

August 24, 2011

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To: All Urban Counties

From: John B. Dahill, General Counsel

**Re: Action Required for Goods-in-Transit Property Tax
by December 31, 2011**

Counties that wish to tax goods-in-transit in 2012 must act to do so by December 31, 2011, even if they previously opted to tax goods-in-transit. Failure to act may mean the loss of significant personal property tax revenue.

"Goods-in-transit" means tangible personal property acquired in or imported into Texas to be forwarded to another location in Texas or outside Texas (i.e., goods in both intrastate and interstate commerce) not later than 175 days after the date of acquisition in or importation into Texas. Pursuant to Article VIII, Section 1-n, Texas Constitution, and Section 11.253, Tax Code, goods-in-transit are generally exempt from local property taxes. Political subdivisions, however, may elect to tax those goods.

Senate Bill 1 by Duncan/Pitts (1st Called Session) nullifies prior decisions of political subdivisions to tax goods-in-transit for tax years after 2011. (There is an exception where taxes imposed on goods-in-transit have been pledged for the payment of a debt of the political subdivision, and those taxes may continue until the debt is discharged without further action of the governing body of the political subdivision.)

A county that wishes to tax goods-in-transit after January 1, 2012, must hold a public hearing and take official action imposing the tax on or after October 1, 2011 and before January 1 of the year for which the tax is to be in effect. Therefore, for a tax on goods-in-transit to be effective for 2012, a county must take action on or after October 1, 2011 and before January 1, 2012.

Senate Bill 1 also clarifies that "goods-in-transit" includes only those goods stored under a contract of bailment by a public warehouse operator. This provision is to give effect to the constitutional requirement that goods-in-transit be detained at a location in Texas not owned or under the control of the property owner.

There is some overlap in the definitions of "goods-in-transit" and "freeport" goods exempt from taxation under Article VIII, Section 1-j, Texas Constitution, and Section 11.251, Tax Code. Freeport goods include tangible personal property acquired in or imported into Texas to be forwarded out of Texas (i.e., interstate goods only) not later than 175 days after the date of acquisition in or importation into Texas.

Although freeport goods are generally exempt from taxation, a county that elected prior to April 1, 1990 to tax freeport goods may continue to do so. If a county rescinds its prior action to tax freeport goods, it *forever* loses the right to again tax freeport goods.

Because goods-in-interstate commerce may qualify for either the freeport or goods-in-transit tax exemptions, there is a concern that a failure of a county to act to tax goods-in-transit may result in changes to business practices to take advantage of the goods-in-transit tax exemption. If a county currently taxes goods in interstate commerce that would fall within the freeport exemption, the handling of those goods may be changed to take advantage of the goods-in-transit tax exemption unless the county acts to tax goods-in-transit.