

AGENDA — March 26, 2002 Business Taxes Committee Meeting
Proposed Regulation for Partial Exemption for Timber Harvesting Equipment and Machinery

<p>Action 1 — Consent Item Agenda – pages 2-9</p>	<p>Adopt portions of proposed Regulation 1534 as agreed upon by interested parties and staff.</p>
<p>Action 2 — Definitions of “Commercial Timber Harvesting Operations” and “Off-Road Commercial Timber Harvesting Equipment and Machinery.” Regulation 1534 (b)(1)-(2) Agenda, pages 10-11. Issue Paper Alternative 1.</p>	<p>Adopt either:</p> <ol style="list-style-type: none"> 1) Staff’s recommendation to exclude from the partial exemption activities and equipment pertaining to fire hazard abatement, reforestation, fire suppression, conservation operations and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting operations, or 2) Industry’s recommendation to include within the partial exemption activities and related equipment pertaining to fire hazard abatement, reforestation, fire suppression, conservation operations and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting operations.
<p>Action 3 — Approval to Publish (whichever language is approved)</p>	<p>Recommend the publication of the proposed Regulation 1534, <i>Timber Harvesting Equipment and Machinery</i>, as adopted in the above actions.</p> <p>Operative Date: September 1, 2001 Implementation: Implementation will take place 30 days following approval by the Office of Administrative Law.</p>

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	<p><u>(B) All repair and replacement parts for off-road commercial timber harvesting equipment and machinery as defined in subdivision (b)(2) which replace previous parts and can include parts that are identical to the parts they replace as well as parts that are different from the ones they replace, such as replacement parts added for the purpose of improving or modifying the off-road commercial timber harvesting equipment and machinery, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by a qualified person or another person. Parts of off-road commercial timber harvesting equipment and machinery do not include tangible personal property used in effectuating the repair of any timber harvesting equipment and machinery such as a wrench used to replace a spark plug, except tools used for repair that are designed exclusively for specific off-road commercial timber harvesting equipment and machinery.</u></p> <p><u>(C) All equipment or devices used or required to operate, control, regulate, or maintain the machinery including, without limitation, computers, data processing equipment, and computer software, including both operating programs and application programs. Parts of off-road commercial timber harvesting equipment and machinery do not include tangible personal property used primarily in the administration, management, or marketing of timber harvesting operations.</u></p> <p><u>(4) “Primarily” means used 50 percent or more of the time. As used herein, the qualified property has to be designed for use 50 percent or more of the time off-road in commercial timber harvesting operations and be used 50 percent or more of the time in timber harvesting.</u></p> <p><u>(5) “Qualified person” means a person engaged in commercial timber harvesting operations. A qualified person is not required to be engaged 50 percent or more of the time in commercial timber harvesting operations.</u></p> <p><u>(6) “Qualified property” means off-road commercial timber harvesting equipment and machinery, and the parts thereof, as defined in subdivision (b)(2)-(3) used primarily in timber harvesting.</u></p> <p><u>(7) “Timber” means trees of any species maintained for eventual harvest for forest products or other forest purposes, whether planted or of natural growth, standing or down, including Christmas trees, on privately or publicly owned land, but does not mean nursery stock.</u></p> <p><u>(8) “Timberland” means privately or publicly owned land which is devoted to and used for growing or timber harvesting, or for growing and timber harvesting and compatible uses, and which is capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre.</u></p>

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<p>3) General provisions regarding partial exemption certificates.</p>	<p><u>(c) PARTIAL EXEMPTION CERTIFICATES.</u></p> <p><u>(1) IN GENERAL. Qualified persons who purchase or lease qualified property from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified person, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified property, any time within the retailer’s normal billing or payment cycle, any time at or prior to delivery of the qualified property to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate that is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the specific property to a qualified person and the property was primarily used in a qualifying manner. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).</u></p> <p><u>The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.</u></p> <p><u>(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a qualified person may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. Qualified persons must include in the partial exemption certificate a description of the qualified property. If purchasing tangible personal property not qualifying for the partial exemption, the qualified person must clearly state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.</u></p> <p><u>(3) FORM OF PARTIAL EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of the property described in the document if it contains all of the following essential elements:</u></p>

