

- SUBJECT:** Increasing regulation of customs brokers
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 6 ayes — Wilson, McCall, Pitts, J. Keffer, Paxton, Woolley
0 nays
3 absent — Hilderbran, Luna, Ritter
- WITNESSES:** For — Steve Ahlenius, McAllen Chamber of Commerce; Mario Avendaño III, Shane Customhouse Brokers; Michael Breitinger, El Paso Central Business Association and Texas Retail Exports and Foreign Trade Committee; Bentley Fondren, Texas Retail Exports and Foreign Trade Committee; David Macias, Customs Brokers Association of El Paso and Texas Retail Exports and Foreign Trade Committee; Larry Norton; Laura Uribarri, Greater El Paso Chamber of Commerce; Monica Weisberg-Stewart, McAllen Hispanic Chamber, Texas Retail Exports and Foreign Trade Committee
Against — None
On — Jesse Ancira, John Heleman, and Michael Reck, Comptroller’s Office
- BACKGROUND:** The U.S. Constitution exempts exports from state taxation. Texas law regulating export sales and use tax exemptions and customs brokers (Tax Code, secs. 151.156-158) recognizes the federal exemption and gives purchasers of export merchandise several ways to claim sales-tax refunds (sec. 151.307). One option is to have a licensed customs broker issue exemption certificates based on documentation verifying exportation.
- DIGEST:** CSHB 109 would set new reporting and verification requirements for customs broker export certification, set penalties for noncompliance, and increase license fees and bonds.
The bill would require brokers licensed by the comptroller who issue documentation for merchandise (tangible personal property) export either to

witness the exportation or to verify it with documentation, including:

- passports, laser visa identification cards, or foreign voter registration with photographic identification;
- original receipts;
- statements of the merchandise's destination identical to the purchaser's country of residence and the expected arrival date and time;
- statements of the purchase date and time, purchase place name and address, sales price and quantity, and merchandise description;
- signed forms confirming provision of the required information and documentation and containing notice of taxability for nonexports and liability, including civil and criminal penalties; and
- purchasers' federal immigration arrival/departure records, or travel documentation if brokers live in counties not bordering Mexico.

Documentation also would have to include brokers' names, addresses, and license numbers; purchasers' names and addresses; purchase locations' names and addresses; sales dates and times; property quantities, descriptions, sales prices, and destinations; dates and times that brokers or employees witnessed exportation or the merchandise's expected arrival dates and times; state licensing declarations; and state export certification stamps. Brokers and employees could issue documentation at any time after purchases were made.

The comptroller could require brokers to pay tax refund amounts for not meeting the requirements or adhering to comptroller rules. Brokers also could incur tax-based penalties ranging from \$500 to \$5,000 that could be deducted from posted bonds. Failure to pay refunds or penalties or intentionally issuing false documentation in order to obtain tax refunds, or to help others do so, could be grounds for license suspension or revocation.

The bill would raise the annual broker license fee from \$100 to \$300 for each business location from which brokers intended to issue exemption certificates. Bond or security amounts would increase from \$500, with a discretionary maximum of \$2,500, to \$5,000, plus \$1,000 per location issuing certificates. Brokers would have to report quarterly the total value of tangible personal property and the total amounts of corresponding tax and refunds for which they had issued certificates. Brokers failing to comply could be required to repay tax refunds. Export stamp rates would rise from 5 cents to \$1.00.

Revenue would have to be spent on administrative costs, and any unspent collections would be deposited into general revenue.

Brokers and employees would have to use a comptroller website to prepare and produce export exemption documentation. Information provided would be used to enforce broker regulations and the exemption verification statute. Documentation requirements for proof of export would have to include certification signed by purchasers claiming tax exemptions, as well as a notice that giving false information to brokers is a Class B misdemeanor (punishable by up to 180 days in jail and/or a maximum fine of \$2,000).

Brokers would have to submit the required documentation and follow comptroller rules in order to buy export stamps and engage in proof of documentation transactions. Discretionary license suspension or revocation would become mandatory revocation for brokers who certified exports that did not occur. New licenses could not be sought for one year after revocation.

Retailers would not be liable for refunds issued due to clerical errors. Seller and retailer sales-tax reports would have to include amounts of sales-tax refunds paid for documented exports.

