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May 12, 2016

Kimberly Lewis Robinson, Esq.
Secretary of Revenue
Louisiana Department of Revenue
617 N 3rd St
Baton Rouge, LA 70802

Dr. James A. Richardson
Director, Public Administration Institute
Louisiana State University
3200 Patrick Taylor Hall
Baton Rouge, LA 70803

Re: Task Force on Structural Changes in Budget & Tax Policy – Comments On Behalf of Members of the Heavy Equipment Rental Industry

Dear Secretary Robinson and Dr. Richardson:

I am writing to you in your capacities as the Co-Chairs of the Task Force on Structural Changes in Budget and Tax Policy (the "Task Force"), which was created pursuant to House Concurrent Resolution No. 11 of the 2016 First Extraordinary Session of the Louisiana Legislature. Thank you in advance for your consideration of these comments, which are provided on behalf of the American Rental Association and members of the heavy equipment rental industry in Louisiana including, but not limited to, United Rentals (North America), Inc., Louisiana Machinery Company, L.L.C., and Bottom Line Equipment, L.L.C.

While legislation passed by the Louisiana Legislature in 2015 and 2016 has impacted the heavy equipment rental industry in numerous ways, this letter will focus on three primary points. First, the recent legislation deviates from long-standing, sound tax policy that treats heavy equipment rental dealers and equipment retail dealers in the same manner for state and local tax purposes. This disparity places heavy equipment rental dealers at a competitive disadvantage and makes doing business in Louisiana less attractive.

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Second, the recent legislative changes impose multiple, additional tax burdens on the heavy equipment rental industry that are not borne by other industries. While the publically-stated goal of the recent legislative changes was to create a "shared sacrifice" among all stakeholders, the recent legislation inflicts an inordinate amount of the new tax burdens on the heavy equipment rental industry. As discussed below, the heavy equipment rental industry was unfairly "sacrificed" by legislation affecting the inventory tax credit and the exclusion from certain state-level sales/use taxes for purchases of tangible personal property for leases or rentals in arm's length transactions.

Third, the recent legislative changes place Louisiana at a competitive disadvantage compared to other states. While Louisiana has moved away from treating heavy equipment rental inventory as inventory for tax purposes, other states are moving in the opposite direction – treating heavy equipment for rental as inventory.[1] This treatment by other states is consistent with the fact that heavy equipment rental dealers and equipment retail dealers should be treated substantially the same for state and local tax purposes.

The Heavy Equipment Rental Industry

The heavy equipment rental industry is unique in that each piece of equipment ultimately will be sold in the regular course of business. The timing of sales of pieces of equipment varies, but the general process is that a piece of equipment will be rented for a period of time and then sold in the regular course of business.

Equipment retail dealers generally purchase pieces of equipment solely for resale to their customers. In many instances, however, customers (*e.g.*, a small, local business) may not be able or willing to purchase a new piece of equipment. For example, a customer (*e.g.*, a start-up business) may not be in a financial position to purchase a new piece of equipment. In this case, the equipment rental industry offers a competitive alternative – rental of the equipment and perhaps a sale at a later date. Or, a customer may want to rent a piece of equipment to test it before it purchases the piece of equipment. Again, the equipment rental industry offers that customer an alternative.

Regardless of the various factual scenarios, a heavy equipment rental dealer generally will sell all of its inventory of equipment in the regular course of business. As such, heavy equipment rental dealers and retail equipment dealers are competitors in the marketplace; they just make their sales in a slightly different way. For this reason, many states (including Louisiana prior to the 2016 1st Special Session), treat both types of dealers the same for tax

[1] Attachment 1 shows how Louisiana is out of step with other states in the way it taxes the heavy equipment rental industry in Louisiana. For example, as discussed below, in 2015 the Louisiana Legislature amended the law to eliminate heavy equipment rental inventory from the definition of "inventory" for purposes of the Louisiana inventory tax credit. Other states, such as Missouri and Wisconsin, recently took the opposite approach and specifically included heavy equipment rental inventory in the applicable definitions of "inventory."

purposes. This is established, sound tax policy. Louisiana has now abandoned the sound policy and placed the heavy equipment rental industry at a competitive disadvantage. At the same time, Louisiana has now placed itself at a competitive disadvantage compared to other states.[2]

Suggested Legislative Changes to Restore Sound Tax Policies and Eliminate Competitive Disadvantages

In order to eliminate or reduce the disparity in the taxation of the heavy equipment rental industry, return Louisiana to a competitive posture, and restore long-standing, sound tax policies, members of the heavy rental equipment industry respectfully suggests that the Task Force include the following recommendations in its report:

1. Treat heavy equipment rental inventory as inventory for Louisiana *ad valorem* property tax purposes and for purposes of the Louisiana credit for property taxes paid on inventory, as provided in La. R.S. 47:6006 (as it was prior to its amendment in the 2016 1st Special Session).

