

Goods-In-Transit Exemption from Ad Valorem Taxes

Background: The “goods-in-transit” exemption provides exemption from ad valorem (property) taxation of goods which are held in a warehouse by a third-party in route from a seller to a buyer. The exemption is offered by many local governments across the country.

According to the A.D. Gerner, Executive VP of the Texas Warehouse Association (TWA), all of Texas’ neighboring states offer the exemption and the previous version of the law placed Texas at a competitive disadvantage. The organization contends that prior law cost the state significant losses in warehouse construction, maintenance and employment.

Prior law: Article 8 Section 1-j of the State Constitution and HB 621 from the 80th Legislature broadly defined goods eligible for the exemption from ad valorem taxation as “all goods-in-transit.” This broad definition left open the possibility of large commercial warehouse operations controlled by the owners of the merchandise contained within them to qualify for exemption from tax on the merchandise.

For that reason most local government entities opted-out from implementing the exemption in their jurisdictions.

Current Law: The 82nd Legislature, 1st Called Session, adopted provisions of SB1 which narrowed the definition of goods-in-transit. According to Gerner, the legislation will even the playing field with neighboring states and encourage more communities to offer a goods-in-transit exemption from ad valorem taxation.

The new definition of goods-in-transit includes only tangible personal property (merchandise) stored under contract of bailment by a public warehouse operator at one or more public warehouses that are not “in any way owned or controlled by the owner of the merchandise.” The terms “assembling,” “manufacturing,” “processing and “fabricating” are removed from the definition as acceptable activities to qualify for the exemption from taxation.

Definitions:

- **Goods-in-transit** - tangible personal property that: is acquired in or imported into this state to be forwarded to another location in this state or outside this state. (Section 11.253, Tax Code, as amended).
- **Bailee** - a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them. (Business and Commerce Code Section 7.102).
- **Warehouse** – a person engaged in the business of storing goods for hire. (Business and Commerce Code Section 7.102).
- **Public Warehouse Operator** - a person that: is both a bailee and a warehouse; and 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 11.253, Tax Code, as amended).

Local Government action to opt-out and continue taxing “goods-in-transit”: To tax personal property that would otherwise qualify for the “goods-in-transit” exemption, the bill adds subsection (j-1) to require taxing units to take official action on or after October 1, 2011 after holding a public hearing. Official action to tax the property must be taken before January 1 of the first tax year in which the governing body proposes to tax the property. If such official action is taken, the property remains subject to taxation by that taxing unit until the unit by official action rescinds or repeals its previous action to tax the property.

Subsection (j-2) is added to allow taxing units to continue to tax “goods-in-transit” if the taxing unit took action to tax the property before October 1, 2011 and pledged those taxes to the payment of debt until the debt is discharged.

Effective January 1, 2012, but applies only to an ad valorem tax year that begins on or after January 1, 2012, except for provisions (j-1) and (j-2) relating to taxing units taking official action to tax goods-in-transit which are effective October 1, 2011.