The bill would take effect January 1, 2004, and would not affect taxes imposed before that date.

**SUPPORTERS
SAY:**

CSHB 109 incorporates elements from several bills that would help eliminate tax-refund fraud in the Texas customs broker industry and boost tax collections. Current law is vague as to what procedures should be used and when to certify export merchandise. The bill would clarify how this should work and would exact penalties from those who did not comply. It would set reporting requirements and generate data to monitor the industry better.

Retail trade with Mexico is the economic lifeblood of many Texas border communities and benefits the entire state. Texas is the only state bordering Mexico that allows sales-tax refunds for merchandise sold here for use in Mexico, a huge boon that has become problematic. The state's approximately 230 customs brokers provide fee-based services, including *manifestos*, allowing Mexicans to show retailers that they are taking merchandise purchased in Texas back home with them.

Some brokers rebate sales taxes to foreign consumers and obtain refunds from retailers. The ease of obtaining refunds makes shopping in Texas cities more attractive and affordable. Retail sales of these exports mean jobs that support many families and strengthen the tax base. However, poor documentation and widespread fraud by brokers, as well as by Texans posing as Mexican citizens, costs the state dearly in illegitimate sales-tax refunds for merchandise not taken out of the state.

CSHB 109 would require more documentation and stricter verification for sales-tax refunds to customs brokers. The comptroller could require brokers to repay refunds based on improperly documented claims and charge penalties.

The bill would encourage professionalism in the customs broker industry by increasing licensing fees and bonding requirements substantially, which would pay for the administrative costs of the additional requirement, and by clarifying grounds for license revocation. A rate increase for export stamps, the fees for which now go uncollected, and licensing each business location would generate new revenue.

Making visual confirmation optional is more workable, given federal restrictions on brokers' presence on international bridges in some border cities. Requiring brokers to obtain more extensive documentation from customers would reduce fraud by both parties.

**OPPONENTS
SAY:**

CSHB 109 is not necessary. If fraud is a problem, it is being overstated, and revenue losses are exaggerated. Large cities such as Houston have customs brokers, and the border's sales-tax collection rates are not that different. The economic impact of the services that customs brokers provide far outweighs any losses to the state.

The real problem is not broker fraud but consumers who "game" the system. This bill would not put the onus on consumers or increase enforcement of their compliance.

**OTHER
OPPONENTS
SAY:**

Allowing export delivery certification to pass from the brokers to the purchasers on their signatures would increase revenue losses considerably. Also, the lack of mandatory visual confirmation would weaken corroboration, running counter to the bill's intended purpose.

The bill would not address the problem of exporters lying to brokers, nor would it require any export documentation of retailers, as other states require.

Customs brokers are at the heart of the problem and should be abolished altogether.

NOTES:

The author plans to offer a floor amendment that would move the signature required of purchasers claiming exemptions from the export certificate to the notice that giving false information to brokers is a Class B misdemeanor. By maintaining brokers' responsibility for export certification, this amendment is expected to address the negative impact of the fiscal note.

According to the fiscal note, the bill's net cost to general revenue would be \$27.8 million during fiscal 2004-05. Cities would lose \$5.6 million, transit authorities would lose \$2.1 million, and counties and special districts would lose \$701,000. The estimates were based on a projected 5 percent increase in the number of illegitimate refund claims filed along the Texas-Mexico border under the bill's consumer-oriented verification process.

CSHB 109 contains portions of HB 3501 by Raymond and HB 1993, HB 1994, and HB 1995, all by Gutierrez.

The committee substitute would modify the filed version of HB 109 by:

- authorizing the comptroller to collect refunded taxes from brokers not complying with the law or with comptroller rules;
- requiring a \$1 export stamp charge;
- adding information required on documentation submitted by brokers to verify exportation;
- requiring retailers to report sales-tax refund amounts on exports after receipt of proof-of-export documentation;
- allowing brokers to charge fees only for providing documentation that complied with the law and with comptroller rules; and
- requiring the comptroller to maintain an export documentation website.

The companion bill, SB 187 by Shapleigh, has been referred to the Senate International Relations and Trade Committee.