



CLIENT ALERT

Powell & Leon, LLP

Taxing "Goods-in-Transit" Requires Board Action

September 28, 2007

This Client Alert is a publication of the law firm of Powell & Leon, L.L.P. and is intended to inform our clients and friends of current developments in school law and the legal concerns raised by such developments. It is not intended, nor should it be used, as a substitute for specific legal advice regarding particular factual situations.

Please feel free to contact one of the attorneys below with any questions or concerns raised by this Client Alert.

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The 80th Session of the Texas Legislature enacted new Property Tax Code Section 11.253 which creates an exemption for certain "goods-in-transit." That is, "inventory," with certain exceptions, will be exempt from ad valorem taxation, beginning in 2008, subject to certain criteria.

The exemption operates similarly to the Freeport exemption. However, goods need not be either acquired out of state or transported out-of-state. Under the Section 11.253, "inventory" merely needs to be acquired and moved within 175 days to a location where the owner of the property does not have direct or indirect control over that facility. How strictly the issues of "common ownership" of the storage facility and the "goods in transit" will be construed remains to be determined.

This exemption does not apply to petroleum products or any types of equipment to which special inventory taxes apply (e.g. automobiles, mobile homes, heavy equipment, etc.).

Similar to the Freeport exemption, the new exemption for goods in transit will be applied by determining the percentage of goods the property owner owned in the last year which were moved from one location to another within 175 days of acquiring them. That percentage would be applied to the goods owned on January 1 to determine what portion would be exempt.

Also similar to the Freeport exemption, local taxing units may elect not to participate in the exemption. That is, they may elect to continue taxing the goods. In order to do so, the taxing unit must have a public hearing which allows people to speak both in favor and against taxing goods in transit, and they must adopt a resolution or other means by which the governmental body takes official action to continue taxing goods in transit.

The action taken by the governing body must take place before January 1 of the year in which that taxing unit wishes to begin or continue taxing goods in transit. Thus, in order to effectively tax goods in transit for 2008, a taxing unit such as a public school district must hold the public hearing and take the official vote prior to January 1, 2008. A board of trustees should adopt a resolution memorializing its action.

Although it is not required by statute, you may also wish to consider publishing notice of the required public hearing in the local newspaper and/or website in addition to your agenda. Sample agenda language is as follows: **Public Hearing to Consider Taxation of Goods-in-Transit, Pursuant to Texas Property Code.**

**RESOLUTION OF THE BOARD OF TRUSTEES
BEEVILLE INDEPENDENT SCHOOL DISTRICT**

**STATE OF TEXAS §
COUNTY OF BEE §**

**RESOLUTION AUTHORIZING TAXATION OF GOODS-IN-TRANSIT,
PURSUANT TO TEXAS PROPERTY TAX CODE, SECTION 11.253**

WHEREAS, the Texas Constitution and Texas Property Tax Code § 11.253 authorizes local taxing units, like Beeville Independent School District, to tax goods-in-transit which would otherwise be exempt from taxation;

WHEREAS, the Beeville Independent School District Board of Trustees has held a public hearing at which members of the public were permitted to speak for or against the taxation of the property in accordance with Texas Constitution Article VIII, § 1-n(d) and Texas Property Code § 11.253; and

WHEREAS, the Beeville Independent School District Board of Trustees determines that it is in the best interest of the District to provide for the ad valorem taxation of goods-in transit, as defined by Texas Property Tax Code § 11.253;

IT IS THEREFORE HEREBY RESOLVED, that goods-in-transit, as defined by Texas Property Tax Code § 11.253, are subject to taxation by the Beeville Independent School District.

BE IT SO ORDERED.

Adopted this 18th day of December, 2007.

BEEVILLE INDEPENDENT SCHOOL DISTRICT

By:

Board President

ATTEST

Secretary