State of California

Board of Equalization
Legal Department-MIC:83
Office of the Chief Counsel
(916) 445-4380
Fax: (916) 322-0341

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: May 2, 2013

From: Randy Ferris
Chief Counsel

Subject: **Board Meeting, May 22-23, 2013**
Chief Counsel Matters – Item J – Rulemaking
Readoption of Emergency Regulation – Lumber Products Assessment

We recommend and request your readoption of attached emergency Regulation 2000, *Retailer Reimbursement Retention*, to maintain the status quo while the Board considers the adoption of a permanent regulation to specify the amount of reimbursement a retailer may retain pursuant to Public Resources Code (PRC) section 4629.5, subdivision (a)(3). If the Board's readoption of the emergency regulation is approved by the Office Administrative Law (OAL), then the effective period of emergency Regulation 2000 will be extended for up to 90 additional days.

Background Regarding Lumber Products Assessment

Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289) was enacted on September 11, 2012, and imposed, beginning January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products to be collected by the retailer at the time of sale. In addition, AB 1492 established the Timber Regulation and Forest Restoration Fund and required that revenues received from the new assessment be deposited into the fund. Furthermore, AB 1492 provided for the Legislature to appropriate revenue from the fund to pay for:

- Specified administrative costs;
- The costs of the Department of Forestry and Fire Protection and other state and local agencies involved in the management of forest lands;
- The costs of managing forest resource programs in the state;
- Certain grants to state and local public agencies, qualified nonprofit organizations, and recognized Indian tribes for fire protection and suppression; and
- Grants to fund restoration on timberland.

As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the Board to adopt regulations to determine the amount retailers may retain as reimbursement for certain compliance costs associated with the commencement of their collection duties on January 1, 2013. Subdivision (a)(3) also authorizes the Board to adopt emergency regulations, and this additional

authorization was intended to allow the Board to specify the amount of reimbursement retailers may retain in the short period of time provided between the enactment of AB 1492 on September 11, 2012, and the commencement of the retailers' collection duties on January 1, 2013. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides that:

> The retailer shall collect the assessment from the person [i.e., purchaser] 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.

As to legislative history, both the pertinent Senate and Assembly floor analyses refer to retailers being reimbursed for "costs to set up collection systems."

The Board initially adopted Regulation 2000, as an emergency regulation, on October 23, 2012. Regulation 2000 provides that retailers, as of January 1, 2013, may retain collected assessment amounts of $250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., for the costs to set up collection systems).

Business Taxes Committee Process

Emergency regulations are temporary. Therefore, the Board must adopt a regulation through the regular rulemaking process in order to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the assessment imposed by PRC section 4629.5, beginning January 1, 2013.

In addition, the California Forestry Association supported the initial adoption of Regulation 2000 and the $250 reimbursement amount established by the regulation. However, other interested parties, including the California Retailers' Association and the West Coast Lumber & Building Material Association (West Coast), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board unanimously voted to begin a Business Taxes Committee process to conduct two interested parties meetings to discuss the adoption of a regulation to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the assessment imposed by PRC section 4629.5, beginning January 1, 2013.

Board staff subsequently issued its first discussion paper regarding the adoption of a permanent regulation on December 18, 2012, and the paper was discussed during an interested parties meeting on January 10, 2013. The first discussion paper provided background information regarding the enactment of AB 1492, the Board's adoption of emergency Regulation 2000, and the interested parties' comments regarding the emergency regulation, and invited the interested parties to provide further comments regarding the Board's adoption of a permanent regulation.

Board staff issued its second discussion paper regarding the adoption of a permanent regulation on February 22, 2013. The second discussion paper presented alternative recommendations, including alternatives proposed by interested parties to increase the reimbursement amount for start-up costs and provide for the retention of an annual amount to reimburse retailers for ongoing costs. For example, the Second Discussion Paper explained that West Coast recommended that the initial reimbursement amount be increased to $5,500 per retail lumber location for startup costs and that an annual retention amount be established of $1,500 per retail lumber location.

