

BILL ANALYSIS

Senate Research Center

S.B. 776
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Finance
8/17/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The United States Constitution, in Article I, Section 10, Clause 2, prohibits state governments from taxing goods exported to foreign nations. Sales taxes on goods sold in the United States and shipped or taken to other countries are forbidden. Texas complies with the constitutional constraint in different ways. One way is rebating state sales taxes to foreign shoppers who prove the purchase is bound for export by documentation by a customs broker. In a 2003 report, the comptroller of public accounts (comptroller) documented widespread abuse of the customs broker system. The Texas Legislature attempted to address this abuse by enacting legislation in 2003 that restructured the customs broker system and added an online system. However, the current customs broker system continues to be plagued by fraud and a lack of enforcement.

S.B. 776 seeks to eliminate fraud by eliminating the hardcopy export certificates issued when the online system is down, and by ensuring that the purchases are actually bound for export. Additionally, it will allocate revenues from the export certificate stamp fee increase towards enforcement of the customs broker system by the comptroller.

S.B. 776 amends current law relating to customs brokers.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 151.157(a-1), (f), and (f-1), Tax Code, as follows:

(a-1) Authorizes, rather than requires, the comptroller of public accounts (comptroller) to provide an alternate method to prepare documentation to show the exemption of tangible personal property under Section 151.307(b)(2) (relating to authorized documentation for proof of export) in those instances when the password-protected website is unavailable due to technical or communication problems. Authorizes a customs broker or authorized employee to use the alternate method only if the comptroller provides prior authorization for each use.

(f) Authorizes the comptroller to suspend or revoke a license issued under this section if the customs broker does not comply with Section 151.1575(c) or issues documentation that is false, rather than that is false to obtain a refund of taxes paid on tangible personal property not exported or to assist another person in obtaining such a refund.

(f-1) Authorizes the comptroller, in addition to any other penalty provided by law, to require a customs broker to pay to the comptroller the amount of any tax refunded and the amount of any penalty imposed under Section 151.1575(c) if the customs broker did not comply with this section or the rules adopted by the comptroller under this section, rather than if the customs broker did not comply with this section or the rules adopted by the comptroller under this section in relation to the refunded tax.

SECTION 2. Amends Sections 151.1575(a), (b), and (c), Tax Code, as follows:

(a) Authorizes a customs broker licensed by the comptroller or an authorized employee of the customs broker to issue documentation certifying that delivery of tangible personal property was made to a point outside the territorial limits of the United States as required by Section 151.307(b)(2)(B) (relating to a certification of delivery made to a point outside the territorial limits of the United States) only if the customs broker or authorized employee:

(1)-(2) Makes no changes to these subdivisions; or

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

(A) Makes no changes to this paragraph;

(B) requiring that the documentation examined under Paragraph (A) have a unique identification number for that purchaser;

(C) requiring the purchaser to produce the property and the original sales receipt for the property;

(D)-(F) Redesignates existing Paragraphs (C)-(E) as Paragraphs (D)-(F);

(G) requiring the purchaser and the broker or an authorized employee to sign in the presence of each other a form prepared or approved by the comptroller:

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

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

(H) Redesignates existing Paragraph (G) as Paragraph (H); and

(I) requiring the purchaser and the broker or an authorized employee, when using a power of attorney form, to attest, as a part of the form and in the presence of each other:

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

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

(b) Requires the comptroller to limit to six the number of receipts for which a single proof of export documentation may be issued under this section. Requires that the documentation include, among other required information, a declaration signed by the customs broker or an authorized employee of the customs broker stating that the customs broker is a licensed Texas customs broker, and the customs broker or authorized employee inspected the property and the original receipt for the property, among other information.

(c) Authorizes the comptroller, in addition to the amount of the refunded tax, to require the customs broker to pay a penalty of not less than \$500 nor more than \$5,000, rather than in an amount equal to the amount of the refunded tax, but not less than \$500 nor more than \$5,000.

SECTION 3. Amends Section 151.158, Tax Code, by amending Subsection (g) and adding Subsections (g-1) and (g-2), as follows:

(g) Requires the comptroller to charge \$2.10, rather than \$1.60, for each stamp. Requires the comptroller to use \$1.60 of the money from the sale of the stamps only for costs related to producing the stamps, including costs of materials, labor, and overhead. Requires the comptroller to use the remaining 50 cents only for enforcement of the laws relating to customs brokers under this title.

(g-1) Creates this subsection from existing text. Makes no further changes to this subsection.

(g-2) Creates this subsection from existing text. Makes no further changes to this subsection.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2011.