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	<p><u>(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.</u></p> <p><u>(B) The name, address and telephone number of the purchaser.</u></p> <p><u>(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.</u></p> <p><u>(D) A statement that the purchaser is engaged in commercial timber harvesting operations, and that the property purchased is primarily designed for off-road use in commercial timber harvesting operations and will be used primarily in timber harvesting.</u></p> <p><u>(E) Description of property purchased.</u></p> <p><u>(F) Date of execution of document.</u></p> <p><u>(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a qualified person for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.</u></p> <p><u>While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.</u></p> <p><u>(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where a qualified person states that he or she is engaged in commercial timber harvesting operations and states that the property purchased is primarily designed for off-road use in</u></p>

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<p>4) Partial Exemption Certificates for use tax transactions.</p>	<p><u>commercial timber harvesting operations and will be used primarily in timber harvesting. If the qualified person is buying property of a kind not normally used in timber harvesting, the seller should require a statement as to how the specific property purchased will be used. However, an exemption certificate cannot be accepted in good faith where the seller has knowledge that the property is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.</u></p> <p><u>(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX.</u> <u>The partial exemption certificate must be completed by a qualified person to claim a partial exemption from use tax on purchases of qualified property from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).</u></p> <p><u>The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board’s request, provide the Board access to any and all documents that support the claimed partial exemption.</u></p> <p><u>The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.</u></p>
<p>5) Provisions for refunds of partial exemption.</p>	<p><u>(e) REFUND OF PARTIAL EXEMPTION.</u></p> <p><u>(1) For the period commencing on September 1, 2001, and ending on June 30, 2002, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before September 30, 2002. The retailer must refund the tax or tax reimbursement directly to the purchaser or, at the purchaser’s sole option, the purchaser may be credited with such amount.</u></p> <p><u>(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a qualified person filing a claim for refund of the partial</u></p>

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<p>6) Provisions regarding liability of purchaser.</p>	<p><u>exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of a qualified person at the time of the purchase subject to the refund claimed under this part.</u></p> <p><u>(f) IMPROPER USE OF PARTIAL EXEMPTION.</u></p> <p><u>(1) PROPERTY USED IN A MANNER NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property that is used in a manner not qualifying for the partial exemption under this regulation.</u></p> <p><u>(2) PURCHASES BY NON-QUALIFIED PERSONS. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property if a purchaser is not a qualified person.</u></p> <p><u>(g) PURCHASER’S LIABILITY FOR THE PAYMENT OF SALES TAX.</u></p> <p><u>(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses that tangible personal property in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used.</u></p> <p><u>(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for tangible personal property that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was purchased.</u></p>
<p>7) Provisions regarding leases.</p>	<p><u>(h) LEASES TO QUALIFYING PERSONS.</u></p> <p><u>(1) LEASES—IN GENERAL. Leases of tangible personal property which are classified as “continuing sales” and “continuing purchases” of tangible personal property, in accordance with Regulation 1660, “Leases of Tangible Personal Property – In General,” may qualify for the partial exemption subject to all the limitations and</u></p>

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<p>8) Requirements regarding maintenance of records.</p>	<p><u>conditions set forth in this regulation. This partial exemption may apply to rentals payable paid by a qualified person on or after September 1, 2001 with respect to a lease of qualified property to the qualified person, which qualified property is used primarily in timber harvesting, notwithstanding the fact that the lease was entered into prior to the effective date of this regulation. For purposes of this subdivision, a non-qualified person may purchase property for resale and subsequently lease the property to a qualified person subject to the partial exemption.</u></p> <p><u>(2) LEASES—ACQUISITION SALE AND LEASEBACK. A qualified person will be regarded as having paid sales tax reimbursement or use tax with respect to that qualified person’s purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the qualified person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.</u></p> <p><u>(3) SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION. If a qualified person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rentals payable.</u></p> <p><u>(i) RECORDS. Adequate and complete records must be maintained by the qualified person as evidence that the qualified property purchased was primarily designed for off-road use in commercial timber harvesting operations and was used by the qualified person primarily in timber harvesting.</u></p>

