



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

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|------------------|-----------------------------------------------|----------|---------------|
| Date Introduced: | <b>02/16/05</b>                               | Bill No: | <b>AB 575</b> |
| Tax:             | <b>Covered Electronic Waste Recycling Fee</b> | Author:  | <b>Wolk</b>   |
| Related Bills:   |                                               |          |               |

## BILL SUMMARY

This bill would authorize a retailer to elect to pay the covered electronic waste recycling fee (fee) on behalf of the consumer by paying the fee to the retailer's vendor if specified conditions are met. A vendor would be defined to mean a person who makes a sale of a covered electronic device (CED) to a consumer under a lease that is a continuing sale and purchase.

## ANALYSIS

### Current Law

Under existing law, the Electronic Waste Recycling Act of 2003 (Ewaste Act) requires a consumer to pay a fee upon the purchase of a new or refurbished CED in specified amounts. Unless otherwise provided, a retailer is required to collect a fee from the consumer at the time of the retail sale of the CED.

A "retailer" is defined to mean a person who makes a retail sale of a new or refurbished covered electronic device. A "retail sale" is defined to mean a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. A sale means and includes, among other things, any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except as otherwise provided.

A retailer is authorized to retain 3 percent of the fee as reimbursement for all costs associated with the collection of the fee and is required to transmit the remainder of the fee to the Board of Equalization (BOE). The fees paid to the BOE are deposited in the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund.

### Proposed Law

This bill would amend Section 42464 of the Business and Professions Code to allow a retailer to elect to pay the fee on behalf of the consumer by paying the fee to the retailer's vendor, but only if all of the following conditions are met:

- The vendor is registered with the BOE to collect and remit the fee.
- The retailer and the vendor agree that the vendor will collect the fee from the retailer and remit the amounts collected to the BOE.

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- The vendor's invoice to the retailer separately states the fee, and the retailer pays the vendor that fee.
- The retailer provides an express statement on the invoice, contract, or other record documenting the sale given to the consumer, that the fee has been paid on behalf of the consumer.

If the first three conditions are met, the fee would be a debt owed by the vendor to the state, and the consumer and the retailer would not be liable for the fee.

This bill would define a "vendor" to mean a person who makes a sale of a CED for the purpose of resale to a retailer who is the lessor of the CED to a consumer under a lease that is a continuing sale and purchase pursuant to Part 1(commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

This bill also provides that a reference in the Fee Collection Procedures Law to "feepayer" would include a vendor if a retailer elects to pay the fee on behalf of the consumer by paying the fee to the vendor.

The provisions of this bill would become effective January 1, 2006.

### **Background**

In 2003, Senate Bill 20 (Sher, Ch. 526) enacted the Electronic Waste Recycling Act of 2003. Among other things, the Act imposed, on and after July 1, 2004, an fee upon the first sale in the state of a covered electronic device to a consumer by a retailer. The Act authorized the California Integrated Waste Management Board to contract with the BOE or another party for collection of the fee.

However, Assembly Bill 901 (Jackson, Ch. 84, Stats. 2004) extended the operative date for the fee from July 1, 2004, to November 1, 2004.

In 2004, Senate Bill 50 (Sher, Ch. 863) made several clarifying changes to the fee and again extended the operative date for the fee by two months to January 1, 2005. The August 18, 2004, version of Senate Bill 50 contain similar provisions to those in proposed in this measure. However, they were subsequently amended out of that bill.

### **COMMENTS**

1. **Sponsor and purpose.** This bill is sponsored by the Equipment Leasing Association (ELA) and is intended to resolve fee calculation and collection difficulties unique to commercial equipment leasing.

According to the ELA, commercial equipment lessors that are defined as retailers pursuant to the Ewaste Act do not maintain an inventory and never take physical possession of the equipment they lease. These commercial equipment lessors are essentially a "financing source" for leased equipment that is usually shipped from a supplier's (i.e. manufacturer, vendor or distributor) inventory directly to a lessee. Since the commercial equipment lessors never take possession of the leased equipment, they must rely on the descriptions and information contained in vendor invoices for the purpose of imposing the fee. However, these invoices often lack the details necessary for the commercial equipment lessor to determine if and how the fee should apply to its lease agreement. Additionally, most leases provide for "quiet possession by lessee" which does not allow a lessor to access equipment for

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inspection or gain descriptive details. As such, the current law hinders good faith efforts by equipment lessors to collect the fees.

