# CITY OF EL PASO, TEXAS
# AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

**DEPARTMENT:** **Office of Management & Budget**

**AGENDA DATE:** **November 13, 2007**

**CONTACT PERSON/PHONE:** **David Almonte, OMB Director, 541-4777**

**DISTRICT(S) AFFECTED: All**

CITY CLERK DEPT.
07 NOV -7 PM 4: 14

**SUBJECT:**
**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.**

An ordinance to tax tangible personal property in transit held temporarily at a location in El Paso, Texas, which would otherwise be exempt pursuant to Tex. Tax Code, Sec.11.253.

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**BACKGROUND / DISCUSSION:**
**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

The $80^{th}$ Texas Legislature in Regular Session enacted House Bill 621 effective on January 1, 2008, which added Texas Tax Code Section 11.253 that exempts from taxation certain tangible personal property held temporarily at a location in this state for assembling, storing manufacturing, processing or fabricating purposes ("Goods-in-Transit"). The exemption is automatic, unless a taxing entity chooses to opt-out. In order to opt-out, the City Council must conduct a public hearing and, by January 1, 2008, adopt an ordinance imposing the ad valorem tax on Goods-in-Transit.

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**PRIOR COUNCIL ACTION:**
**Has the Council previously considered this item or a closely related one?**

No.

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**AMOUNT AND SOURCE OF FUNDING:**
**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

N/A

**BOARD / COMMISSION ACTION:**
**Enter appropriate comments or N/A**

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*********************REQUIRED AUTHORIZATION**********************

**LEGAL:** (if required) [signature] **FINANCE:** (if required) ____________

**DEPARTMENT HEAD:** David Almonte

**(Example: if RCA is initiated by Purchasing, client department should sign also)**
***Information copy to appropriate Deputy City Manager***

**APPROVED FOR AGENDA:**

**CITY MANAGER:** [signature] **DATE:** 11-07-07

**ORDINANCE NO. ____________**

**AN ORDINANCE TO TAX TANGIBLE PERSONAL PROPERTY IN TRANSIT HELD TEMPORARILY AT A LOCATION IN EL PASO, TEXAS, WHICH WOULD OTHERWISE BE EXEMPT PURSUANT TO TEXAS TAX CODE, SECTION 11.253**

**WHEREAS**, the $80^{th}$ Texas Legislature in Regular Session has enacted House Bill 621 to take effect on January 1, 2008, which added Texas Tax Code Section 11.253 to exempt from taxation certain tangible personal property held temporarily at a location in this state for assembling, storing, manufacturing, processing or fabricating purposes ("Goods-in-Transit") which property has been subject to taxation in the past;

**WHEREAS**, Texas Tax Code Section 11.253(j) as amended allows the governing body of a taxing unit, after conducting a public hearing, to provide for the continued taxation of such Goods-in-Transit; and

**WHEREAS,** the City Council of the City of El Paso, having conducted a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution, has determined that it is in the best interests of the City of El Paso to continue to tax such Goods-in-Transit.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the Goods-in-Transit, as defined Texas Tax Code Section 11.253(a)(2), as amended by Texas House Bill 621, enacted by the $80^{th}$ Texas Legislature in Regular Session, shall remain subject to taxation by the City of El Paso, Texas.

**PASSED AND APPROVED** this ________ day of __________________, 2007.

CITY OF EL PASO

______________________________
John F. Cook
Mayor

ATTEST:

______________________________
Richarda Duffy Momsen
City Clerk

CITY CLERK DEPT.
07 NOV -7 PM 5:10

APPROVED AS TO FORM:

