QUESTION: It was mentioned, at ELA sponsored conference call in October, that regular sized copiers used in an office will not be subject to this fee. What about larger manufacturing and high production types of copiers with a digital video display monitor physically attached to the casing of the copier? To assist in the determination, these monitors are generally LCD and would not be CRT containing devices.

BOE Response: To be subject to the Electronic Waste Recycling Fee the covered electronic device would have to meet the current definitions as stated in Appendix X published by DTSC:

> Cathode ray tube containing devices (CRT) devices) with CRTs greater than four inches measured diagonally (X)
> Cathode ray tubes (CRTs) greater than four inches measured diagonally (X);
> Computer monitors containing cathode ray tubes greater than four inches measured diagonally (X)
> Laptop computers with liquid crystal display (LCD) screens greater than four inches measured diagonally (X)
> LCD containing desktop monitors greater than four inches measured diagonally (X)
> Televisions containing cathode ray tubes greater than four inches measured diagonally (X)
> Note: Authority cited: Sections 25140, 25141 and 25214.9, Health and Safety Code and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25117, 25140, 25141 and 25214.9, Health and Safety Code.

The physical size of the copier itself would have no bearing on whether the fee applies. At this time the fee is imposed on CED's with liquid crystal display screens on laptop computers and desktop monitors only and televisions containing cathode ray tubes with display screens greater than four inches measured diagonally.

QUESTION: ELA members often lease ultrasound machines with monitors, MRIs and CAT Scan machines. Is all medical equipment exempt? Are there specific known examples of video display devices that accompany certain medical equipment and are subject to the fee? Would a CRT monitor rather than LCD or other display technology affect determination of fee-ability on medical equipment?

BOE Response: The Department of Toxic Substances Control (DTSC) is responsible for defining what is and what is not a covered electronic device. Specific questions should be directed to:

DTSC
Attn: Mr. Charles Corcoran
P.O. Box 806
Sacramento, CA 95812-0806
916-327-4499

QUESTION: Since BOE receives manufacturer's notices and our members have not received any from the manufacturers, at minimum, we would be appreciative it if we could get a few examples of the above equipment that DTSC and BOE know to be subject to the fee.

BOE Response: See prior response.

QUESTION: Some ELA members may have program agreements with a particular vendor or manufacturer whereby it includes the electronic waste recycling fee in their billing. As long as they have this broken out in their billing will they be okay in case of audit or should they ask all vendors or manufacturers to exclude this amount in their billings? As long as the fees are collected and remitted to the proper authorities, is that the important point?

BOE Response: BOE does not want to prescribe the look of the invoice beyond what is stated in the statute. Instead, the focus should be on the ability to determine that the appropriate fee was collected/remitted per CED sold. The invoice should be fashioned so that the retailer, the consumer and the Board's staff can readily determine that the amount of fees collected and remitted was appropriate. If the fee is not separately stated per CED sold, your records must be able to demonstrate the fees collected and remitted by fee category.

QUESTION: Are leases made to financial institutions exempt from fee collection?

BOE Response: There are no exemptions in the Electronic Waste Recycling fee statutes specifically for these entities. The fee would be imposed on purchases of CEDs by financial institutions and insurance companies in the same manner as you would impose the fee on transactions you make to other consumers.

QUESTION: Several of our members have customers who have had equipment considered a Covered Electronic Device (CED) shipped to one or many configuration sites [which may be outside of California] that set up the equipment, install software, etc., and then the customer may ship the CED equipment to a California location. The equipment lessor may not be notified until after the lease commencement that the equipment has been moved to California. Does the lessor have a responsibility to collect the fee upon learning after the fact that the equipment has entered California?

BOE Response: There are too many variables in this scenario which does not lend itself to a general answer.

QUESTION: Is there any definition with regard to a timeframe after which the fee would not have to be assessed (for example, if the equipment is stored for 3 months before it is moved to California) or is it strictly based upon whether or not the equipment was used in California? Is it possible to provide guidance on this question as well as the question regarding refurbished equipment sent last week in advance of the effective date of January 1? I need to let industry know how to proceed.

