

By: Shapleigh

S.B. No. 187

A BILL TO BE ENTITLED

AN ACT

relating to customs brokers.

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

SECTION 1. Sections 151.157(a)-(g), Tax Code, are amended to read as follows:

(a) A customs broker, or an authorized employee of a customs broker, licensed by the comptroller under this section may issue documentation for the purpose of showing the exemption of tangible personal property under Section 151.307(b)(2) only under procedures established by this section, Section 151.1575, and by the comptroller by rule.

(b) The comptroller may issue a license to a customs broker for the purpose described by Subsection (a) for each place of business of the broker if the broker:

(1) applies to the comptroller for the license;

(2) pays the license fee to ~~set by~~ the comptroller in the amount required by Subsection (c);

(3) posts the bond or security in the amount required by Subsection (d); and

(4) complies with any rules of the comptroller to administer this section and to prevent the evasion of the tax under this chapter and local sales and use taxes.

(c) A customs broker must pay to the comptroller an annual license fee of \$300 for each place of business from which the

1 customs broker intends to issue exemption certificates. [~~The~~  
2 ~~comptroller shall set the fee for a license in an amount that does~~  
3 ~~not exceed \$100 for each customs broker, without regard to whether~~  
4 ~~the broker has more than one place of business. The fee may be~~  
5 ~~imposed only once for each broker.] The comptroller shall use the  
6 fees only for the administration of this section, including costs  
7 of materials, labor, and overhead.~~

8 (d) The amount of the bond or security required by  
9 Subsection (b)(3) is \$5,000, plus an additional \$1,000 for each  
10 place of business from which the customs broker intends to issue  
11 exemption certificates [~~\$500, except that the comptroller may~~  
12 ~~require a customs broker to post additional bond or security in an~~  
13 ~~amount the comptroller considers necessary to ensure the payment of~~  
14 ~~the tax under this chapter and local sales and use taxes. The~~  
15 ~~comptroller may not require a bond or security in an amount greater~~  
16 ~~than \$2,500. The comptroller may not require the customs broker to~~  
17 ~~post more than one bond or security solely because the broker has~~  
18 ~~more than one place of business]. The security may be in the form of  
19 cash, a certificate of deposit, a letter of credit, or another  
20 instrument of value.~~

21 (e) A customs broker licensed under this section shall make  
22 available to the comptroller, on or after the 15th day after the  
23 date the broker receives written notice from the comptroller, the  
24 customs broker's books and records relating to the business of  
25 issuing documentation certifying the export of tangible personal  
26 property beyond the territorial limits of the United States for  
27 purposes of exempting the property from the taxes imposed by this

1 chapter. The customs broker shall make available to the  
2 comptroller, without notice from the comptroller, the customs  
3 broker's books and records if the comptroller determines that the  
4 comptroller's ability to administer and enforce effectively the  
5 provisions of this chapter relating to documentation for the  
6 purpose of showing the exemption of tangible personal property  
7 under Section 151.307(b)(2) is jeopardized by providing notice.  
8 The customs broker shall keep the books and records described by  
9 this subsection for at least two years after the date of the last  
10 entry that they contain. The customs broker shall report quarterly  
11 to the comptroller:

12 (1) the total value of the tangible personal property  
13 and the total amount of the corresponding tax for which the customs  
14 broker issued exemption certificates; and

15 (2) the total amount of tax refunded in accordance  
16 with exemption certificates.

17 (f) The comptroller may suspend or revoke a license issued  
18 under this section if the customs broker does not comply with  
19 Section 151.1575(c) or knowingly or intentionally issues  
20 documentation that is false to obtain a refund of taxes paid on  
21 tangible personal property not exported or to assist another person  
22 in obtaining such a refund [~~for good cause~~]. The comptroller may  
23 determine the length of suspension or revocation necessary for the  
24 enforcement of this chapter and the comptroller's rules. A  
25 proceeding to suspend or revoke a license under this subsection is a  
26 contested case under Chapter 2001, Government Code. Judicial  
27 review is by trial de novo. The district courts of Travis County

1 have exclusive original jurisdiction of a suit under this section.

2 (g) A customs broker may authorize a person to act as an  
3 independent contractor to certify in accordance with Section  
4 151.1575(a)(1) that tangible personal property has been exported  
5 outside of the United States only if the authorization is part of  
6 the written contract and the comptroller in writing approves the  
7 authorization. A customs broker may not authorize a person under  
8 this subsection to prepare documentation for the purpose of showing  
9 the exemption for tangible personal property under Section  
10 151.307(b)(2).

