

David E. Colmenero

Partner

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PRACTICE AREAS

State Tax Planning and Litigation

Income Tax Litigation

Estate and Gift Tax Litigation

Real Estate



Biography

Mr. Colmenero has experience in litigation and practices primarily in the State Tax Controversy and Litigation and State Tax Planning areas. He represents individuals, closely held businesses, and large corporations in all forums for Texas tax litigation, including the State Office of Administrative Hearings, District Court, the Court of Appeals and the Texas Supreme Court. He has also represented clients in IRS audits, appeals, and litigation in the United States Tax Court, Federal District Courts and the United States Court of Federal Claims, U.S. Courts of Appeals and the United States Supreme Court.

Mr. Colmenero was previously a tax auditor for the State of Texas and, as a lawyer, has successfully represented taxpayers in contested proceedings involving sales and use tax, franchise tax, motor fuels tax, motor vehicle tax, mixed beverage taxes, employment tax and others. Mr. Colmenero represents taxpayers through contested Texas tax proceedings including audits, Independent Audit Review Conferences, administrative proceedings before the State Office of Administrative Hearings and in State court litigation. Mr. Colmenero has been extensively involved in challenging various aspects of Texas Comptroller franchise tax assessments and refund denials and in planning business structures and business transactions to mitigate exposure to the revised franchise tax.

Through the course of his federal tax practice, Mr. Colmenero has represented taxpayers in complex and contentious federal tax matters through various stages of examination, appeals and litigation. Representative matters include constructive dividends disputes, accumulated earnings tax assessments, hobby loss, passive activity loss and Section 465 challenges by the IRS to loss deductions, digital currency characterization issues, employment tax disputes, penalty assessments, assignment of income claims, statute of limitations disputes, trust fund assessments, partnership adjustment disputes, refund claims and voluntary disclosures to name a few.

Mr. Colmenero is a Certified Public Accountant and maintains active involvement in various professional legal and accounting organizations. In January 2023, David Colmenero received the Stanley J. Scott CPE Award from the

TXCPA Dallas Chapter in recognition of outstanding contributions and dedicated service to the Continuing Education Program of the Dallas Chapter. David previously served as Chair of the Tax Section of the State Bar of Texas and was a member of the Board of Directors for the Texas Society of CPAs. He is the current chair of the Federal Tax Policy Committee of the Texas Society of CPAs and is a member of the Texas Comptroller's Taxpayer Advisory Group. He is a past chair of the Dallas CPA Society and past chair of both the State and Local Tax Committee and the Tax Controversy Committee of the Tax Section of the State Bar of Texas. He helped form the Leadership Academy for the Tax Section of the State Bar of Texas and served as its Program Director for several years. He frequently speaks on substantive and procedural tax issues involving both federal and state tax matters.

Mr. Colmenero was admitted to practice in Texas in 1997.

Education

- Southern Methodist University Dedman School of Law, LL.M. in Taxation, 2006
- Texas Tech School of Law, J.D., *summa cum laude*, 1997
 - Order of the Coif
 - Managing Editor, *Texas Tech Law Review* (1996-1997)
- Midwestern State University, B.A., 1992

Memberships

- State Bar of Texas
 - Tax Section Chair, 2016-2017
 - Chair Elect, 2015-2016
 - Secretary, 2014-2015
 - Treasurer, 2013-2014
 - Council Member
 - Leadership Academy Program Director, 2012-2015
 - Past Chair, Tax Controversy Committee
 - Past Chair, Committee on State and Local Taxation
- Dallas Bar Association
- American College of Tax Counsel
 - Fellow
- Texas Comptroller Taxpayer Advisory Group
 - Member, 2016-2023
- Texas Taxpayers and Research Association (TTARA)
 - Member, 2007-2023
- Texas Society of Certified Public Accountants
 - Member, Board of Directors, 2015-2021
 - Member, Executive Board of Directors, 2014-2015
 - Member, State Tax Committee
 - Chair, Federal Tax Policy Committee, 2021-2024
 - Member
 - Co-Chair, Comments Subcommittee of the Federal Tax Policy Committee, 2020-2023
 - TXCPA Summit
 - Member, 12/1/19-5/31/23

