax Code. The exemption was adopted in response to Hurricane Harvey. To qualify for the exemption, a property must be located in an area declared by the Governor to be a disaster area. Importantly, the property must have been at least 15 percent damaged by the disaster. If the property qualifies for the exemption, the exemption would cover only a percentage of the property's appraised value. This percentage is based on the damage assessment rating assigned by the chief appraiser, specifically Level I (at least 15% damaged), Level II (at least 30% damaged), Level III (at least 60% damaged), or Level IV (100% damaged – total loss).

The Exemption Applies to Physical Damage Only, Says the Texas Attorney General

In an opinion dated April 13, 2020 (KP-0299), the Texas Attorney General clarified that the scope of Section 11.35 is limited to *physical* damage to property. The opinion was issued in response to a question about the exemption's applicability to economic losses caused by the COVID-19 outbreak. This would include, for instance, lost revenue suffered by hotels, retailers, and restaurants because of forced closures aimed at curbing the spread of the virus. According to the Attorney General, nothing in the statute evidences an intent for it to extend to purely economic loss. The statute's language, notably, describes levels of physical damage requiring repairs to return the property to its pre-disaster status. In contrast to these descriptions, a purely economic loss involves no physical damage to property. "Thus, purely economic, non-physical damage to property caused by the COVID-19 disaster is not eligible for the temporary tax exemption provided by section 11.35 of the Tax Code," explained the Attorney General.

Disaster Declaration by the Governor

On February 12, 2021, Governor Abbott issued a disaster declaration concerning the winter storm that covers all 254 counties. The winter storm caused physical damage to numerous properties statewide, most notably in connection with ruptured water lines. This type of damage, i.e., *physical damage*, falls within the scope of Section 11.35. Any purely economic damage caused by the storm, however, would not. Importantly, a property must still be at least 15 percent damaged by the disaster to qualify for the exemption. This is a significant threshold for qualification that many properties, although physically damaged, may have difficulty meeting.

Applying Section 11.35 to Physical Damage Caused by the Winter Storm – Qualified Property

The exemption **only** applies to qualified property listed in 11.35 (a)(1) and consists of:

- Tangible business personal property used for income production if the owner filed a 2021 rendition;
- An improvement to real property, which would include residential buildings (homes), commercial buildings (businesses), industrial buildings (manufacturing), multi-family buildings (apartments), and other real property buildings; and
- certain manufactured homes used as a dwelling.

It is important to note that land is **NOT** listed as qualified property and therefore land value should not be used for the determination of damage assessment levels nor should it be used for the calculation of the exemption amount.

Applying Section 11.35 to Physical Damage Caused by the Winter Storm – Damage Assessment Levels

The appraisal district determines if the property qualifies for the temporary exemption and assigns a damage assessment rating of Level I, II, III or IV based upon available information. The district may rely on information from a county emergency management authority, the Federal Emergency Management Agency (FEMA) or other appropriate sources like insurance adjusters or repair estimates (form 50-312, Section 4 item 7, requires the applicant to provide an estimated cost to repair) when making this determination. For example, the percent damaged may be calculated by dividing the estimated cost to repair by the improvement value.

Level	Damage Assessment	Damage Description	Exemption Percentage
I	15% < 30%	Minimal, may continue to be used as intended	15%
II	30% < 60%	Nonstructural damage and waterline <18" above floor if flooded.	30%
III	60% < 100%	Significant structural damage and waterline 18"+ above floor if flooded	60%
IV	100%	Total loss; repair is not feasible	100%

The percentage damaged determines the damage assessment level (see chart above). Appraisal Districts should stress the importance of property owners providing estimated cost to repair and supporting documents with their exemption application.

Each appraisal district will need to make a determination, based on their appraisal practices and data structures, whether they consider property elements, such as pools or garage apartments, to be a separate improvement or whether they incorporate them as characteristic of the total SFR improvement. If carried separately, the damage assessment level may be calculated and applied to each individual improvement.

Applying Section 11.35 to Physical Damage Caused by the Winter Storm – Proration

The exemption amount must be prorated based on the date the Governor declared the disaster. The proration factor is the number of days remaining in the tax year after the date the governor declares the disaster divided by 365. The proration factor for this disaster is 0.88 (322/365 = 0.88).

Sample disaster exemption calculation:

A \$100,000 house (structure value only) received \$20,000 in damage from burst pipes that resulted in nonstructural damage.

- \$20,000 Damage / \$100,000 House value = 20%. Damage assessment level is Level 1
- \$100,000 House Value times 15% exemption percentage = \$15,000
- \$15,000 X 0.88 Proration Factor = \$13,200 exemption amount reducing the taxable value for 2021

Deadline to File Exemption Application

The exemption is not automatic. An owner of a qualified property must apply for it. A completed Form 50-312, which is issued by the Texas Comptroller, should be submitted to the relevant appraisal district. The deadline to file an application is the 105th day after the date of Governor Abbott's disaster declaration, which is **May 28, 2021** (02/12/2021 + 105 days = 05/28/2021).

Actions on an Application

Appraisal Districts should take into consideration any evidence or documentation an owner provides with their application. If no documentation is provided with the application the appraisal district may request additional information and give the property owner 30 days to provide the requested documents before taking action on the application. Business Personal Property is not eligible for the exemption if the property did not file a rendition for the tax year. It may be necessary to delay processing exemption requests for business personal property until the rendition is filed or the filing deadline has passed.

Once a determination is made on an application, the appraisal district should notify the property owner in writing of the approval, modification, or denial of the application. It is recommended that the written notice provide the property owner with the damage assessment level determined by the chief appraiser and informs the property owner of their right to protest the exemption determination. Because the exemption amount is subject to change based on notices of appraised value or value protests, it is optional for appraisal districts to include the calculated exemption amount in the notice.

Communication with Taxpayers and Taxing Units

Appraisal Districts should take efforts to inform taxpayers of the availability of the disaster exemption to qualified properties. A sample press release has been prepared for use by appraisal districts.

Chief Appraisers should also communicate with taxing units of the potential impact the disaster exemption may have on their appraisal rolls. Per Truth-In-Taxation calculation worksheets, there is no deduction of disaster exemption in the reported values given by the chief appraiser; instead the disaster declaration invokes other provisions related to the calculating of M&O and voter approval tax rates. Taxing Units should seek advice of their legal counsel in determining the correct method for calculating tax rates under disaster declaration provisions.