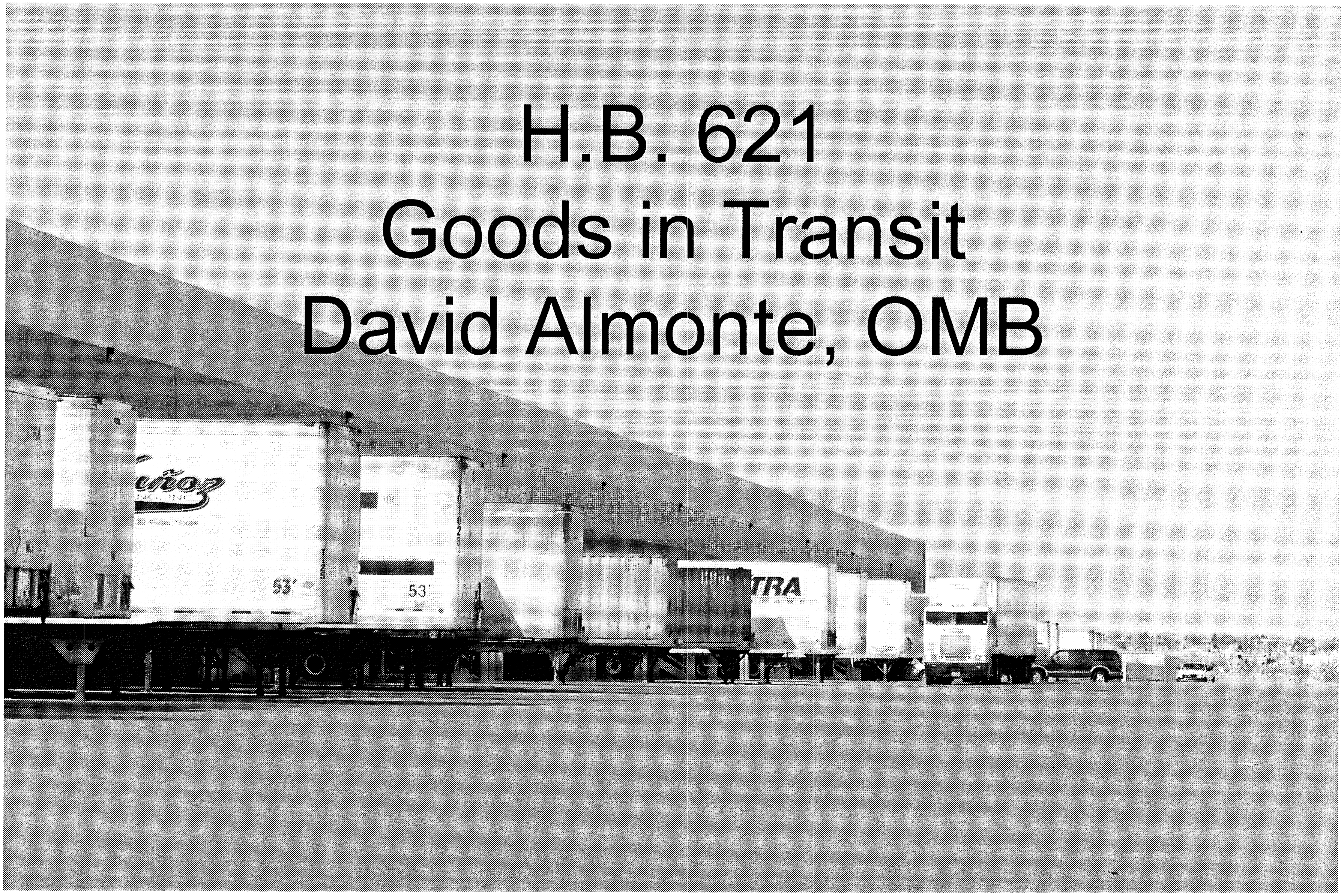
Bertha A. Ont
______________________________
Bertha Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

David Almonte
______________________________
David Almonte, Director
Office of Management & Budget

ORDINANCE__________________

#34424 v1 - OMB/1/ORD TAXATION OF TANGIBLE PERSONAL PROPERTY
Document Author: BONT


H.B. 621
Goods in Transit
David Almonte, OMB

# H.B. 621

- Exemption from ad valorem taxation of tangible personal property held temporarily at a location in this state for assembling, storing, manufacturing, processing, or fabricating purposes.  This property is commonly referred to as “Goods in Transit”.
- Optional property tax exemption
- Exemption automatically applies unless the City holds a public hearing and adopts an ordinance stating that it wished to continue taxing these goods no later than **December 31, 2007.**

# H.B. 621

- Goods in Transit means tangible personal property that is:
  - Acquired in or imported into this state to be forwarded to another location in this state or outside this state
  - Detained at a location in this state in which the owner of the property does not have a direct or indirect ownership interest by the person who acquired or imported the property
  - Transported to another location in or out of this state no later than 175 days after acquisition

# H.B. 621

- A property owner who receives the exemption from taxation under this bill is not eligible to receive the exemption from taxation provided by the Tax Code Section 11.251 for the same property.
- Requires governing body of each taxing unit to take action to tax these goods.
- If the governing body of the taxing unit takes no action, the goods will first become exempt in year following the year in which the governing body takes no action.

# Impact

- Estimates are based on existing business personal property accounts that were provided by CAD on October 11, 2007.
- Estimates will be subject to change due to individual companies changing their accounting practices to comply with the new State law.

# Impact

- Revenue loss is estimated to be approximately $2.9 million dollars of property tax revenue in the first year of exemption.
- Tax rate would increase approximately $0.011456 to the FY 2008 ordinal rate.

# Impact

- Estimated impact of revenue loss in other Texas cities:

| | |
|---|---|
| Houston | $18 million |
| Fort Worth | $13 million |
| San Antonio | $13 million |
| Austin | $4 million |
| Dallas | $8 million |

# Recommendation

- Continue taxing goods in transit.
- Introduce ordinance to City Council.

