



Mr. Russell Golden  
Chairman  
Financial Accounting Standards Board  
401 Merritt 7, PO Box 5116  
Norwalk, CT 06856

September 10, 2018

**Re: Proposed Accounting Standards Update  
File Reference 2018-260**

Submitted via electronic mail to [director@fasb.org](mailto:director@fasb.org)

Dear Chairman Golden:

The Equipment Leasing and Finance Association (ELFA) is the trade association that represents companies in the \$1 trillion equipment finance sector, which includes financial services companies and manufacturers engaged in financing capital goods. ELFA members are the driving force behind the growth in the commercial equipment finance market and contribute to capital formation in the U.S. and abroad. Its 575 members include independent and captive leasing and finance companies, banks, financial services corporations, broker/packagegers and investment banks, as well as manufacturers and service providers. For more information, please visit [www.elfaonline.org](http://www.elfaonline.org).

We at the ELFA continue to follow developments in lease accounting and monitor the implementation questions raised by our members since the issuance of *Leases (Topic 842)*. We have been supportive of the *Leases* project and the broad outlines of the approach to lessor and lessee accounting included in the standard. Whenever there is a change in accounting, however, there will always be implementation questions, as reading a proposal is different from the knowledge gained by companies preparing to apply its provisions. Some of the questions regarding *Leases* have arisen from conditions or factors not specifically considered when the standard was in development, and some have arisen as the cost and benefits of implementation have come into sharper focus. We appreciate the willingness of the Board to listen to preparers' concerns as questions have arisen and to take actions to listen to and address these concerns.

The Proposed Accounting Standards Update, *Leases (Topic 842): Narrow-Scope Improvements for Lessors* (the Exposure Draft or ED), responds to three post-issuance questions: the accounting for sales, use and similar taxes; the accounting for other costs paid

by a lessee that may benefit a lessor; and variable payments when contracts have lease and non-lease components.

With regards to these proposals, we believe the approach to the first and third matters are reasonable and operational. We do, however, have a number of concerns with regards to the approach to lessee-paid costs other than sales and use taxes. The proposal significantly reduces the burden on lessors for insurance costs, but the application of the approach articulated in the ED to other taxes, such as property taxes, does not provide meaningful relief in many circumstances and does not answer several fundamental questions about the nature of these costs and whether the inclusion of these items in a lessor's financial statements is meaningful. We believe this matter should be approached in a manner similar to that employed to resolve the first question, and lessors should have the ability to make an election as to the accounting for these costs.

### Costs Paid by the Lessee

The model presented in the ED would require lessors to not report certain costs paid directly by the lessee when these amounts are not readily determinable. It would also make explicit the requirement that lessor-paid costs reimbursed by a lessee are determinable and should be reported by the lessor on a gross basis. Basing the accounting on these approaches would not relieve the lessor from the burden of evaluating the nature of these charges, especially if the costs are those that are paid directly by the lessor, and, in the case of lessee-paid costs, would leave open the question of what determinable means and how much effort should be expended to establish if they are determinable. In the case of lessee-paid costs, it is possible that lessors would have to prove to their auditors that costs are not determinable by any number of means, including detailed review of local tax databases or sending out written requests for lease - specific information. This may undermine the expected benefit of this approach. The determinable standard will probably suffice for lessee-paid insurance, but it may not be sufficient for other items.

The proposal for lessee costs in the ED is premised on the view that the costs most often included in this category (insurance and property taxes) are costs the lessor either incurs as the owner of the underlying asset or in its role as lessor. We do not believe these costs are necessarily costs of the lessor or incurred in its role as lessor when we consider the assets our members lease. In the case of insurance, whether the insurance exists to insure the underlying asset or whether it insures the lessee's obligation in the event of a casualty loss is a reasonable question to ask and indicates to us that there is a valid alternative view of the nature of these costs.

