

Amend Public Resources Code (PRC) Section 4629.5 to (1) allow retailers to claim a bad debt deduction for the lumber products assessment and (2) establish a threshold of annual sales of \$25,000 in qualifying lumber products, under which a retailer is not required to collect the lumber product assessment.

Source: Honorable George Runner

Existing Law. Beginning January 1, 2013, the Legislature enacted Assembly Bill 1492,¹ which imposed a 1% assessment on a person who purchases lumber products and engineered wood products to be collected by the retailer at the time of sale.

Currently, the statute:

- Does not provide any relief for retailers if their customers' accounts become uncollectible. In effect, retailers must pay the LPA to the BOE whether or not they collected the LPA from their customers, on whom the LPA is actually imposed.
- Does not provide any type of exclusion for otherwise qualified businesses that have few to no sales of wood products subject to the LPA. These businesses must file zero or small dollar returns.

For the privilege of selling tangible personal property at retail, existing Sales and Use Tax Law² imposes sales tax upon a retailer. Retailers are responsible for reporting and paying the retail sales tax. RTC Section 6055 allows retailers to claim a bad debt deduction for previously reported taxable sales if they do not receive total compensation for the retail sale transaction insofar as the measure of the tax is represented by accounts that have been found worthless and charged off for income tax purposes. If retailers only collect a portion of the reported taxable amount, they also may claim a partial deduction for that portion found to be uncollectible.

This Proposal. This proposal would:

- Allow retailers to claim a bad debt deduction for previously reported LPA amounts if the related account becomes worthless and is charged off for income tax purposes or, if the retailer is not required to file income tax returns, the account is charged off in accordance with generally accepted accounting principles. Thus, this proposal would extend to the LPA bad debt provisions similar to the provisions in the Sales and Use Tax Law, Use Fuel Tax Law, and Energy Resources Surcharge Law administered by the BOE.
- Create a \$25,000 small seller's threshold based on annual sales of qualifying lumber products and engineered wood products, under which retailers are not required to report or collect the LPA.

Background. *Bad Debt Deduction:* While the retailers who sell products subject to the LPA are required to collect the assessment on the products sold for storage, use, or other consumption in California, the assessment is actually imposed upon a person who purchases a lumber product or an engineered wood product. This method of collection

¹ Article 9.5 (commencing with Section 4629) Chapter 8 of Part 2 of Division 4 of the PRC [Assembly Bill 1492, Chapter 289, Statutes 2012]

² Article 1 (commencing with Section 6051) of Part 1 of Division 2 of the Revenue and Taxation Code (RTC)

places the ultimate liability for collection of the assessment with the retailer, as the retailer is required to charge and collect the assessment from the purchaser pursuant to both subdivisions (a) and (c) of PRC Section 4629.5. Accordingly, if a person purchasing a lumber product issues a bad check or does not pay the retailer, the retailer still must report those sales as subject to the LPA and remit it to the BOE. A bad debt deduction would be consistent with other BOE-administered programs and relieve retailers of liability that more rightly belongs to customers who do not pay their bills.

Small Seller Threshold: Currently all retailers that may make sales of lumber products or engineered wood products are required to register with the BOE and to report the LPA on those sales. Based on the initial two quarters of the LPA, the BOE has over 28,000 businesses registered. However, approximately 94% of the returns filed in the first two quarters are zero returns. The Sales and Use Tax Department plans to close out accounts that have filed zero returns for each of the 4 quarters during the previous calendar year. The close-outs will significantly reduce the number of businesses registered for the LPA program.

Information from the first two quarter returns was used to estimate annual returns and payments. After excluding the zero returns, approximately 50% of the remaining returns that included an LPA amount reported more than \$500.00 in LPA. This represents approximately 778 quarterly returns.

If the small seller threshold provision is enacted, retailers must still continue to track their sales of qualifying wood products and engineered wood products to determine if they qualify under the threshold.

Cost Impact. The BOE has not completed a detailed cost analysis of this proposal. However, any costs savings realized by having fewer retailers is likely to be offset by additional costs associated with administering a small seller threshold and the bad debt deduction provisions.

