



## **Equipment Lessors To Collect California E-Waste Fee**

Under legislation enacted in 2003 (SB 20, Sher, Chapter 526, Statutes of 2003) equipment lessors must collect an electronic waste recycling fee when leasing a Covered Electronic Device (CED) in California. On August 27, 2004, the California Legislature approved Senate Bill 50, which would make the effective date for commencing collection as January 1, 2005. Senate Bill 50 will become effective upon signature of the Governor. A successful veto would move the effective date into 2004.

To view a copy of SB 50 or other bills go to: <http://www.leginfo.ca.gov/bilinfo.html> Scroll down to "Search by" and select the "Bill Number" option as your choice for a search. Put "SB 50" in the box and click on the Search button.

Assuming Senate Bill 50 is signed by California Governor Arnold Schwarzenegger, ELA will schedule the third in a series of conference calls with state officials responsible for implementation of the California electronic waste recycling fee. Details will be announced in the regular email reports sent to ELA members that have requested them. If you are an ELA member that is not already receiving these periodic updates but wish to obtain them in the future, please send your name along with that of your company and mailing address in a request to [dbrown@elamail.com](mailto:dbrown@elamail.com)

### **Precaution**

The information provided below is primarily taken directly from Senate Bill 50. Regulations and implementation measures announced in the coming weeks and months by the Board of Equalization and California Environmental Protection Agency (CalEPA) could modify interpretations gained from simply reading this adaptation of legislative text. This is not a legal document and is not intended as a guide to implementation. It will however give you a sense of legislative goals and a preview of the focus to be taken by implementation directives soon to come from state government.

### **Who Collects The Fee?**

Equipment lessors are included in the definition of a retailer responsible for fee collection with "Retailer" officially defined as a person who makes a retail sale of a new or refurbished covered electronic device. The retailer shall separately state the covered electronic waste recycling fee on the receipt given to the consumer at the time of sale. "Retailer" includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or the Internet, or any other similar electronic means.

### **When Is The Fee Due?**

The text of Senate Bill 50 authorizes a covered electronic waste recycling fee that shall be due and payable quarterly on or before the last day of the month following each calendar quarter. The payments shall be accompanied by a return in the form as prescribed by the State Board of Equalization, including, but not limited to electronic media. Recycling fees collected by retailers/lessors are to be deposited in an Electronic Waste and Recovery and Recycling Account established by the state in the Integrated Waste Management Fund. There is an Electronic Waste Penalty Subaccount to which will be deposited all fines or penalties collected under the law.

### **Legislative Intent Versus Marketplace Realities**

As implementation of the new recycling program unfolds the executive branch of state government, primarily the California Environmental Protection Agency (CalEPA) and Board of Equalization will strive to put into effect the intent of legislative drafters. This is where marketplace reality encounters the vision of elected officials.

An example of the implementation burden facing state government is a provision declaring a person shall not sell a new or refurbished covered electronic device to a consumer in California if the state determines that the manufacturer of that covered electronic device is not in compliance and unless the device is labeled with the name of the manufacturer or the manufacturer's brand label, so that it is readily visible. This is a challenging directive placed on the state bureaucracy to issue proclamations making obligations under the law clear to a nationwide audience that in large measure is unaware of this new recycling program. It explains why this posting is only an advisory. Regulations interpreting the law could significantly vary from your understanding of Senate Bill 20, Chapter 526, Statutes of 2003 and Senate Bill 50, assuming it is signed by the Governor.

### **What Equipment Is Covered?**

Covered Electronic Device (CED) means a video display device containing a screen greater than four inches, measured diagonally that is identified in the regulations adopted by the department. Covered Electronic Waste or Covered E-Waste means a covered electronic device that is discarded.

Covered electronic device does not include a video display device that is a part of a motor vehicle, as defined in Section 415 of the Vehicle Code, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle; a video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment; a video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air

purifier, or an electronic device on and after the date that it ceases to be a covered electronic device.

### **How Much Do I Collect?**

A retailer may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee. A consumer shall pay a covered electronic waste recycling fee upon the purchase of a new or refurbished covered electronic device, in the following amounts:

(1) Six dollars (\$6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.