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Action Item	Language Proposed by Staff	Language Proposed by Industry Representatives
<p>ACTION 2 – Definitions of “Commercial Timber Harvesting Operations” and “Off-road commercial timber harvesting equipment and machinery.”</p>	<p><u>(b)(1) “Commercial timber harvesting operations” means the cutting or removal or both of timber from timberlands that may be sold, offered for sale to others, or used in the creation of commercial wood products. Such activities include, but are not limited to, bucking, bunching, chipping, debarking, delimiting, felling, forwarding, loading, piling, skidding, slashing, topping and yarding operations performed on timber as well as the construction and maintenance of fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for the falling of trees, and logging roads not maintained by the California Department of Transportation or other applicable government agency. Commercial timber harvesting operations do not include the use of timber in processing activities or other activities resulting in the creation of other commercial wood products for sale to others, including, without limitation, milling, planing, carving, paper manufacturing, the treating of wood with creosote or other preservatives to prevent decay or protect against fire, or the packaging of wood chips for use in preparing food. Commercial timber harvesting operations also do not include activities incidental to commercial timber harvesting operations including, without limitation, fire hazard suppression or abatement, except as otherwise provided herein, soil erosion, reforestation and conservation, or site preparation that involves disturbance of soil or burning of vegetation following timber harvesting operations.</u></p> <p><u>(b)(2) “Off-road commercial timber harvesting equipment and machinery” means any new or used device that may be powered by an internal combustion engine, electric motor, or otherwise, necessary in complying with any operational requirement of federal, state or local government laws and regulations and designed primarily for use off the highways,</u></p>	<p><u>(b)(1) “Commercial timber harvesting operations” means the cutting or removal or both of timber or other solid wood forest products, from timberlands for commercial purposes, together with all the work incidental thereto, including but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for the falling of trees, fire hazard abatement, reforestation, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities. Such activities include, but are not limited to, bucking, bunching, chipping, debarking, delimiting, felling, forwarding, loading, piling, skidding, slashing, topping and yarding operations performed on timber. Commercial timber harvesting operations do not include the use of timber in processing activities or other activities resulting in the creation of other commercial wood products for sale to others, including, without limitation, milling, planing, carving, paper manufacturing, the treating of wood with creosote or other preservatives to prevent decay or protect against fire, or the packaging of wood chips for use in preparing food.</u></p> <p><u>(b)(2) “Off-road commercial timber harvesting equipment and machinery” means any new or used device, that may be powered by an internal combustion engine, electric motor, or otherwise, that is necessary in complying with any operational requirements of federal, state, or local government laws and regulations and is designed primarily</u></p>

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	<p><u>to propel, move, draw or cut timber in commercial timber harvesting operations. Such items include, but are not limited to, chainsaws, slashers, debarkers, harvesters, forwarders, feller-bunchers, cable yarding equipment, yarders, chippers, loading helicopters, bulldozers, loading equipment used to lift and move timber, graders, water trucks and similar logging road building and maintenance equipment, fuel storage equipment, all-terrain vehicles, timber harvest preparation equipment, loaders, carriages, mobile metal spars, delimiters, chokers, steel cables, grapples, tractors, or skidders used to fell, delimb, cross-cut, measure, sort, bunch, move, and load timber for transport to roadside. Off-road commercial timber harvesting equipment and machinery does not include junction boxes, switches, conduit and wiring, valves, pipes, tubing incorporated into fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of equipment and machinery. Off-road commercial timber harvesting equipment and machinery also does not include supplies such as articles of clothing, fuels, real property, materials or fixtures within the meaning of subdivisions (a)(4) and (a)(5), respectively, of Regulation 1521, Construction Contractors, including such items set forth in Appendix A and B of Regulation 1521.</u></p>	<p><u>for use off the highways, to propel, move, draw or cut timber in commercial timber harvesting operations. Such items include, but are not limited to, chainsaws, slashers, debarkers, harvesters, forwarders, feller-bunchers, cable yarding equipment, yarders, loading helicopters, chippers, bulldozers; truck, trailer and loading equipment used to lift and move the equipment; graders; water trucks and similar logging road building and maintenance equipment; equipment service vehicles; fuel storage equipment, site preparation equipment; all-terrain vehicles; fire fighting and safety equipment; timber harvest preparation equipment; reforestation tools and equipment; loaders; carriages; skidders; mobile metal spars; delimiters; chokers; steel cables; grapples; front-end loaders, and tractors or rubber tire skidders and other equipment used to fell, delimb, cross-cut, measure, sort, bunch, move and load timber for transport to roadside. Off-road commercial timber harvesting equipment and machinery does not include junction boxes, switches, conduit and wiring, valves, pipes, tubing incorporated into fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of equipment and machinery. Off-road commercial timber harvesting equipment and machinery also does not include supplies such as articles of clothing, fuels, real property, materials or fixtures within the meaning of subdivisions (a)(4) and (a)(5), respectively, of Regulation 1521, Construction Contractors, including such items set forth in Appendix A and B of Regulation 1521.</u></p>

