

September 12, 2018

Technical Director  
**File Reference No. 2018-260**  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116

**Proposed Accounting Standards Update, *Leases (Topic 842), Narrow-Scope Improvements for Lessors***

Dear Technical Director:

We appreciate the opportunity to comment on the proposed ASU, *Narrow-Scope Improvements for Lessors (the "Update")*. We continue to support the Board's efforts to improve the accounting for leases to provide greater transparency in financial reporting and address the needs of users of financial statements, and we support the Update.

***Coalition Background***

Our Coalition represents many of the largest railcar lessors doing business in North America, with some companies operating globally as well. We have been closely engaged throughout the standard setting process and plan to continue to provide feedback to the Board to support implementation objectives on the new lease accounting guidelines.

***Response and Conclusions***

Detailed responses to the Questions for Respondents are included in the Appendix to this letter.

We believe that the proposed amendments regarding *Sales Taxes and Other Similar Taxes Collected from Lessees* and *Certain Lessor Costs Paid Directly by Lessees* have the most significant impact for lessors. The Coalition strongly supports the proposed practical expedient whereby lessors can make an accounting policy election to record sales tax and other similar taxes collected from lessees net on the income statement. The Coalition also strongly supports the requirement 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.

We further believe these Updates will reduce the costs and complexity associated with implementing Topic 842, while maintaining the objective of providing decision-useful information to financial statement users.

However, we believe the proposal would be improved if the ASC 842-10-15-39A guidance for lease transactions was expanded to explicitly include property taxes assessed by a governmental taxing authority, permitting lessors, as an accounting policy election, to not evaluate whether property taxes are costs of the lessor or costs of the lessee regardless of which party pays the taxing jurisdiction for the reasons detailed in Question 1 below.

Thanks again for seeking the perspectives of your constituents as part of the improvement process. We are available to assist the Board and its staff by providing any additional information as may be useful.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Wilensky". The signature is stylized with large, sweeping loops and a prominent initial "J".

*Jay Wilensky - On behalf of the Railcar Leasing Coalition  
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## **Appendix**

### **Responses to Questions for Respondents**

#### **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.**

Yes, we believe lessors should be allowed to make an accounting policy election to exclude from the consideration in the contract and from variable payments not included in the consideration in the contract all collections from lessees of taxes within the scope of the election, i.e., report these items net on the income statement. We also believe this will significantly reduce the costs and complexity associated with implementing Topic 842.

Therefore, we support this proposed election; however, we believe the proposal would be improved if the ASC 842-10-15-39A guidance for lease transactions was expanded to include property taxes assessed by a governmental taxing authority, permitting lessors, as an accounting policy election, to not evaluate whether property taxes are costs of the lessor or costs of the lessee regardless of which party pays the taxing jurisdiction.

Regarding property taxes, we note that the concepts described in the proposed ASU regarding the cost and complexity associated with performing an analysis of sales and other similar taxes also applies to property taxes as outlined below:

- Similar to sales taxes, there are differences and ambiguities amongst jurisdictions as to whether the lessee or lessor is primarily obligated for the payment of property taxes. Under the current ASU, we believe lessors would need to analyze property tax laws on a jurisdiction-by-jurisdiction basis to determine whether those taxes are costs of the lessor or of the lessee. If the property tax collected from a lessee is a reimbursement of lessor cost, the lessor would record gross lease revenue and costs for the same amount in its income statement with no net effect on profit or loss. If the property tax is a lessee cost, a lessor would record the property tax net.

There will be significant lessor costs evaluating complex tax laws in the numerous state and local jurisdictions in which many lessors operate. Consistent with ASU paragraph BC8, the variation of, and changes in, property tax laws among jurisdictions contributes to complexity. These challenges would be further complicated for mobile assets for which the lessee controls the location of the leased asset and, therefore, the jurisdictions in which those taxes are assessed.