(2) Eight dollars (\$8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.

(3) Ten dollars (\$10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

Beginning in 2005, and, thereafter, no more frequently than annually, and no less frequently than biennially, the state shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program. At that time the fee is expected to increase, perhaps significantly.

### **Temporary Storage Exemption**

"Retail sale" does not include the sale of a covered electronic device that is temporarily stored or used in California for the sole purpose of preparing the covered electronic device for use thereafter solely outside the state and that is subsequently transported outside the state and thereafter used solely outside the state.

### **Manufacturer Notification**

Senate Bill 50 requires a manufacturer to inform the retailer if a covered electronic device is subject to the waste recycling fee. The notice shall identify the electronic device, and shall inform the retailer that the electronic device is a covered electronic device and is subject to a fee. In addition, a manufacturer shall notify each retailer, to which that manufacturer has sold a covered electronic device that the device has been determined to be nonhazardous and is no longer subject to a covered electronic recycling fee. Among baseline reports to be submitted is a list of those retailers to which the manufacturer provided a notice in the prior 12 months. A manufacturer shall also send a copy of notices to the State Board of Equalization. Equipment lessors are cautioned that the clarity of a notification may be open to opinion. It is another instance where guidance published by state government could appreciably impact your ability to obtain realistic notification.

## **Penalties**

Notwithstanding stated exceptions, a fine or penalty shall not be assessed on a retailer who unknowingly sells, or offers for sale, in California a covered electronic device for which the covered electronic waste recycling fee has not been collected or paid, if the failure to collect the fee was due to the failure of the State Board of Equalization to inform the retailer that the electronic device was subject to the fee. Any fines or penalties collected shall be deposited in the Electronic Waste Penalty Subaccount to be expended only upon appropriation by the Legislature. The ability to decipher a notification could be a major factor when facing the issue of penalties.

## **What Is An Electronic Waste Recycler?**

Covered Electronic Waste Recycler or Covered E-Waste Recycler means a person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of reuse or recycling; a person who changes the physical or chemical composition of a covered electronic device, in accordance with the requirements of the law and the regulations adopted, by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for purposes of segregating components, for purposes of recovering or recycling those components, and who arranges for the transport of those components to an end user or a manufacturer who meets any conditions established by selected chapters of Division 20 of the Health and Safety Code for the collection or recycling of covered electronic waste.

## **Payments to Collectors, Recyclers and Manufacturers**

Regulations implementing payments will be an increasing area of attention in Sacramento. This advisory merely reiterates statutory language to provide a glimpse of the general path to be taken. State government shall establish an electronic waste recovery payment schedule for covered electronic wastes generated in California to cover the average net cost for an authorized collector to operate a free and convenient system for collecting, consolidating and transporting covered electronic wastes generated in California.

Until the Board adopts a new payment schedule that covers the average net cost for an electronic waste recycler to receive, process, and recycle each major category, as determined by the board of covered electronic waste received from an authorized collector, the amount of the covered electronic waste recycling payment shall be equal to twenty-eight cents (\$0.28) per pound of the total weight of covered electronic waste received from an authorized collector and subsequently processed for recycling.

A covered electronic waste recycler shall make the electronic waste recovery payments to an authorized collector upon receipt of a completed and verified invoice submitted to the recycler by the authorized collector in the form and manner determined by the board. An

e-waste recycler is eligible for a payment only if the e-waste recycler is in compliance with applicable requirements outlined in detail within Senate Bill 50.

The state will establish an electronic waste recycling payment schedule to cover an e-waste recycler's net cost of receiving, processing, and recycling covered electronic waste including supplemental electronic waste recovery payments to an authorized collector, as specified. The law also authorizes payment to a manufacturer who takes back covered electronic waste from a consumer in California. This could be a payment to a manufacturer that takes back a covered electronic device from a consumer in California for purposes of recycling the device at an out of state a processing facility.

### **What Is Refurbished Equipment?**

The term Refurbished when used to describe a covered electronic device, means a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished.