HOUSE RESEARCH ORGANIZATION bill analysis | 5/23/2011 | SB 776 Zaffirini (Guillen) (CSSB 776 by Otto)

SUBJECT: Customs brokers and reporting requirements for certificates of export

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 9 ayes — Hilderbran, Otto, Christian, Elkins, Gonzalez, Lyne, Martinez Fischer, Murphy, Woolley

0 nays

2 absent — Ritter, Villarreal

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: (*On House companion bill, HB 3284:*)
For — Bentley Fondren; Benjamin Petty, Tax Free Shopping, LTD; (*Registered, but did not testify:* Michael Breitinger, El Paso Central Business Association; Horacio DeLeon, City of Laredo; Diana DeWall, Texas Tax Back; Stephanie Gibson, Texas Retailers Association; Roberto Lara, 4N Service; David Macias; Michael Stromberg; Monica Weisberg-Stewart, Texas Border Coalition)

Against — None

On — Richard Sorgee, LBB; (*Registered, but did not testify*: Don Hoyte, Tax Free Shopping)

BACKGROUND: Tax Code, 151.307 exempts goods and services from the sales tax if they are to be exported for use or consumption in a foreign country. Sec. 151.157 allows customs brokers, using forms and stamps from the comptroller, to prepare certificates of export establishing the exemption of tangible personal property for export. These certificates are sent to the comptroller, who then issues a refund of sales tax paid.

Sec. 151.157 requires the comptroller to maintain an on-line system for customs brokers to use to prepare and submit documentation showing an export sales tax exemption. The comptroller also maintains a paper based system for use when the comptroller's on-line system is unavailable.

Sec. 151.1575 requires a customs broker to watch property cross the border, be placed on a common carrier for delivery outside the U.S., or verify that the purchaser is transporting the property to a destination outside of the territorial limits of the U.S. by:

- examining personal identification indicating the purchaser of the property resides in a foreign country;
- requiring the purchaser to produce the property and the original receipt for the property;
- requiring the purchaser to state the foreign country designation of the property, which also must be the foreign country in which the purchaser resides;
- requiring the purchaser to state the date and time the property is expected to arrive in the foreign country designation;
- requiring the purchaser to state the date and time the property was purchased, the name and address of the place of purchase, the sales price and quantity of the property, and a description of it;
- requiring the purchaser to sign a form stating the purchases has supplied this information and informing the purchaser that if the goods are not exported they are subject to the sales tax and possible civil and criminal penalties may apply; and
- requiring certain visa or travel documentation.

Sec. 151.158 requires the comptroller to charge $1.60 for each export stamp.

DIGEST: CSSB 776 would make several changes to way customs brokers prepare and submit certificates of export.

Online reporting. The bill would require that customs brokers use the comptroller's on-line preparation and reporting system. Brokers could use alternative paper systems only if the comptroller provided authorization for each offline use.

Revocation of license and other penalties. The comptroller would be allowed to revoke a customer broker's license if the broker failed to comply with applicable law or issued false certificates of export. In addition, the comptroller could require a customs broker who did not comply with applicable law or rules to pay the comptroller the amount of any tax refund and a penalty between $500 and $5,000.

Verification of export. The bill would require a customs broker to verify that the purchaser's personal identification had a unique identification number for that purchaser. The bill also would require that the purchaser and the broker sign the certificate of export in each other's presence. The certificate also would have to include a declaration that the broker inspected the property and the original receipt for the property.

Limit of six receipts. Under CSSB 776, a broker could include up to six receipts in a single certificate of export.

Export stamp price increase. The bill would direct the comptroller to raise the fee for an export stamp from $1.60 to $2.10 for each stamp. The comptroller would use the additional $.50 only for enforcement of the customs brokers laws. The original $1.60 would be used to cover costs related to producing stamps.

Effective date. The bill would take effect on September 1, 2011, and would apply only to documentation prepared by a customs broker on or after that date.

SUPPORTERS SAY:

CSSB 776 partially would implement recommendations from the LBB's January 2011 *Government Effectiveness and Efficiency Report* to prevent fraud and abuse of customs-related sales tax rebates. According to the LBB's fiscal note, the bill would raise an additional $2.9 million in general revenue over fiscal 2012-13.

In a 2003 report, the comptroller documented widespread fraud and abuse of the customs broker system, which allows refunds of sales tax paid on goods bought in the United States, but not intended for use in the United States. The system was heavily revised in 2003, under HB 109 by Chavez. That bill implemented several useful checks and verification requirements, but they need to be improved.

CSSB 776 would build on those reforms by placing a limit on the number of receipts that could be placed in the same certificate of export. The current system does not have a cap on the number of receipts, and this increases the likelihood that refunds are paid on goods that are not actually exported. This results in the loss of needed state and local sales tax revenue.

The bill would require brokers to use the comptroller's website to create certificates of export. Current rules allow brokers to issue paper certificates when the comptroller's website is down. This invites fraud and abuse since hardcopy certificates often are doctored to fraudulently claim sales tax refunds. The bill would allow brokers to issue paper certificates only with explicit permission from the comptroller.

The bill would require brokers to see or inspect the property to be exported or the receipt for that property. This would help prevent refunds for goods that did not exist, had already been claimed, or were not being exported outside the United States. It also would require that personal identification used by a purchaser to prove residence outside of the United States have a unique identification number to help prevent the use of fraudulent identification.

The bill would not impose onerous regulations on custom brokers. It would tighten up existing regulations to help prevent incidents of fraud.

OPPONENTS SAY:

Customs brokers facilitate a great deal of border trade, and imposing additional paperwork and reporting requirements would impede their ability to compile timely certificates of export for their clients. The sales tax rebate means shoppers from abroad can come to Texas and make purchases they otherwise would have made outside of the Unites States. Border trade is an important part of the Texas economy and is contributing to the economic recovery. The Legislature should do nothing to impede it.

NOTES:

The House committee substitute differs from the Senate-passed version in that it would:

- set the number of receipts a broker could include in a certificate of export at six;
- require that the personal identification of the purchaser have a unique identification number; and
- require that brokers and purchasers sign certificates of export in each others' presence.

The House companion bill, HB 3284 by Guillen, was considered in a public hearing by the House Ways and Means Committee on March 28 and left pending.