

O'Connell 9-29-11
✓ MD

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

ATTORNEYS AT LAW

2805 N. Navarro, Ste. 700
VICTORIA, TEXAS 77901

(361) 578-6010
FAX: (361) 578-6144

September 23, 2011



Linda G. Bridge
Tax Assessor Collector, Bee County
P O Box 1900
Beeville, TX 78104-1900

RE: Senate Bill 1 / Exemption of goods in transit

Dear Mrs. Bridge:

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.

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,

LINEBARGER GOGGAN BLAIR
& SAMPSON, LLP

By: 
M. Jeffrey Rutledge

Enclosures

cc: The Honorable David Silva
Bee County Judge
105 W. Corpus Christi St., Room 106
Beeville, Texas 78102

Dr. Sue Thomas, Superintendent
Beeville Independent School District
2400 N. St. Mary's
Beeville, Texas 78102

Dr. Thomas Baynum, President
Coastal Bend College
300 Charco Road
Beeville, Texas 78102

Tucker Rackley, Superintendent
Pettus Independent School District
P.O. Box D
Pettus, Texas 78146

Dr. Brett Belmarez, Superintendent
Skidmore-Tynan ISD
P.O. Box 409
Skidmore, Texas 78389

Elaine Richardson, Superintendent
Pawnee Independent School District
P.O. Box 569
Pawnee, Texas 78415

Tom Ginter, City Manager
City of Beeville
400 N. Washington
Beeville, Texas 78102

WHEREAS, on the _____ day of _____, 2011, the commissioners court of Bee County held a public hearing at which members of the public were permitted to speak for or against the taxation of certain goods-in-transit personal property; and

WHEREAS, following the public hearing, the commissioners court of Bee County has determined that such personal property, as exempted by Tex. Tax Code § 11.253, should be subject to taxation by said county for tax year 2012 and all subsequent years.

NOW, THEREFORE,

BE IT ORDERED BY THE COMMISSIONERS COURT OF BEE COUNTY, TEXAS, SITTING AS THE GOVERNING BODY OF SAID COUNTY, THAT:

SECTION 1: THE RECITALS SET FORTH IN THIS ORDER ARE TRUE AND CORRECT.

SECTION 2: ALL SUCH GOODS-IN-TRANSIT PERSONAL PROPERTY AS DEFINED BY THE AMENDMENTS TO TEX. TAX CODE § 11.253 UNDER SENATE BILL 1, SHALL BE, AND ARE HEREBY DECLARED TO BE, TAXABLE BY BEE COUNTY FOR TAX YEAR 2012 AND FOR EVERY YEAR THEREAFTER, ALL AS PROVIDED FOR AND IN ACCORDANCE WITH TEXAS TAX CODE § 11.253.

PASSED, APPROVED and ADOPTED this ____ day of _____, 2011.

BEE COUNTY

BY: _____
David Silva, County Judge
Bee County, Texas

ATTEST:

Mirella Escamilla Davis, County Clerk

VIA REGULAR MAIL

[DATE]

[CHIEF APPRAISER OF COUNTY APPRAISAL DISTRICT(S)]

**RE: [TAXING UNIT] – PROPERTY TAX CODE SECTION 11.253, TANGIBLE
PERSONAL PROPERTY IN TRANSIT – [RESOLUTION/ORDINANCE/ORDER]
ADOPTING THE TAXATION OF GOODS-IN-TRANSIT PERSONAL
PROPERTY**

Dear [CHIEF APPRAISER]:

Regarding the referenced matter and relating to Property Tax Code Section 11.253, Tangible Personal Property in Transit, attached for your information and use is a copy of the [resolution/ordinance/order] approved on [date] by the [governing body] for the [taxing unit] wherein the [governing body] provided for the taxation of goods-in-transit personal property beginning with tax year 2012 and applicable to every tax year thereafter. As you know, in accordance with Section 11.253, this decision is subject to any subsequent rescission or repeal of same or later determination by the [governing body] that the exemption prescribed by that section will apply.

Please feel free to contact me should you have any questions, concerns and/or require additional information.

Sincerely,

[taxing unit contact]

Enclosure(s)

cc: [tax assessor-collector]

EXCERPT FROM BILL ANALYSIS OF C.S.S.B. 1

Article 47. Ad Valorem Taxation of Certain Stored Property

C.S.S.B. 1 amends the Tax Code to prohibit a taxing unit from taxing goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes action on or after October 1, 2011, in the manner required for official action by the governing body, to provide for the taxation of the goods-in-transit. The bill requires official action to tax the goods-in-transit to be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit and requires the governing body of the taxing unit to conduct a public hearing required by the Texas Constitution before acting to tax the exempt property. The bill establishes that, if the governing body provides for such taxation, the tax exemption for goods-in-transit does not apply to that unit and that the goods-in-transit remain subject to taxation by the taxing unit until the governing body, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit or otherwise determines that the exemption will apply to that taxing unit.

C.S.S.B. 1 authorizes the tax officials of a taxing unit, if the unit's governing body, before October 1, 2011, took the required official action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the taxing unit, to continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created. The bill makes these provisions relating to the taxation of goods-in-transit, including changes conforming to a redefinition by the bill, effective October 1, 2011.

C.S.S.B. 1 redefines "goods-in-transit" as it relates to the property tax exemption for certain good-in-transit, in part, as tangible personal property that is stored under contract of bailment by a public warehouse operator at one or more public warehouse facilities in Texas that are not in any way owned or controlled by the owner of the personal property for the account of the person who acquired or imported the property, rather than as such property that is detained at a location in Texas in which the owner of the property does not have a direct or indirect ownership interest for assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property. The bill makes related conforming changes and limits the applicability of the redefinition to a property tax year that begins on or after January 1, 2012.