11 SECTION 2. Subchapter E, Chapter 151, Tax Code, is amended  
12 by adding Section 151.1575 to read as follows:

13 Sec. 151.1575. REQUIREMENTS RELATING TO ISSUING  
14 DOCUMENTATION SHOWING EXPORTATION OF PROPERTY. (a) A customs  
15 broker licensed by the comptroller or an authorized employee of the  
16 customs broker may issue documentation certifying that delivery of  
17 tangible personal property was made to a point outside the  
18 territorial limits of the United States as required by Section  
19 151.307(b)(2)(B) only if the customs broker or authorized employee:

20 (1) watches the property cross the border of the  
21 United States;

22 (2) watches the property being placed on a common  
23 carrier for delivery outside the territorial limits of the United  
24 States; or

25 (3) verifies that the purchaser is transporting the  
26 property to a destination outside of the territorial limits of the  
27 United States by:

1           (A) examining a passport, laser visa  
2 identification card, or foreign voter registration picture  
3 identification indicating that the purchaser of the property  
4 resides in a foreign country;

5           (B) requiring the purchaser to produce the  
6 original receipt for the property;

7           (C) requiring the purchaser to state the foreign  
8 country destination of the property which must be the foreign  
9 country in which the purchaser resides;

10          (D) requiring the purchaser to state the date and  
11 time the property is expected to arrive in the foreign country  
12 destination;

13          (E) requiring the purchaser to state the date and  
14 time the property was purchased, the name and address of the place  
15 at which the property was purchased, the sales price and quantity of  
16 the property, and a description of the property;

17          (F) requiring the purchaser to sign a form:

18               (i) stating that the purchaser has provided  
19 the information and documentation required by this subdivision; and

20               (ii) that contains a notice to the  
21 purchaser that tangible personal property not exported is subject  
22 to taxation under this chapter and the purchaser is liable, in  
23 addition to other possible civil liabilities and criminal  
24 penalties, for payment of an amount equal to the value of the  
25 merchandise if the purchaser improperly obtained a refund of taxes  
26 relating to the property; and

27          (G) requiring the purchaser to produce the

1 purchaser's:

2 (i) Form I-94, Arrival/Departure record, or  
3 its successor, as issued by the United States Immigration and  
4 Naturalization Service; or

5 (ii) air, land, or water travel  
6 documentation if the customs broker is located in a county that does  
7 not border the United Mexican States.

8 (b) A customs broker licensed by the comptroller or an  
9 authorized employee of the customs broker may issue and deliver  
10 documentation under Subsection (a) at any time after the tangible  
11 personal property is purchased and the broker or employee completes  
12 the process required by Subsection (a). The documentation must  
13 include:

14 (1) the name and address of the customs broker;

15 (2) the license number of the customs broker;

16 (3) the name and address of the purchaser;

17 (4) the name and address of the place at which the  
18 property was purchased;

19 (5) the date and time of the sale;

20 (6) a description and the quantity of the property;

21 (7) the sales price of the property;

22 (8) the foreign country destination of the property,  
23 which may not be the place of export;

24 (9) the date and time:

25 (A) at which the customs broker or authorized  
26 employee watched the property cross the border of the United  
27 States;

1           (B) at which the customs broker or authorized  
2 employee watched the property being placed on a common carrier for  
3 delivery outside the territorial limits of the United States; or

4           (C) the property is expected to arrive in the  
5 foreign country destination, as stated by the purchaser;

6           (10) a declaration signed by the customs broker or an  
7 authorized employee of the customs broker stating that the customs  
8 broker is a licensed Texas customs broker; and

9           (11) an export certification stamp issued by the  
10 comptroller.

11           (c) The comptroller may require a customs broker to pay the  
12 comptroller the amount of any tax refunded if the customs broker  
13 does not comply with this section, Section 151.157, or the rules  
14 adopted by the comptroller under this section or Section 151.157.  
15 In addition to the amount of the refunded tax, the comptroller may  
16 require the customs broker to pay a penalty in an amount equal to  
17 the amount of the refunded tax, but not less than \$500 nor more than  
18 \$5,000. The comptroller and the state may deduct any penalties to  
19 be paid by a customs broker from the broker's posted bond.

20           (d) A proceeding to require a customs broker to pay an  
21 amount under Subsection (c) is a contested case in the same manner  
22 as a proceeding to revoke or suspend a customs broker's license  
23 under Section 151.157(f).

24           (e) In this section, "customs broker" and "authorized  
25 employee" have the meanings assigned by Section 151.157.

26           SECTION 3. Sections 151.307(d) and (e), Tax Code, are  
27 amended to read as follows:

1 (d) A retailer who receives documentation under Subsection  
2 (b)(2) relating to the purchase of tangible personal property  
3 exported beyond the limits of the United States may not refund the  
4 tax paid under this chapter on that purchase before:

5 (1) the fourth [~~24th~~] hour after the hour stated as the  
6 time of export on the documentation, if the retailer is located in a  
7 county that borders the United Mexican States; or

8 (2) the seventh day after the day stated as the date of  
9 export on the documentation, if the retailer is located in a county  
10 that does not border the United Mexican States.

11 (e) A retailer who makes a refund before the time prescribed  
12 by Subsection (d) or makes a refund that is undocumented or  
13 improperly documented is liable for the amount of the tax refunded  
14 with interest. The retailer is not liable if the refund is made  
15 erroneously because of a clerical error.

16 SECTION 4. (a) This Act takes effect January 1, 2004.

17 (b) The change in law made by this Act does not affect taxes  
18 imposed before the effective date of this Act, and the former law is  
19 continued in effect for purposes of the liability for and  
20 collection of those taxes.