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Legislative Update: Texas Franchise Tax and Texas Sales Tax

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Texas Franchise Tax & Texas Sales Tax

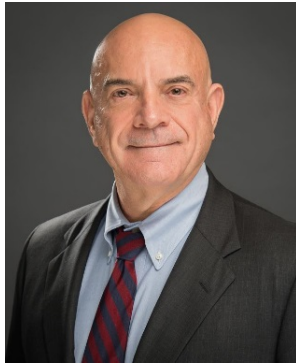
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This outline provides information on general tax issues and is not intended to provide advice on any specific legal matter or factual situation. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this information without seeking professional counsel.

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Instructor



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Jimmy Martens, trial and appellate attorney, is the founding partner of Martens, Todd & Leonard, a boutique tax litigation law firm located in downtown Austin, Texas. Mr. Martens has handled the trial of tax cases and related appeals all the way through both the Texas Supreme Court and the U.S. Supreme Court.

His recent Texas Supreme Court cases include: *Hegar v. Gulf Copper & Manufacturing Corp.*, No. 17-0894, slip op. (Tex. Apr. 3, 2020), 601 S.W.3d 668 (Tex. 2020); *Combs v. Roark Amusement & Vending, L.P.*, 422 S.W.3d 632 (Tex. 2013); *In re AllCat Claims Serv., L.P.*, 356 S.W.3d 455 (Tex. 2011); and *Titan Transp., LP v. Combs*, 433 S.W.3d 625 (Tex. App.—Austin 2014, pet. denied).

His recent appellate cases include: *Combs v. Newpark Res., Inc.*, 422 S.W.3d 46 (Tex. App.—Austin 2013, no pet.); *Hegar v. CGG Veritas Servs. (U.S.), Inc.*, No. 03-14-00713-CV, 2016 WL 1039054 (Tex. App.—Austin Mar. 9, 2016, no pet.) (mem. op.); *Graphic Packaging Corp. v. Hegar*, 471 S.W.3d 138, 140 (Tex. App.—Austin 2015), aff'd, 538 S.W.3d 89 (Tex. 2017); *Hegar v. Gulf Copper and Manufacturing Corporation*, 535 S.W.3d 1 (Tex. App.—Austin 2017, pet. granted); and *OGCI Training, Inc. v. Hegar*, No. 03-16-00704-CV (Tex. App.—Austin Oct. 27, 2017, no pet.).

He focuses his law practice on challenging Texas franchise and sales tax assessments in administrative hearings, state district court, the related courts of appeal and Texas Supreme Court. He is board certified by the Texas Board of Legal Specialization in Tax Law.

Mr. Martens is vice-chair of the Texas State Bar Tax Controversies Committee, a former council member of the Tax Section for the State Bar of Texas and the former chair of the CLE Committee. He is the statewide course instructor for the Texas Society of CPAs. He teaches his Texas Franchise Tax and Texas Sales Tax courses for them annually in the major Texas cities.

Mr. Martens received his B.B.A. and J.D. from The University of Texas at Austin, both with honors.

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Introduction

These materials cover critical legislative developments in Texas sales tax, Texas franchise tax, tax administration, jurisdiction, and procedure during the Texas Legislature's 2021 87th Regular Session. These materials also describe recent Texas sales tax policy developments which were implicated by legislation that was filed or passed during the Texas Legislature's 2021 87th Regular Session.

Texas Legislature's 87th Regular Session Concludes.

The Texas Legislature meets for its regular session once every two years on odd-numbered years. The 87th Regular Session began on January 12, 2021 and adjourned sine die (i.e., without reconvening) on May 31, 2021.¹ Because the session has ended, we focus only on those bills that passed. Although the Legislature adopted some substantive changes to the tax laws, the most significant developments appear to be changes to the procedures taxpayers may use to bring lawsuits against the Comptroller.

Below are brief descriptions of relevant substantive and procedural new tax law that might affect your clients or your practice. Each bill number below is a hyperlink that should take you to the Texas Legislature Online webpage for the bill. You can review the bill text by clicking one of the three icons on the "Text" tab under the word "Bill." Select the "Enrolled" bill icons to view the final language of each bill that passed into law.

I. New Sales Tax Laws

Medical Billing Services. The Comptroller's Tax Policy Division issued a memorandum notifying the Audit Division that the Comptroller's new policy will treat medical billing services as taxable insurance services. These will include services performed prior to submitting a claim to an insurance company, to provide additional information, or to adjust a submitted billing. "Insurance services" are included in the exclusive lists of services subject to Texas sales tax.² The Comptroller's Rule 3.355 defines these services broadly to include "any activities to supervise, handle, investigate, pay, settle, or adjust claims or losses" and makes these services taxable regardless of whether the purchaser of the service is the insurance company, the policy holder, or others.³ Medical billing services are not defined by the statute or the Comptroller's rule. Medical billing services involve assigning codes for the preparation of claims, verifying insurance eligibility, preparing claim

¹ Tex. Const. Art III, Section 24(b).

² Tex. Tax Code § 151.0101(a)(9).

³ Comptroller Rule 3.355(a)(8), (b).

forms for filing, filing claims, resubmitting and adjusting claims, reviewing and appealing denied claims, settling claims, and posting payment for claims.⁴

On March 19, 2020, the Comptroller announced that he would delay the implementation of his policy change “until after the 2021 legislative session, allowing industry time to seek a legislative change.” He clarified that, in the meantime, “[m]edical billing services that occur before a claim is submitted do not fall under ‘insurance claims adjustment or claims processing’ and are not taxable as insurance services.”⁵ During the Texas Legislature’s 2021 regular session, the Legislature passed HB 1445, which excludes medical or dental billing services from taxable insurance services if they are performed prior to the original submission of a medical or dental insurance claim, or prior to a claim related to health or dental coverage made to a medical assistance program funded by the federal or state government.

HB 1445, passed during the Texas Legislature’s 2021 Regular Session, excludes certain medical and dental billing performed prior to the original submission of an insurance claim from taxable insurance services. Under the new law, taxable insurance services do not include medical or dental billing services performed before the original submission of (a) a medical or dental insurance claim related to health or dental coverage or (b) a claim related to health or dental coverage made to a medical assistance program funded by the federal or state government. “Medical or dental billing service” is defined to mean “assigning codes for the preparation of a medical or dental claim, verifying medical or dental insurance eligibility, preparing a medical or dental claim form for filing, and filing a medical or dental claim.” Link to Texas Legislature Online bill page: [HB 1445](#)

Credit Card and Payment Processing. SB 153 excludes certain payment processing services from the definition of “data processing service.” The law excludes from taxable data processing “services exclusively to encrypt electronic payment information for acceptance onto a payment card network.” It also excludes from taxation the “settling of an electronic payment transaction” by specified entities. The law takes effect October 1, 2021 and explicitly does not apply to any tax liability accruing prior to that date. Link to Texas Legislature Online bill page: [SB 153](#)

Marketplace Providers and Ticket Sellers. This law continues implementation of the 2019 marketplace provider legislation concerning use tax collection by out of state sellers

⁴ Comptroller Letter No. 201911003L (Nov. 22, 2019).

⁵ Comptroller Letter No. 202003007L (Mar. 19, 2020).

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