Issue Paper Number 02 - 003



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

PROPOSED REGULATION FOR PARTIAL EXEMPTION FOR TIMBER HARVESTING EQUIPMENT AND MACHINERY

I. Issue

Should the Board adopt a proposed regulation for implementing the provisions of Assembly Bill 426 regarding the partial sales and use tax exemption on the sale or use of equipment and machinery designed primarily for off-road use in commercial timber harvesting operations by qualified persons?

II. Staff Recommendation

Adopt staff's proposed Regulation 1534, *Timber Harvesting Equipment and Machinery*, to provide definitions of terms used in the statute and to clarify the application of the partial exemption to the sale or use of timber harvesting equipment and machinery. (See Issue Paper (IP) pages 2-3, and agenda action items 1 and 2.)

III. Other Alternative(s) Considered

Alternative 1:

As proposed by industry, adopt staff's recommendation, except:

- Amend staff's proposed subdivision (b)(1) to include activities pertaining to "fire hazard abatement, reforestation and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities" within the definition of commercial timber harvesting operations. In addition to adding these activities, the alternative would include fire suppression and conservation operations. (See IP pages 5-6 and agenda action item 2.)
- Amend staff's proposed subdivision (b)(2) to specifically include in the definition of "off-road commercial timber harvesting equipment and machinery" trucks and trailers used to lift and move equipment from site to site, site preparation equipment, fire fighting and safety equipment, and reforestation tools and equipment. This alternative also includes specialized tools in subdivision (b)(2) which staff included in subdivision (b)(3)(B). (See IP pages 5-6 and agenda action item 2.)

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IV. Background

Assembly Bill 426, Stats. 2001, Chap. 156 (AB 426) enacted Revenue and Taxation Code (RTC) section 6356.6 to provide a partial sales and use tax exemption on the sale or use of equipment and machinery designed primarily for off-road use in commercial timber harvesting operations, and parts thereof, purchased for use by a qualified person used primarily in commercial timber harvesting.

This partial exemption applies to only the state portion of the tax. The local taxes and taxes imposed by special taxing jurisdictions still apply. Effective January 1, 2002, the amount of the partial exemption increased from 4.75% to 5% to coincide with the increase in the state sales tax. Prior to the enactment of this statute, sales and purchases of equipment and machinery used in commercial timber harvesting operations were subject to tax at the applicable state, local and county tax rate with no specific exemptions or exclusions. The provisions of this statute have an operative date of September 1, 2001.

Meetings were held with interested parties on November 27, 2001 and January 2, 2002. Several representatives of industry and trade associations were in attendance. Staff discussed the proposed regulatory language with attendees. An interested party provided staff with a reference to Public Resource Code section 4527 defining the term "timber operations."

Staff and interested parties discussed the types of property that are used in timber harvesting operations. Staff proposed the general guideline that the term "timber harvesting operations" include activities performed from the severing of the timber through the removal of the timber from the off-road location of the harvesting operations. Interested parties noted that mills are sometimes built at the harvesting location to process the timber at the harvest site. In addition, interested parties inquired as to the eligibility of other types of equipment that are required by law to engage in timber harvesting operations, including equipment and machinery used for fire suppression, flood relief, erosion control and reforestation.

These concerns and others were presented in a joint written submission representing the following organizations: Associated California Loggers, California Farm Bureau, California Forestry Association, Forest Landowners of California, California Licensed Foresters Association and the Forest Resources Council. Staff has resolved all differences with the exception of those noted in Exhibit 2.