# Questions?

# Goods in Transit

| Calendar Year | Fiscal Year | Number Granted | Freeport Valuation | Percent Change | Adopted Tax Rate | Certified Property Valuation | Property Tax Levied | Tax Rate w/Super Freeport Exemption | Difference in Tax Rate |
|---|---|---|---|---|---|---|---|---|---|
| 2000 | 2001 | 303 | 1,174,445,028 | | 0.660213 | 16,340,380,651 | 107,881,317 | 0.660213 | 0.000000 |
| 2001 | 2002 | 326 | 1,377,318,795 | 17.27% | 0.719833 | 17,234,071,649 | 124,056,535 | 0.719833 | 0.000000 |
| 2002 | 2003 | 312 | 1,058,265,551 | -23.16% | 0.719833 | 17,713,160,948 | 127,505,178 | 0.719833 | 0.000000 |
| 2003 | 2004 | 296 | 1,003,542,606 | -5.17% | 0.719833 | 18,155,131,668 | 130,686,629 | 0.719833 | 0.000000 |
| 2004 | 2005 | 345 | 1,022,056,204 | 1.84% | 0.696677 | 19,721,379,507 | 137,394,315 | 0.696677 | 0.000000 |
| 2005 | 2006 | 365 | 1,060,324,580 | 3.74% | 0.696677 | 21,045,610,783 | 146,619,930 | 0.696677 | 0.000000 |
| 2006 | 2007 | 361 | 1,043,017,605 | -1.63% | 0.672326 | 23,408,514,803 | 157,381,531 | 0.672326 | 0.000000 |
| 2007 | 2008 | 379 | 1,141,035,266 | 9.40% | 0.671097 | 25,842,360,340 | 173,427,336 | 0.671097 | 0.000000 |
| | | 1,145 | 1,574,782,612 * | 50.98% | 0.671097 | 25,408,612,994 | 173,427,336 | 0.682553 | 0.011456 |
| | | | | Tax Levy with additional exemption | | | 170,516,440 | | |
| | | | | Property Tax Revenue Loss | | | 2,910,896 | | |

* Additional estimated freeport valuation $433,747,346 provided by El Paso Central Appraisal District on October 11, 2007

AN ACT

relating to the exemption from ad valorem taxation of tangible personal property held temporarily at a location in this state for assembling, storing, manufacturing, processing, or fabricating purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.253 to read as follows:

Sec. 11.253. TANGIBLE PERSONAL PROPERTY IN TRANSIT. (a) In this section:

(1) "Dealer's motor vehicle inventory," "dealer's vessel and outboard motor inventory," "dealer's heavy equipment inventory," and "retail manufactured housing inventory" have the meanings assigned by Subchapter B, Chapter 23.

(2) "Goods-in-transit" means tangible personal property that:

(A) is acquired in or imported into this state to be forwarded to another location in this state or outside this state;

(B) is detained at a location in this state in which the owner of the property does not have a direct or indirect ownership interest for assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property;

(C) is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and

(D) does not include 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.

(3) "Location" means a physical address.

(4) "Petroleum product" means a liquid or gaseous material that is an immediate derivative of the refining of oil or natural gas.

(b) A person is entitled to an exemption from taxation of the appraised value of that portion of the person's property that consists of goods-in-transit.

(c) The exemption provided by Subsection (b) is subtracted from the market value of the property determined under Section 23.01 or 23.12, as applicable, to determine the taxable value of the property.

(d) Except as provided by Subsections (f) and (g), the chief appraiser shall determine the appraised value of goods-in-transit under this subsection. The chief appraiser shall determine the percentage of the market value of tangible personal property owned by the property owner and used for the production of income in the preceding calendar year that was contributed by goods-in-transit. For the first year in which the exemption applies to a taxing unit, the chief appraiser shall determine that percentage as if the exemption applied in the preceding year. The chief appraiser shall apply that percentage to the market value of the property owner's tangible personal property used for the production of income for the current year to determine the appraised value of goods-in-transit for the current year.

(e) In determining the market value of goods-in-transit that in the preceding year were assembled, stored, manufactured, processed, or fabricated in this state, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held by the owner of the component parts during the preceding year at a location in this state that was not owned by or under the control of the owner of the component parts in determining whether the component parts were transported to another location in this state or outside this state before the expiration of 175 days.

(f) If the property owner was not engaged in transporting goods-in-transit to another location in this state or outside this state for the entire preceding year, the chief appraiser shall calculate the percentage of the market value described in Subsection (d) for the portion of the year in which the property owner was engaged in transporting goods-in-transit to another location in this state or outside this state.