BOE Response: There are too many variables that could affect the answer to the questions posed. However, as a general rule, if sales or use tax is to be collected on the transaction, the fee will also need to be collected.

QUESTION: Can you provide further clarification relating to the definition of "refurbished" Covered Electronic Devices (CEDs)? Based on BOE's responses during the 10/12/04 conference call, refurbished items are products that the manufacturer or an authorized service center (acting as an agent for a manufacturer) has tested and returned to a condition that meets factory specifications, repackaged, and labeled as refurbished. I also note that BOE and CIWMB indicated on the 10/12/04 conference call that this is evolving and that they may provide further clarification as to whether a CED refurbished by a service /refurbishment center independent from the manufacturer will qualify as "refurbished" equipment.

BOE Response: The statute has defined "refurbished" specifically to be an activity required to be performed by the manufacturer. If the manufacturer has itself delegated this specific task to its agent then, depending on the specific facts of the situation, that activity might be viewed as being

performed by the manufacturer. Independent contractors or others refurbishing CEDs probably would not meet the manufacturer requirement.

QUESTION: What is "an authorized service center (acting as an agent for a manufacturer)" in the definition of "manufacturer"? When is a fee due on refurbished equipment? I'd appreciate whatever guidance you can provide for industry.

BOE Response: Same as stated above.

QUESTION: There appears to be an inconsistency between a CalEPA communication of June 7 and the Board opinion letter of December 15 on the issue of E-Waste recycling fee application to federal instrumentalities. I'm told some companies proceeded on the definitive view expressed on June 7 and are not in a position to re-program their systems prior to the effective date. Others may be considering the Board opinion of December 15 as inconclusive when it is contrasted to the CalEPA analysis of June 7. Meanwhile, the program will be implemented in one week.

The CalEPA message clearly indicates the federal government is not a fee payer. Conversely, the Board opinion is seen as expressing an opposing view that the federal is a fee payer but need not be a fee collector in a BX or PX.

BOE Response: There have been many changes to the statute since SB 20 was signed. SB 901 amended provisions of SB 20 in late June 2004, as did SB 50 in September. It is SB 50 that will be implemented on January 1, 2005, not prior versions of the bill. In October, BOE posted our opinion that Federal Entities would be subject to the fee on our E-Waste Program web page. Now that we have a formal legal ruling we are in the process of updating the web page to reflect the definitive answer. CIWMB concurs with the opinion.

QUESTION: How will the Board of Equalization handle sales to the Federal Government, which in turn are resold by the government? In the question presented to our office, government is buying systems to sell in the PX. We know that SB20 applies to the Federal Government. We also know that sales for resale are not subject to SB20. Do we need to have the Government send the lessor a resale certificate to prove that SB20 does not apply in those particular circumstances? This is a difficult issue.

BOE Response: For purposes of administering SB 50, the Board of Equalization will be looking for records that document the collection and

remittance of the fee by the retailer or lessor, payment on behalf of the consumer, or documentation to support an exemption. The seller or lessor must maintain records to document any exempt sale, just like they would do when they make a sale that is exempt from sales tax. Sales for resale are not subject to the fee. For the protection of the seller, Regulation 1668 Sales for Resale, in pertinent part below, should be adhered to when making sales for resale to any entity. BOE encourages sellers to review Regulation 1668 Sales for Resale in its entirety if sales for resale are contemplated.

(b) FORM OF CERTIFICATE.
(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:
(A) The signature of the purchaser, purchaser's employee or authorized representative of the purchaser.
(B) The name and address of the purchaser.
(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser must include on the
certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.
(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase ''for resale''. The use of phrases such as ''non-taxable'', ''exempt'', or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.
(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

You must keep records for four years unless we give you written authorization to destroy them sooner.