



**GLENN HEGAR** TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

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October 20, 2022

Jeff Nelson  
Commissioner of Workers' Compensation  
Texas Department of Insurance, Division of Workers' Compensation  
7551 Metro Center Drive, Suite 100  
Austin, TX 78744-1645

RE: Private Letter Ruling No. PLR20220516113922  
Texas Department of Insurance- Designated Doctor Examinations

Dear Mr. Nelson:

We issue this private letter ruling in accordance with Rule 3.1<sup>1</sup>, Private Letter Rulings and General Information Letters, in response to your request dated Feb. 9, 2022.

You requested guidance on the taxability of charges for Designated Doctor Examinations performed under Labor Code, Section 408.0041. In accordance with Rule 3.10, Taxpayer Bill of Rights, the Comptroller will grant detrimental reliance relief to doctors performing Designated Doctor Examinations under identical facts.

**Facts Presented**

The relevant facts are based on the email request provided by the Texas Department of Insurance, Division of Workers' Compensation (DWC), video conference calls held on Feb. 23, 2022, and May 12, 2022, and a redacted copy of an example of Form DWC069 (Report of Medical Evaluation) and its attached designated doctor exam report.

Workers' compensation is a state-regulated insurance program that pays medical bills and replaces some lost wages for employees who are injured at work or who have work-related diseases or illnesses. DWC regulates worker's compensation insurance coverage under Texas Labor Code, Chapter 408.

During treatment of an injury, an injured worker or the worker's attorney, insurance carrier, or DWC can request a Designated Doctor Examination (Exam) under Labor Code Section 408.0041. DWC orders an Exam to evaluate questions about an injured employee's

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<sup>1</sup> Unless otherwise indicated, all references to "Section" are to the Texas Tax Code, and all references to "Rule" are to Title 34 of the Texas Administrative Code.

medical condition and to resolve disputes about worker's compensation insurance benefits regarding a work-related injury or illness.

DWC chooses a designated doctor to perform the Exam. All designated doctors are certified and trained by DWC to answer questions about workers' compensation insurance benefits on work-related injuries or occupational illnesses. During an Exam, a designated doctor examines an injured employee and issues a report that addresses:

- Maximum Medical Improvement (MMI), based on reasonable medical probability, or the earliest date that further medical recovery can no longer be reasonably anticipated.
- Impairment Rating based on the injured employee's condition at the date of MMI considering the medical records and the Exam.
- Extent of the employee's injury.
- Whether the disability is a direct result of the injury.
- Injured employee's ability to return to work.

An Exam is paid for by the insurance carrier or the self-insured municipality that provided worker's compensation insurance to the injured employee. Neither DWC nor the injured employee pay any portion of the Exam's cost.

Exams are evaluations performed to determine the appropriate benefits an injured worker may be entitled to. Exams are not medical treatment and do not establish a physician-patient relationship.

### **Question, Ruling, and Analysis**

Our restatement of your question is shown below, followed by our response and analysis.

Question: Are Exams ordered by DWC taxable insurance services?

Ruling: Yes, charges for Exams are taxable insurance services.

Analysis: Texas imposes a sales tax on each sale of a taxable item in this state. Section 151.051 (Sales Tax Imposed). Section 151.010 (Taxable Item) defines a taxable item to include tangible personal property and taxable services. Section 151.0101 ("Taxable Services") provides a list of taxable services that includes Section 151.0101(a)(9) insurance services.

Section 151.0039 ("Insurance Service") defines an insurance service as "...insurance loss or damage appraisal, insurance inspection, insurance investigation, insurance actuarial analysis or research, insurance claims adjustment or claims processing, or insurance loss prevention service." Rule 3.355(a)(8) (Insurance Services) further defines "insurance claims adjustment or claims processing" as any activity to supervise, handle, investigate,

pay, settle, or adjust claims or losses. Rule 3.355(b) states insurance services, including services performed on behalf of an insurance carrier, are taxable.

DWC orders Exams to evaluate an injured employee's medical condition and to resolve disputes about worker's compensation insurance benefits regarding a work related injury or illness. They are performed to determine the appropriate level of workers' compensation benefits. These are activities to handle, investigate, adjust, and/or pay claims or losses, and the activities meet the definition of insurance claims adjustment or claims processing under Rule 3.355(a)(8). Charges for Exams are subject to Texas sales and use tax. Sections 151.010, 151.0101(a)(9), and 151.051; Rule 3.355(b).

Rule 3.355(c)(2) provides that medical services provided by medical providers, including physicians and medical staff, are not taxable as insurance services. However, this provision is not applicable to the Exams . Exams are evaluations performed to determine the appropriate level of worker's compensation benefits. They are not medical treatment and do not establish a physician-patient relationship.

The agency addressed similar services, such as independent medical exams, in STAR Accession No. 202005027L (May 15, 2020). Similar to Exams, these independent medial reviews are performed on behalf of an insurance company to settle benefit claims instead of providing medical treatment of a patient. The agency held that the independent medical exams provided for an insurance company for the purpose of evaluating the validity and scope of an insured client's claim are taxable under Rule 3.355(b). *See* Comptroller's Decision No. 27,950 (1992).

Designated doctors are responsible for collecting and remitting sales and use tax on charges to workers' compensation insurance carriers for Exams. The doctors may accept an exemption certificate in lieu of collecting tax on Exams for exempt governmental entities described by Section 151.309, such as self-insured political subdivisions, or to religious, educational, and public service organizations described by Section 151.310.

Comptroller's Decisions and STAR documents cited can be found on the Comptroller's State Tax Automated Research (STAR) system. The Texas Tax Code, Texas Administrative Code, and the STAR system are accessible at [www.comptroller.texas.gov/taxes/](http://www.comptroller.texas.gov/taxes/).

If you have questions about this private letter ruling, please email us through our website at <https://comptroller.texas.gov/web-forms/tax-help/> and reference Private Letter Ruling No. 20220516113922.

Sincerely,