(g) If the property owner or the chief appraiser demonstrates that the method provided by Subsection (d) significantly understates or overstates the market value of the property qualified for an exemption under Subsection (b) in the current year, the chief appraiser shall determine the market value of the goods-in-transit to be exempt by determining, according to the property owner's records and any other available information, the market value of those goods-in-transit owned by the property owner on January 1 of the current year, excluding the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner to provide copies of property records so the chief appraiser can determine the amount and value of goods-in-transit and that the location in this state where the goods-in-transit were detained for assembling, storing, manufacturing, processing, or fabricating purposes was not owned by or under the control of the owner of the goods-in-transit. If the property owner fails to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner, the property owner forfeits the right to claim or receive the exemption for that year.

(i) Property that meets the requirements of this section constitutes goods-in-transit regardless of whether the person who owns the property on January 1 is the person who transports the property to another location in this state or outside this state.

(j) The governing body of a taxing unit, in the manner required for official action by the governing body, may provide for the taxation of goods-in-transit exempt under Subsection (b) and not exempt under other law. 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 as required by Section 1-n(d), Article VIII, Texas Constitution. If the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this subsection, the exemption prescribed by Subsection

(b) does not apply to that unit. 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 prescribed by Subsection (b) will apply to that taxing unit.

(k) A property owner who receives the exemption from taxation provided by Subsection (b) is not eligible to receive the exemption from taxation provided by Section 11.251 for the same property.

SECTION 2. Section 26.012(15), Tax Code, is amended to read as follows:

(15) "Lost property levy" means the amount of taxes levied in the preceding year on property value that was taxable in the preceding year but is not taxable in the current year because the property is exempt in the current year under a provision of this code other than Section 11.251 or 11.253, the property has qualified for special appraisal under Chapter 23 [~~of this code~~] in the current year, or the property is located in territory that has ceased to be a part of the unit since the preceding year.

SECTION 3. Section 403.302(d), Government Code, is amended to read as follows:

(d) For the purposes of this section, "taxable value" means the market value of all taxable property less:

(1) the total dollar amount of any residence homestead exemptions lawfully granted under Section 11.13(b) or (c), Tax

Code, in the year that is the subject of the study for each school district;

(2) one-half of the total dollar amount of any residence homestead exemptions granted under Section 11.13(n), Tax Code, in the year that is the subject of the study for each school district;

(3) the total dollar amount of any exemptions granted before May 31, 1993, within a reinvestment zone under agreements authorized by Chapter 312, Tax Code;

(4) subject to Subsection (e), the total dollar amount of any captured appraised value of property that:

(A) is within a reinvestment zone created on or before May 31, 1999, or is proposed to be included within the boundaries of a reinvestment zone as the boundaries of the zone and the proposed portion of tax increment paid into the tax increment fund by a school district are described in a written notification provided by the municipality or the board of directors of the zone to the governing bodies of the other taxing units in the manner provided by Section 311.003(e), Tax Code, before May 31, 1999, and within the boundaries of the zone as those boundaries existed on September 1, 1999, including subsequent improvements to the property regardless of when made;

(B) generates taxes paid into a tax increment fund created under Chapter 311, Tax Code, under a reinvestment zone financing plan approved under Section 311.011(d), Tax Code, on or before September 1, 1999; and

(C) is eligible for tax increment financing under Chapter 311, Tax Code;

(5) for a school district for which a deduction from taxable value is made under Subdivision (4), an amount equal to the taxable value required to generate revenue when taxed at the school district's current tax rate in an amount that, when added to the taxes of the district paid into a tax increment fund as described by Subdivision (4)(B), is equal to the total amount of taxes the district would have paid into the tax increment fund if the district levied taxes at the rate the district levied in 2005;

(6) the total dollar amount of any exemptions granted under Section 11.251 or 11.253, Tax Code;

(7) the difference between the comptroller's estimate of the market value and the productivity value of land that qualifies for appraisal on the basis of its productive capacity, except that the productivity value estimated by the comptroller may not exceed the fair market value of the land;

(8) the portion of the appraised value of residence homesteads of individuals who receive a tax limitation under Section 11.26, Tax Code, on which school district taxes are not imposed in the year that is the subject of the study, calculated as if the residence homesteads were appraised at the full value required by law;

(9) a portion of the market value of property not otherwise fully taxable by the district at market value because of:

(A) action required by statute or the constitution of this state that, if the tax rate adopted by the district is applied to it, produces an amount equal to the difference between the tax that the district would have imposed on the property if the property were fully taxable at market value and the tax that the district is actually authorized to impose on the property, if this subsection does not otherwise require that portion to be deducted; or

(B) action taken by the district under Subchapter B or C, Chapter 313, Tax Code;

(10) the market value of all tangible personal property, other than manufactured homes, owned by a family or individual and not held or used for the production of income;

(11) the appraised value of property the collection of delinquent taxes on which is deferred under Section 33.06, Tax Code;

(12) the portion of the appraised value of property the collection of delinquent taxes on which is deferred under Section 33.065, Tax Code; and

(13) the amount by which the market value of a residence homestead to which Section 23.23, Tax Code, applies exceeds the appraised value of that property as calculated under that section.

