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September 16, 2011

Mrs. Lynda Gunstream
Tax Assessor-Collector, Orange County
P.O. Box 1568
Orange, Texas 77631-1568

RE: Senate Bill 1 / Exemption of Goods in Transit

Dear Lynda:

BACKGROUND

In 2007, the 80th Texas Legislature enacted Tex. Tax Code § 11.253 (House Bill 621) which implemented the goods-in-transit exemption authorized by Texas Constitution, Art. 8, sec. 1-n. That bill defined “goods-in-transit” in part as: tangible personal property detained in a location in this state whose owner did not have direct or indirect ownership of the facility at which the property was assembled, stored, manufactured, processed, or fabricated.

House Bill 621 also provided for a local option to tax goods-in-transit notwithstanding the authorized exemption. And, a number of taxing units chose to do so beginning in tax year 2008 by taking official action through their governing bodies.

NEW LOCAL OPTION AVAILABLE

The 82nd Legislature has now enacted Senate Bill 1, amending § 11.253 and, through that amendment, has narrowed the definition of “goods-in-transit.” The amendment is effective October 1, 2011 and it applies to tax years 2012 and subsequent. The only exemption now authorized relates only to those goods “being stored”.

Senate Bill 1, under the new subsection (j-1) of Section 11.253, also requires that if a taxing unit wishes to tax the newly defined goods-in-transit, then it must take affirmative action to do so, even if the taxing unit previously acted under House Bill 621 back in 2007. If the taxing unit favors the exemption, then no affirmative action need be taken.

STEPS TO TAKE IN EXERCISING LOCAL OPTION TO TAX THE PROPERTY

The governing body of a local taxing entity may elect to tax goods-in-transit, but only after holding a public hearing for the purpose of providing your taxpayers the opportunity to express their opinions on the subject. The public hearing may be held in conjunction with a regular meeting of the governing body. And, there is no requirement for publishing notice of the hearing other than including notice of the public hearing on a regular meeting agenda. Sample agenda wording is also attached for your reference.

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Page 2

If your taxing unit chooses to tax goods-in-transit for the tax year 2012 and subsequent years, the governing body must act no sooner than October 1, 2011 and no later than December 31, 2011. If your taxing unit elects to tax goods-in-transit, those goods will remain taxable until the governing body takes action to rescind or repeal its previous action and grant the exemption.

In the event that your governing body wishes to take the affirmative action necessary in taxing the property, we are enclosing herewith a form of Resolution, Ordinance, or Order which needs to be passed and approved by the governing body prior to January 1, 2012.

Finally, you must ***send a copy of any resolution, ordinance, or order passed by your governing body to each chief appraiser for each appraisal district that serves your taxing unit.*** A form of transmittal letter to the chief appraiser is enclosed for your convenience.

A copy of the relevant part of Senate Bill 1 and a copy of its analysis are also enclosed. We hope you find this material helpful, regardless of which policy your taxing unit chooses to follow. Please feel free to call on us if we can be of further assistance.

Very Truly Yours,



Douglas Steven Bird
Attorney at Law

With Enclosures

Xc: Mr. Mike Cedars, Chief Appraiser
Orange County Appraisal District
P.O. Box 457
Orange, Texas 77631-0457