2. Fully restore the Rental Exclusion, as defined below, so that purchases of heavy equipment for rental in arm's length transactions are excluded from all state-level sales/use taxes.

The First "Shared Sacrifice" of the Heavy Equipment Rental Industry – Repeal of the Inventory Tax Credit

The first "shared sacrifice" imposed on the heavy equipment rental industry by the Louisiana Legislature is the complete elimination of the inventory tax credit in La. R.S. 47:6006 (the "ITC"). Unlike many states, inventory is subject to local property taxes in Louisiana. This property tax scheme places Louisiana at a competitive disadvantage to other states. In order to eliminate this competitive disadvantage, the Legislature enacted the ITC many years ago.

Under prior law, the excess of the amount of the ITC over the taxpayer's Louisiana corporation income/franchise tax liability (the "Excess ITC Credit") was fully refundable to the taxpayer. Under the law as amended by Act 133 of the 2015 Regular Session of the Louisiana Legislature ("Act 133"), the Excess Credit continues to be fully refundable if the total amount of *ad valorem* property taxes paid by the taxpayer to all political subdivisions is less than $10,000. If the total amount of property taxes paid to all political subdivisions is $10,000 or more, 75% of the Excess Credit is refundable to the taxpayer and the remaining 25% of the Excess Credit is carried forward for a period not to exceed five years. This treatment applies to both retail equipment dealers and heavy equipment rental dealers. If this were the only change made by the Legislature with respect to the ITC, retail equipment dealers and heavy equipment rental dealers would be treated the same, which is consistent with sound tax policy.

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[2] Attachment 2 is a comparison of how various states treat rental equipment inventory.

But the Legislature was not satisfied with the sacrifice by the heavy equipment rental dealers, so it enacted Act No. 415 of the 2015 Regular Session ("Act 415"), which completely eliminates the ITC for most, if not all, heavy equipment rental dealers. Act 415 does not affect retail equipment dealers. Thus, heavy equipment rental dealers in Louisiana are placed at a competitive disadvantage as compared with retail equipment dealers. In addition, the clock has been turned back to the days when Louisiana was at a considerable competitive disadvantage when compared with other states that do not levy property taxes on inventory.

In order to restore sound tax policy and eliminate competitive disadvantages, members of the heavy equipment rental industry respectfully requests that the Task Force recommend to the Louisiana Legislature that it amend La. R.S. 47:6006 to include heavy equipment rental inventory in the definition of "inventory" and thus restore the ITC for heavy equipment rental dealers.[3]

The Second Shared Sacrifice of the Heavy Equipment Rental Industry - Triple Sales/Use Taxation of Equipment Rental Transactions

The second "shared sacrifice" imposed on the heavy equipment rental industry by the Louisiana Legislature is the partial suspension/repeal of the sales/use tax exclusions in La. R.S. 47:301(10)(a) and La. R.S. 47:301(14)(a)(the "Rental Exclusion"), which exclude from state and local sales and use taxes sales and uses, respectively, of tangible personal property for lease or rental in arm's length transactions. The Rental Exclusion was enacted in the 1990's to implement established, sound tax policy, which already was in place in most other states that levy a sales/use taxes.[4] Enactment of the Rental Exclusion also placed Louisiana in a better competitive position with other states by eliminating the double taxation of purchases and importations of rental equipment. The Rental Exclusion also resulted in the same sale/use tax scheme for both equipment retail dealers and equipment rental dealers.

[3] There are other options for eliminating the discriminatory treatment of equipment rental dealers with respect to property taxes on inventory. A discussion of these other options is beyond the scope of this letter, but we would be happy to address them with the Task Force if necessary.

[4] Louisiana is unique in the way it treats lease/rental transactions for sales/use tax purposes. Most states that impose a sales/use tax define the term "sale" to include the lease or rental of tangible personal property. As such, the purchase of a piece of rental equipment for lease or rental is excluded from sales/use tax because the transaction is treated as a non-taxable "sale for resale." Thus, in most other states, purchases of equipment for resale and purchases of equipment for lease or rental are treated the same – as non-taxable transactions. This is established, sound tax policy.