- Our Coalition further notes that Rail lessors would face some industry specific challenges with estimating lessee paid railcar ad valorem property taxes and as a result, property tax payments paid by the railcar lessees are not readily determinable by the lessor. The reporting car mark is a unique rail industry identifier assigned to each railcar; that mark may be "held" by the lessor or the lessee. For example, a lessee may sell a car to the lessor and enter into a lease-back; the lessee may retain the mark. Or a lessor may sell a car to the lessee at the end of the lease term but retain the car mark for some period of time. The party who reports and pays the ad valorem tax on the car may invoice another party for reimbursement to the extent permitted under the contracts. Because the tax is assessed to the owner of the car mark, and the ownership of the mark can change from time to time, it is particularly difficult to assess whether, at any given time, those taxes are lessor or lessee costs (see additional comments included in our response to Question 6).
- The net effect of property tax activity is typically zero on the lessor income statement as the lessee is generally assigned property tax obligations in the lease contract, and the reimbursement does not have

a profit element. Today, most lessors record such payments and reimbursements net on the income statement, i.e., property taxes are essentially viewed as collected by the lessor on behalf of the taxing authority.

- Without specifically addressing property taxes, including those that are affected by the lessee's usage of the leased asset, issuers may have diversity in practice which could lead to inconsistencies in reporting to stakeholders.
- We do not believe recording gross revenue and expense for property tax provides users of the financial statements with additional decision-useful information. Lessors do not generally consider property taxes to be "revenue" (there is no profit element), and in that regard, we believe grossing up the income statement may have a distortive impact on reported revenue and expense, as well as operating efficiency ratios and other margin based analytics used by investors and equity analysts.

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

Yes, we believe that the guidance in the proposed Update, as written, will be operable in practice with respect to sales taxes and other similar taxes. We believe that lessors, prior to adopting Update 2016-02, often report these tax items net on the income statement and the accounting policy election would be operable as lessors could continue to utilize their existing accounting procedures.

Please also see our additional Property Tax comments above in our Response to Question 1.

**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.**

No, we do not believe the proposed accounting policy election with respect to sales taxes and other similar taxes would result in a reduction of decision-useful information to users of a lessor's financial statements as these items are pass-through items with no profit element.

Please also see our additional Property Tax comments above in our Response to Question 1.

**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 lessors should be provided an option regarding whether to apply the guidance to all existing and new lease contracts or only to new lease contracts. We believe that lessors, prior to adopting Update 2016-02, often report these tax items net on the income statement and these lessors could continue to utilize their accounting procedures for both existing and new lease contracts. However it potentially may be very challenging for some lessors to apply the guidance to existing lease contracts and therefore lessors should have an accounting policy election option regarding application of the approach to existing lease contracts for these pass-through items with no profit element.

#### **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.**

Yes, we believe a lessor should 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 and believe this requirement will reduce the costs and complexity associated with implementing Topic 842.

Please also see our additional comments regarding property tax noted above in our Response to Question 1.

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

Yes. We believe that the guidance in the proposed Update, as written, will be operable in practice for lessors of railcars. We believe that many rail lessors currently exclude from their reported financial results ad valorem taxes and insurance paid directly by lessees to third parties. We further believe that these taxes and insurance are not readily determinable, and the proposed amendment would be operable as the lessors could continue to utilize their existing accounting procedures.

**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.**

No, we do not believe the proposed accounting policy election would result in a reduction of decision-useful information to users of a lessor's financial statements primarily as there is no profit element for these items.

**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.**

We believe lessors should be provided an option regarding whether to apply the guidance to all existing and new lease contracts or only to new contracts. We believe that lessors often currently exclude these items from their financial statements and these lessors could continue to utilize their accounting procedures for both existing and new lease contracts. However, it may be very challenging for some lessors to apply the guidance to existing lease contracts and therefore lessors should have an accounting policy election option regarding application of the approach to existing lease contracts for these pass-through items with no profit element.

**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 these proposed amendments do help clarify the application of paragraph 842-10-15-40. However, we believe the proposed guidance would be improved if it also indicated that for a contract with both lease and nonlease components, the lessor should evaluate if the variable payment relates entirely to the lease component. If the variable payment relates specifically to the lease component, the lessor should allocate the variable payment to the lease component.

**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.**

As these proposed amendments are not particularly applicable to us, we do not have any specific comments on whether the proposed amendments, as written, will be operable in practice.

**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 believe that the proposed amendments described in Issues 1 and 2 have the most significant impact for rail lessors. We do not believe it would require significant time to implement these amendments for new leases. However, see our comments above regarding significant efforts that will be required by lessors to evaluate property taxes if the property tax guidance is not changed.

Our Coalition members do not plan to early adopt Update 2016-02 and we have not evaluated early adoption in detail, and as a result we do not have specific comments regarding transition method and disclosures.

**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.**

Yes, we believe the effective date for the amendments in this proposed Update should be aligned with that of Update 2016-02.