SECTION 4. This Act applies only to taxes imposed for a tax year beginning on or after the effective date of this Act.

SECTION 5. This Act takes effect January 1, 2008.

President of the Senate

Speaker of the House

I certify that H.B. No. 621 was passed by the House on April 4, 2007, by the following vote: Yeas 134, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 621 on May 23, 2007, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 621 was passed by the Senate, with amendments, on May 18, 2007, by the following vote: Yeas 29, Nays 0.

Secretary of the Senate

APPROVED: ____________________

Date

____________________

Governor

Bill Studer
(Make sure we are on top)
JW

# El Paso Central Appraisal District



JERRY R. GRIFFIN, RPA
EXECUTIVE DIRECTOR
CHIEF APPRAISER

5801 TROWBRIDGE DRIVE
EL PASO, TEXAS 79925-3345
(PHONE) 915-780-2000
(FAX) 915-780-2130

October 11, 2007

The Honorable John F. Cook, Mayor
City of El Paso
Two Civic Center Plaza
El Paso, TX 79901-1196

Re: New exemption of "Goods in Transit"

Dear Mayor Cook:

As a reminder, HB 621 which was passed during the 2007 legislative session will go into effect in January for the 2008 tax year and will exempt certain "Goods in Transit". If you wish to continue to tax these types of goods you must take action before the end of 2007. (Please see attached copy of our letter dated August 13, 2007.)

We are enclosing our estimate of the possible value loss to your entity due to the new "Goods in Transit" exemption. This estimate is based on existing business personal property accounts and will be subject to individual companies changing their accounting practices to comply with the new State law.

If you should have any questions or need further information, please call me.

Sincerely,

Jerry R. Griffin

Jerry R. Griffin, R.P.A.
Executive Director/Chief Appraiser

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Enclosure (2)

cc: Joyce Wilson
City Manager

David Almonte
Director, Office of Management & Budget

RECEIVED
OCT 15 2007
FINANCIAL SERVICES

EL PASO CENTRAL APPRAISAL DISTRICT
POSSIBLE BUSINESS PERSONAL PROPERTY INVENTORY
THAT MAY BE SUBJECT TO NEW "GOODS IN TRANSIT" EXEMPTION

| ENTITY | NUMBER OF ACCOUNTS | VALUE CURRENTLY ON APPRAISAL ROLL |
|---|---|---|
| Anthony ISD | 15 | $11,258,178 |
| Anthony , Town of | 15 | $11,258,178 |
| Canutillo ISD | 43 | $5,031,223 |
| Clint ISD | 22 | $3,778,357 |
| Clint, Town of | 5 | $231,000 |
| El Paso, City of | 1,145 | $433,747,346 |
| El Paso Community College | 1,307 | $459,022,538 |
| El Paso, County of | 1,307 | $459,022,538 |
| El Paso ESD #1 | 9 | $2,886,516 |
| El Paso ESD #2 | 153 | $22,388,676 |
| El Paso County Lower Valley WDA | 67 | $5,622,595 |
| El Paso County Tornillo WID | 3 | $19,240 |
| El Paso County WCID #4 | 14 | $1,067,639 |
| El Paso ISD | 766 | $200,205,990 |
| Fabens ISD | 17 | $1,286,890 |
| Haciendas Del Norte WID | none at the present time | |
| Horizon City, Town of | 9 | $2,886,516 |
| Horizon Regional MUD | 9 | $2,886,516 |
| Paseo Del Este MUD #1 | none at the present time | |
| Paseo Del Este MUD #3 | none at the present time | |
| Paseo Del Este MUD #10 | none at the present time | |
| Paseo Del Este MUD #11 | none at the present time | |
| San Elizario ISD | 14 | $489,921 |
| Socorro ISD | 136 | $134,026,457 |
| Socorro, City of | 38 | $3,038,879 |
| R. E. Thomason Hospital | 1,307 | $459,022,538 |
| Tornillo ISD | 3 | $19,240 |
| Vinton, Village of | 3 | $37,147 |
| Ysleta ISD | 291 | $102,926,282 |

rar\U:\ENTITIES\GOODS IN TRANSIT LTRS\EST VALU LOSS CHART

# El Paso Central Appraisal District



EL PASO CENTRAL APPRAISAL DISTRICT

JERRY R. GRIFFIN, RPA
EXECUTIVE DIRECTOR
CHIEF APPRAISER

5801 TROWBRIDGE DRIVE
EL PASO, TEXAS 79925-3345
(PHONE) 915-780-2000
(FAX) 915-780-2130

FILE COPY

August 13, 2007

The Honorable John F. Cook, Mayor
City of El Paso
Two Civic Center Plaza
El Paso, TX 79901-1196

Re: New Exemption of "Goods in Transit" – Local Option to Tax

Dear Mayor Cook:

In the 2007 session, the Texas Legislature passed HB 621. This bill was the implementing legislation for a constitutional amendment that was passed several years ago. The bill is very similar to the Freeport Exemption but it has a potentially larger impact as time goes on. This letter is to inform you of your options to tax the property that is subject to this new exemption and to provide you with the forms and procedure to tax these goods if you choose.