Act No. 25 of the 1st Special Session ("Act 25")[5] suspends/repeals the Rental Exclusion. Prior to April 1, 2016, purchases and importations of pieces of heavy equipment for lease or rental in arm's length transactions were excluded from all state and local sales and use taxes pursuant to the Rental Exclusion.[6] Pursuant to Act 25, such purchases (and importations) now are subject to a 4% state-level sales/use tax through June 30, 2016. From July 1, 2016 through June 30, 2018, the same transactions will be subject to a 2% state-level sales/use tax. After June 30, 2018, the same transactions again will be fully excluded from state-level sales/use taxes, thus restoring sound tax policy and eliminating competitive disadvantages to equipment rental dealers and the State of Louisiana.

While the administration-backed Act No. 26 of the 1st Special Session ("Act 26") follows sound tax policy and maintains the Rental Exclusion with respect to the new 1% sales/use tax levied pursuant to La. R.S. 47:321.1, Act 26 turns the clock back many years to recreate unsound tax policy, place Louisiana at a competitive disadvantage, and place heavy equipment rental dealers in Louisiana at a competitive disadvantage. In addition, under the new law, heavy equipment rental transactions (purchases, rentals and sales) are now subject to triple taxation! The initial purchase (or importation) of a piece of heavy equipment for lease or rental in arm's length transactions is now subject to a partial state-level sales/use tax. Taxable rentals of the same piece of equipment are subject to a 5% sales tax on the gross proceeds of the rentals. Finally, when the heavy equipment rental dealer sells the piece of equipment, it is subject to another sales tax. Triple taxation![7]

Members of the heavy equipment rental industry respectfully request that the Task Force recommend that the Louisiana Legislature fully restore the Rental Exclusion at the earliest possible time and applicable to the earliest possible date. This will restore sound tax policy, place heavy equipment rental dealers on the same footing with its competitors, and eliminate a competitive disadvantage for the State of Louisiana.

Thank you for your consideration of the requests of the equipment rental industry and please do not hesitate to contact me if you have any questions or comments.

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[5] Act No. 25 began as House Bill No. 61 by Rep. Morris. Act 25 is not the administration-backed legislation relative to "scrubbing" certain sales/use tax exemptions and exclusions in order to raise taxes. The administration-backed bill, House Bill No. 62 by Rep. Jackson, which became Act 26 of the 2016 1st Special Session, does not affect the Rental Exclusion, thus maintaining long-standing, sound tax policy at least with respect to the new 1% sales/use tax enacted by Act 26.

[6] The Rental Exclusion also applies to the importation of pieces of rental equipment into Louisiana for rental in arm's length transactions. Under prior law, heavy equipment rental dealers could transfer a piece of equipment from a store in another state to a store in Louisiana for rental to a customer in Louisiana. The importation and use of the piece of equipment in Louisiana was not subject to state or local use tax.

[7] This analysis does not include local property taxes on the equipment rental inventory, which adds yet another level of taxation on the heavy equipment rental industry. No other industry has the pleasure of sharing so much tax sacrifice.

With kindest regard,

Sincerely,

Bill

William M. Backstrom, Jr.

WMB,JR/gmj
Enclosures

LOUISIANA'S TAX SYSTEM:

DISADVANTAGING THE EQUIPMENT RENTAL INDUSTRY

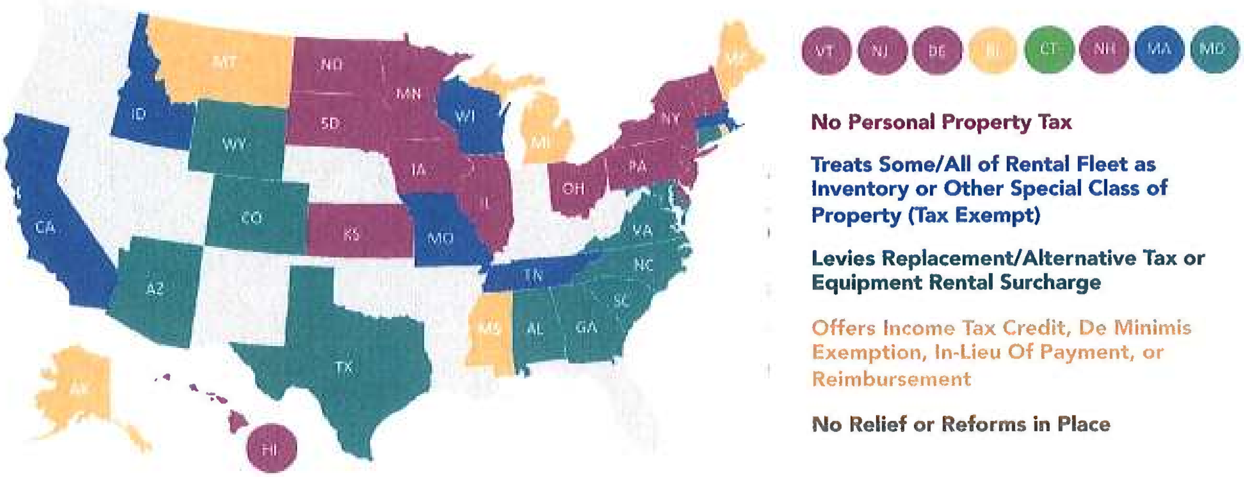
The equipment rental industry is at a disadvantage in Louisiana—more so than in any other state. The heavy equipment rental industry is unique in that each piece of equipment will ultimately be sold (meaning it is inventory for resale). In most states, the fleet is deemed inventory and exempt from business personal property taxes, or the state has some type of reforms in place to reduce or eliminate the burden of the tax.

