EQUIPMENT LEASING AND FINANCE ASSOCIATION
1825 K Street NW
Suite 900
Washington, DC 20006
P 202.238-3400
F 202.238-3401
www.elfaonline.org

Texas Dealer's Heavy Equipment Inventory Tax

The Equipment Leasing and Finance Association (ELFA) is expressing increasing concerns about the implementation of Texas House Bill 2476 that amended the Texas Dealer's Heavy Equipment Inventory appraisal for the purposes of personal property tax (PPT) computation and is now defining lease finance companies as dealers. This will require lessors to file and report according to the Texas Dealer's Heavy Equipment Inventory Tax, a very burdensome procedure.

ELFA Concerns

- Leasing companies, including entities that finance a dealer's inventory through flooring finance contracts, are swept into the definition of a dealer.
- Lessors with customers in Texas currently file PPT returns with tax based on equipment cost. This will continue on heavy equipment with added complexities for collecting the advance escrow based on gross receipts and reconciling that to the tax based on cost, with any excess kept by the locality while shortages are billed out to the owner.
- Leasing companies will now file and report according to the Texas Dealer's Heavy Equipment Inventory Tax, which requires:
    - an annual declaration reporting market value (which they define as an average of the monthly inventory sales, leases and rentals from the preceding year); and
    - monthly tax statements including property tax prepayments based on lease payments received during the month.

These payments are put into an escrow and then the county assessor pays the annual tax from the escrow account.

- Number of filings: This changes the property tax filing for heavy equipment ONLY to monthly filing in addition to (not in lieu of) the annual filing for PPT to calculate the annual tax and reconcile the differences due . Taxpayer would still have to file the annual property tax reports for other property. Question remains as to whether the 'heavy equipment' must be segregated from 'other property' and filed on a separate PPT return. For example: if a taxpayer files 150 Texas returns (filed by county), under these new rules, the taxpayer would file over 2,000 returns annually (filed by location) and potentially an additional 150 annual PPT returns for 'heavy equipment' if filed separate from other property.

- This is a paperwork nightmare inasmuch as unit prepaid property tax must be collected on the lease payments as a separate line item, deposited into an escrow account with the county and then reconciled to the annual property tax (calculated in same manner) with any net additional property tax billed to the owner.
    - Billing lessees: A 'property tax factor' (representing 1/12 of the prior year aggregate tax rate) would need to be obtained from the assessor for each asset. That factor would need to be calculated against the rental charge to bill a monthly property tax charge to each lessee. It does not appear that there is an option of an annual PPT charge to the lessee, which would allow a taxpayer to bill the lessee once but remit to the jurisdiction monthly. It would be a nightmare for the taxpayer to upload this in a format to a lease accounting system (A/R).

  - System standards for the equipment long term leasing industry do not include the ability to add multiple tax/fee surcharges to the monthly billing as is currently available in many of the short term vehicle rental systems. Development and testing to implement such new charges are expensive and require lead time.
- Fleet transaction sales are exempt from the unit property tax but fleet transaction leases do not appear to benefit from a like exemption.
- Q&A #11 in the Comptroller's manual states there is no exemption for leases to out-of-state individuals or government. Would this mean that if equipment moves out of Texas in a subsequent year it continues to be subject to this tax?
- It appears no attempt was made to communicate with lessors that had prior heavy equipment filings with the local tax jurisdiction or were listed in the Comptroller's records as a lessor with heavy/industrial equipment. Communications about this new law were sent to existing Heavy Equipment Dealers (those that sell) and to the short-term rental association. Perhaps the intent was only to impact those that both sell as well as lease heavy equipment, but subsequent analysis by the Comptroller's office determined that any business that leases 'heavy equipment' is now subject to this new law.
- Penalties: form indicates a penalty of $500 per month for non-filing. Is this per return? If so, just based on 150 returns, taxpayer would owe a penalty of 150 (return) x $500 (penalty) x 5 (months) = $375,000 at this time. An additional $75,000 penalty accrues for each month of non-filing. There is a 5% penalty for non-payment, with an additional 5% if not paid within 10 days of due date, but it also states that unit property taxes paid by January 31 of the following year are not delinquent. (January 31 is the due date for Texas PPT payments) Can the payments on the monthly filing be remitted once a year before January 31 and still be considered not delinquent?
- Farm equipment & machinery: This exemption is available to our TX lessees but there are other exemptions that the new rules will impact. Property tax exemption for husbandry equipment would be lost on equipment meeting the 'heavy equipment inventory' definition: "self-propelled, self-powered, or pull-type equipment, including farm equipment or a diesel engine, which weighs at least 1,500 pounds and is intended to be used for agricultural, construction, industrial, maritime, mining or forestry uses. The term does not include motor vehicle that is required to be titled under Chapter 501 or registered under Chapter 502, transportation code."
- Conditional Sales and Finance Leases. Perhaps these are excluded but the new law is silent. Can the lessor exclude the conditional sale/finance lease from the gross receipts tax collection but continue to report for PPT calculated on assessed value?

Dennis Brown
Vice President, State Government Relations
Equipment Leasing and Finance Association
Phone: (202) 238-3411
dbrown@elfaonline.org
www.elfaonline.org