

PerdueBrandonFielderCollins&Mott LLP  
ATTORNEYS AT LAW



Howard Perdue  
(1933-2005)  
Larry Brandon  
James O. Collins  
Terry Ann White  
R. Bruce Medley  
Robert Mott  
Kevin Brennen  
Harold Lerew  
Jeanmarie Baer  
David A. Ellison  
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David Hudson  
R. Gregory East  
Elizabeth Banda Calvo  
Yolanda M. Humphrey  
John T. Banks  
Sandra Griffin  
Sergio E. Garcia  
E. Stephen Lee

1235 North Loop West  
Suite 600  
Houston, Texas 77009  
Telephone: 713-862-1860  
Facsimile: 713-896-0030  
www.pbfcm.com

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Terry G. Wiseman\*  
C. David Fielder\*  
Gregg M. McLaughlin\*  
\*Retired

Clients of the Firm

RE: New Exemption of "Goods-in-Transit" — Local Option to Tax

Dear Client:

In the 2007 session, the Texas Legislature passed Tax Code Section 11.253 or the "Goods-in-Transit" exemption as it is more commonly known. This legislation implemented a constitutional amendment that was passed several years before. This legislation was very similar to the "Freeport exemption" passed many years ago, but it had a potentially larger impact as time passed. At that time, we wrote you and advised you of your option to tax "goods-in-transit" and most of you did.

During the 2011 special session, the legislature acted to significantly limit the applicability of section 11.253. This exemption now applies only to goods that are stored in a public warehouse owned by someone other than the owner of the goods. The law no longer exempts goods that are in a location for assembly, manufacturing, fabrication or processing, as was the case under the law passed in 2007. The legislature revised and narrowed the law to address the author's issue: competition between Texas and New Mexico warehouse facilities. New Mexico does not tax such goods at all, so New Mexico warehouse owners had a competitive advantage.

This update to the law requires that you act within a narrow window of time if you want to continue to tax these goods for 2012. The update provides that **you must take action after October 1, 2011 but before December 31, 2011**, if you want to continue to tax such goods in 2012. You may later elect to tax such goods for subsequent years if you fail to act this year.

## Special Note for School Districts

The wealth lost to this exemption will be deducted from the taxable wealth of the school district as determined by the Comptroller for purposes of calculating state aid. Until the hold harmless provisions of House Bill 1 are removed, this will have little impact on the amount of state aid your school district receives. At present, the Comptroller's wealth estimate affects only the additional four cents that a school district may impose and the amount of certain types of facilities aid the district receives from the state (existing debt allotment and instructional facilities allotment).

We hope that this letter and the attached forms will help you make an informed decision on behalf of the taxpayers that you represent. If you should have any questions concerning this matter, please feel free to call your attorney at your local office or call me in Houston.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Mott", with a large, stylized initial "R" and a long horizontal flourish extending to the right.

Robert Mott

## Forms

[CLICK HERE](#) for the Word Document of the Resolution Form

[CLICK HERE](#) for the Word Document of the Order Form

[CLICK HERE](#) for the Word Document of the Ordinance Form

# **The FAQs on G-I-T (Revisited)**

## **A Look at Tax Code Section 11.253 – Goods-in-Transit – as amended in SB1 (82<sup>nd</sup> Leg)**

### **My taxing unit has already acted on Freeport, isn't this the same thing?**

Actually, the Freeport exemption (11.251) is completely separate from this exemption. Indeed, 11.253(k) explicitly states that no taxpayer can receive Freeport exemption on the same property that receives a goods-in-transit exemption.

### **It looks the same to me -what's the difference?**

There is a significant difference in the types of property which may receive goods-in-transit exemption as opposed to Freeport. First of all, unlike Freeport, goods-in-transit do not have to be shipped out of state within 175 days to qualify – they just need to be moved to another physical address as long as the new storage facility has a different owner than the goods. In terms of the type of property, the definitions are similar to those of Freeport goods, with certain exceptions. Any property which would be subject to special inventory tax will not qualify for the exemption. Also, there is some concern that the definition of exempt petroleum products is not exactly the same in both 11.251 and 11.253.

### **So, a taxpayer can't get both Freeport and GIT?**

Not exactly. A taxpayer can't get Freeport on the same property receiving GIT. If they have two facilities in the County, one could potentially get Freeport and the other GIT.

### **Well, that seems clear...**

Assume there is a facility in Blackacre County which has property that would meet both the definition of Freeport and GIT. The County grants Freeport and the City and School do not. The School grants GIT, but the County and City do not. If the owner applies for the School's GIT exemption, he might forfeit the other unit's Freeport.

### **Why would the School grant GIT?**

The statute that enacted 11.253 in 2007 had language to remove property subject to GIT from the Property Value Study, thus potentially reducing the District's value for school funding purposes. This could change though in subsequent sessions – particularly if the change significantly reduces money coming in from Chapter 41 schools.

### **Last and most important, what's this going to cost?**

The best answer is either: "No-one really knows" or "Potentially, lots of money". The Appraisal District should be able to give an estimate based on those units with Freeport, but it is just an estimate. Once taxpayers realize how easy it is to qualify property for goods-in-transit, companies will most likely adjust their business model to take advantage of the exemption





## **What is Exempted?**

This law exempts goods, principally inventory, that are stored under a contract of bailment by a public warehouse operator at a public warehouse facility, that is in no way owned or controlled by the owner of the goods, provided such property is moved to another location in this state or out of state within 175 days after the goods were acquired in Texas or imported into Texas. The movement requirement could be satisfied by simply moving the goods to another warehouse across the street.

Certain specific types of goods are presently excluded from this exemption: oil, natural gas, petroleum products, aircraft, dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment inventory, or retail manufactured housing inventory. Petroleum products are defined to be only the immediate derivatives of oil and natural gas, so some goods that you might think of as petroleum products may actually be exempted from taxation by this new law.

## **What is the Impact on Your Tax Base?**

At present, this new law will probably have a limited impact because most goods are kept in facilities owned by the owners of the goods. However, this may change. Some owners of goods that presently store them may move their goods into a public warehouse in order to obtain the tax exemption. It should be noted, however, that this pared down exemption has much less potential to reduce your tax base than the original statute.

## **What Can You Do?**

The governing body of each taxing unit in the state may act to tax these goods in the year following the year in which the governing body takes action. These goods will first become exempt in 2012. So if you wish to continue to tax these types of goods in 2012, you must act to tax the goods after October 1, 2011 and before December 31, 2011. You must inform all the appraisal districts in which your local government is located that you have acted to tax these goods. A copy of a resolution, order, or ordinance is the best way to document your decision to your appraisal district.

Before you act to tax these goods, you must hold a public hearing on the question of whether to tax them or whether to let them become exempt. The legislature has prescribed no special procedures for this hearing, so it may be held at a meeting of the governing body called for other purposes. The item must be listed on the agenda for that meeting as an action item in compliance with the Open Meetings Act, but there is no additional public notice required.

The legislature required that each taxing unit act in the manner required for official action by the governing body of the taxing unit. For counties, this means that action should be taken by an order of the commissioner's court. For cities, this means that action should be taken by an ordinance. For school districts and other taxing units, this means that action should be taken by resolution. A sample order, ordinance and resolution form is attached to this letter.