

AGENDA REQUEST FORM  
COMMISSIONER 'S COURT  
SOMERVELL COUNTY, TEXAS

For Agenda of (Date):

10/11/11

Department:

Judge

Date Submitted:

9/26/11

Request:

D/TA on Goods-in-transit Property Tax



August 24, 2011

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To: All Urban Counties  
From: John B. Dahill, General Counsel

**Re: Action Required for Goods-in-Transit Property Tax  
by December 31, 2011**

Counties that wish to tax goods-in-transit in 2012 must act to do so by December 31, 2011, even if they previously opted to tax goods-in-transit. Failure to act may mean the loss of significant personal property tax revenue.

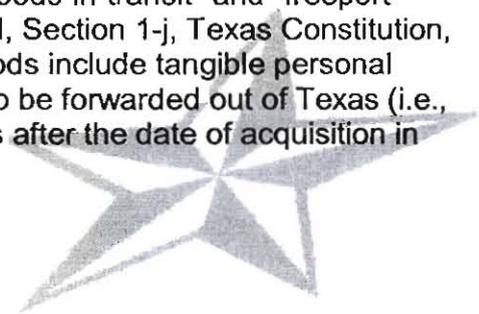
"Goods-in-transit" means tangible personal property acquired in or imported into Texas to be forwarded to another location in Texas or outside Texas (i.e., goods in both intrastate and interstate commerce) not later than 175 days after the date of acquisition in or importation into Texas. Pursuant to Article VIII, Section 1-n, Texas Constitution, and Section 11.253, Tax Code, goods-in-transit are generally exempt from local property taxes. Political subdivisions, however, may elect to tax those goods.

Senate Bill 1 by Duncan/Pitts (1<sup>st</sup> Called Session) nullifies prior decisions of political subdivisions to tax goods-in-transit for tax years after 2011. (There is an exception where taxes imposed on goods-in-transit have been pledged for the payment of a debt of the political subdivision, and those taxes may continue until the debt is discharged without further action of the governing body of the political subdivision.)

A county that wishes to tax goods-in-transit after January 1, 2012, must hold a public hearing and take official action imposing the tax on or after October 1, 2011 and before January 1 of the year for which the tax is to be in effect. Therefore, for a tax on goods-in-transit to be effective for 2012, a county must take action on or after October 1, 2011 and before January 1, 2012.

Senate Bill 1 also clarifies that "goods-in-transit" includes only those goods stored under a contract of bailment by a public warehouse operator. This provision is to give effect to the constitutional requirement that goods-in-transit be detained at a location in Texas not owned or under the control of the property owner.

There is some overlap in the definitions of "goods-in-transit" and "freeport" goods exempt from taxation under Article VIII, Section 1-j, Texas Constitution, and Section 11.251, Tax Code. Freeport goods include tangible personal property acquired in or imported into Texas to be forwarded out of Texas (i.e., interstate goods only) not later than 175 days after the date of acquisition in or importation into Texas.



Although freeport goods are generally exempt from taxation, a county that elected prior to April 1, 1990 to tax freeport goods may continue to do so. If a county rescinds its prior action to tax freeport goods, it *forever* loses the right to again tax freeport goods.

Because goods-in-interstate commerce may qualify for either the freeport or goods-in-transit tax exemptions, there is a concern that a failure of a county to act to tax goods-in-transit may result in changes to business practices to take advantage of the goods-in-transit tax exemption. If a county currently taxes goods in interstate commerce that would fall within the freeport exemption, the handling of those goods may be changed to take advantage of the goods-in-transit tax exemption unless the county acts to tax goods-in-transit.

To Commissioners Court ListServe:

Today, the Urban Counties sent this sample resolution out to our members. We post it here as well in case it helps anyone.

Goods-in-transit are commercial goods stored in independent (not controlled by the owner of the goods) warehouses awaiting further distribution. It can constitute significant amounts of taxable personal property.

The legislature, in SB 1, acted to make goods-in-transit exempt from property taxes unless a taxing entity holds a hearing and adopts a resolution to tax goods-in-transit. Even counties that have previously adopted such a resolution must do so again -- or goods-in-transit become exempt despite the previous action.

Goods-in-transit exemption is similar to, but not quite the same as, the Freeport exemption. Freeport goods are goods in storage to be shipped outside Texas. Goods-in-transit are goods in storage to be shipped both inside Texas and outside Texas.

So this is a good time to review your policy and adopt the attached resolution, or one close to it, before December 31. If you do nothing, goods-in-transit will be exempt from taxes.

One further note. If you think the requirement that the warehouse be independent limits this exemption so much that you don't care -- remember that a Wal-Mart or Target can easily sell their distribution warehouse to a third party and make all of their inventory in that warehouse tax exempt.

I've attached a more detailed explanation memo from our General Counsel, John Dahill.

If anyone has a question feel free to call me.

Donald Lee  
Executive Director  
Texas Conference of Urban Counties  
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512.476.6174

Recommended resolution to continue to tax Goods-in-Transit.

COMMISSIONERS COURT RESOLUTION (Goods-in-Transit Tax Exemption) WHEREAS, on October 1, 2011, a legislative change to Section 11.253 of the Texas Tax Code (which provides a general exemption from property taxation for certain goods-in-transit personal property) takes effect and nullifies all previous local option actions taken by a Commissioners Court to provide for the taxation of goods-in-transit; and

WHEREAS, the new statute also provides a local option for Commissioners Court to opt out of the exemption provided it takes official action to tax the goods-in-transit after October 1, 2011 and before January 1 of the first tax year in which the Commissioners Court proposes to tax goods-in-transit; and WHEREAS, the \_\_\_\_\_ County Commissioners Court held a public hearing on the issue of taxing goods-in-transit on \_\_\_\_\_, 2011; and WHEREAS, the \_\_\_\_\_ County Commissioners Court finds that the goods-in-transit exemption as authorized by Section 11.253 of the Texas Tax Code is not in the best interest of \_\_\_\_\_ County and further finds that more appropriate business incentives exist to encourage economic

development and growth of business in \_\_\_\_\_ County; NOW, THEREFORE, BE IT RESOLVED THAT THE COMMISSIONERS COURT OF \_\_\_\_\_ COUNTY, TEXAS, as permitted by the Texas Constitution and Section 11.253 of the Texas Tax Code, hereby provides for the taxation of goods-in-transit otherwise exempt from taxation by Section 11.253 of the Texas Tax Code.

DULY adopted by vote of the Commissioners Court of \_\_\_\_\_ County, Texas on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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