Revenue Impact. The BOE has not completed a detailed revenue analysis of this proposal. However, a BOE revenue loss of approximately \$50,000 could be expected due to the bad debt allowance and the small seller exemption. The LPA is assessed on the purchaser, with a requirement for the retailer to collect and report the assessment to the BOE. Accordingly, the purchaser would still be required to report the LPA to the BOE even if the retailer is not required to, or did not collect and report the amounts.

Public Resources Code Section 4629.5 is amended to read:

4629.5. (a) (1) On and after January 1, 2013, there is hereby imposed an assessment on a person who purchases a lumber product or an engineered wood product for the storage, use, or other consumption in this state, at the rate of 1 percent of the sales price.

(2) A retailer, with total sales of qualified lumber products and engineered wood products of twenty-five thousand dollars (\$25,000) or more during the prior calendar year, shall charge the person the amount of the assessment as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser.

(3) The retailer shall collect the assessment from the person at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained. For purposes of this paragraph, the State Board of Equalization may adopt emergency regulations pursuant to Section 11346.1 of the Government Code. The adoption of any regulation pursuant to this paragraph shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.

(b) The retailer shall separately state the amount of the assessment imposed under this section on the sales receipt given by the retailer to the person at the time of sale.

(c) (1) The State Board of Equalization shall administer and collect the assessment imposed by this section pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) with those changes as may be necessary to conform to the provisions of this article. For purposes of this section, the references in the Fee Collection Procedures Law to "fee" shall include the assessment imposed by this section, and references to "feepayer" shall include a person required to pay the assessment imposed by the article, which includes the retailer.

(2) A retailer is relieved from liability to collect the assessment imposed by this section that became due and payable, insofar as the base upon which the assessment is imposed is represented by accounts that have been found to be worthless and charged off for income tax purposes by the retailer or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A retailer that has previously paid the assessment may, under rules and regulations prescribed by the State Board of Equalization, take as a deduction on its return the amount found worthless and charged off by the retailer. If any such accounts are thereafter in whole or in part collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the assessment shall be paid with the return.

(d) (1) The assessment is required to be collected by a retailer and any amount unreturned to the person who paid an amount in excess of the assessment, but was collected from the person under the representation by the retailer that it was owed as an assessment, constitutes debts owed by the retailer to this state.

(2) Every person who purchases a lumber product or an engineered wood product for storage, use, or other consumption in this state is liable for the assessment until it has been paid to this state, except that payment to a retailer relieves the person from further liability for the assessment. Any assessment collected from a person that has not been remitted to the State Board of Equalization shall be a debt owed to the state by the retailer required to collect and remit the assessment. Nothing in this part shall impose any obligation upon a retailer to take any legal action to enforce the collection of the assessment imposed by this section.

(e) Except as provided in paragraph (3) of subdivision (a), the State Board of Equalization may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this section, including, but not limited to, collections, reporting, refunds, and appeals.

(f) (1) The assessment imposed by this section is due and payable to the State Board of Equalization quarterly on or before the last day of the month next succeeding each quarterly period.

(2) On or before the last day of the month following each quarterly period, a return for the preceding quarterly period shall be filed with the State Board of Equalization using electronic media, in the form prescribed by the State Board of Equalization. Returns shall be authenticated in a form or pursuant to methods, as prescribed by the State Board of Equalization.

(g) For purposes of this section, all of the following shall apply:

(1) "Purchase" has the same meaning as that term is defined in Section 6010 of the Revenue and Taxation Code.

(2) "Retailer" has the same meaning as that term is defined in Section 6015 of the Revenue and Taxation Code.

(3) "Sales price" has the same meaning as that term is defined in Section 6011 of the Revenue and Taxation Code.

(4) "Storage" has the same meaning as that term is defined in Section 6008 of the Revenue and Taxation Code.

(5) "Use" has the same meaning as that term is defined in Section 6009 of the Revenue and Taxation Code.

(h) (1) Every person required to pay the assessment imposed under this article shall register with the State Board of Equalization. Every application for registration shall be made in a form prescribed by the State Board of Equalization and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the State Board of Equalization may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the State Board of Equalization.

(2) An application for registration filed pursuant to this section may be filed using electronic media as prescribed by the State Board of Equalization.

(3) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.