### Personal Property Taxes

Whether property taxes are the lessor's cost or not is ambiguous in the case of leases of personal property (equipment). If there is a property tax obligation related to the underlying asset, it arises because of the location where the lessee chooses to use the asset. Further, the property tax cost may change solely on the basis of the lessee's decision to relocate the asset to a different site. As discussed below, there also is diversity in how taxes on personal property

are levied, with some jurisdictions assessing the lessor and others assessing the lessee. Since equipment lessors generally originate net leases, it has not in the past been necessary to determine the primary obligor apart from what is provided in the lease contract.

With personal property taxes, there is more complexity than with real property in determining the primary obligor. The task would require a jurisdiction-by-jurisdiction review, of which there are approximately 3,000 assessing counties in the United States. While each state's governing law generally provides a basis for uniformity in assessment -- e.g., ownership under commercial law -- it also often grants local assessors with discretion as to which party to assess. Hence, the lessee's direct payment of personal property taxes is not in itself determinative of a lessor cost. Nor is the lessee's reimbursement of the lessor's payment of property taxes determinative. Further, like a mortgage provider, the lessor may choose to act as an agent, billing and collecting from the lessee and remitting those funds to the assessor in the interest of keeping the underlying free of tax liens.

We also note that personal property leasing involves millions of small ticket transactions (approximately \$5,000 to \$10,000). The number of taxing jurisdictions taken with the large volume of low value transactions leaves lessors of equipment in a situation that is not dissimilar to that which exists with sales and use tax (BC 8). Further, the available property tax records for such assets may only be readily available in the aggregate, e.g., by asset type and years placed in service, and thus require obtaining supplemental information from the lessee or taxing authorities to derive the cost the lessor would need to account for.

### Insurance Costs

Federal or state banking laws specify the primary obligor by means of permitted authorities for certain executory costs. For example, national banks are permitted to engage in personal property leasing generally only by acquiring specific property pursuant to a legally binding conforming lease, which, among other requirements, must be on a net lease basis. A net lease is defined as one that does not directly or indirectly obligate the bank to provide maintenance, insurance, parts or accessories for the asset. Accordingly, we believe bank regulation renders the lessee as the primary obligor for insurance costs.

In cases where the lessor is or may be the primary obligor, we support the Board's proposal to exclude from variable payments lessor costs paid by a lessee directly to a third party when the amount of lessor costs paid by the lessee is not readily determinable by the lessor, but we do find the determinable approach is not sufficiently robust to deal with all of the situations that a lessor will encounter.

### Other Considerations and Questions for Respondents

Ultimately, it is worth noting for leases of equipment, these costs are generally small in relation to amount of the periodic rent payment. In the case of property taxes, they may be equivalent of 1-2% of the rent payment. This leads us to question whether the detailed analysis required to respond to this question and to review it with a company's auditor is worth the expenditure of time and resources when the item is clearly immaterial both individually and in the aggregate.

In addition to our overall comments on the standard, the following are our responses to the questions for respondents included in the Exposure Draft.

## I. Sales Taxes and Other Similar Taxes Collected from Lessees

**Question 1:** *Should a lessor's accounting for sales taxes and other similar taxes collected from lessees be aligned with Topic 606? If not, please explain why.*

We believe the proposed alignment of the accounting for sales and use taxes with Topic 606 is reasonable and eliminates inconsistent treatment that is not necessitated by differences between leases and other revenue transactions.

**Question 2:** *Is the proposed accounting policy election, as written in this proposed Update, operable? If not, please explain why.*

We believe the proposal is operational, as it is consistent with accounting that exists under Topic 840 and it should not require modifications to systems and procedures.

**Question 3:** *Would the proposed accounting policy election result in a reduction of decision-useful information to users of a lessor's financial statements? If so, please explain why.*

We do not believe the change will impact the usefulness of financial statements, as sales tax receipts and payments are not relevant when evaluating a lessor's financial performance.

**Question 4:** *Should a lessor's accounting policy election for sales taxes and other similar taxes collected from lessees be applied to new lease contracts only or to all existing and new lease contracts? Please explain your rationale.*

We believe that most finance lessors and operating lessors already net these receipts and payments. As a result, we believe application of this approach to all leases will not be a burden. If a lessor was not netting them already, they may need more time to implement the systems necessary to report on this basis.