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff recommends the adoption of proposed Regulation 1534, *Timber Harvesting Equipment and Machinery*, as illustrated in Exhibit 3. The proposed language provides definitions of terms used in the statute and clarification with respect to the application of the partial exemption to timber harvesting equipment and machinery. The proposed regulation has an operative date of September 1, 2001.

Regulation 1534 (b), Definitions

Subdivision (b) provides definitions of terms used in the statute that are essential to administering the provisions of the partial exemption as set forth in RTC section 6356.6.

In a letter dated February 1, 2002, the organizations listed above suggested revisions to the language proposed by staff. Staff agrees with some of the revisions but there remain a few issues on which staff disagrees.

First, industry representatives have asked that staff utilize Public Resource Code Section 4527 to define the term "commercial timber harvesting operations." This definition would include activities such as fire hazard abatement,

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reforestation and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities as part of commercial timber harvesting operations. Industry contends that none of these activities would occur but for the fact that they are part of a timber harvesting operation. In particular, industry contends that the California Forest Practice Rules require landowners to undertake these operations as part of a timber harvesting plan. Industry also contends that the definition of “Timberland” in Section 38103.1 of the Revenue and Taxation Code refers to land devoted to the growing and harvesting of timber or for growing and harvesting timber *and compatible uses*. For these reasons, industry believes that “fire hazard abatement, reforestation and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities” should be included in the definition of the term “commercial timber harvesting operations.”

Staff believes that Public Resource Code Section 4527 addresses the broader concept of “commercial timber operations” and not solely timber harvesting operations. In that regard, RTC section 6356.6 only provides a partial exemption for purchases of equipment and machinery designed primarily for off-road use in commercial timber *harvesting* operations. Staff is of the opinion that the language of RTC section 6356.6 (as enacted by AB 426) limits the partial exemption to the sale and use of property directly used in timber harvesting and not to all property used in commercial timber operations, regardless of whether such activities are required in order to harvest timber.

Second, industry had proposed language to include equipment such as trucks and trailers used to lift and move equipment from site to site, site preparation equipment, fire fighting and safety equipment, and reforestation tools and equipment in the definition of “off-road commercial timber harvesting equipment and machinery” at subdivision (b)(2). Staff believes that equipment designed primarily for use on highway, or used in activities not part of commercial timber harvesting operations do not qualify for the partial exemption. A comparison of the language proposed by staff and by industry is found in Exhibit 2.

Regulation 1534 (c), Partial Exemption Certificates

Staff proposes language to provide clarification with respect to partial exemption certificates. In general, retailers who take a partial exemption certificate timely and in good faith from a customer are relieved from the liability for the sales or use tax subject to the partial exemption. “Timely” is defined, in this and other regulations, as taking the certificate any time before the retailer bills the purchaser for the property, any time within the retailer’s normal billing or payment cycle, or any time prior to the delivery of the property to the purchaser. A partial exemption certificate may also be considered timely if taken no later than 15 days after the date of purchase. If the retailer fails to obtain a timely partial exemption certificate, relief of the tax liability is not provided unless the retailer presents satisfactory evidence to the Board that the property was sold to an applicable qualifying person and used in a qualifying manner. Language has been proposed to clarify the presumption that a retailer has accepted an exemption certificate in good faith in the absence of evidence to the contrary.

Regulation 1534 (e), Refund of Partial Exemption

Due to the short implementation time allowed to enact the provisions of the statute, the proposed regulation is not expected to be adopted until several months following the operative date. Although the statute requires that a timber harvesting equipment and machinery partial exemption certificate be issued in a timely manner, staff proposes regulatory language that provides a limited period of time within which a qualified person may provide its vendor with a partial exemption certificate which would not otherwise be considered timely.

Regulation 1534 (f), Improper Use of Partial Exemption

The partial exemption provided in RTC section 6356.6 applies to the sale and use of equipment and machinery designed primarily for off-road use in commercial timber harvesting operations, and parts thereof, that is purchased for use by a qualified person to be used primarily in timber harvesting. Therefore, tax applies to property that is not used in a qualifying manner or is not purchased by a qualified person.