C.S.S.B. 1 defines "public warehouse operator" and provides for the meanings of "bailee" and "warehouse" by reference to the Business & Commerce Code. The bill makes this article effective January 1, 2012, except as otherwise provided.

ARTICLE 48. AD VALOREM TAXATION OF CERTAIN STORED PROPERTY

SECTION 48.01. Subsection (a), Section 11.253, Tax Code, is amended by amending Subdivision (2) and adding Subdivisions (5) and (6) to read as follows:

(2) "Goods-in-transit" means tangible personal property that:

(A) is acquired in or imported into this state to be forwarded to another location in this state or outside this state;

(B) is stored under a contract of bailment by a public warehouse operator [detained] at one or more public warehouse facilities [a location] in this state that are not in any way owned or controlled by [in which] the owner of the personal property [does not have a direct or indirect ownership interest] for the account of [assembling, storing, manufacturing, processing, or fabricating purposes by] the person who acquired or imported the property;

(C) is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and

(D) does not include 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.

(5) "Bailee" and "warehouse" have the meanings assigned by Section 7.102, Business & Commerce Code.

(6) "Public warehouse operator" means a person that:

(A) is both a bailee and a warehouse; and

(B) stores under a contract of bailment, at one or more public warehouse facilities, tangible personal property that is owned by other persons solely for the account of those persons and not for the operator's account.

SECTION 48.02. Section 11.253, Tax Code, is amended by amending Subsections (e) and (h) and adding Subsections (j-1) and (j-2) to read as follows:

(e) In determining the market value of goods-in-transit that in the preceding year were ~~[assembled,]~~ stored~~[, manufactured, processed, or fabricated]~~ in this state, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held by the owner of the component parts during the preceding year at a location in this state that was not owned by or under the control of the owner of the component parts in determining whether the component parts were transported to another location in this state or outside this state before the expiration of 175 days.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner to provide copies of property records so the chief appraiser can determine the amount and value of goods-in-transit and that the location in this state where the goods-in-transit were detained for storage ~~[assembling, storing, manufacturing, processing, or fabricating purposes]~~ was not owned by or under the control of the owner of the goods-in-transit. If the property owner fails to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner, the property owner forfeits the right to claim or receive the exemption for that year.

(j-1) Notwithstanding Subsection (j) or official action that was taken under that subsection before October 1, 2011, to tax goods-in-transit exempt under Subsection (b) and not exempt under other law, a taxing unit may not tax such goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes action on or after

October 1, 2011, in the manner required for official action by the governing body, to provide for the taxation of the goods-in-transit. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Before acting to tax the exempt property, the governing body of the taxing unit must conduct a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution. If the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this subsection, the exemption prescribed by Subsection (b) does not apply to that unit. The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit or otherwise determines that the exemption prescribed by Subsection (b) will apply to that taxing unit.

(j-2) Notwithstanding Subsection (j-1), if under Subsection (j) the governing body of a taxing unit, before October 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the taxing unit, the tax officials of the taxing unit may continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created.

SECTION 48.03. Subdivision (2), Subsection (a), Section 11.253, Tax Code, as amended by this article, applies only to an ad valorem tax year that begins on or after January 1, 2012.

SECTION 48.04. (a) Except as provided by Subsection (b) of this section, this article takes effect January 1, 2012.

(b) Section 48.02 of this article takes effect October 1, 2011.

**BEEVILLE INDEPENDENT SCHOOL DISTRICT
RESOLUTION AND ORDINANCE
RELATING TO APPROVAL OF TAXATION OF GOODS-IN-TRANSIT
THAT ARE OTHERWISE EXEMPT FROM TAXATION UNDER SECTION 11.253,
TEXAS TAX CODE**

WHEREAS, the 82nd Texas Legislature during its Special Session enacted Senate Bill 1 which amended Tex. Tax Code § 11.253, under which personal property consisting of goods-in-transit, as newly defined, are exempt from taxation; and

WHEREAS, a new subsection (j-1) was added to § 11.253 by Senate Bill 1, and which provides for a local option under which a taxing unit may tax such goods-in-transit otherwise exempt, if the governing body of such taxing unit after a public hearing takes official action to tax such personal property; and

WHEREAS, on the ___ day of _____, 2011, the Board of Education held a public hearing at which members of the public were permitted to speak for or against the taxation of certain goods-in-transit personal property; and

WHEREAS, following the public hearing, the Board of Education has determined that such personal property, as exempted by Tex. Tax Code § 11.253, should be subject to taxation by the Beeville Independent School District for tax year 2012 and all subsequent years.

THEREFORE, BE IT RESOLVED AND ORDAINED BY THE BOARD OF EDUCATION OF THE BEEVILLE INDEPENDENT SCHOOL DISTRICT THAT:

(1) all of the above recitals are incorporated and made a part of this Resolution and,

(2) all such goods-in-transit personal property as defined by the amendments to Tex. Tax Code § 11.253 under Senate Bill 1, shall be, and are hereby declared to be, taxable by the Beeville Independent School District for tax year 2012 and for every year thereafter, all as provided for and in accordance with Texas Tax Code § 11.253.

PASSED, APPROVED, AND ADOPTED this _____ day of _____,
2011.

BEEVILLE INDEPENDENT SCHOOL DISTRICT

By: _____
Nick Cardenas
President, Board of Education

ATTEST:

Velma Elizalde
Secretary, Board of Education