



When is a Consumer?

The Dynamics of a Changing Leasing Landscape

By Paul Bent

Every one of us consumes something. We eat pizza, we buy cars, we go to the movies. So are we all consumers? And are businesses consumers, too? All of our companies and employers consume paper by the ream, they consume large quantities of electric power, they even consume consulting services.

Then is every person or every business who consumes something a “consumer”? Seems like an obvious question. But it may not be as obvious as you think. And if you’re in the leasing industry, the consequences of your answer may be more significant than you think.

An important change is afoot in the characterization of “consumers” of leasing services, and it’s a change that may have far-reaching implications for lessors. Historically, equipment lessors have understood the difference between lessees who are businesses or commercial enterprises and

lessees who are individual consumers. With a few important exceptions such as automobile leasing, equipment leasing companies have provided financing to business lessees – corporations, partnerships, limited liability companies – lessees who are “in business.”

matters of only marginal concern to most traditional equipment lessors.

But traditions have a way of changing. And real world events have a way of catching up with them. When a major government enforcement agency begins referring to small business lessees

The Alta Group, established in 1992, is made up of more than 25 experienced international professionals committed to the asset finance industry, including former CEOs, company founders and industry thought leaders. They collaborate and share their in-depth knowledge and insights with today’s business leaders who face a range of challenges, both old and new. The firm has built a reputation on creative thinking, trust and professionalism.

The Alta Group’s wide range of consulting services include:

- strategic planning
- captive finance and vendor program development
- competitive analysis
- professional development and training
- market entry services
- global portfolio development and management
- merger and acquisition management
- litigation support
- mediation
- information technology management

www.thealtagroup.com

These words have consequences. Various sections of the Internal Revenue Code require that lessees be engaged in a trade or business; many state commercial codes and statutes include language about the trade or business of a party; lessors who deal in TRAC leases know that leased vehicles must be used primarily in the lessee’s trade or business; indeed, the U.C.C. itself was created to establish uniform statutes for handling the business of buyers and sellers (and lessors) of goods – in other words, businesses.

And there are many laws and regulations, both federal and state, that *do not* apply to leasing companies or their deals because those companies *do not* deal directly with “consumers.” Rules about disclosing detailed financing costs, calculations of annual percentage rates, applicability of usury statutes, jurisdiction of regulatory agencies and commissions, enforcement or waiver of product warranties – all (and many others) are

as “consumers,” and when lawsuits, legal proceedings, and resulting precedents make no distinction between consumers (in the legal sense) and corporate business enterprises, perhaps there are changes in the wind. Changes with far-reaching implications for lessors of every kind.

Keeping up with change is not easy. Managing your business to keep up with change is even harder. So it’s OK to ask for help. There are resources available, experts whose job it is to keep up with change and to help you deal with it. If your lessees are actually consumers, that’s something you need to know – and something to deal with right now.

Paul Bent is a leasing veteran, an attorney, and a member of The Alta Group based in Long Beach, Ca.

