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BREAKING NEWS: COMPANIES DOING BUSINESS WITH FEDERAL GOVERNMENT MAY SEEK TEXAS SALES TAX REFUNDS

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As a result of a favorable decision issued by the Austin court of appeals on March 16, 2011, companies doing business in Texas with the federal government may have significant Texas sales tax refund claims for the last four years.¹ We will discuss the case in more detail in our June edition.

Affected companies should consider filing “protective refund claims” with the State of Texas pending the final outcome of the litigation. An ideal candidate would be a company that: (i) during the last four years has performed services in Texas for a federal agency pursuant to one or more cost-plus contracts which incorporate the Federal Acquisition Regulation title-transfer provisions, and (ii) paid Texas sales tax on the original purchase of items used in providing those services. The purchases in question would be things like office supplies, furniture, telephone equipment, utilities, capitalized assets, services (telephone, laundry, printing, landscaping, and janitorial services), leased assets, and software and maintenance on software.

In Texas, the statute of limitations for recovering taxes is generally four years from when the taxes were paid. Each month affected companies lose a month’s worth of potential refunds. Filing a “protective refund claim” with the State of Texas will toll the statute of limitations. If Blue Cross ultimately prevails, the refund claim can be pressed. If Blue Cross ultimately loses, the refund claim can be dismissed by the taxpayer. On the basis of the decision by the Austin court of appeals, the chances that the taxpayer will ultimately prevail are high. There are literally *millions of dollars* on the line.



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¹ Cause No. D-1-GN-04-001955 (Travis Co. Tex. Dist. Ct. July 2009), *affirmed*, No. 03-09-00617-CV (Tex. App.—Austin March 16, 2011, no pet. hist.) (slip op. at <http://www.3rdcoa.courts.state.tx.us/opinions/pdfOpinion.asp?OpinionID=20044>) (web site last visited March 16, 2011).