



MVBA BULLETIN

Goods in Transit

The Legislature has amended the Goods in Transit exemption found in TEX. PROP. TAX CODE § 11.253 to clarify that the warehouse in which the goods are stored must not be “in any way owned or controlled by” the owner of the goods. S.B. 1, First Called Session.

The legislation also, however, requires taxing units to specifically adopt a resolution to continue taxing goods in transit even if the taxing unit has already done so in the past. If the taxing unit wishes to continue to tax the goods, it must hold a public hearing at which members of the public are allowed to speak for or against taxing goods in transit. Then, in order for the tax to be effective, the taxing unit must adopt a resolution to continue taxing the goods. That resolution must be passed after October 1, 2011 and before January 1 of the year in which the taxing unit wishes to tax the goods in transit. A sample resolution is attached. It must be adapted to the needs of the particular taxing unit. The option is open to any taxing unit, even if it has not previously elected to tax goods in transit.

Unfortunately, there is little guidance on what is required of the public hearing other than that proponents and opponents of taxation be allowed to speak. At a minimum, the taxing unit must comply with the Open Meetings Act, TEX. GOV'T CODE §§ 551.001 *et seq.*, and post a notice of the hearing at least 72 hours in advance. Since many public hearing require notice in the newspaper, a taxing unit may be wise to publish such a notice in advance of the hearing.

Under the current legislation, the option to tax remains open to the taxing unit in any future year, so long as the taxing unit adopts the appropriate resolution before January 1 of that year. If the tax on goods in transit is pledged as security for a debt and releasing those taxes would impair the obligation, the tax continues even without an additional resolution, at least until the debt is satisfied.