

SUBJECT: Exemption of certain goods in transit from ad valorem taxation

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Oliveira, Otto, Bohac, Hartnett, Hilderbran, P. King, Peña, Villarreal

0 nays

3 absent — C. Howard, Paxton, Taylor

SENATE VOTE: On final passage, April 21 — 30-0

WITNESSES: No public hearing

BACKGROUND: Texas Constitution, Art. 8, sec. 1-j and Tax Code, sec. 11.251 exempt from ad valorem taxation “freeport” property that is located in Texas temporarily. Eligible freeport property includes goods, wares, merchandise, and other tangible personal property, including aircraft and aircraft parts used for maintenance or repairs by certified air carriers, and ores, other than oil, natural gas, and other petroleum products. To be eligible for the exemption, property must be acquired in or imported into Texas for export; detained for assembly, storage, manufacturing, processing, or fabrication; and shipped out of Texas no later than 175 days after acquisition or importation.

In November 2001, Texas voters approved Proposition 10 (SJR 6 by Duncan, et al.), amending the Constitution to allow the Legislature to exempt from taxation goods in transit that are stored temporarily en route to another location in Texas or outside the state (Art. 8, sec. 1-n). Exempt property would include the same types of goods and products eligible for the freeport exemption. The 77th Legislature, however, did not enact enabling legislation to accompany the constitutional amendment. The 80th Legislature did so in 2007 when it enacted HB 621 by Chavez.

Under Art. 8, sec. 1-n, property eligible for the exemption must be acquired in or brought into Texas and stored at a location not owned or controlled by the property owner for not more than 270 days after

acquisition or importation. Unlike “freeport goods,” goods in transit need not be shipped out of state to qualify for the exemption. Governing bodies of taxing entities may choose to tax goods in transit but must hold a public hearing before acting to do so. Owners of property eligible for the freeport exemption may apply to local taxing entities for the goods-in-transit exemption. However, an owner receiving the goods-in-transit exemption may not claim the freeport exemption for the same property.

Under Tax Code, sec. 11.253(j), the governing body of a taxing unit may provide for the taxation of goods-in-transit. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Before acting to tax the exempt property, the governing body of the taxing unit must conduct a public hearing. The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit, or otherwise determines that the exemption for goods-in-transit will apply to that taxing unit.

DIGEST:

SB 947 would amend Tax Code, sec. 11.253(2)(B), to expand the definition of “goods-in-transit” to require that eligible tangible personal property be stored under contract by a public warehouse operator at one or more public warehouses in this state not owned or controlled by the owner of the personal property for the account of the person who acquired or imported the property. SB 947 would use the definitions of “bailee” and “warehouse” found in Business and Commerce Code, sec. 7.102. A “public warehouse operator” would mean a person that:

- was both a bailee and a warehouse; and
- for hire stored, at one or more public warehouse facilities, tangible personal property owned by other persons solely for the account of those persons and not for the operator’s account.

The bill would amend sec. 11.253(e) and (h) to change the kinds of goods the chief appraiser would consider under the goods-in-transit exemption to cover only those goods that were stored in Texas. The bill would remove from eligibility those goods that were assembled, manufactured, processed, or fabricated.

These changes would take effect on January 1, 2010.

SB 947 also would amend sec. 11.253 to create subsec.(j-1), which would prevent a taxing unit from taxing goods-in-transit in a tax year that began on or after 2010 unless the governing body of the taxing unit took action on or after September 1, 2009, to provide for the taxation of the goods-in-transit. The official action to tax the goods-in-transit would have to have been taken before January 1 of the first tax year in which the governing body proposed to tax goods-in-transit. Before acting to tax the exempt property, the governing body of the taxing unit would have to conduct a public hearing. The goods-in-transit would remain subject to taxation by the taxing unit until the governing body of the taxing unit, in a manner required for official action, rescinded or repealed its previous action to tax goods-in-transit, or otherwise determined that the exemption would apply to that taxing unit.

SB 947 would also add subsec. (j-2) to allow the governing body of a taxing unit, before September 1, 2009, that took action to provide for the taxation of goods-in-transit and pledged the revenues from taxes imposed on goods-in-transit for payment of a debt of the taxing unit, to continue to impose the taxes against the goods-in-transit until the debt was discharged, if cessation of the tax would impair the obligation of the contract by which debt was created.

These changes would take effect on September 1, 2009.

**SUPPORTERS
SAY:**

SB 947 would carry out fully the intent of the Legislature and the voters to enact a property-tax exemption for goods-in-transit. In 2001, the 77th Legislature enacted, and the voters approved, an amendment to the Texas Constitution to exempt goods-in-transit from property taxes. The 80th Legislature enacted HB 621 by Chavez to implement the exemption for goods-in-transit.

It was soon discovered that certain provisions in HB 621 were inconsistent with the constitutional language authorizing the tax exemption. Specifically, language regarding the arrangement under which property must be held to qualify for the exemption was discovered to be inconsistent. This resulted in a more expansive application of eligibility for the tax exemption than was originally intended. Local governments were reluctant to grant the exemption for fear that it would cover large big-box and other retailers, not just warehouses storing goods-in-transit. SB 947 would clarify that only those goods held under a contract for bailment by a public warehouse operator would qualify for the exemption.

SB 947 would narrow the eligibility to that which was originally intended by the Legislature and approved by the voters.

SB 947 would help stop the continuing transfer of lucrative warehousing and distribution business to neighboring states and Mexico because of discriminatory taxes on inventories. By exempting business inventories with few exceptions, jurisdictions that border Texas offer much more favorable inventory tax treatment than Texas does. According to a 2003 report by the Perryman Group, Texas' unfavorable warehouse taxes have already cost the state at least 62,000 jobs, at least \$1 billion in retail sales, and as much as \$188.5 million per year in lost tax revenues.

SB 947 would not mandate that local governments enact the exemption for goods-in-transit. Local governments would be allowed to choose whether or not it applied in their jurisdictions. SB 947 would allow local governments to choose what was best for their communities by evaluating their local circumstances and needs.

**OPPONENTS
SAY:**

Any measure that would erode local tax bases would be imprudent. Local taxing districts would see their revenues undermined if they chose to adopt the exemption, and the "hold harmless" provisions of HB 1, 79th Legislature, third called session likely would transfer the cost of the property-tax exemption from school districts to the state. With the cost of education and government services outpacing revenue collection at the local and state level, now is not the time to carve out an unnecessary tax exemption.

Texas already has an attractive business climate. The exemption for goods-in-transit unfairly would shift the property-tax burden in from certain taxpayers who happen to own goods-in-transit to other taxpayers. It would show favoritism by subsidizing a single, relatively small industry, while producing little positive ripple effect through the economy.

**OTHER
OPPONENTS
SAY:**

The bill should include a Sunset date and require a report to the Legislature on economic benefits versus lost tax revenues so that lawmakers could review the policy before continuing it.

NOTES:

According the LBB, the fiscal impact of SB 947 cannot be estimated because of a lack of data on the value of goods that might qualify for the goods-in-transit exemption.