9350 Excelsior Blvd., Suite 400
Hopkins, Minnesota 55343

ELEMENT FLEET MANAGEMENT
TESTIMONY TO THE LEGISLATIVE FISCAL COMMITTEES

2021-22 TAXES BUDGET HEARING
FEBRUARY 23, 2021

Good afternoon. My name is John Crepps and I am the Director of Global Sales Tax for Element Fleet Management, a commercial automotive leasing company that provides comprehensive fleet management services and solutions to a large base of clients in New York State as well as throughout the United States.

Fleet leasing companies such as Element own and manage more than 3.5 million vehicles which are leased to small businesses, non-profit organizations, government entities, and corporations that usually have smaller divisions or franchises. These vehicles range from passenger cars to cargo vans and trucks that are customized and outfitted to fit business purposes, from electrical and plumbing repair and telecommunications installation, to wholesale food and beverage distribution and fuel delivery. In New York, Element owns and manages on behalf of local businesses over 22,000 vehicles. Other fleet leasing companies own and lease an additional 65,000 vehicles. Of these vehicles, approximately one-third are replaced every year with safer and more fuel-efficient vehicles. Element and other fleet leasing companies make New York businesses of all sizes more competitive by allowing customers to focus on their core business activities rather than managing their vehicle fleets.

Commercial motor vehicle leases have a unique structure that encourages customers to keep newer, safer and cleaner vehicles on the roads. These commercial leases feature a Terminal Rental Adjustment Clause (TRAC), an industry-standard provision that allows for adjustments to the total lease computation after the lease is terminated and the vehicle is sold at auction. If the actual value of the vehicle upon lease termination is less than the value estimated in the lease agreement, then the total lease computation results in the customer having to make an additional lease payment. In this case, the customer would also be responsible for paying additional sales tax on this additional lease payment. Conversely, if the actual value of the vehicle upon lease termination is greater than the estimated value, then the customer receives a refund of overpaid lease consideration. However, the NYS Department of Taxation & Finance (DTF) has taken the position that in this case no refunds of sales taxes are allowed to customers when they receive a refund of a portion of their lease consideration. This is because the existing statute governing TRAC leases is silent on the issue of additional sales tax payments or refunds, leading to disputes between fleet leasing companies and DTF. This had led to situations where fleet leasing companies are subjected to repeated, contentious audits by DTF. It is also important to note that New York is the only state the collects sales tax on additional payments under the TRAC provision but does not return sales tax when customers are refunded payments.

To remedy this situation and avoid future audits over TRAC-related sales tax provisions, Element supports allowing fleet leasing companies the option to pay sales and use tax up-front on its purchase of motor vehicles for lease to New York businesses as reflected in S3926 (Kennedy) / A5401 (McDonald) and respectfully requests that this language is included in the final 2021-2022 NYS Enacted Budget. Providing commercial fleet lessors the option to pay tax on its purchases of its motor vehicles for lease would simplify tax compliance since tax could be paid instead on the purchase price paid by the lessor to the seller. This is the same manner by which sales and use tax is computed on any other motor vehicle purchased by an individual or business. The purpose of this legislation is to ensure the ability of these companies to streamline their sales and use tax compliance. In turn, this will also eliminate the need for costly and time-consuming audits related to disputes over final TRAC payment computations and associated sales tax collection and remittance activities.

Allowing fleet leasing companies such as Element to pay sales and use tax on its purchases of motor vehicles for lease would accelerate and increase tax revenues to New York State. Under current law, sales tax is paid up-front on the lease consideration received for the first 32 months of the lease term and subsequently on each renewal option thereafter. If this legislation is enacted, this same treatment will continue, except that commercial fleet leasing companies will have the option to instead pay all of the sales and use tax due on its vehicle purchase up-front. This will not only accelerate the tax paid, but the tax will also be paid on a higher tax base. The ultimate amount of additional revenues depends on how many companies opted in to this new option. Based on fiscal projections compiled by Element, which includes their current practice of replacing approximately one-third of their vehicles each year, if just Element were to opt in to this new sales tax payment mechanism, New York State would realize approximately $17 million more in the first four years than it currently receives under the existing law broken down as follows: an additional $4.8 million annually over the first three years, an additional $2.6 million in the fourth year, and then an additional $570,000 annually for all other out years.

Enacting the above-referenced legislation into the final 2021-22 NYS Enacted Budget will ensure that Element and other fleet leasing companies are able to more easily comply with the sales and use tax laws and reduce future audit risks. This allows these companies to focus their efforts instead on ensuring that New York State businesses of all sizes and types that lease vehicle fleets are able to operate in this difficult economic climate while also supporting New York State. Thank you.