

CHAPTER 955

H.B. No. 2413

AN ACT

relating to tangible personal property exported outside of the United States and the persons who may provide documentation to prove the tax exemption for the property; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter E, Chapter 151, Tax Code, is amended by adding Sections 151.157, 151.158, 151.159, and 151.160 to read as follows:

Sec. 151.157. CUSTOMS BROKERS. (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 151.907(b)(2) only under procedures established 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 fee set by the comptroller;

(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) The comptroller shall set the fee for a license in an amount that does not exceed \$100 for each customs broker, without regard to whether the broker has more than one place of business. The fee may be imposed only once for each broker. The comptroller shall use the fees only for the administration of this section, including costs of materials, labor, and overhead.

(d) The amount of the bond or security required by Subsection (b)(3) is \$500, except that the comptroller may require a customs broker to post additional bond or security in an amount the comptroller considers necessary to ensure the payment of the tax under this chapter and local sales and use taxes. The comptroller may not require a bond or security

in an amount greater than \$2,500. The comptroller may not require the customs broker to post more than one bond or security solely because the broker has more than one place of business. The security may be in the form of cash, a certificate of deposit, a letter of credit, or another instrument of value.

(e) A customs broker licensed under this section shall make available to the comptroller, on or after the 15th day after the date the broker receives written notice from the comptroller, the customs broker's books and records relating to the business of issuing documentation certifying the export of tangible personal property beyond the territorial limits of the United States for purposes of exempting the property from the taxes imposed by this chapter. The customs broker shall make available to the comptroller, without notice from the comptroller, the customs broker's books and records if the comptroller determines that the comptroller's ability to administer and enforce effectively the provisions of this chapter relating to documentation for the purpose of showing the exemption of tangible personal property under Section 151.307(b)(2) is jeopardized by providing notice. The customs broker shall keep the books and records described by this subsection for at least two years after the date of the last entry that they contain.

(f) The comptroller may suspend or revoke a license issued under this section for good cause. The comptroller may determine the length of suspension or revocation necessary for the enforcement of this chapter and the comptroller's rules. A proceeding to suspend or revoke a license under this subsection is a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review is by trial de novo. The district courts of Travis County have exclusive original jurisdiction of a suit under this section.

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

(h) In this section:

(1) "Customs broker" means a person licensed by the United States Customs Service to act as a customs house broker.

(2) "Authorized employee" means an employee of a customs broker:

(A) who is authorized by the broker to perform customs transactions on behalf of the broker;

(B) who is compensated by the broker with a regular salary or wages;

(C) who is under the direct control and supervision of the broker; and

(D) from whose salary or wages the broker is required to and actually does deduct and withhold a tax under federal law.

Sec. 151.158. EXPORT STAMPS. (a) The comptroller shall have printed or manufactured stamps in the design, size, and quantity the comptroller determines is necessary for the purpose of this section.

(b) The comptroller may designate the method of identification for the stamps.

(c) The comptroller shall require that the stamps be manufactured so that a stamp may be easily and securely attached to export documentation.

(d) The comptroller shall change the design of the stamps at least once each calendar quarter, or more frequently if the comptroller determines it is necessary for the enforcement of this section and the comptroller's rules.

(e) The comptroller may provide stamps only to a customs broker licensed under Section 151.157.

(f) A stamp is invalid if transferred to a person other than the customs broker to whom the comptroller issued the stamp, to an authorized employee of that customs broker, or to an authorized independent contractor.

(g) The comptroller shall charge an amount not to exceed five cents for each stamp. The comptroller shall use the money from the sale of the stamps only for costs related to producing the stamps, including costs of materials, labor, and overhead.

(h) The comptroller may require stamps to be purchased in minimum quantities if the comptroller considers it necessary for the efficient administration of this section.

Sec. 151.159. **REFUNDS; IDENTIFICATION CARDS.** (a) The comptroller in writing may authorize a customs broker to refund taxes collected under this chapter at export locations specified by the comptroller.

(b) The comptroller may issue an export identification card to a wholesaler or retailer. The card must contain the picture of the person to whom the card is issued. The comptroller may issue the card only if the wholesaler or retailer shows by clear and convincing evidence that the wholesaler or retailer is a citizen and resident of a foreign country and that any tangible personal property purchased in this state by the wholesaler or retailer is for export purposes only and is to be used or consumed outside the territorial limits of the United States. A wholesaler or retailer issued an export identification card may use the card only to facilitate the preparation of documentation by a customs broker under Section 151.307(b). The comptroller may require a wholesaler or retailer applying for an export identification card to submit any information in any form the comptroller determines is necessary and to pay a fee in an amount the comptroller determines is necessary to pay for the cost of issuing the card.

Sec. 151.160. **DEPOSITS.** Penalties collected by the comptroller shall be deposited into general revenue. Fees and charges collected by the comptroller under this Act shall be considered reimbursements for expenses of administration and shall be available for use by the comptroller in accordance with provisions in the General Appropriations Act appropriating such revenues for use by agencies.

SECTION 2. Section 151.307, Tax Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) When an exemption is claimed because tangible personal property is exported beyond the territorial limits of the United States, proof of export may be shown only by:

(1) a bill of lading issued by a licensed and certificated carrier of persons or property showing the seller as consignor, the buyer as consignee, and a delivery point outside the territorial limits of the United States;

(2) documentation:

(A) provided by a [licensed] United States Customs Broker licensed by the comptroller under Section 151.157;

(B) certifying that delivery was made to a point outside the territorial limits of the United States; and

(C) to which a stamp issued under Section 151.158 is affixed in the manner required by that section or Section 151.157;

(3) import documents from the country of destination showing that the property was imported into a country other than the United States;

(4) an original airway, ocean, or railroad bill of lading and a forwarder's receipt if an air, ocean, or rail freight forwarder takes possession of the property; or

(5) any other manner provided by the comptroller for an enterprise authorized to make tax-free purchases under Section 151.156.