## II. Certain Lessor Costs Paid Directly by Lessees

**Question 5:** *Should a lessor be required to exclude certain lessor costs paid directly by lessees to third parties on behalf of a lessor as variable payments when the uncertainty in the amount is not expected to ultimately be resolved? If not, please explain why.*

As detailed earlier in this comment letter, we believe lessors should exclude these costs, and in many circumstances net receipts and expenditures related to these items even when they are paid by the lessor and reimbursed by the lessee. With regards to the lessee reimbursed costs, we believe:

1. There remain questions about whether these are lessor costs,
2. The amounts involved are not significant, and

3. The effort involved in changing systems to accommodate the proposed approach exceed any benefit that would be achieved as the amounts involved are, again, not significant.

**Question 6:** *Are the proposed amendments for the accounting for certain lessor costs operable? If not, please explain why.*

The proposal is operational with regards to lessee paid insurance costs, but we are concerned the “determinable” standard may be narrowly applied, which may reduce the benefit that might have been envisioned. We suggest that a final standard include in the basis for conclusions additional language that would indicate more precisely what it intended under this standard. We assume the Board did not intend for companies to have to search electronic or analog data bases in search of this information.

**Question 7:** *Would the proposed requirement for a lessor to not report certain lessor costs paid directly by a lessee to a third party on behalf of the lessor result in a reduction of decision-useful information to users of a lessor’s financial statements? If so, please explain why.*

We do not believe these costs are relevant to a review of a lessor’s performance, and are not significant. In equipment leases, property taxes are likely only the equivalent of 1-2% of rent payments. We also believe that inclusion of these items in a lessor’s income statement on a gross basis will distort key performance indicators, albeit to a limited extent.

**Question 8:** *Should the proposed amendment in paragraph 842-10-15-40A to exclude certain lessor costs paid directly by lessees on behalf of a lessor as variable payments be applied to new lease contracts only or to all existing and new lease contracts? Please explain your rationale.*

If the proposal is adopted as is, we believe it should only be applied to new lease contracts, as companies do not have the processes and systems in place to account for these payments.

### **III. Recognition of Variable Payments for Contracts with Lease and Nonlease Components**

**Question 9:** *Would the proposed amendments clarify the application of paragraph 842-10-15-40? If not, please explain why.*

We believe the proposed amendments are reasonable.

**Question 10:** *Are the proposed amendments for the accounting for certain variable payments for contracts with lease and nonlease components operable? If not, please explain why.*

We believe the proposals are operational, but our membership does not have experience with transactions that would be within the scope of this proposal.

#### IV. Transition and Effective Date for Early Adopters

**Question 11:** *How much time would be needed to implement the amendments in this proposed Update for an entity that early adopts Update 2016-02 before these proposed amendments are finalized? What transition method and transition disclosures should those entities be required to apply (provide)? Please explain your reasoning.*

We do not believe the proposal for sales and use tax would require significant time or effort to apply, as we believe most lessors account for sales tax on that basis today. With regards to other lessee paid costs, we believe some companies will be challenged to adopt the proposals within the last three months of the year, depending upon the amount of effort that needs to be expended on the evaluation of what constitutes determinable and depending upon the systems efforts required for lessors to gross up the reporting of property taxes that lessors pay directly and for which they invoice the lessee.

**Question 12:** *Should the effective date for the amendments in this proposed Update be aligned with that of Update 2016-02? If not, please explain why.*

Additional time is necessary to adopt these proposals beyond the effective date of Update 2016-02, though we acknowledge the reporting challenge this might entail. While this would result in the staggering of changes to lessor accounting, since the impacts are not significant, we would expect there to be only a minor impact on reporting if Topic 842 is adopted prior to the adoption of these proposals.

We appreciate your taking our views into consideration and, as always, stand ready to assist you and the Board on this and other matters of mutual interest.

Sincerely,



Ralph Petta

President/CEO  
Equipment Leasing and Finance Association