

**PINE TREE INDEPENDENT SCHOOL DISTRICT  
TAX OFFICE  
MEMORANDUM**

To: Pine Tree ISD Board of Trustees

From: Melissa Newman, Tax Office *Ym*

Date: October 25, 2011

Re: Resolution to tax "Goods-in-Transit"

As a result of recent legislation during the 2011 special session, Section 11.253 of the Texas Property Tax Code concerning "goods-in-transit" has been changed. This change requires that the governing body of each taxing entity adopt a resolution to continue to tax such goods in 2012.

I have attached a letter from the Perdue, Brandon, Fielder, Collins & Mott law firm which was forwarded to me from Tom Hayes, Chief Appraiser at the Gregg Appraisal District. This letter gives a detailed explanation of goods-in-transit and the exemption.

Also attached is the resolution to "Tax Tangible Personal Property in Transit." This resolution was prepared by Pine Tree ISD's delinquent tax attorneys, McCreary, Veselka, Bragg & Allen. It is my recommendation that this resolution be adopted so that we may continue to tax "goods-in-transit."

PerdueBrandonFielderCollins&MottLLP  
ATTORNEYS AT LAW



Howard Perdue  
(1933-2005)  
Larry Brandon  
James O. Collins  
Terry Ann White  
R. Bruce Medley  
Robert Mott  
Kevin Brennen  
Harold Lerew  
Jeanmarie Baer  
David A. Ellison  
Laura J. Monroe  
Tab Beall  
B. Lynn Stavinoha  
Michael J. Darlow  
Joseph T. Longoria  
David S. Crawford  
Donald B. Roseman  
Carl O. Sandin  
Jason Bailey  
Owen M. Sonik  
David Hudson  
R. Gregory East  
Elizabeth Banda Calvo  
Yolanda M. Humphrey  
John T. Banks  
Sandra Griffin  
Sergio E. Garcia  
E. Stephen Lee

1235 North Loop West  
Suite 600  
Houston, Texas 77009  
Telephone: 713-862-1860  
Facsimile: 713-896-0030  
www.pbfc.com

August 23, 2011

D'Layne Peebles Carter  
Hiram A. Gutierrez  
Michael J. Siwierka  
Thelma Banduch  
Christopher S. Jackson  
Eboney Cobb  
Charles E. Brady  
Adam J. Walker  
Alesha L. Williams  
Leslie M. Schkade  
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W. Tracy Crites, Jr.  
Michael W. Balczak  
Veronica Leal Vasquez  
Guy A. "Tony" Fidelie, Jr.  
Jonathan Garza  
Ofilia R. Gonzales  
Elizabeth A. Wiehle  
George Dowlen\*  
Terry G. Wiseman\*  
C. David Fielder\*  
Gregg M. McLaughlin\*  
\*Retired

Clients of the Firm

RE: New Exemption of "Goods-in-Transit" — Local Option to Tax

Dear Client:

In the 2007 session, the Texas Legislature passed Tax Code Section 11.253 or the "Goods-in-Transit" exemption as it is more commonly known. This legislation implemented a constitutional amendment that was passed several years before. This legislation was very similar to the "Freeport exemption" passed many years ago, but it had a potentially larger impact as time passed. At that time, we wrote you and advised you of your option to tax "goods-in-transit" and most of you did.

During the 2011 special session, the legislature acted to significantly limit the applicability of section 11.253. This exemption now applies only to goods that are stored in a public warehouse owned by someone other than the owner of the goods. The law no longer exempts goods that are in a location for assembly, manufacturing, fabrication or processing, as was the case under the law passed in 2007. The legislature revised and narrowed the law to address the author's issue: competition between Texas and New Mexico warehouse facilities. New Mexico does not tax such goods at all, so New Mexico warehouse owners had a competitive advantage.

This update to the law requires that you act within a narrow window of time if you want to continue to tax these goods for 2012. The update provides that **you must take action after October 1, 2011 but before December 31, 2011**, if you want to continue to tax such goods in 2012. You may later elect to tax such goods for subsequent years if you fail to act this year.

## **What is Exempted?**

This law exempts goods, principally inventory, that are stored under a contract of bailment by a public warehouse operator at a public warehouse facility, that is in no way owned or controlled by the owner of the goods, provided such property is moved to another location in this state or out of state within 175 days after the goods were acquired in Texas or imported into Texas. The movement requirement could be satisfied by simply moving the goods to another warehouse across the street.