- Chair, 2024
- Dallas CPA Society
 - Member, Convergence Planning Committee, 2020-2024
 - Chair, 2011-2012
 - Chair Elect, 2010-2011
 - Past Chair Nominations Committee, 2012
 - Past Member, Board of Directors
- AAA-CPA
 - Member

Honors & Awards

- Recipient of the Stanley J. Scott CPE Award, TXCPA Dallas, January 2023-in recognition of outstanding contributions and dedicated service to the Continuing Education Program of the Dallas Chapter.
- The Best Lawyers in America[®], 2021-2024, Litigation and Controversy-Tax
- Best Lawyers in Dallas, *D Magazine*, 2019, 2022 & 2023 (Tax: Litigation)
- Texas Super Lawyers-Tax as listed in *Texas Supers Lawyer Magazine* and *Texas Monthly*, 2012-2018
- Texas Rising Star, *Texas Monthly* and *Law and Politics Magazine*, 2005 through 2009
- Best Lawyer Under 40, *D Magazine*, 2006
- The Chairman's Citation, TSCPA Annual Meeting, June 2008-for extraordinary volunteer service and contribution to the cooperation between the legal and accounting profession through his efforts with the TSCPA State Tax Committee, State Bar of Texas State Tax Committee and the Texas Comptroller of Public Accounts on the response to the Texas Comptroller's rules implementing the new margin tax.

Publications

- "To Tax or Not to Tax: Should PPP Loans That are Forgiven Under Federal Law be Subject to the Texas Franchise Tax?", published in the TXCPA Tax Issues eNews, March 2021.

Presentations

- May 10, 2024 - TXCPA Dallas Convergence 2024
- 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
- August 29, 2023 - 2023 Panhandle Chapter/TXCPA Tax Institute
- August 21, 2023 - TXCPA Summit 2023
- June 6, 2023 - Meadows Collier June Webinar
- April 6, 2023 - Dallas Bar Association Construction Law Section
- February 7, 2023 - Texas Budgetary Surplus & Tax Legislation Considerations
- December 7, 2022 - TXCPA Dallas Member Appreciation CPE Series December 2022
- October 20, 2022 - Texas Management Group (TMG) Annual Meeting (Day One)
- August 25, 2022 - Fort Worth Chapter/TXCPA Member Appreciation Day
- August 23, 2022 - 37th Annual Panhandle Chapter Tax Institute
- August 22, 2022 - TXCPA CPE Summit-2022 (Day One)
- August 9, 2022 - August 2022 Meadows Collier 1-Hour Monthly Webinar

- May 18, 2022 - Wichita Falls Chapter Free CPE Day
- May 16, 2022 - TXCPA Dallas Convergence 2022
- May 3, 2022 - May 3, 2022 Webinar
- February 8, 2022 - Meadows Collier February 2022 One-Hour Free Monthly Webinar