This isn't the case in Louisiana. Several recently-enacted provisions directly harm the industry:

- In the 2015 regular session, Louisiana disallowed the industry from utilizing the inventory tax credit with HB 664 (while other industries can still claim the credit).
- In the 2016 special session, a new tax on the industry was imposed by eliminating the exemption against equipment purchased to be leased with HBs 61 and 62 (causing triple taxation under the sales tax).

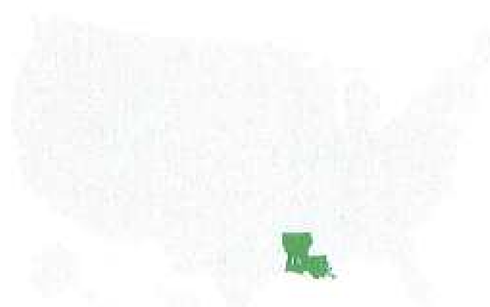
LOUISIANA'S INVENTORY TAX: OUT OF STEP WITH OTHER STATES

Louisiana is one of only 14 states that taxes business personal property and/or inventory and doesn't provide any other form of relief to taxpayers subject to this onerous and administratively expensive tax. Further, most states in the region are actively considering reforms, putting Louisiana even farther behind (Arkansas, Indiana, Kentucky, Oklahoma, West Virginia). States with no tax or reforms currently in place are denoted in color on the map below (see key for detailed explanations).



LOUISIANA: THE ONLY STATE THAT TRIPLE TAXES

In addition, Louisiana is the only state in which the same equipment is taxed three times before it is ultimately sold. Businesses pay sales tax when the equipment is first purchased for the purposes of renting it out. Second, sales tax is collected on the transaction when the equipment is rented to a customer. Finally, sales tax is collected when the equipment is sold.



TREATMENT OF RENTAL EQUIPMENT INVENTORY

- 14 States do not impose a personal property tax on any industry/business. (DE, HI, AI, IL, KS, MN, ND, HN, NJ, NY, OH, PA, SD, VT)
- 8 States provide a partial/full exemption for rental equipment inventory. (AK, CA, ID, MA, MO, MT, TN, WI)
- 5 States authorize a recovery fee to be collected and used to pay the personal property tax on rental Equipment inventory. (AL, AZ, CT, GA, SC)
- 6 States exempt the rental equipment inventory from personal property tax and impose a replacement rental tax instead. (CO, MD, NC, TX, VA, WY)
- 2 States reimburse equipment rental companies for the personal property tax paid on the equipment rental inventory. (ME & MS) *(LA-Prior to 2016).*
- 8 State are considering reforms to address the unique nature of equipment rental and the taxing of equipment rental inventory (AR, IN, KY, LA, MI, OK, OR, WY).
- 7 States currently have no plans to consider reforms for the equipment rental inventory.

Of the 9 states that currently impose a local property tax on inventory, 4 have put reforms in place to address rental equipment inventory (GA, TX, VA, and MS). ***Of the 5 remaining states, all but LA are considering reforms (AR, KY, OK, and WV).***

SPECIFIC AD VALOREM TAX REFORMS PUT IN PLACE BY VARIOUS STATES

1.) Define equipment rental inventory as a special class of inventory and exempt it from personal property tax.

2.) Define equipment rental inventory as special class of inventory, eligible to receive a state income tax credit for ad valorem taxes paid on inventory.

3.) Define equipment rental inventory as a special class of inventory, exempt it from personal property tax, and replace it with a new tax (rental/gross receipts).

4.) Authorize a recovery fee to be collected on rental transactions that will be used to pay the annual ad valorem tax on the rental equipment inventory.