Certain specific types of goods are presently excluded from this exemption: oil, natural gas, petroleum products, aircraft, dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment inventory, or retail manufactured housing inventory. Petroleum products are defined to be only the immediate derivatives of oil and natural gas, so some goods that you might think of as petroleum products may actually be exempted from taxation by this new law.

## **What is the Impact on Your Tax Base?**

At present, this new law will probably have a limited impact because most goods are kept in facilities owned by the owners of the goods. However, this may change. Some owners of goods that presently store them may move their goods into a public warehouse in order to obtain the tax exemption. It should be noted, however, that this pared down exemption has much less potential to reduce your tax base than the original statute.

## **What Can You Do?**

The governing body of each taxing unit in the state may act to tax these goods in the year following the year in which the governing body takes action. These goods will first become exempt in 2012. So if you wish to continue to tax these types of goods in 2012, you must act to tax the goods after October 1, 2011 and before December 31, 2011. You must inform all the appraisal districts in which your local government is located that you have acted to tax these goods. A copy of a resolution, order, or ordinance is the best way to document your decision to your appraisal district.

Before you act to tax these goods, you must hold a public hearing on the question of whether to tax them or whether to let them become exempt. The legislature has prescribed no special procedures for this hearing, so it may be held at a meeting of the governing body called for other purposes. The item must be listed on the agenda for that meeting as an action item in compliance with the Open Meetings Act, but there is no additional public notice required.

The legislature required that each taxing unit act in the manner required for official action by the governing body of the taxing unit. For counties, this means that action should be taken by an order of the commissioner's court. For cities, this means that action should be taken by an ordinance. For school districts and other taxing units, this means that action should be taken by resolution. A sample order, ordinance and resolution form is attached to this letter.

## Special Note for School Districts

The wealth lost to this exemption will be deducted from the taxable wealth of the school district as determined by the Comptroller for purposes of calculating state aid. Until the hold harmless provisions of House Bill 1 are removed, this will have little impact on the amount of state aid your school district receives. At present, the Comptroller's wealth estimate affects only the additional four cents that a school district may impose and the amount of certain types of facilities aid the district receives from the state (existing debt allotment and instructional facilities allotment).

We hope that this letter and the attached forms will help you make an informed decision on behalf of the taxpayers that you represent. If you should have any questions concerning this matter, please feel free to call your attorney at your local office or call me in Houston.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Mott", with a large, stylized initial "R" and a long horizontal flourish extending to the right.

Robert Mott

**A RESOLUTION OF THE PINE TREE INDEPENDENT SCHOOL DISTRICT TO TAX TANGIBLE PERSONAL PROPERTY IN TRANSIT WHICH WOULD OTHERWISE BE EXEMPT PURSUANT TO TEXAS TAX CODE, SECTION 11.253**

WHEREAS, pursuant to the Texas Constitution and TEX. PROP. TAX CODE, § 11.253, local taxing units are granted the option to tax goods in transit which would otherwise be exempt pursuant to § 11.253; and

WHEREAS, this governing body has held a public hearing pursuant to TEX. CONST. Art. VIII, § 1-n(d) on the issue of whether goods in transit, as defined by the referenced § 11.253, should be taxed or exempted; and

WHEREAS, the Pine Tree Independent School District determines that it is in the public interest to provide for the ad valorem taxation of goods in transit, as defined by the referenced § 11.253;

NOW, THEREFORE, BE IT RESOLVED BY THE Pine Tree Independent School District THAT:

All "goods in transit" as defined by TEX. PROP. TAX CODE § 11.253 shall be subject to ad valorem taxation by the Pine Tree Independent School District pursuant to the Pine Tree Independent School District's annual ad valorem tax assessment, if not otherwise exempt or subject to abatement by law other than § 11.253 and TEX. CONST. Art. VIII, § 1-n.

The foregoing resolution was moved and seconded and adopted by a majority vote at a meeting of the Pine Tree I.S.D Board of Trustees on October 27, 2011.

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Melinda R. Burns, President  
Pine Tree I.S.D. Board of Trustees

ATTEST:

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Patrick P. Noon, Secretary  
Pine Tree I.S.D. Board of Trustees