Archived Speeches

- December 16, 2021 - TXCPA CPE Expo - Dallas
- December 13, 2021 - 2021 TXCPA CPE Expo
- December 6, 2021 - 2021 TXCPA CPE Expo
- November 9, 2021 - TXCPA Summit 2021
- November 8, 2021 - TXCPA Summit 2021
- August 24, 2021 - 2021 Panhandle Chapter/TXCPA Tax Institute
- May 28, 2021 - TXCPA Dallas Convergence 2021
- November 5, 2020 - Permian Basin Chapter/TXCPA 2020 Virtual CPE Expo
- August 27, 2020 - 38th Annual Course Tax Law 2020: A Practical Guide to Tax Law in the Real World - Day One
- August 6, 2020 - TXCPA Summit 2020 Virtual Conference
- August 5, 2020 - TXCPA Preconference Workshop Summit 2020 Virtual Conference
- May 26, 2020 - 2020 Metroplex Practice Management Group (MPMG)
- May 4, 2020 - TXCPA Dallas Convergence 2020
- December 13, 2019 - TXCPA 2019 CPE Expo - Irving
- December 10, 2019 - TXCPA 2019 CPE Expo - Houston
- December 3, 2019 - TXCPA 2019 CPE Expo - San Antonio
- November 22, 2019 - Industrial Auctioneers Association- 25th Annual Conference and Members Meeting
- November 15, 2019 - TXCPA Tax Institute - Dallas
- November 14, 2019 - TXCPA Tax Institute - San Antonio
- November 7, 2019 - Permian Basin Chapter/TXCPA CPE Expo
- November 5, 2019 - 21st Annual Meadows Collier Tax Conference
- September 20, 2019 - State Bar of Texas Tax Section Leadership Academy
- August 27, 2019 - 35th Annual Tax Institute sponsored by the Panhandle Chapter/TXCPA
- July 23, 2019 - AXA Advisors Annual CPE Event
- July 18, 2019 - Practice Management Group
- May 22, 2019 - Taxation and Estate Planning Update for Professionals
- May 16, 2019 - East Texas Chapter/TXCPA CPE Expo
- May 14, 2019 - Taxation and Estate Planning Update for Professionals
- March 27, 2019 - Fort Worth Chapter/TSCPA Controllers Conference
- March 22, 2019 - Advanced Tax Workshop: A Post-Wayfair Deep Dive into Nexus
- December 11, 2018 - TSCPA 2018 CPE Expo - Houston
- December 4, 2018 - TSCPA 2018 CPE Expo - San Antonio
- November 30, 2018 - TSCPA 2018 CPE Expo - Dallas
- November 16, 2018 - Texas CPA Tax Institute
- November 15, 2018 - Texas CPA Tax Institute
- November 12, 2018 - Dallas CPA Society's Member Appreciation CPE Series
- November 7, 2018 - Community Bank & Trust and the Central Texas Chapter/TSCPA Speaking Engagement

- November 1, 2018 - 2018 Meadows Collier Annual Tax Conference
- October 26, 2018 - San Antonio Chapter/TSCPA CE Symposium
- October 17, 2018 - Fort Worth Chapter/TSCPA Lunch Seminar
- September 25, 2018 - Western States Association of Tax Administrators (WSATA)
- September 10, 2018 - Dallas Bar Association Real Property Law Section
- August 7, 2018 - TSCPA Texas State Taxation Conference-Virtual/Webcast Conference
- May 15, 2018 - Texas Bank and Trust
- May 11, 2018 - Dallas CPA Society Convergence 2018
- May 2, 2018 - Texas Bank and Trust
- April 30, 2018 - Lorman Education Services
- February 20, 2018 - AXA Advisors Seminar
- November 17, 2017 - TSCPA Tax Institute - Nov. 17, 2017 in Dallas, TX
- November 16, 2017 - TSCPA Tax Institute - Nov. 16, 2017 in San Antonio, TX
- November 7, 2017 - First Bank & Trust in Lufkin, TX
- October 23, 2017 - TSCPA CPE Value Conference
- August 23, 2017 - Panhandle Chapter/TSCPA Tax Institute - Aug. 23, 2017
- August 22, 2017 - Metroplex Practice Management Group
- August 7, 2017 - TSCPA Texas State Taxation Virtual Webcast Conference
- July 26, 2017 - AXA Advisors Seminar
- May 25, 2017 - Wichita Falls Chapter/TSCPA
- May 24, 2017 - North Texas Chapter of the American Academy of Attorney-CPA's
- May 4, 2017 - Texas Association of CPAs
- May 1, 2017 - East Texas Chapter/TSCPA Spring CE Expo
- February 15, 2017 - AXA Advisors Lunch Seminar
- December 9, 2016 - 2016 TSCPA CPE Expo- San Antonio
- December 6, 2016 - 2016 TSCPA CPE Expo- Arlington
- December 5, 2016 - Dallas Bar Association Tax Section
- December 2, 2016 - 2016 TSCPA CPE Expo- Houston
- November 15, 2016 - TSCPA Tax Institute- Addison
- November 14, 2016 - TSCPA Tax Institute- San Antonio
- October 25, 2016 - 18th Annual Meadows Collier Tax Conference
- October 22, 2016 - Southern & Western Accounting Group
- August 17, 2016 - AXA Advisors
- May 27, 2016 - Dallas CPA Society 2016 Convergence Conference
- May 23, 2016 - East Texas Chapter/TSCPA CPE Expo
- February 26, 2016 - Beaird Harris
- December 10, 2015 - TSCPA CPE Expo- Houston
- December 7, 2015 - TSCPA CPE Expo- San Antonio
- December 2, 2015 - TSCPA CPE Expo- Arlington
- November 20, 2015 - TSCPA Tax Institute- San Antonio
- November 19, 2015 - TSCPA Tax Institute- Richardson
- November 3, 2015 - 2015 Meadows Collier Taxation Conference
- October 27, 2015 - Central Texas Chapter/TSCPA CPE Expo
- September 25, 2015 - UT Texas Margin Tax Conference