2. **Vendor costs associated with the collection of the fee.** Existing law allows retailers to retain 3 percent of the fee as reimbursement for all costs associated with the collection of the fee. However, a retailer should not be allowed to retain a portion of the fee when an election is made to pay the fee to its vendor since the retailer is not collecting the fee. It is therefore suggested that a vendor, in lieu of the retailer, retain the 3 percent reimbursement for its costs associated with the collection of the fee if a retailer meets the specified conditions to pay the fee on behalf of the consumer to its vendor. The following language is suggested:

42464. (c) 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 and shall transmit the remainder of the fee to the state pursuant to Section 42464.4. If a retailer makes an election pursuant to subdivision (d)(2), and the conditions at subdivision (d)(2)(A), (B), and (C) are met, the vendor, in lieu of the retailer, may retain 3 percent of the covered electronic waste recycling fee for all costs associated with the collection of the fee and the vendor shall transmit the remainder of the fee to the state pursuant to Section 42464.4.

The BOE staff has provided the author's office and the ELA with additional suggested technical amendments. In part, these amendments delete the requirement that the retailer and the vendor have agreed that the vendor will collect the fee since it would be given that such agreement exists if the vendor separately states the fee on its invoice to the lessor. Furthermore, the suggested amendments require a vendor to hold a valid seller's permit for sales and use tax purposes as a condition of an election, and delete duplicate language concerning the relief of the consumer pursuant to the election. And lastly, the amendments provide an exception to the confidentiality provisions in the Fee Collection Procedures Law. This exception would allow a retailer/lessor to verify that a vendor is registered with the BOE for purposes of the fee, which is a condition to an election. The information disclosed would be similar to what is disclosed under the sales and use tax law, which includes business name, address, account number and account status.

3. **This bill limits the election to lessors.** A retailer would only be authorized to make an election to pay the fee on behalf of the consumer by paying the fee to its vendor. A vendor would be defined to mean a person who makes a sale of a CED for the purpose of resale to a retailer who is the lessor of the CED. The sponsor of this measure intended to limit application of the election to purchases of leased equipment so as not to create unintentional consequences to other industries. Limiting the election to lessors also makes the provisions of this measure manageable for BOE audit staff.

If this election was open to all fee payers, it could hinder the BOE's ability to audit and verify payment and liability of the fee. For example, a manufacturer pays the fee on behalf the consumer when it sells a CED to a wholesaler. Before the CED is finally sold to a consumer, it is purchased and sold by another wholesaler. Although the sales invoice includes an express statement that the fee has been paid on behalf of the consumer, it would be burdensome to audit up the distribution chain to verify payment of the fee.

Furthermore, it could potentially lead to abuse where an express statement appears on invoices throughout the distribution chain where the fee has not been paid. This would lead to an unexpected liability for a retailer if that retailer relies on the express statement provided on its purchase invoice and does not remit a fee to the BOE.

5. **The provisions of the bill would not be problematic to administer.** BOE staff has suggested a few technical amendments that would clarify the conditions to qualify for the election for audit and compliance purposes. If this measure were amended as suggested, it would not be problematic for the BOE to administer.

**COST ESTIMATE**

Some administrative costs may be incurred in identifying and registering additional fee payers, rewriting computer programs, processing additional returns and payments, revising returns and publications, and answering inquires from the public. An estimate of these costs is pending.

**REVENUE ESTIMATE**

The provisions of this bill could have a positive impact on the fees collected due to addressing the fee collection difficulties encountered in commercial equipment leasing. However, the BOE has no way of measuring the potential impact these provisions may have, and therefore, cannot provide an estimate at this time.

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| Analysis prepared by: | Cindy Wilson      | 916-445-6036 | 03/22/05     |
| Contact:              | Margaret S. Shedd | 916-322-2376 |              |
| mcc                   |                   |              | 0575-1cw.doc |

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