MARYLAND SB 685 IMPLEMENTATION OVERVIEW

Maryland SB 685 ("Act" or "SB 685") was enacted on April 12, 2010 and signed into law by Governor O'Malley on May 4, 2010. The new law imposes a 2% gross receipts tax on the short-term lease or rental of heavy equipment property, and at the same time exempts that same property from local personal property tax impositions. An end of year true-up process is included in the legislation to ensure that local government revenue is not negatively impacted by this legislation. Key dates and special issues related to implementation of this law, which goes into effect on December 31, 2010, are discussed below.

Rental businesses must determine whether they are qualified to exercise this exemption. In order to do so, it must receive the largest segment of its total receipts from the short-term leases or rentals of heavy equipment and be defined under Code 532412 of the North American Industry Classification System as published by the U.S. Census Bureau. The actual property exempted must meet the definition of heavy equipment property as defined in § 9-609(D)(5) of the Political Subdivisions Article.

1. Key Dates for Businesses to Remember

Although the Act becomes effective on December 31, 2010, many key provisions do not take effect until later dates:

- **Fall of 2010**

  Short term rental businesses should prepare for the transition to the gross receipts tax. Specifically, each business should determine which properties will be subject to the short-term rental gross receipts tax and exempt from the business personal property tax. If a business is located where both the county and the municipality collect personal property tax separately, the business should contact both offices to discuss how each jurisdiction plans to handle the gross receipts tax collection. In addition, any business in a locality with a county and municipal personal property tax will need to determine the proportion of the collected gross receipts tax that will be remitted to the county and the municipal corporation. For example, if the county has a rate of 2.18 and the municipality has a rate of 1.5, the percentage of total tax collected during any period that should be remitted to the municipality is:

  $$1.5/(2.18+1.5) \ \text{X} \ 100\% = 40.76\%$$

- **Spring, 2011 and subsequent years.**

  Short term rental businesses should submit a list of exempt properties to the appropriate county or municipal corporation office no later than July 31 of each year starting in 2011. This list must include each exempt property, its original cost, and date of acquisition of that property.

The business should file its normal return with the state, except that the exempt property will not be included under Form 1. However, the total dollar amount of exempt property should be included on line 11, Form 4B. This should ensure that the business will not be assessed for personal property tax on that property in the upcoming property tax year.

- **July 1, 2011**

  The personal property tax exemption for heavy equipment property that is subject to the gross receipts tax is effective July 1, 2011 and continues in subsequent calendar years.

- **July 1, 2011 – December 31, 2011 – Transition period**

  The Act refers to this date range as the "initial period." This is a period in which the calculations for the end of year true-up process are modified to account for only collecting the gross receipts tax for a half year.

  The provisions of Section 3 of the Act become effective on July 1, 2011, but are only applicable during the initial period, thus expiring after December 31, 2011. These Section 3 provisions are designed to provide a fair transition from the personal property tax obligation. During the initial period, the definitions of "gross receipts shortage" and "gross receipts surplus" are modified so that they equal one-half of the annual personal property tax, calculated according to Article 24, section 9-609(d)(2), less the gross receipts tax remitted under Article 24, section 9-609(c). Thus, at the end of this initial period, the true-up process will only consider half of the personal property tax that would have been paid relative to the full amount of gross receipts tax remitted during the six-month period. After December 31, 2011, the definitions of "gross receipts shortage" and "gross receipts surplus" revert to the definitions contained in Section 1 of the Act and are derived based on the full year of calculated personal property tax and remitted gross receipts tax. The effect of this transitional period is that the taxpayer will remit personal property tax for the first half of the year 2011, gross receipts tax for the second half of the year 2011, and any gross receipts shortage for the second half of the year.

- **October 31, 2011**

  3rd quarter rental tax return due with remittance to the proper County or Municipal Corporation office.

- **January 31, 2012**

  4th quarter rental tax return due with remittance to the proper County or Municipal Corporation office.

- **February 28, 2012 and subsequent years**

  The county or municipal corporation must provide a statement to each taxpayer who remits the gross receipts tax under Section 1 by February 28 of each tax year. This statement shall include the total gross receipts tax remitted during the previous tax year and the gross receipts shortage or surplus as defined in Section 1 and Section 3 (in 2011 only) of the Act. If a gross receipts shortage exists, the county or municipal corporation must also include a bill for the amount of gross receipts shortage payable by the taxpayer on or before March 31 of each year.

- **March 31, 2012 and subsequent years**

  Rental Companies remit payment for the amount of any gross receipts shortage to the County or Municipal Corporation.

- **April 30, 2012 and each April thereafter**

  1st quarter rental tax return due with remittance to the proper County or Municipal Corporation office.