- August 19, 2015 - Fort Worth Chapter/TSCPA
- May 19, 2015 - Central Texas Chapter/TSCPA CPE Expo- Waco
- May 8, 2015 - Dallas CPA Society's Convergence- Dallas
- January 21, 2015 - "Recent Developments in Texas Tax Could Help Improve The Bottom Line For Many Taxpayers"
- January 20, 2015 - "Recent Developments in Texas Franchise Tax Could Help Improve the Bottom Line for Many Taxpayers"
- December 1, 2014 - "Recent Judicial and Administrative Developments in Texas Tax Could Help Improve the Bottom Line for Many Taxpayers"
- November 21, 2014 - "IRS Update: What are They Doing Now?"
- November 20, 2014 - "The Importance of and Requirements for Portability"
- October 31, 2014 - "Recent Judicial and Administrative Changes in Law Could Affect Your Bottom Line"
- October 30, 2014 - "Current Trends and State Initiatives: Impact on State and Use Tax Audits" "What to do When a In-State S&U Tax Auditor Knocks on the Door..."
- October 28, 2014 - "Texas Margin Tax"
- October 20, 2014 - "The Eggshell IRS Exam: What to Do?"
- August 13, 2014 - "The Resale Exemption Under Scrutiny in Texas"
- May 29, 2014 - "Let's Make a Deal - Federal and Texas Tax Issues Involved in Purchasing and Selling Businesses"
- May 22, 2014 - "Passive Activity and Hobby Loss Limitations: Withstanding an IRS Attack of Your Client's Outside Business Activities Under Sections 469 & 183"
- May 8, 2014 - "The Year of the Taxpayer: A Growing Divide Between Texas Comptroller Policies and Texas Courts is Reflected in Recent Decisions"
- March 20, 2014 - "Texas Franchise Tax"
- January 14, 2014 - "Federal and State Tax Considerations for the Sale or Acquisition of a Business in a Rebounding Economy"
- November 22, 2013 - "Current Audit Trends"
- November 21, 2013 - "Current Audit Trends"
- October 22, 2013 - "What the Texas Legislature Giveth, Taxpayers and Tax Practitioners Can Take to the Bank"
- September 27, 2013 - "What the Texas Legislature Giveth, Taxpayers and Tax Practitioners Can Take to the Bank"
- August 16, 2013 - "Texas Tax Following the 2013 Legislative Session: While the Texas Legislature Giveth, Congress May Taketh Away"
- May 22, 2013 - "What We Can Expect from the IRS in 2013" "Self-Employment and Employment Tax Issues in LLCs and S Corporations"
- May 8, 2013 - "Panelists - Criminal Tax"
- February 1, 2013 - "What Can We Expect From the IRS in 2013?"
- November 14, 2012 - "Taxpayer Beware: Audit Trends in Texas Tax"
- November 13, 2012 - "Taxpayer Beware: Audit Trends in Texas Tax"
- November 7, 2012 - "Texas Franchise Tax: Recent Developments for the Cutting Edge Practitioner"
- November 1, 2012 - "Texas Franchise Tax"
- August 13, 2012 - "Selecting a Forum for Challenging Assessments or Refund Denials"
- May 18, 2012 - "Using Family Limited Partnerships and What to Expect from the IRS"