This new law passed without much scrutiny because it was a bracket bill that only affected on county in Texas until the closing days of the legislative session. Then an amendment made the exemption applicable statewide.

This bill exempts goods, principally inventory, that are stored in a location that is not owned by the owner of the goods and are transferred from that location to another location within 175 days. The goods may be in the location for the purposes of assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property. 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 may actually be exempted from taxation by this new law.

**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 2008. So if you wish to continue to tax these types of goods in 2008, you must act to tax the goods before the end of 2007. You must then inform the appraisal district that you have acted to tax these goods. A copy of the resolution, order, or ordinance is the best way to document your decision to us.

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 not prescribed 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 no additional public notice is 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 cities, this means that action must be taken by an ordinance. A sample ordinance is attached.

We hope this letter and the attached form 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 call me.

Sincerely,

Jerry R. Griffin

Jerry R. Griffin, R.P.A.
Executive Director/Chief Appraiser

rar

Enclosure

cc: Joyce Wilson
City Manager

David Almonte
Director, Office of Management & Budget

COMMITTEES:
STATE AFFAIRS, CHAIR
FINANCE
JURISPRUDENCE
NATURAL RESOURCES

ROBERT DUNCAN
STATE SENATOR
DISTRICT 28

September 19, 2007

The Honorable Gregg Abbott
Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 78711

Dear Attorney General Abbott:

During the 77th Regular Session, the Legislature passed Senate Joint Resolution 6, which proposed a constitutional amendment authorizing the Legislature to exempt from ad valorem taxation tangible personal property held at certain locations only temporarily for assembling, manufacturing, processing, and other commercial purposes. The constitutional amendment was approved by Texas voters in the November 2001 election and is now found in Article VIII, Section 1-n of the Texas Constitution.

The stated purpose of the amendment is to promote economic development in the State of Texas by exempting goods that are moving from one location to another, both intrastate and interstate. The constitutional amendment specifies, in Section 1-n (a)(2) that the goods – while being detained – may not be under the control of the actual owner of the goods. Rather, the person or entity owning the real property where the goods are located must have control of the goods for purposes of assembling, storing, manufacturing, processing or fabricating those goods. This relationship where one party actually holds title to the goods while another party is temporarily in control of the goods is commonly known as that of a "bailee" and "bailor."

The Constitution expressly anticipates the passage of a general law in order to facilitate such exemption from ad valorem taxes. This is found in the enabling legislation, House Bill 621, passed during the 80th Regular Session. Although the intent of this legislation was for the exemption to be applied only to those goods held in a bailee-bailor arrangement, it is argued by some that the statute is more generic in its approach and only refers to "goods in transit" as those in which the owner of the real property is different from the owner of the tangible goods. The relationship between these parties is more commonly known as that of a "lessee" and "lessor." Because of the lack of expressed language regarding "control," questions have arisen as to the application of the statute. Does the proposed exemption apply only to those goods in a "bailee-bailor" relationship, or does it extend to that of a "lessee-lessor?"

LUBBOCK DISTRICT OFFICE:
1500 BROADWAY
SUITE 902
LUBBOCK, TEXAS 79401
(806) 762-1122
1-800-546-9928
FAX (806) 749-2828
DIAL 711 FOR RELAY CALLS

CHILDRESS DISTRICT OFFICE:
119 AVENUE B NW
CHILDRESS, TEXAS 79201
(940) 937-0909
(888) 887-7027
FAX (940) 937-6994
DIAL 711 FOR RELAY CALLS

CAPITOL OFFICE:
ROOM 3E.12
P.O. BOX 12068
AUSTIN, TEXAS 78711
(512) 463-0128
(800) 322-9538
FAX (512) 463-2424
DIAL 711 FOR RELAY CALLS

SAN ANGELO DISTRICT OFFICE:
36 WEST BEAUREGARD
SUITE 510
SAN ANGELO, TEXAS 76903
(915) 481-0028
1-800-558-9928
FAX (915) 655-2541
DIAL 711 FOR RELAY CALLS

Under the bill, local taxing jurisdictions are required to take action by January 1, 2008 if they wish to opt out of the exemption. In preparation for this consideration by taxing jurisdictions, appraisal districts around the state are attempting to estimate the potential value reduction associated with the implementation of SJR 6 and HB 621. It is for this reason I am requesting an informal opinion as to the application of the proposed exemption.

