

## DEPARTMENT OF STATE REVENUE

## Commissioner's Directive #60

June 2019

Effective Date: July 1, 2019

**SUBJECT:** Heavy Equipment Rental Excise Tax**REFERENCES:** [IC 6-6-15](#)

**DISCLAIMER:** Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUMMARY OF CHANGES**

Clarifies that the heavy equipment rental excise tax applies to the rental of all personal property (subject to certain exclusions and exemptions) by a merchant that primarily rents equipment described in NAICS code 532412. Provides guidance regarding the determination of whether a merchant primarily rents equipment described in NAICS code 532412. Directs questions about the application of the property tax exemption to the Department of Local Government Finance.

**I. INTRODUCTION**

HEA 1323 (2018) created a new tax system for heavy rental equipment. This type of equipment had previously been subject to assessment of the personal property tax. However, HEA 1323 excludes personal property subject to the heavy equipment rental excise tax from the personal property tax. HEA 565 (2019) clarifies the rentals subject to the tax.

**II. IMPOSITION AND RATE**

The heavy equipment rental excise tax is imposed upon the rental of all personal property from a retail merchant that meets the requirements of [IC 6-6-15-2\(3\)\(A\)](#) and from a location in Indiana for a period of 365 or fewer days or for a rental contract with no specified end date. The tax imposed is two and twenty-five hundredths percent (2.25%) of the gross retail income received by the retail merchant for the rental.

The "gross retail income" of a transaction subject to the heavy equipment rental excise tax is defined in [IC 6-6-15\(2\)\(2\)](#) as having the same meaning set forth in [IC 6-2.5-1-5](#), and thus is calculated in the same manner as it is under the sales tax. For the sales tax, "gross retail income" means the total amount of consideration received. Therefore, the gross retail income subject to the 2.25% heavy equipment rental excise tax would include delivery charges as well as any miscellaneous charges that the merchant applies to the rental bill.

The person renting the property is liable for the heavy equipment rental excise tax on the transaction, and shall pay the tax to the retail merchant as a separate amount added to the consideration for the transaction. The retail merchant is responsible for collecting and remitting the tax as an agent for the state.

**III. RENTALS SUBJECT TO THE TAX**

"Heavy rental equipment" means all personal property (including attachments used in conjunction with the personal property) that is owned by a person or business that primarily rents equipment described in 532412 of the North American Industry Classification System Manual in effect on January 1, 2018, and is a retail merchant in the business of renting heavy equipment, including any attachments or accessories.

HEA 565, effective July 1, 2019, clarifies the application of the heavy equipment rental excise tax. The tax is imposed on the rental of all personal property (except for the exclusions and exemptions listed below) of a merchant subject to the tax. The rental of equipment described in NAICS code 532412 rented by a merchant that does not primarily rent equipment described in NAICS code 532412 is not subject to the heavy equipment rental excise tax.

The term does not include equipment that is intended to be permanently affixed to real property or is subject to vehicle registration under [IC 9-18.1](#) for use on a public highway.

It also does not include heavy rental equipment that is rented for mining purposes or heavy rental equipment that is eligible for a property tax abatement deduction under [IC 6-1.1-12.1](#) during the calendar year.

"Rental" means any transfer of possession or control of heavy rental equipment for consideration for a period not to exceed 365 days or for a period that is open ended under the terms of the rental contract with no specified end date.

#### **IV. EQUIPMENT DESCRIBED IN NAICS CODE 532412**

The equipment described in NAICS Code 532412 includes, but is not limited to, the following:

- Bulldozers
- Construction machinery and equipment
- Cranes
- Earth moving equipment
- Forestry machinery and equipment
- Heavy construction equipment
- Logging equipment
- Oil field machinery and equipment
- Oil well drilling machinery and equipment
- Welding equipment
- Well drilling machinery and equipment

#### **V. DETERMINATION OF "PRIMARILY RENTS EQUIPMENT DESCRIBED IN NAICS CODE 532412"**

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.

HEA 565 provides that the department 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 determination without the approval of the department.

#### **VI. RENTALS OF HEAVY EQUIPMENT NOT SUBJECT TO THE TAX**

Rentals by the United States government, the State of Indiana, a political subdivision (meaning a municipal corporation or special taxing district), or an agency or instrumentality of any of these entities, are exempt from the heavy equipment excise tax.

Transactions that are a subrent of the taxable personal property from a rentee to another person where the rentee was liable for and paid the tax are exempt from the tax (i.e. there is no sale for resale or renting for re-rent exemption.) The tax is imposed only on the first rental.

Personal property that is rented for mining purposes is exempt from the tax.

Personal property that is eligible for a property tax abatement deduction under [IC 6-1.1-12.1](#) during the calendar year is exempt from the tax.

Customers must provide proof of eligibility for the exemptions by providing the following information to the merchant: the purchaser's name; the purchaser's address; the purchaser's federal ID number or social security number and the home state sales tax registration number if applicable; a description of the articles purchased; a statement of the reason for the exemption; and the authorized signature of the purchaser.

Rentals for a specified period of more than 365 days are not subject to the new tax.

## VII. EXEMPTION FROM PROPERTY TAX

For an assessment date after December 31, 2018, personal property that is rented or held in inventory for rental or sale, the rental of which is or would be subject to the heavy equipment rental excise tax, is exempt from the personal property tax. **Please contact the Department of Local Government Finance for details on the application of the property tax exemption.**

## VIII. ADDITIONAL INFORMATION

Any heavy equipment rental excise tax separately stated on the invoice is not part of gross retail income under [IC 6-2.5-1-5\(b\)\(5\)](#) for purposes of the sales tax. Gross retail income for purposes of the heavy equipment rental excise tax does not include sales tax imposed under [IC 6-2.5](#).

[IC 6-6-15\(3\)\(a\)](#) provides that the heavy equipment rental excise tax is imposed on the *rentals from a location in Indiana and received in Indiana*. Whereas, the personal property tax on personal property was based on the *use of equipment in Indiana*.

Therefore, a rental transaction by a retail merchant located outside Indiana is not taxable, and for a retail merchant in Indiana, the delivery must occur in Indiana (either picked up at the Indiana retail location or delivered to a location in Indiana) for the transaction to be subject to the tax. Subject personal property rented from a location in Indiana, but used outside Indiana, is subject to the heavy equipment rental excise tax. Subject personal property rented and received from a location outside Indiana, but used in Indiana, is not subject to the heavy equipment rental excise tax.

## IX. REGISTRATION

Merchants should register to collect the heavy equipment rental excise tax by visiting the INBiz website at <https://inbiz.in.gov/bos/home/index>. Existing businesses with a sales tax account already open, should add this new tax type to the existing sales tax location through INBiz.

## X. FILING

The heavy equipment rental excise tax adopts the statutory filing requirements of the sales tax (e.g. filing frequency and reporting methods), but the taxes must be filed separately. The heavy equipment rental excise tax is sourced to the heavy equipment rental business location (i.e. origin sourcing). In contrast, the sales tax is sourced based on the location of the rental property (i.e. destination sourcing), thus requiring that the heavy equipment rental excise tax must be reported separately from the sales tax. The origin sourcing of the heavy equipment rental excise tax also precludes the filing of a consolidated heavy equipment rental excise return because the heavy equipment rental excise tax must be distributed to the specific county where the heavy equipment rental business is located.

Merchants must collect the tax from the rental customers and remit the tax collected to the department. Visit DOR's website to learn about electronic filing of the heavy equipment rental excise tax through INTax - DOR's online filing and payment portal.

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Commissioner

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