- May 17, 2012 - "Taxpayer Beware: Recent Developments in Texas Tax Create Uncertainty For Taxpayers"
- May 16, 2012 - "Judgment Day: Preparing for a Visit from Uncle Sam"
- May 4, 2012 - "The Texas Comptroller's Office: Current Areas of Interest for Audit and Investigation"
- May 1, 2012 - "The Benefits of Benevolence"
- April 30, 2012 - "Top Audit Issues for High-Net Worth Individuals"
- November 17-18, 2011 - "Recent Developments in Texas Taxation"
- September 22, 2011 - "The Hottest Audit Issues in Texas Tax: Who is Being Targeted For Audit and What Can You Do to Protect Your Client's Interests?" "Texas Legislature Ax in the Face of a Budgetary C
- September 8, 2011 - "When Can You Recover Attorney's Fees? Challenging State Tax Assessments in District Court"
- September 7, 2011 - "When Can You Recover Attorney's Fees? Challenging State Tax Assessments in District Court"
- September 1, 2011 - "When Can You Recover Attorney's Fees? Challenging State Tax Assessments in District Court"
- August 23, 2011 - "The Hottest Audit Issues in Texas Tax: Who is Being Targeted For Audit and What Can You Do to Protect Your Client's Interests?"
- August 18, 2011 - "Texas Franchise Tax Update"
- August 15, 2011 - "Representing Your Clients Before the Texas Comptroller of Public Accounts"
- August 5, 2011 - "Texas Legislature Ax in the Face of a Budgetary Crisis: Whose Ox Will be Gored Next?"
- May 26, 2011 - "Responding to Governmental Inquiries"
- May 25, 2011 - "Professionals as Return Preparers, Witnesses, Targets and IRS Licensees"
- May 18, 2011 - "Don't Give Up on Family Limited Partnerships (FLPs)" "Differences Between Aggressive Tax Planning and Tax Fraud" "The Legislative and Admi
- May 13, 2011 - "The Legislative and Administrative Search for Tax Dollars in Light of a Budgetary Shortfall"
- May 12, 2011 - "The Legislative and Administrative Search for Tax Dollars in Light of a Budgetary Shortfall"
- May 4, 2011 - "Don't Give Up on Family Limited Partnerships (FLPs)" "Differences Between Aggressive Tax Planning and Tax Fraud" "The Legislative and Administrat
- November 17, 2010 - "Double Whammy -- The IRS Employs a One-is-Good, Two-is-Better Approach in Pursuing Both Taxpayers and Tax Professionals" "Texas Tax in Light of a L
- November 15-16, 2010 - "How CPAs Get in Trouble with the IRS" "Planning Opportunities for Financially Distressed Entities and Related Issues" "Representing Your Clients Before the
- May 25, 2010 - "Differences Between Aggressive Tax Planning and Tax Fraud"
- May 24, 2010 - "Texas Tax Comptroller Losses"
- May 20, 2010 - "Differences Between Aggressive Tax Planning and Tax Fraud"
- April 27, 2010 - "What's Going On at the IRS and How it Affects You" "The Texas Franchise Tax: What the Texas Comptroller and the Texas Legislature Have in Mind"
- February 23, 2010 - "How to Survive an Audit"
- February 18, 2010 - "How to Survive an Audit", "Texas Franchise Tax Update"
- February 11, 2010 - "How to Survive an Audit"
- December 9, 2009 - "Texas Margin Tax"
- November 17, 2009 - "Margin Tax Update"
- November 10, 2009 - "Annual Tax Update"
- September 18, 2009 - "Margin Tax Update"
- August 28, 2009 - "Preparing for and Defending the Examination of Estate and Gift Tax Returns"

- May 27, 2009 - Annual Taxation and Estate Planning Update for Professionals Seminar sponsored by Texas Bank and Trust-Tyler
- May 20, 2009 - Annual Taxation and Estate Planning Update for Professionals Seminar sponsored by Texas Bank and Trust-Longview
- May 1, 2009 - "Franchise Tax and Related Pending Legislation"
- March 19, 2009 - "Texas Franchise Tax Update"
- February 3, 2009 - "Preparer Beware: Circular 230 and the New Section 6694 Penalty" and "The IRS is Currently Auditing Taxpayers Again: What Issues Will the IRS Likely Raise During your Next Audit?"