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Regulation 1534 (g), Purchaser's Liability for the Payment of Sales Tax

In cases where the purchaser furnishes a valid partial exemption certificate to a retailer or the Board (as applicable), the purchaser is liable for payment of tax if the property is subsequently used in a manner not qualifying for the timber harvesting equipment and machinery partial exemption. The tax is due as if the purchaser were a retailer making a retail sale of the property at the time the property was converted to a non-qualifying use, or the date the purchaser no longer qualifies for the partial exemption, whichever is applicable.

Regulation 1534 (h), Leases to Qualifying Persons

Staff proposes regulatory language to provide that leases of tangible personal property, which are classified as "continuing sales" and "continuing purchases," qualify for the timber harvesting equipment and machinery partial exemption subject to all the conditions and limitations set forth in the regulation.

Regulation 1534 (i), Records

Adequate and complete records must be maintained by the qualified person as evidence that the property purchased was primarily designed for off-road use in commercial timber harvesting and was used by the qualified person primarily in timber harvesting.

B. Pros of the Staff Recommendation

- Provides clear definitions of terms used in the statute.
- Provides requirements for issuing a partial exemption certificate and an example of an acceptable format for a partial exemption certificate.

C. Cons of the Staff Recommendation

None.

D. Statutory or Regulatory Change

No statutory change is required. Staff proposes that a new regulation be adopted.

E. Administrative Impact

Staff will need to notify taxpayers about the new regulation and will do so through a Tax Information Bulletin article.

FORMAL ISSUE PAPERIssue Paper Number 02 - 003**F. Fiscal Impact****1. Cost Impact**

The costs associated with the distribution of Tax Information Bulletins, which are routinely prepared and distributed to taxpayers, are accommodated within the Board's existing budget. There are no other costs.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

Since the proposed regulation provides clear guidance to taxpayers regarding the partial exemption, staff expects that this regulation will improve compliance.

H. Critical Time Frames

The provisions of the proposed regulation are operative September 1, 2001. Implementation will occur 30 days after approval by the Office of Administrative Law.

VI. Alternative 1**A. Description of the Alternative**

Industry representatives have proposed regulatory language that includes activities such as fire hazard abatement, reforestation and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities within the definition of commercial timber harvesting operations. Industry has also proposed language to include trucks and trailers used to lift and move equipment from site to site, site preparation equipment, fire fighting and safety equipment, and reforestation tools and equipment within the definition of "off-road commercial timber harvesting equipment and machinery." As stated above, industry representatives have asked that staff utilize Public Resource Code Section 4527 to define the term "commercial timber harvesting operations." This definition would include activities such as fire hazard abatement, reforestation and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities as part of commercial timber harvesting operations. Industry contends that none of these activities would occur but for the fact that they are part of a timber harvesting operation. In particular, industry contends that the California Forest Practice Rules require landowners to undertake these operations as part of a timber harvesting plan. Industry also contends that the definition of "Timberland" in Section 38103.1 of the Revenue and Taxation Code refers to land devoted to the growing and harvesting of timber or for growing and harvesting timber *and compatible uses*. For these reasons, industry believes that "fire hazard abatement, reforestation and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities" should be included in the definition of the term "commercial timber harvesting operations."

Issue Paper Number 02 - 003

B. Pros of the Alternative

Expanding the application of the exemption would provide additional tax incentives to industry.

C. Cons of the Alternative

Proposed exempt activities appear to exceed the provisions of the statute.

D. Statutory or Regulatory Change

Statutory change may be required. Industry proposes that a new regulation be adopted.

E. Administrative Impact

Staff will need to notify taxpayers about the new regulation and will do so through a Tax Information Bulletin article.

F. Fiscal Impact

1. Cost Impact

The costs associated with the distribution of Tax Information Bulletins, which are routinely prepared and distributed to taxpayers, are accommodated within the Board's existing budget. There are no other costs.

2. Revenue Impact

Estimated revenue loss of less than \$250,000. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

Since the proposed regulation provides clear guidance to taxpayers regarding the partial exemption, staff expects that this regulation will improve compliance.