If you have any questions, please feel free to contact me or my Austin office directly. I appreciate your time and attention to this matter.

Very truly yours,

Robert Duncan

**LEGISLATIVE BUDGET BOARD**
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**February 27, 2007**

**TO:** Honorable Jim Keffer, Chair, House Committee on Ways & Means

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB621** by Chavez (Relating to the exemption from ad valorem taxation of tangible personal property held temporarily at a location in this state for assembling, storing, manufacturing, processing, or fabricating purposes.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB621, As Introduced: a negative impact of ($845,000) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

## General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 2008 | $0 |
| 2009 | ($845,000) |
| 2010 | ($887,000) |
| 2011 | ($931,000) |
| 2012 | ($978,000) |

## All Funds, Five-Year Impact:

| Fiscal Year | Probable Savings/ (Cost) from *FOUNDATION SCHOOL FUND* 193 | Probable Revenue Gain/(Loss) from *School Districts* | Probable Revenue Gain/(Loss) from *Counties* | Probable Revenue Gain/(Loss) from *Cities* |
|---|---|---|---|---|
| 2008 | $0 | $0 | $0 | $0 |
| 2009 | ($845,000) | ($845,000) | ($288,000) | ($255,000) |
| 2010 | ($887,000) | ($887,000) | ($302,000) | ($268,000) |
| 2011 | ($931,000) | ($931,000) | ($317,000) | ($281,000) |
| 2012 | ($978,000) | ($978,000) | ($333,000) | ($295,000) |

## Fiscal Analysis

The bill would add a new section to Chapter 11 of the Tax Code to provide an exemption from ad valorem taxation for certain "goods in transit."

The exemption only would apply to property located in a county with a population of 650,000 or more and adjacent to an international border.

To qualify for the exemption, personal property would have to be acquired in or imported into Texas and stored at a location in Texas in which the owner of the goods did not have a direct or indirect ownership interest.

Oil and gas and their immediate derivatives, aircraft, and dealer's special inventories would not qualify for the exemption. In addition, the inventory would have to be transported or distributed to another location no later than 175 days after the property was acquired in, or imported into, the state.

The exemption would have to be granted by all taxing units unless the governing body of a taxing unit proposed by official action to tax goods in transit. Before acting to tax goods in transit, the governing body of a taxing unit would have to conduct a public hearing where the public would be allowed to speak for or against the action to tax the property.

This bill would take effect January 1, 2008.

## Methodology

Currently, Article VIII, Section 1-j of the Texas Constitution and Section 11.251 of the Tax Code provide for a "freeport exemption." This exemption, which can be granted at the option of each city, county, school district, or junior college district, exempts goods, wares, ores, raw materials, and other types of inventory that are brought into, or acquired in, the state and transported out of the state within 175 days of acquisition.

In November 2001, Texas voters passed SJR 6 to add Article VIII, Section 1-n to the Texas Constitution, thereby, authorizing the Legislature to exempt from ad valorem taxation "goods in transit."

This proposed enabling legislation would provide an exemption for property acquired in or imported into Texas, stored at a location in El Paso County in which the owner of the goods did not have a direct or indirect ownership interest, and transported to another location either inside or outside of the state within 175 days. The bill would provide a local option procedure to continue taxing the property.

The proposed exemption could cause an undetermined revenue loss to El Paso County and the municipalities, school districts, and junior college districts therein should they decide to exempt goods in transit.

Because it is not known how many taxing unit governing bodies in El Paso County might vote to continue taxing the covered items, the fiscal impact cannot be determined.

Note: Because the exemption would be optional, the fiscal impact table provides an illustrative example only. Appraisal district information about the potential value loss to the proposed bill was trended over the projection period to estimate the value loss in each year. The appropriate taxing unit rates were applied to estimate the levy loss. Information was not available to estimate special district losses.

Note: In addition, with respect to school districts, the mechanics of the school finance system would likely transfer the initial fiscal impacts to the state, resulting in a zero or negligible fiscal impact to the school districts. Initial school district losses are shown, even though the operation of the "hold harmless" feature of HB 1, 79th Legislature, Third Called Session (2006), would likely transfer the losses to the state causing a net school district loss of zero.

## Local Government Impact

Because the exemption would be optional, the fiscal impact table above provides an illustrative example only.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, CT, SD, SJS

## Texas Legislature Online
# History

**Bill:** HB 621 **Legislative Session:** 80(R) **Council Document:** 80R 1402 EJI-D

**Last Action:** *06/15/2007 E Effective on 1/1/08*

**Caption Version:** Enrolled

**Caption Text:** Relating to the exemption from ad valorem taxation of tangible personal property held temporarily at a location in this state for assembling, storing, manufacturing, processing, or fabricating purposes.

