

## Alex J. Pilawski

### Partner

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### PRACTICE AREAS

State Tax Planning and Litigation

Commercial Litigation and Arbitration



### Biography

Mr. Pilawski practices in the areas of State Tax Controversy and Litigation, State Tax Planning, and Commercial Litigation.

Mr. Pilawski's State Tax Controversy and Litigation practice focuses on representing taxpayers in disputes with the Texas Comptroller of Public Accounts involving sales and use tax, mixed beverage tax, and franchise tax, among others. He has extensive experience working with taxpayers to successfully resolve disputes in contested proceedings through administrative hearings and in Texas state court. He also assists taxpayers in remedying noncompliance with Texas taxes, including guiding them through the Texas Comptroller's Voluntary Disclosure program.

His State Tax Planning practice involves assisting taxpayers in structuring their business and transactions to minimize exposure to franchise tax.

His Commercial Litigation practice involves representing individuals and entities in both state and federal court in a variety of controversies including complex business disputes, securities, and health care, among others.

Mr. Pilawski is also active in the Tax section of the State Bar of Texas. He recently completed the State Bar of Texas Tax Section Leadership Academy and was the co-chair of the planning committee for the Advance Tax Law Course.

Mr. Pilawski was admitted to practice in Texas in 2010.

### Education

- Southern Methodist University Dedman School of Law, J.D., *cum laude*, 2010
- Purdue University, B.S., Management with focus in Accounting, 2007

### Memberships

- American Bar Association
- State Bar of Texas
  - Member, Tax Section

- Co-Chair, Advanced Tax Law Seminar
- Graduate Member, State Bar of Texas Tax Section Leadership Academy, 2016-2017
- Dallas Bar Association
- Dallas Association of Young Lawyers

### Admissions

- United States District Court for the Northern District of Texas
- United States District Court for the Southern District of Texas
- United States District Court for the Eastern District of Texas
- United States District Court for the Western District of Texas

### Presentations

- May 1, 2024 - Texas Bank and Trust - Longview, TX
- April 24, 2024 - Texas Bank and Trust - Tyler, TX
- February 13, 2024 - Meadows Collier February 2024 Monthly Webinar
- January 17, 2024 - Grant Thornton In-House Presentation
- June 6, 2023 - Meadows Collier June Webinar
- February 7, 2023 - Texas Budgetary Surplus & Tax Legislation Considerations
- October 20, 2022 - Texas Management Group (TMG) Annual Meeting (Day One)
- August 9, 2022 - August 2022 Meadows Collier 1-Hour Monthly Webinar
- May 3, 2022 - May 3, 2022 Webinar
- February 8, 2022 - Meadows Collier February 2022 One-Hour Free Monthly Webinar

### Archived Speeches

- November 22, 2019 - Industrial Auctioneers Association- 25th Annual Conference and Members Meeting
- November 5, 2019 - 21st Annual Meadows Collier Tax Conference
- May 22, 2019 - Central Texas Chapter/TXCPA CPE Expo
- May 16, 2019 - East Texas Chapter/TXCPA CPE Expo
- November 7, 2018 - Community Bank & Trust and the Central Texas Chapter/TSCPA Speaking Engagement
- November 1, 2018 - 2018 Meadows Collier Annual Tax Conference
- September 25, 2018 - Metroplex Practice Management Group (MPMG)
- April 30, 2018 - Lorman Education Services
- May 25, 2017 - Wichita Falls Chapter/TSCPA
- October 20, 2014 - "The Eggshell IRS Exam: What to Do?"

### Blog

- June 30, 2021 - Recent Legislation Gives Taxpayers Greater Access to District Court in Challenging the Texas Comptroller's Denial of a Refund Claim or Assessment of Tax  
Among the various bills that became law in the 87th Texas Legislature of 2021 are two amendments to the Texas Tax Code that will significantly impact the procedures available for challenging the denial of tax refund claims and assessments by the Texas Comptroller of Public Accounts in district court. Both of these bills (SB 903 and HB 2080) are intended to make district court more accessible to taxpayers.

- May 27, 2020 - Texas Comptroller Prevails in a Texas Franchise Tax Sourcing Case involving Satellite-Radio Programming â But Taxpayers Could Also Benefit in Other Contexts

In a case with potentially broad implications, the Third Court of Appeals recently agreed with the Texas Comptroller that revenues received by a taxpayer from subscription-based satellite-radio programming could be sourced to the location of the subscribers for Texas franchise tax purposes rather than to where the programming actually occurred.

- May 20, 2020 - The Texas Supreme Court Holds that the Sale of Military Aircraft to the U.S. Government for Foreign Buyers Could not be Sourced to Texas for Franchise Tax Purposes

In a recent decision involving the apportionment factor for Texas franchise tax purposes, the Texas Supreme Court held that the sale of certain military aircraft to the U.S. Government for ultimate delivery to foreign buyers could not be sourced to Texas, even though legal title and possession transferred in Texas, where the U.S. Government's involvement was statutorily required under federal law. In so holding, the Court disclaimed deciding whether tangible personal property must be sold to a buyer located in Texas or simply delivered to a point in Texas before the sale can be sourced to Texas. See *Lockheed Martin Corp. v. Hagar*, 2020 WL 2089741 (Tex. 2020). As discussed below, the decision is potentially significant both with respect to what it holds and also what it expressly disclaims to hold.