- **July 31, 2012 and each July thereafter**

  2nd quarter rental tax return due with remittance to the proper County or Municipal Corporation office. Short term rental businesses should submit a list of exempt properties to the appropriate county or municipal corporation office. This list must include each exempt property, its original cost, and date of acquisition of that property.

The Gross Receipts Tax on Heavy Equipment Rentals – Answers to Questions

Is heavy equipment rental property exempt from Maryland personal property taxes?

No. However, rental businesses may claim an exemption on qualified heavy equipment rental property and collect and remit gross receipts tax in place of the personal property tax. Under this new law, the rental business must provide a list of heavy equipment rental property to the County and/or Municipality where the business branch is located at the beginning of each year. The business will collect the gross receipts tax on all proceeds from the rental of this equipment and remit quarterly. At the end of the year, the County and/or Municipality will provide a statement to each rental business which will show the total gross receipts tax remitted and the amount of business personal property tax the business would have owed if the heavy equipment rental property were subjected to the personal property tax. If the gross receipts remitted is less than the calculated personal property tax, the County or Municipality will include a bill for the amount of shortage. The rental business will therefore make up any gross receipts shortage relative to what it would have owed in personal property tax on that heavy equipment.

How do I know if I'm required to collect this gross receipts tax?

The legislation requires entities to meet certain provisions before it is subject to the gross receipts tax. The entity must:

- receive the largest segment of its total receipts from short-term leases or rental of heavy equipment property; and

- be described under Code 532412 of then North American Industry Classification System as published by the United States Census Bureau.

A short term lease or rental is a lease or rental of heavy equipment property for a period of 365 days or less.

One other important consideration is whether the taxing jurisdiction in which your business resides has a personal property tax. Where there is no personal property tax, the gross receipts tax should not be collected in such jurisdiction as there is no personal property tax to be replaced.

What equipment should I collect the gross receipts tax on?

Heavy equipment property is defined in the statute as "construction, earthmoving, or industrial equipment that is mobile including any attachment for the heavy equipment." It includes a self-propelled vehicle that is not designed to be driven on a highway, and industrial electrical generation equipment, industrial lift equipment, industrial material handling equipment, or other similar industrial equipment. Any equipment that must be registered and titled should not be treated as heavy equipment property under this statute and the gross receipts tax should not be applied to any receipts from the rental of such equipment.

Although the statute does not provide a weight limit, the ARA recommends that only equipment weighing over 500 pounds should be considered heavy equipment for the purposes of this legislation. This restriction does not apply to any attachments rented for use with other heavy equipment property. If the attachment is designed to attach to equipment which meets the definition of heavy equipment property and weighs 500 lbs or more, that attachment should be taxed in the same way that the heavy equipment property is taxed.

What does "mobile" mean in the definition of "heavy equipment property?"

In the legislation enacted this past spring, Maryland SB 695, "heavy equipment property" is defined as "construction, earthmoving, or industrial equipment that is mobile including any attachment for the heavy equipment." Questions have arisen since the bill's enactment regarding the meaning of "mobile" in this definition. For the purposes of determining which property will be exempt from personal property tax and subject to short term rental property gross receipts tax, the following definition of "mobile" should be used:

"Mobile" heavy equipment property is any heavy equipment which is not intended to be permanently affixed to real property for the purpose of using the equipment for its intended use. Mobile heavy equipment is intended to be moved among work sites as needed. In addition, mobile heavy equipment may also include, but is not limited to, equipment which is not designed for the transportation of persons or property upon a highway and only incidentally operated or moved over a highway.

Are government agencies exempt from this tax?

No. The gross receipts tax is meant to replace the business personal property tax imposed by counties and municipalities. The gross receipts tax would be due even if the property was rented to government entities all year long. Also, exemptions from tax must be expressly granted by the legislature. If tax is not collected from government agencies, the rental company may well have to remit additional funds at the end of the year to make up for those uncollected gross receipts.

Individuals working for government entities may expect the rental transaction to be exempt from the gross receipts tax because they enjoy an exemption from the state sales and use tax. Please explain to these individuals that the gross receipts tax on heavy equipment rentals is not part of the sales and use tax imposition and the exemptions that apply to sales and use taxes do not apply to this gross receipts tax.

Which county or municipality do I remit this tax to?

The gross receipts tax is an origin-based tax. Therefore, you should collect this tax and remit it according to the county or municipality in which your rental branch is located. If you operate multiple branches, you will collect and remit to each county or municipality in which you have branch locations.

How do I report the personal property subject to the gross receipts tax on the annual Maryland personal property return?

The Maryland personal property return consists of the Form 1 and the Form 4. Form 4 includes a balance sheet (4A) and a depreciation schedule (4B) and includes all property owned by an entity. Form 1 provides multiple line items for taxable personal property. Although the personal property subject to the gross receipts tax will not appear on the Form 1, total dollar amount of exempt personal property must be identified on line 11 (exempt property), Form 4B.