**Author:** Chavez

**Sponsor:** Duncan

**Cosponsor:** Zaffirini

**Subjects:** Business & Commerce--General (I0050)
Economic & Industrial Development--General (I0214)
Taxation--Property-Exemptions (I0793)
GOODS-IN-TRANSIT (S0432)

**Companion:** SB 501 by Duncan, Identical

**House Committee:** Ways & Means

**Status:** Out of committee

**Vote:** Ayes=6 Nays=0 Present Not Voting=0 Absent=3

**Senate Committee:** Finance

**Status:** Out of committee

**Vote:** Ayes=9 Nays=0 Present Not Voting=0 Absent=6

**Actions**: (descending date order)
Viewing Votes: Most Recent House Vote | Most Recent Senate Vote

| | Description | Comment | Date | Time | Journal Page |
|---|---|---|---|---|---|
| E | Effective on 1/1/08 | | 06/15/2007 | | |
| E | Signed by the Governor | | 06/15/2007 | | 7405 |
| E | Sent to the Governor | | 05/26/2007 | | 7059 |
| S | Signed in the Senate | | 05/25/2007 | | 4499 |
| H | Signed in the House | | 05/24/2007 | | 5830 |
| H | Reported enrolled | | 05/24/2007 | 08:16 AM | 6456 |
| S | House concurs in Senate amendment(s)-reported | | 05/23/2007 | | 3185 |
| H | Text of Senate Amendment(s) | | 05/23/2007 | | 5329 |
| H | Record vote | RV#1636 | 05/23/2007 | | 5329 |
| H | House concurs in Senate amendment(s) | | 05/23/2007 | | 5329 |
| H | Senate Amendments printed and distributed | | 05/21/2007 | 07:55 PM | |
| H | Senate passage as amended reported | | 05/21/2007 | | 4882 |
| S | Record vote | | 05/18/2007 | | 2391 |

| | | | | | |
|---|---|---|---|---|---|
| S | Passed | | 05/18/2007 | | 2391 |
| S | Read 3rd time | | 05/18/2007 | | 2391 |
| S | Record vote | | 05/18/2007 | | 2390 |
| S | Three day rule suspended | | 05/18/2007 | | 2390 |
| S | Vote recorded in Journal | | 05/18/2007 | | 2390 |
| S | Read 2nd time & passed to 3rd reading | | 05/18/2007 | | 2390 |
| S | Rules suspended-Regular order of business | | 05/18/2007 | | 2390 |
| S | Placed on intent calendar | | 05/17/2007 | | |
| S | Co-sponsor authorized | | 05/17/2007 | | 2158 |
| S | Committee report printed and distributed | | 05/15/2007 | 03:09 PM | |
| S | Reported favorably as substituted | | 05/15/2007 | | 2140 |
| S | Considered in public hearing | | 05/14/2007 | | |
| S | Scheduled for public hearing on . . . . . | | 05/14/2007 | | |
| S | Left pending in committee | | 05/07/2007 | | |
| S | Testimony taken in committee | | 05/07/2007 | | |
| S | Considered in public hearing | | 05/07/2007 | | |
| S | Scheduled for public hearing on . . . . . | | 05/07/2007 | | |
| S | Referred to Finance | | 04/11/2007 | | 931 |
| S | Read first time | | 04/11/2007 | | 931 |
| S | Received from the House | | 04/10/2007 | | 885 |
| H | Reported engrossed | | 04/04/2007 | 05:37 PM | 1655 |
| H | Statement(s) of vote recorded in Journal | | 04/04/2007 | | 1585 |
| H | Record vote | RV#319 | 04/04/2007 | | 1585 |
| H | Passed | | 04/04/2007 | | 1585 |
| H | Read 3rd time | | 04/04/2007 | | 1585 |
| H | Nonrecord vote recorded in Journal | | 04/03/2007 | | 1542 |
| H | Passed to engrossment | | 04/03/2007 | | 1542 |
| H | Read 2nd time | | 04/03/2007 | | 1541 |
| H | Placed on General State Calendar | | 04/03/2007 | | |
| H | Considered in Calendars | | 03/29/2007 | | |
| H | Committee report sent to Calendars | | 03/13/2007 | | |
| H | Committee report printed and distributed | | 03/12/2007 | 11:19 PM | |
| H | Comte report filed with Committee Coordinator | | 03/12/2007 | | 878 |
| H | Reported favorably w/o amendment(s) | | 03/07/2007 | | |
| H | Considered in public hearing | | 03/07/2007 | | |
| H | Left pending in committee | | 02/28/2007 | | |
| H | Testimony taken in committee | | 02/28/2007 | | |
| H | Considered in public hearing | | 02/28/2007 | | |
| H | Scheduled for public hearing on . . . . | | 02/28/2007 | | |
| H | Referred to Ways & Means | | 02/12/2007 | | 399 |
| H | Read first time | | 02/12/2007 | | 399 |
| H | Filed | | 01/18/2007 | | |