

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: County Auditors & Assessing Officials
FROM: Wesley R. Bennett, Commissioner
RE: Legislation Affecting Heavy Rental Equipment Taxation
DATE: July 9, 2019

This memorandum discusses the revisions made to the law regarding the taxation of heavy rental equipment. Please note that this memorandum is for informational purposes only and is not a substitute for reading the law.

The purpose of this memorandum is to supplement the previously issued memo on heavy rental equipment taxation issued by the Department of Local Government Finance (“Department”) on May 17, 2018.

I. House Enrolled Act 1323-2018

On March 21, 2018, Governor Holcomb signed into law House Enrolled Act 1323-2018 (“HEA 1323”), which specified that heavy rental equipment subject to excise taxes under IC 6-6-15 would no longer be subject to business personal property taxation. The changes under HEA 1323 were effective January 1, 2019, and would therefore impact personal property tax returns due on May 15, 2020.

Section 1 of HEA 1323 specified that for assessments after December 31, 2018, heavy rental equipment (as defined in IC 6-6-15-2) that would be subject to the heavy equipment rental excise tax under IC 6-6-15 is not subject to assessment and taxation as business personal property. Under the new excise tax chapter, “heavy rental equipment” was defined to include personal property (including attachments used in conjunction with the personal property):

- (1) that is owned by a person or business that:
 - (A) is classified under 532412 of the North American Industry Classification System Manual in effect on January 1, 2018; and
 - (B) is a retail merchant in the business of renting heavy equipment, including any attachments;
- (2) is not intended to be permanently affixed to any real property; and
- (3) is not subject to registration under IC 9-18.1 for use on a public highway (as defined in IC 9-25-2-4).

However, the term does not include heavy rental equipment that is rented for mining purpose or heavy rental equipment that is eligible for a property tax abatement deduction under IC 6-1.1-12.1 during the calendar year.

II. Senate Enrolled Act 565-2019

On May 5, 2019, Governor Holcomb signed into law Senate Enrolled Act 565-2019 (“SEA 565”). Section 25 of SEA 565, effective July 1, 2019, modifies the definition of “heavy rental equipment” to include the following clarification:

A person is considered to primarily rent equipment described in 532412 of the North American Industry Classification System Manual in effect on January 1, 2018, if the rental of the equipment generates the largest portion of the person’s gross revenue and the person lists 532412 as the person’s principal business activity code on the person’s Indiana adjusted gross income tax return. In the case of a person who is an affiliate included in an Indiana consolidated or combined adjusted gross income tax return, the person may provide a copy of the federal Form 851 filed with the Internal Revenue Services that lists 532412 as the person’s principal business activity code. For purposes of this chapter, the Department of Revenue may rely on the principal business activity code listed for the person on the person’s Indiana adjusted gross income tax return of the federal Form 851, and the person may not apply any change to the listing on any amended return or subsequent return or federal form for purposes of this chapter without the approval of the Department of Revenue.

Section 26 of SEA 565, effective July 1, 2019, also specifies that a retail merchant subject to heavy rental equipment excise tax under IC 6-6-15 is required to collect and remit the excise tax on all rentals of tangible personal property.

Section 27 of SEA 565, effective July 1, 2019, expanded the list of heavy rental equipment that is exempt from excise taxation to include any of the following:

- (1) The rentee is:
 - (A) the United States government;
 - (B) the state;
 - (C) a political subdivision (as defined in IC 36-1-2-13); or
 - (D) an agency or instrumentality of an entity described in clauses (A) through (C).
- (2) The transaction is a subrent of the heavy rental equipment from a rentee to another person, and the rentee was liable for the tax imposed under this chapter.
- (3) The heavy rental equipment is rented for mining purposes or would be eligible for a property tax abatement deduction under IC 6-1.1-12.1 during the calendar year if the rentee was considered the owner of the equipment for income tax purposes or property tax purposes.

SECTION 27 (SEA 565) – IC 6-6-15-4

III. Property Taxation vs. Excise Tax

If business personal property meets the definition of heavy rental equipment and is subject to excise taxation under IC 6-6-15, the taxpayer is exempt from property taxation and assessment under IC 6-1.1. However, property that is exempt from excise taxation under IC 6-6-15-4 or does not qualify as “heavy rental equipment” under IC 6-6-15-2, will still be subject to the property assessment and taxation requirements under IC 6-1.1.

In order to determine whether business personal property is subject to excise taxation under IC 6-6-15, please refer to the Department of Revenue Commissioner’s Directive #60 issued June 2019.

Contact Information

Questions may be directed to Emily Crisler, Deputy General Counsel, at (317) 234-8624 or emcrisler@dlgf.in.gov.