(c) Documentation, including the stamp affixed to the documentation, that is provided by a customs broker licensed by the comptroller under Section 151.157 is presumed valid in the absence of clear and convincing evidence that the tangible personal property covered by the documentation was not exported outside the territorial limits of the United States.

(d) In this section:

(1) "Air forwarder" means a licensed International Air Transportation Association freight forwarder.

(2) "Ocean forwarder" means a licensed Federal Maritime Commission freight forwarder.

SECTION 3. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3071 to read as follows:

Sec. 151.3071. INSTALLATION OF CERTAIN EQUIPMENT FOR EXPORT. Electronic audio equipment that is exempted from the taxes imposed by this chapter because it is purchased for use beyond the territorial limits of the United States does not become subject to the taxes imposed by this chapter solely because the equipment is installed in this state.

SECTION 4. Subchapter L, Chapter 151, Tax Code, is amended by adding Sections 151.712 and 151.713 to read as follows:

Sec. 151.712. CIVIL PENALTY FOR PERSONS CERTIFYING EXPORTS. (a) A person may not sign or certify proof of export documentation for the purpose of showing an exemption under Section 151.307(b)(2) unless:

(1) the person is:

(A) a customs broker licensed by the comptroller under Section 151.157; or

(B) an authorized employee of a customs broker licensed by the comptroller under Section 151.157; and

(2) the tangible personal property the export of which the person certifies is exported on the date and to the place shown on the export documentation signed by the person.

(b) A person who provides proof of documentation that tangible personal property has been exported outside of the United States or a person who may benefit from the provision of the proof of documentation, including a customs broker, authorized employee, authorized independent contractor, seller of the property or agent or employee of the seller, or a consumer of the property or agent or employee of the consumer, may not sell or buy the proof of documentation, including stamps required for the documentation. This subsection does not apply to a customs broker who accepts a fee for providing documentation under Section 151.307(b).

(c) Except as provided by Subsection (e), a person who violates this section is subject to a monetary penalty that may not exceed:

(1) \$500 for the first violation;

(2) \$1,000 for the second violation; and

(3) \$3,000 for each subsequent violation.

(d) Except as provided by Subsection (e), each violation of this section is subject to a separate monetary penalty.

(e) The aggregate of monetary penalties imposed under this section against any person for all violations that occur in a calendar year may not exceed \$30,000.

(f) In addition to any monetary penalty under this section, the comptroller may suspend or revoke under Section 151.157 the license of a customs broker who violates this section.

(g) A proceeding to impose a civil penalty or suspend or revoke a license because of a violation of this section is a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review is by trial de novo. The district courts of Travis County have exclusive original jurisdiction of a suit under this section.

(h) The comptroller must give notice of the comptroller's intent to impose a monetary or other penalty under this section not later than two years after the date of the alleged commission of a violation of this section or the comptroller may not impose a monetary or other penalty.

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

Sec. 151.713. FURNISHING FALSE INFORMATION TO CUSTOMS BROKER; CIVIL PENALTY. (a) A person may not obtain or attempt to obtain export documentation for the purpose of showing an exemption under Section 151.307(b)(2) from a customs broker or an authorized employee of a customs broker if the person knows, at the time the documentation is sought, that the information provided to the broker or employee is materially false, in

whole or in part, and the documentation is sought for the purpose of evading the tax imposed by this chapter.

(b) After notice as provided by this section, a person who violates this section is subject to a monetary penalty that may not exceed:

- (1) \$500 for the first violation;*
- (2) \$1,000 for the second violation; and*
- (3) \$3,000 for each subsequent violation.*

(c) Each violation of this section is subject to a separate monetary penalty.

(d) If the comptroller believes that a person has violated this section, the comptroller shall give written notice to the person to show cause why the person should not be subject to a monetary penalty for the violation. The notice must advise the person of the allegations and explain that the person has a right to respond to the allegations in writing and request an oral hearing before the 31st day after the date that the notice is issued.

(e) The comptroller may not impose a monetary penalty under this section until the comptroller or a person designated by the comptroller:

- (1) considers the allegations against the person;*
- (2) considers any timely written response made by the person;*
- (3) considers any evidence properly admitted at any oral hearing held on the allegations; and*
- (4) issues a written decision.*

(f) The comptroller must give notice of the comptroller's intent to impose a monetary penalty under this section not later than four years after the date of the alleged commission of a violation of this section or the comptroller may not impose a monetary penalty.

(g) The penalty imposed by this section is in addition to any tax, penalty, and interest that may be assessed against a person who violates this section.

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

SECTION 5. This Act applies only to an exemption to the tax imposed under Chapter 151, Tax Code, claimed on or after the effective date of this Act.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 7, 1993: Yeas 139, Nays 0, 2 present, not voting; the House concurred in Senate amendments to H.B. No. 2413 on May 26, 1993: Yeas 126, Nays 0, 3 present, not voting; passed by the Senate, with amendments, on May 22, 1993: Yeas 30, Nays 1.

Approved June 19, 1993.

Effective June 19, 1993.