



Testimony  
L.B. 190  
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I appreciate this opportunity to present testimony on behalf of the Equipment Leasing Association (ELA) on L.B. 190 that would levy a five dollar fee on the sale or lease of new electronic equipment, initially cathode ray tube (CRT) equipment. ELA members engage in business-to-business transactions financing equipment and would be fee collectors under this bill drafted on a consumer retail model designed for wastes from households rather than the commercial sector in which our members operate.

ELA presents outcomes oriented testimony developed after examining the electronic waste fee experience and proposals in other states. From this assessment ELA leadership adopted a policy that provides flexibility to work with states within basic principles under which the association could endorse and support legislation that rectifies problems currently faced. L.B. 190 does not provide the uniformity and simplicity needed for our endorsement but we outline below basic principles under which we could offer that support. ELA asserts recycling fees imposed on consumers and collected at the point of sale should have the following elements:

- uniformity with like equipment subject to fees in other states,
- the scope of equipment is certain and identifiable to the lessor,
- collection responsibility provides clarity,
- the fee allows for a bi-lateral election between equipment supplier (vendor, wholesaler or manufacturer) and lessor to pay the fee at point of purchase rather than point of lease.

### **Voluntary election between equipment supplier and lessor**

Examining the last point first explains why equipment lessors are not retailers as contemplated in L.B. 190. Leasing also poses issues different from Internet and catalogue sales that escape the fee. Lessors do not have physical possession of equipment and often rely on equipment descriptions and information contained in vendor invoices. Phrases in L.B. 190 such as "...certain scientific instruments..." and "electronic equipment includes, but is not limited to..." invite uncertainty as to what equipment is covered. This will make it challenging at best and impossible on occasion for equipment lessors to reach an informed decision on what equipment may or may not be covered. Without specific language addressing the commercial equipment leasing marketplace, L.B. 190 will hinder good faith efforts by equipment lessors to collect the five dollar fee.



## L.B. 190 Testimony Equipment Leasing Association

Recognition of the vendor relationship within a commercial leasing context assists in making upfront consumer fees more acceptable in leasing transactions. The 'leasing vendor provision' offered in this testimony recognizes the working relationship between a financing source and a vendor leasing firm that promotes leasing to their customers. Such a leasing provision is needed to make L.B. 190 more user friendly in the business-to-business environment. This leasing provision is limited to purchase transactions for the purpose of lease. Since many suppliers of equipment to lessors also sell at retail, our industry distinguishes these sellers as vendors. Our limitation to purchases for the purpose of leasing is advised to forestall potential objection that this provision might apply in traditional retail environments. Our intention is to remedy problems faced by equipment lessors and to limit application of the provision to purchases of leased equipment so as not to create unintentional consequences to other industries.

ELA wishes to work with bill drafters in a flexible manner to craft a vendor provision that meets these goals. Following is one example of text that may be considered to recognize vendor programs in which a leasing company finances equipment:

"A lessor who purchases an electronic device (subject to this Act) in a wholesale transaction for the purpose of leasing to others, may contract to pay the advanced electronic waste recycling fee to the equipment vendor at time of purchase, provided such vendor is registered with the State for purposes of complying with this Act. The vendor shall separately state the advanced electronic waste recycling fee on the invoice given to the lessor at the time of sale and the lessor shall provide a statement in the lease agreement or on an invoice to document compliance with the fee. Nothing in this election shall alter the lessors' right to collect the fee from the consumer."

### **Uniformity with like equipment subject to fees in other states**

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L.B. 190 imposes a fee on new electronic CRT equipment to be collected by retailers and lessors. Electronic equipment is meant as appliances that contain complex circuitry, circuit boards, or signal processing and one or more hazardous elements. Electronic equipment includes, but is not limited to, televisions, audio and stereo equipment, monitors, computers, video cassette recorders, computer keyboards, printers, telephones, copy and facsimile machines, and microwave ovens. Equipment covered initially is televisions, computer monitors, and certain scientific instruments such as oscilloscopes.

L.B. 190 applies fees to scientific devices suggesting medical equipment exempt elsewhere would be subject to the fee in Nebraska. Video cassette recorders and telephones are examples of equipment not commonly included by other states. We seek uniformity with like equipment subject to fees in other states and offer to work with you to achieve it. A multi-state task force under the National Conference of State Legislatures (NCSL) is one potential vehicle reach this goal.



