

Texas Tax Code §11.35: Disaster-Related Property Tax Exemption Frequently Asked Questions

What section of the Texas Tax Code discusses disaster-related property tax exemption amounts?

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).

What does the exemption cover?

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, such as lost revenue by hotels, retailers, and restaurants due to 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.

When and Why does Winter Storm Uri apply to Scurry County?

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. **The deadline for application of the exemption is May 28, 2021.**

How does my property qualify?

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.