Heavy Equipment Special Inventory Frequently Asked Questions

1. **What is Heavy Equipment?**
   For the purpose of Dealer Inventory, Section 23.1241 (a)(6) defines Heavy Equipment as any item of equipment that is self-propelled, self-powered, or pull-type equipment, including farm equipment or a diesel engine, that 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 an item of heavy equipment that is required to be titled under Chapter 501 or registered under Chapter 502, Transportation Code. The term includes items of heavy equipment that are leased or rented. A sale is considered to occur when possession of an item of heavy equipment is transferred from the dealer to the purchaser.

2. **Is anyone who sells, leases or rents heavy equipment a dealer? Or must the person be "engaged in the business in this state of selling, leasing or renting heavy equipment"?**
   Section 23.1241(a)(1) defines "dealer" as a "person engaged in the business in this state of selling, leasing, or renting heavy equipment." Note: An appraisal district can check to see if the person has a Texas sales tax permit. A dealer engaged in business in Texas that sales or leases heavy equipment must be permitted to collect state and local sales tax since these are taxable transactions for sales tax purposes.

3. **If you are a heavy equipment dealer, do you still have to render under Chapter 22?**
   Yes, a heavy equipment dealer is required to render all tangible personal property used for the production of income, as required by Section 22.01, Tax Code. See also Section 23.1241(d) that addresses personal property held by a dealer and a dealer who sells predominately to other dealers. The more difficult question here is not whether they are required to render, but whether they are required to render the inventory that is otherwise appraised under Section 23.1241. It seems that chief appraisers have not been requiring those dealers to render their inventory, but have been considering the declaration they are required to file to meet the rendition requirement. Nonetheless, there is nothing specific in the Tax Code which exempts inventory owners from the rendition requirements.

4. **Can we treat all attachments sold or rented with heavy equipment as heavy equipment?**
   Yes, the heavy equipment and attachments are sold or rented as one transaction with a total sales price.

   If a dealer sells an attachment as a separate transaction and that attachment does not meet the definition of heavy equipment, then it is not part of the dealer's heavy equipment inventory. The part may be part of the dealer's other personal property inventory. Some dealers have parts departments that the dealer renders and the appraisal district appraises as regular inventory under Tax Code Section 23.12.

5. **Is a dealer who does not owe property tax because the dealer was not in business on Jan. 1 prohibited from assigning a unit property tax apply only to sales or sales, leases and rentals?**
   Section 23.1242(g) addresses a dealer who owes no heavy equipment inventory tax for the current year because the dealer was not in business on January 1. The dealer files the monthly statements each month that the dealer is in business. Section 23.1242(g)(2) states that the dealer may not assign a unit property tax to an item of heavy equipment sold by the dealer or remit money with the statement. It appears that the Legislature failed to correct the language in this subsection to reflect changes to include leases or rentals.

   An exception is Section 23.1242(k) that addresses a person who acquires another dealer's business and has a contract to pay the selling dealer's inventory taxes.

6. **Does the requirement that "the owner of the equipment shall state the amount of the unit property tax assigned as a separate line item on an invoice" apply to sales?**
   Changes to Section 23.1241(b) includes this new sentence: "The owner of the equipment shall state the amount of the unit property tax assigned as a separate line item on an invoice." The paragraph in which this new sentence is found addresses both sales and lease/rental transactions. This line item should appear on all invoices.

7. **How are lease/rental agreements effective 2012 treated?**
   The dealer's inventory value for tax year 2012 is based on the total sales and leases/rentals for the preceding tax year (January – December 2011). Those will be reported on the Dealer's Heavy Equipment Inventory Declaration. The form provides that the dealer who was not in business for the entire 12-month period reports the months in business.

   For each month of 2012, the Dealer's Heavy Equipment Inventory Tax Statement will list each sale, lease or rental during that month. For these sales, leases and rentals, the dealer will report the unit property tax for that heavy equipment.

