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MVBA BULLETIN

Date: July 30, 2007

Re: New Exemption for Goods in Transit

In its 2007 session, the Legislature enacted new Property Tax Code § 11.253, creating an exemption for certain “goods in transit.” That is, inventory, with certain exceptions, will be exempt from ad valorem taxation, starting in 2008, assuming it meets certain criteria.

The exemption works very similarly to the freeport exemption. However, goods need not be either acquired out of state or transported out of state. The 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 issue of common ownership of the storage facility and the goods in transit will be construed remains to be seen. The January 1 location of the inventory may be owned by the same person who owns the inventory.

This exemption does not apply to petroleum products or any of the types of equipment to which special inventory taxes apply such as automobiles, mobile homes, heavy equipment, etc.

Similarly to the freeport exemption, this 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 similarly 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. Therefore, in order to effectively tax goods in transit for the year 2008, the taxing unit must hold the public hearing and take the official vote prior to January 1, 2008. If a taxing unit elects to continue taxing the goods, it may later decide to rescind that action and extend the exemption. There is no mention in the statute or Constitution regarding the ability to then tax the inventory again.

Attached, please find a form of resolution which you may be able to adapt for your jurisdiction if you wish to continue the taxation of goods in transit.

If a school district allows the exemption to continue, it does not detract from the district's state funding. The Comptroller will not include the exempted value in the property value study. Neither will extending the exemption adversely affect any taxing unit's effective tax rate calculation.

If you have any questions, please do not hesitate to contact us.

RESOLUTION NO. _____

WHEREAS, pursuant to the Texas Constitution and TEX. PROP. TAX CODE, § 11.253, local taxing units are granted the option to tax goods in transit which would otherwise be exempt pursuant to § 11.253; and

WHEREAS, this governing body has held a public hearing pursuant to TEX. CONST. Art. VIII, § 1-n(d) on the issue of whether goods in transit, as defined by the referenced § 11.253, should be taxed or exempted; and

WHEREAS, the _____[name of governing body] determines that it is in the public interest to provide for the ad valorem taxation of goods in transit, as defined by the referenced § 11.253;

NOW, THEREFORE, BE IT RESOLVED BY THE _____[name of governing body] THAT:

All “goods in transit” as defined by TEX. PROP. TAX CODE § 11.253 shall be subject to ad valorem taxation by the _____[name of taxing unit], pursuant to the ____[taxing unit’s] annual ad valorem tax assessment, if not otherwise exempt or subject to abatement by law other than § 11.253 and TEX. CONST. Art. VIII, § 1-n.

The foregoing resolution was moved and seconded and adopted by a majority vote at a meeting of the _____[name of governing body] on _____, 2007.

[name and title of presiding officer]

ATTEST:

[name and title of secretary, clerk etc.]