Blog

- January 27, 2022 - Proposed Revisions to Texas Comptroller Rule 3.591 (Apportionment) Seek to Incorporate the Texas Supreme Court's Holding in Sirius XM Radio, Inc.
In the Friday, January 20, 2023 edition of the Texas Register, the Texas Comptroller published yet another set of proposed revisions to Texas Comptroller Rule 3.591, Franchise Tax Apportionment. See 48 Tex. Reg. 200 (Jan. 20, 2023).
- 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.
- February 11, 2021 - To Tax or Not to Tax: Should PPP Loans That Are Forgiven Under Federal Law Be Subject to the Texas Franchise Tax?
Among the many issues confronting taxpayers, legislators and the Texas Comptroller related to COVID-19 is whether Paycheck Protection Program (PPP) loans forgiven pursuant to federal law should be subject to the Texas franchise tax.
- 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. Hegar*, 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. Hegar*, 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.

- May 1, 2018 - Texas Comptroller Implements a "Tax Amnesty Program," But Is This the Best Option for All Taxpayers?

Starting today, May 1, 2018 through June 29, 2018, the State of Texas Comptroller's Office will run its "Texas Tax Amnesty Program" which offers relief from tax-related penalties and interest for certain taxpayers. But before participating in that program, taxpayers may want to consider whether the Comptroller's existing voluntary disclosure program provides a better option for them.

- December 27, 2017 - Taxpayers May Want to Consider Accelerating Large Dollar Purchases Under the New Tax Law

As the year comes to a close, one additional matter that individual taxpayers may want to consider is whether to expedite any large dollar purchases into this year if sales tax will be due on those transactions.

- December 22, 2017 - The Texas Comptroller Receives Christmas Gift from the Texas Supreme Court in MTC Apportionment Decision

In a much anticipated decision the Texas Supreme Court today issued its decision in *Graphic Packaging Corp. v. Hegar*, No. 15-0669, (December 22, 2017). The Court held that Graphic Packaging could not use the three-factor apportionment formula provided for in the Multistate-Tax Compact for apportioning Texas franchise tax, notwithstanding that Texas is a member of the Compact.

- 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).

- December 19, 2016 - Circumventing the Nexus Requirement: Colorado Law Imposing Sales Tax Obligations on Out-of-State Retailers is Upheld

On December 12, the U.S. Supreme Court denied the petition for certiorari in *Direct Marketing Association v. Brohl* (Direct Marketing). As a result, the Tenth Circuit's earlier decision in *Direct Marketing* will stand. In *Direct Marketing*, 814 F.3d 1129 (10th Cir. Feb. 22, 2016), the Tenth Circuit upheld a Colorado law requiring out-of-state retailers with no physical presence in Colorado to either voluntarily collect sales tax or comply with substantial notice and reporting requirements. At least arguably, the Colorado statute at issue represents yet another attempt by a state to circumvent the physical presence requirement imposed by the U.S. Supreme Court on a state's ability to impose its tax collection obligations on an out-of-state entity.

- June 9, 2016 - Recent Texas Supreme Court Decision Addressing Treatment of Capital Losses for Texas Franchise Tax Apportionment Purposes Carries Significant Implications
In a recent decision with potentially broad implications, the Texas Supreme Court held in favor of a taxpayer on a question involving the treatment of capital losses for purposes of the Texas franchise tax.
- September 18, 2015 - Appeals Court Upholds Half Percent Texas Franchise Tax Rate For Rent To Own Business
In a recent decision, the Third Court of Appeals in Texas held that Rent-A-Center, Inc. was entitled to use the .5% tax rate for Texas franchise tax purposes which is generally available to retailers and wholesalers. *Rent-A-Center, Inc. v. Hegar*, 2015 Tex. App. LEXIS 5865 (Tex. App. - Austin, no pet., June 11, 2015).
- September 3, 2015 - Tax Amnesty Programs
Several states have amnesty programs that begin this month and have limited duration. Taxpayers who may be interested should seek legal counsel before approaching any state about past due taxes. Read the full article to see what states have amnesty programs.