

BILL ANALYSIS

C.S.H.B. 109
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The United States Constitution exempts exports from state taxation and the State of Texas has enacted statutes recognizing the exemption and provides a means for obtaining a refund of state sales tax paid on exports. One of those means is by a licensed customs broker issuing documentation certifying that merchandise is an export. The statutes under which this documentation is issued do not provide sufficient direction regarding when and under what procedures this documentation may be issued certifying merchandise as an export. Correcting these deficiencies could help ensure the state's proper collection of taxes and benefit the economy of the state by encouraging the sale of exports from Texas to Mexico. C.S.H.B. 109 modifies procedures under which licensed customs brokers operate, including procedures under which they may issue documentation certifying merchandise as an export, and provides for fines and penalties to be imposed when procedures are not followed.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 2 (Section 151.1575, Tax Code) of this bill.

ANALYSIS

C.S.H.B. 109 amends the Tax Code to establish procedures under which licensed customs brokers (broker) must operate. C.S.H.B. 109 amends the licensing procedure by increasing the annual broker license fee from \$100, regardless of whether the broker has more than one place of business, to \$300 for each place of business. The bill increases the amount of the bond or security required of each broker from \$500, regardless of whether the broker has more than one place of business, to \$5,000, plus an additional \$1,000 for each place of business. The bill requires the broker to report quarterly to the comptroller on the value of tangible personal property and corresponding tax exempted, and of the tax refunded. The bill requires the comptroller to maintain a password-protected website for use by a customs broker to prepare the documentation to show exemption of tangible personal property that has been exported. The comptroller shall use the information provided for enforcement purposes. The comptroller may require that a customs broker pay to the comptroller the amount of any tax refunded if the customs broker does not comply with the Act or the rules adopted by the comptroller in relation to the refund of the tax. C.S.H.B. 109 also specifies conditions under which the comptroller may suspend or revoke a broker's license.

C.S.H.B. 109 provides that a broker or the authorized employee of a broker may issue documentation to certify the delivery of tangible personal property outside the United States only if the broker verifies the delivery according to specified procedures. The bill sets forth the information that the documentation must include. If the broker does not comply with these procedures or with comptroller rules, the bill authorizes the comptroller to require the broker to pay the amount of any tax refunded or to pay the amount of the tax refunded and an additional penalty that is equal to the amount of the refunded tax, but not less than \$500 or more than \$5,000.

C.S.H.B. 109 requires the Comptroller to charge \$1 for each export stamp. When an exemption is claimed because tangible personal property is exported outside the United States, one form of proof of export is for the person claiming the tax exemption to sign the proof of export documentation. The bill also

provides that the documentation include the statement that “Providing false information to a customs broker is a Class B misdemeanor.”

C.S.H.B 109 provides that the retailer required to file a tax report with the Comptroller's office must show the amount of sales tax refunded for items exported outside the United States after the retailer has received the proof of export documentation.

The bill clarifies that customs brokers may provide documentation of proof of export for a fee only if the documentation is provided in accordance with Sec. 151.157 and rules adopted by the comptroller. The comptroller is required to revoke the license of a customs broker who violates Sec. 151.712, and the customs broker may not apply for a new license for one year after the license is revoked.

EFFECTIVE DATE

January 1, 2004.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds provisions which: require the comptroller to maintain a password-protected website for use by a customs broker to prepare the documentation to show exemption of tangible personal property that has been exported; provide that the comptroller may require that a customs broker pay to the comptroller the amount of any tax refunded if the customs broker does not comply with the Act or the rules adopted by the comptroller in relation to the refund of the tax; require the Comptroller to charge \$1 for each export stamp; provide when an exemption is claimed because tangible personal property is exported outside the United States, one form of proof of export is for the person claiming the tax exemption to sign the proof of export documentation; provide that the documentation include the statement that “Providing false information to a customs broker is a Class B misdemeanor.”; provide that the retailer required to file a tax report with the Comptroller's office must show the amount of sales tax refunded for items exported outside the United States after the retailer has received the proof of export documentation; and clarify that customs brokers may provide documentation of proof of export for a fee only if the documentation is provided in accordance with Sec. 151.157 and rules adopted by the comptroller. The substitute also provides that the comptroller is required to revoke the license of a customs broker who violates Sec. 151.712, and the customs broker may not apply for a new license for one year after the license is revoked. The substitute removes a provision in Section 3 of the original bill.