8. **Do the exclusions for fleet transactions, sales to dealers, and subsequent sales apply to leases and rentals?**
   No, these exclusions all deal with sales of heavy equipment; therefore, they do not apply to leases and rentals. Please note that the definition of "subsequent sale" includes: "The term does not include a rental or lease with an unexercised purchase

option or without a purchase option." Leased or rented equipment in which the lessee/renter has exercised a purchase option changes that leased/rented equipment to a sale.

9. **Is sales tax included in the sales price of heavy equipment or in the monthly lease or rental payment, as applicable?**
   Yes, the sales price includes the sales tax. The sales price of heavy equipment is defined in Section 23.1241(a)(7), Tax Code, as "total amount of money paid or to be paid to a dealer for the purchase of an item of heavy equipment" or "for a lease or rental with an option to purchase, the total amount of the lease or rental payments plus any final consideration, excluding interest." The sales price ***includes*** the sales tax since it is part of the "money paid or to be paid to a dealer" for the purchase of the heavy equipment.

10. **Can previous lease and rental payments be deducted from the cost of a piece of heavy equipment being sold?**
    Any interest payment can be deducted. Section 23.1241(a)(7) states that the sales price is the "total amount of the lease or rental payments plus any final consideration, excluding interest."

    For purposes of the annual declaration used to determine the property tax on the market value of a dealer's inventory, Section 23.1241(b-1) provides that the sales price of an item of heavy equipment that is sold during the preceding year is considered to be the sum of the sales price for the item plus the total lease and rental payments received for the item in the preceding tax year.

11. **Should the cost of warranties in the sales price of heavy equipment be included before applying the unit property tax?**
    It depends on how the transaction is written. If the cost of warranties is set up as a separate transaction, then it is not part of the sales price of the heavy equipment. If, however, the cost of warranty is part of the single transaction in the purchase of the heavy equipment, then that cost is included as part of the sales price since it is part of the "money paid or to be paid to a dealer" for the purchase of the heavy equipment.

12. **Can excess funds in the escrow account after all property taxes have been paid to the appropriate taxing units be carried over to the next tax year?**
    No, no excess funds are carried over to the next tax year. Section 23.1242(j) provides that no later than February 15, the tax collector "shall distribute to each appropriate taxing unit ... all funds collected under authority of this section and held in escrow ...." In other words, funds deposited during the 2011 calendar year are used to pay the heavy equipment dealer's 2011 tax bill on the dealer's inventory; the tax collector distributes the deposited funds to the taxing units on or before January 31, 2012 and then any remaining in the account by February 15, 2012. No funds are carried forward to pay the next year's tax bill.

    A new provision allows a heavy equipment dealer to apply for a refund of prepaid taxes on a sale that is a fleet transaction (sale of five or more items of heavy equipment in one calendar year). This is the only provision for returning money in an escrow account to a heavy equipment dealer.

13. **If the same auction house is used by a company to sell all of its used equipment, is this considered a fleet sale?**
    If the dealer is selling the used equipment to the auction company and sells five or more items in one calendar year, then the dealer reports those sales as "fleet transactions." The auction company reports its sales as a dealer selling heavy equipment. In some cases, however, an auction company is not taking ownership of the heavy equipment but is handling the sales transaction for the dealer. So, the final answer will depend on the arrangements between the dealer and the auction company.

14. **How do I get a refund for unit property tax paid on a sale that has become a "fleet transaction"?**
    All sales included in the sale of 5 or more vehicles to the same buyer within one calendar year become "fleet transactions". A dealer may apply to the chief appraiser to determine eligibility of a refund of unit property tax paid to the county on a sale that is a fleet transaction. A property owner may protest a chief appraiser's determination of eligibility for a refund under Tax Code Section 23.1243 to the appraisal review board not later than the 30th day after the date the chief appraiser's refund eligibility is delivered to the property owner. An ARB determination on the eligibility of a refund may be appealed in district court.