- April 21, 2020 - The Texas Supreme Court Denies a Cost of Goods Sold Deduction for Costs Associated with Picking up and Delivering Heavy Construction Rental Equipment

In one of three recent decisions issued by the Texas Supreme Court involving the Texas franchise tax, the Court held that certain costs associated with the rental of heavy construction equipment could not be included in the cost of goods sold deduction.

- April 13, 2020 - The Texas Supreme Court Denies a Cost of Goods Sold Deduction to a Movie Theater Company in a Texas Franchise Tax Case

In the recent case of *American Multi-Cinema, Inc. v. Hagar*, Cause No. 17-0464 (Tex. Apr. 3, 2020), the Texas Supreme Court held that a taxpayer engaged in exhibiting movies in movie theaters could not claim a cost of goods sold for the costs it incurred in exhibiting its movies. This case, which has been closely monitored by taxpayers and practitioners alike, addresses important questions regarding the definition of "tangible personal property" for cost of goods sold purposes. The Court ultimately concluded that American Multi-Cinema, Inc. ("AMC") did not qualify for the cost of goods sold deduction because it did not sell tangible personal property.

- April 8, 2020 - The Texas Supreme Court Provides Important Guidance in Construing Two Statutory Provisions Dealing with Real Property Work for Texas Franchise Tax Purposes

In one of three recent cases addressing the Texas franchise tax, the Texas Supreme Court held that a company engaged in performing work on offshore oil-and-gas drilling rigs could not claim a cost of goods sold deduction with respect to certain costs incurred with that work, but could exclude payments to subcontractors from total revenue.

- April 6, 2020 - Texas Supreme Court Issues Three Decisions Addressing Various Aspects of the Texas Franchise Tax

In a monumental day for Texas franchise tax, the Texas Supreme Court issued on Friday, April 3rd, three much-anticipated decisions addressing different aspects of the Texas franchise tax.

- March 26, 2020 - Texas Comptroller Delays Implementation of New Policy Regarding the Taxability of Medical Billing Services Until After 2021 Legislative Session

Last week, the Texas Comptroller issued an important memo regarding the taxation of medical billing services. The memo is dated March 19, 2020 and follows up on a prior memo dated November 19, 2019,

which had previously announced the reversal of a long-standing Comptroller policy treating medical billing services as nontaxable.

- March 26, 2020 - The Texas Comptroller Issues Potential Life-line for Struggling Businesses: But Proceed with Caution!

This week, the Texas Comptroller issued a potential life-line to businesses that are struggling to pay their taxes in light of COVID-19, but taxpayers should proceed with caution.

- March 20, 2020 - COVID-19 May Cause Defaults in Compromise and Settlement Agreements with the Texas Comptroller

Along with the many ails COVID-19 brings to the table is the possibility that it will cause a default on payments due under Compromise and Settlement Agreements with the Texas Comptroller.

- August 5, 2019 - Texas Comptroller Proposes Revisions to Texas Franchise Tax Rule 3.586, Implementing Wayfair

The Texas Comptroller's office issued a draft set of proposed revisions to Comptroller Rule 3.586 (Margin: Nexus) today in response to the U.S. Supreme Court's decision last year in *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018).

- June 21, 2018 - U.S. Supreme Court Overturn's Physical Presence Rule in Holding States Can Require Out-of-State Sellers to Collect Sales Tax

On June 21, 2018, the United States Supreme Court issued its opinion in *South Dakota v. Wayfair, Inc., et al.* In a 5-4 decision, the Court held a state can require out-of-state sellers with no physical presence in the state to collect sales tax on sales of goods or services delivered into the state.

- February 17, 2017 - The Third Court of Appeals in *Agri-Plex* Finds that a Business Buyer May Not Be Able to Escape Successor Liability for Hidden Tax Liabilities Assessed After Purchase

On January 19, 2017, the Texas Third Court of Appeals (the "Court") in *Agri-Plex Heating and Cooling, LLC v. Hegar* found that a business buyer may not be able to escape successor liability for hidden tax liabilities assessed after the purchase occurs. *Agri-Plex Heating and Cooling, LLC v. Hegar*, No. 03-15-00813-CV (Tex. App.-Austin January 19, 2017, no pet. h.) (mem. op.)). As a result and moving forward, a buyer purchasing a business should be cautious and plan accordingly because it could be liable for taxes incurred by the seller before the purchase but not known or ascertainable by either party at the time of closing.

- January 17, 2017 - Recently Revised Opinion in *American Multi-Cinema, Inc. v. Hegar* Narrows Its Previously Broad Scope

On January 6, 2017, the Texas Third Court of Appeals (the "Court") withdrew their opinion and judgment in *American Multi-Cinema, Inc. v. Hegar* from April 30, 2015 to substitute a revised opinion (No. 03-14-00397-CV (Tex. App.-Austin January 6, 2017, no pet. h.) (mem. op.)). The revised opinion upholds American Multi-Cinema, Inc.'s ("AMC's") cost of goods sold ("COGS") deduction for its film exhibition costs while leaving unresolved whether AMC's products are "perceptible to the senses" and thus qualify as "tangible personal property" under Texas Tax Code Section ("Section") 171.1012(a)(3)(A)(i).