Board staff conducted an interested parties meeting on March 7, 2013, to discuss the second discussion paper, but staff was not able to reach a consensus with the interested parties regarding the substantive provisions of the permanent regulation at that time. As a result, staff is still formulating its recommendation to the Board for the adoption of a permanent regulation to specify the amount of reimbursement a retailer may retain for costs associated with the collection of the assessment imposed by PRC section 4629.5 beginning January 1, 2013. Therefore, staff is continuing to consider the comments the interested parties have made so far and staff is still open to receiving additional comments that may lead to a consensus. In addition, the first returns reporting the new one-percent assessment were due on April 30, 2013. Board staff is planning to review the information provided in those returns to try to more precisely determine how many retail locations were actually selling lumber products when the new assessment became effective on January 1, 2013, and how much revenue those retail locations actually collected during the first quarter of 2013, because that data may affect staff's recommendation to the Board.

Board staff is scheduled to issue a formal issue paper on May 31, 2013, and the formal issue paper will contain staff's recommendation to the Board for the adoption of a permanent regulation to specify the amount of reimbursement a retailer may retain for costs associated with the collection of the assessment imposed by PRC section 4629.5, beginning January 1, 2013. The Board's Business Taxes Committee is scheduled to consider the formal issue paper during its meeting on June 11, 2013, and the Board may vote to propose the adoption of a permanent regulation at that time.

Request for Readoption of Emergency Regulation

An emergency regulation that is approved by OAL is only effective for a maximum of 180 days, unless OAL approves a readoption of the emergency regulation during that time period. (Gov. Code, § 11346.1, subd. (e).) OAL may approve two readoptions of the same or substantially equivalent emergency regulation if an agency has made substantial progress and proceeded with due diligence to permanently adopt the emergency regulation through the regular rulemaking process, and each approved readoption will extend the emergency regulation's effective period for up to 90 days. (Gov. Code, § 11346.1, subd. (h).)

Emergency Regulation 2000 became effective on January 1, 2013, and OAL has indicated that Regulation 2000 will expire on July 2, 2013, unless the Board readopts Regulation 2000 or a substantially equivalent regulation, as an emergency regulation, and submits the rulemaking file for the readoption to OAL at least 10 calendar days prior to the expiration date. Therefore, Board staff is recommending and requesting that the Board vote to readopt Regulation 2000, as an emergency regulation, to maintain the status quo while the Board considers the adoption of a permanent regulation to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). Board staff believes that OAL is likely to approve the

readoption of emergency Regulation 2000 because the Board, through the Business Taxes Committee process, has made substantial progress and proceeded with due diligence to adopt a permanent regulation to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), through the regular rulemaking process, and it appears likely that the Board will propose the adoption of such a regulation, through the regular rulemaking process, at the conclusion of its June 11, 2013, Business Taxes Committee meeting.

If you have any questions, please feel free to contact me.

STATE BOARD OF EQUALIZATION

BOARD APPROVED

At the May 22, 2013 Board Meeting

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

Approved:

Cynthia Bridges
Executive Director

RF:kbs:yg

Attachment: Regulation 2000, *Retailer Reimbursement Retention*

cc:	Ms. Cynthia Bridges	MIC:73
	Mr. Robert Tucker	MIC:82
	Mr. Stephen Smith	MIC:82
	Mr. Bradley Heller	MIC:82
	Mr. Kevin Smith	MIC:82
	Ms. Michele Pielsticker	MIC:66
	Mr. Bill Benson	MIC:67
	Mr. Joe Fitz	MIC:67
	Mr. Jeffrey McGuire	MIC:43
	Ms. Susanne Buehler	MIC:92

Regulation 2000, *Retailer Reimbursement Retention*

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain $250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

"Location" means and is limited to a business location registered under the retailer's seller's permit as of January 1, 2013, where sales of products subject to the assessment are made.

Note: Authority cited: Section 4629.5, Public Resources Code. Reference: Section 4629.5, Public Resources Code.