L.B. 190 Testimony  
Equipment Leasing Association

**The scope of equipment is certain and identifiable to the lessor**

The scope of equipment subject to the new \$5 fee appears to be left to the bureaucracy. Phrases in the bill such as “...certain scientific instruments...” and “electronic equipment includes, but is not limited to...” invite program administrators to make these judgments through regulatory procedures. ELA members know from experience this will pit manufacturers against state bureaucracy with equipment lessors caught in the middle at times unable to determine what equipment is covered by the fee and potentially subject to penalties through no fault of their own. Let us work with you to resolve such issues prior to enactment of a recycling fee rather than positioning our industry to grapple with bureaucratic disarray.

**Collection responsibility provides clarity**

When enacting a recycling fee Nebraska should provide clarity as regards fee collection responsibilities. To assist in this process ELA offers some basic questions that would be supplemented as the process of examining a recycling fee proceeds.

- What is the definition of “new” equipment?
- Is the fee imposed if the leased assets are first located in another state and moved to Nebraska?
- If the answer above is yes, will Nebraska give a credit for a recycling fee already paid to the other state?
- Is credit allowed if the item is moved out of Nebraska?
- How would a lessor document if the sale were for resale? Will the lessor be required to maintain some type of exemption certificate?
- Will Nebraska allow a temporary storage exemption for a consumer's deployment stations?
- Is credit allowed if the consumer (the person the fee is imposed upon) defaults?
- Will a lease renewal be subject to the fee?
- Will this fee apply to devices that are delivered to a customs broker or forwarding agent in Nebraska for shipment to a foreign destination?
- Will leases to federal government instrumentalities or State of Nebraska agencies be subject to the fee?
- Will a state web-site provide a centralized list of all equipment by all manufacturing sources subject to this fee?
- Can a lessor assign the obligation to pay this fee to the lessee?
- If an out-of-state retailer/lessor only deals in transactions exempt from sales tax, will that retailer/lessor have to register for sales/use tax in order to get an account number for remittance of the recycling fee?



## L.B. 190 Testimony Equipment Leasing Association

- Will assessment to the customer of the fee be subject to sales/use tax?
- What administration allowance is given the retailer/lessor for collecting the fee?
- Must the fee be “visible” to customers on the receipt?
- Should the fee show up as an individual line item for multiple products or should it be a sum total?
- Is the fee due if the retailer donates equipment to Nebraska consumers?
- May a manufacturer administer the recycling fee by collecting it from the leasing company and remitting it to the state with fees collected on their direct sales?
- Are equipment moving into Nebraska after initial use occurred in another state subject to the fee?
- In some instances equipment covered under L.L. 190 may be shipped to one or many configuration sites [which may be outside of Nebraska] that set up the equipment, install software, etc., and then the customer ships the equipment to a Nebraska location. The equipment lessor may not be notified until after the lease commencement that the equipment has been moved to Nebraska. Does the lessor have a responsibility to collect the fee upon learning after the fact that the equipment has entered Nebraska?
- Must instrumentalities of the federal government pay the fee? How will you handle sales to the Federal Government, which in turn are resold by the government in the PX?

### **Summary**

As some general comments, we know from public recyclers and disposal interests that the \$6, \$8 and \$10 fee collected in California starting January 1, 2005 is already projected to be insufficient for projected costs. Will Nebraska manage better? L.B. 190 allows the Department of Revenue to withhold up to 30% of fees for administration costs but how much will it cost government agencies to gear up for inauguration of the program? It will require an appropriation before the program can commence.

On leasing issues, explicit directives by government and manufacturers regarding specific equipment covered by a fee, unambiguous application of exemptions (if any) and enactment of a voluntary vendor amendment can help facilitate compliance by commercial equipment lessors. It is this lack of simplicity in the current Nebraska bill that will subject equipment lessors to undue administrative burdens and make them liable for penalties for noncompliance due to no fault of the lessor. ELA can endorse and support legislation that rectifies problems foreseen in Nebraska while providing the uniformity and simplicity between states needed by commercial equipment lessors as outlined above. I hope we have the opportunity to assist in this manner prior to enactment of a recycling fee.

Thank you for your attention and I would welcome any questions.