

SUBJECT: Excluding certain ships under construction from ad valorem taxation

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — Oliveira, McCall, Bonnen, Y. Davis, Heflin, Keffer, Ramsay, Ritter

0 nays

1 present, not voting — Hartnett

2 absent — Craddick, Hilbert

WITNESSES: For — Robert Isaac, ENSCO

Against — None

BACKGROUND: Under Tax Code, sec. 21.031, a commercial or special-purpose vessel or other watercraft used outside Texas that is in the state solely to be repaired, stored, or inspected is presumed to be in interstate, international, or foreign commerce and not located in the state for longer than a temporary period for purposes of ad valorem taxation. The appraisal office must exclude from the vessel's taxable value the portion of the vessel's market value that reflects its use outside the state or country or in international waters.

DIGEST: CSHB 1100 would specify that commercial and special-purpose vessels and other watercraft under construction in Texas are presumed to be temporarily located in the state and engaged in interstate, international, or foreign commerce. If the owner could demonstrate to the chief appraiser that the owner intended to install or attach tangible personal property to the vessel or watercraft, that property also would be considered temporary and engaged in commerce outside Texas.

The bill also would add conversion of vessels or watercraft to the types of activities they may undergo (repair, storage, inspection) to be presumed temporary and engaged in commerce out of state.

This bill would take effect January 1, 2002.

SUPPORTERS
SAY:

CSHB 1100 is needed to redress an unprecedented, unfair, and indefensible tax appraisal.

The Friede Goldman Halter shipyard (formerly TDI Halter) in Orange is the only shipbuilding facility on the Texas Gulf Coast not located in a tax-free federal trade zone. Since 1993, the shipyard has built custom drilling barges for Dallas-based ENSCO for use in overseas oil exploration. Construction periods often exceed 12 months.

In 2000, the Orange County Appraisal District assessed the value of three unfinished barges, the materials being used to build them, and the equipment in storage for installation on board at about \$60 million. The district imposed ad valorem property taxes of approximately \$1.2 million on the shipyard and the owner. The taxes have not been paid, and the matter is now being litigated in state district court. Never before in the history of this shipyard has the appraisal district taxed ships under construction, along with the construction materials and equipment to be installed. Other shipyards in Texas are exempt from such taxes because they are located in federal free-trade zones. Barges designed specifically to drill in the shallow waters of Venezuela's Lake Maracaibo clearly are not going to be used in Texas and are inherently temporary in nature.

Because construction often lasts more than 12 months, construction materials and equipment often are stored for more than a year and are on site as of January 1, the appraisal date. Sometimes they are present for two consecutive Januaries, subjecting the owners to double taxation because construction has not been finished.

If this decision is allowed to stand, it could inhibit shipbuilding in Orange, which would cost jobs and hurt the economy of a struggling area because much of the shipyard's business is in foreign-bound vessels. This precedent could have serious implications for other Texas shipyards if they were to lose their tax-exempt status or find themselves subject to new interpretations of the Tax Code.

School property taxes are the largest part of the district's tax assessment. Seeking a tax abatement, however, is not a viable option for the owner or the shipyard because the state does not deduct abated property values from its school funding calculations.

OPPONENTS
SAY:

CSHB 1100 is an attempt to legislate on behalf of one company what should be a matter for the courts, not for the Legislature. An isolated situation like this does not justify changing state tax law. Enactment of this bill would benefit neither local government nor the state.

The shipyard and the owner could seek tax breaks through abatements or reinvestment zones under Chapter 312 of the Property Tax Code. Also, they could follow the example of many other port cities in Texas and along the Gulf of Mexico and seek federal trade zone status. The fact that Orange is not in a federal free-trade zone should not exempt its businesses from any legitimate local property taxes.

Structures, materials, and equipment that remain in one place for more than a year should not be considered temporary. A shipyard is not unlike an automobile factory that keeps parts on hand to assemble vehicles, some of which may be shipped outside the state. Those parts are taxable property; they are not in the flow of interstate or international commerce.

NOTES:

The bill as filed would have created a presumption based on the owner's intent that tangible personal property is considered to be in interstate, international, or foreign commerce if installed in or attached to the vessel. The committee substitute would require the owner to demonstrate that status to the chief appraiser.

The companion bill, SB 530 by Bernsen, is pending in the Senate Intergovernmental Affairs Committee.