H. Critical Time Frames

The provisions of the proposed regulation are operative September 1, 2001. Implementation will occur 30 days after approval by the Office of Administrative Law.

Prepared by: Program Planning Division, Sales and Use Tax Department

Current as of: March 4, 2002

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



PROPOSED REGULATIONS FOR PARTIAL EXEMPTION FOR
TIMBER HARVESTING EQUIPMENT AND MACHINERY
(REGULATION 1534)

Recommendation and Alternatives

Staff Recommendation:

Adopt staff's proposed Regulation 1534, *Timber Harvesting Equipment and Machinery*, to provide definitions of terms used in the statute and to clarify the application of the partial exemption as it applies to timber harvesting equipment and machinery.

Alternative 1:

As proposed by industry, adopt staff's recommendation, except:

Amend staff's proposed subdivision (b)(1) to include activities pertaining to "fire hazard abatement, reforestation and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities" within the definition of commercial timber harvesting operations. In addition to adding these activities, the alternative would include fire suppression and conservation operations.

Amend staff's proposed subdivision (b)(2) to specifically include in the definition of "off-road commercial timber harvesting equipment and machinery" trucks and trailers used to lift and move equipment from site to site, site preparation equipment, fire fighting and safety equipment, and reforestation tools and equipment.

Background, Methodology, and Assumptions

Staff Recommendation:

Staff recommends the adoption of proposed Regulation 1534, *Timber Harvesting Equipment and Machinery*. The proposed language provides definitions of terms used in the statute and clarification with respect to the application of the partial exemption as it applies to timber harvesting equipment and machinery. This regulatory language is provided to implement certain statutory provisions of AB 426, Chapter 156 (2001). The revenue impact outlined in this estimate is due to the passage of this statute.

The total annual expenditures exempted by AB 426 as reflected in the staff recommendation would amount to \$95.8 million. This exemption is from the state sales and use tax and would result in a revenue loss of \$4.8 million annually.

Alternative 1:

In addition to staff's recommendation, Alternative 1 would further amend subdivision (b)(1) to include activities pertaining to "fire hazard abatement, reforestation and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities" within the definition of commercial timber harvesting operations. This would extend the partial exemption to persons engaged in the above activities.

According to information provided by the United States Forest Service and industry associations, we estimate little additional revenue loss from this alternative when these activities are performed by commercial timber harvesters. Most all the activities identified in this alternative use essentially the same type of equipment that already qualifies for the partial exemption, with the possible exception of fire hazard abatement. Additionally, it is difficult to determine costs since information related to expenditures on equipment and machinery is limited. However, based upon information provided by the forest service and discussions with industry representatives, we estimate the annual revenue loss to be less than \$100,000.

This alternative would further amend subdivision (b)(2) to include in the definition of "off-road commercial timber harvesting equipment and machinery" trucks and trailers used to lift and move equipment from site-to-site, site preparation equipment, fire fighting and safety equipment, and reforestation tools and equipment.

According to information provided by the United States Forest Service and industry associations, we estimate little additional revenue loss from the exemption of this additional equipment. Most all the equipment identified in this alternative are the same types of equipment that already qualify for the partial exemption, with the exception of fire, safety, and reforestation tools and equipment. Safety equipment and reforestation tools and equipment represent a small expenditure by commercial timber harvesters. We estimate that the annual revenue loss for this equipment to be less than \$150,000.

Revenue Summary

Staff Recommendation:

The revenue effect of those provisions of AB 426, Chapter 156 (2001) as implemented by the regulations recommended by staff would be as follows.

Revenue Effect	
Expenditure	State (5.0%)
\$95.8 million	\$ 4.8 million

Alternative 1:

The additional revenue loss associated with the proposed alternative interpretation of AB 426 would be as follows:

Exemption	State (5.0%)
Fire Hazard Abatement	Less than \$100,000
Safety Equipment and Reforestation Tools	Less than \$150,000
Total	Less than \$250,000

Preparation

This revenue estimate was prepared by Timothy S. Wahl, Research and Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Mr. David E. Hayes, Manager, Research and Statistics Section, Margaret Shedd, Legislative Counsel, and Ms. Charlotte Paliani, Program Planning Manager, Sales and Use Tax Department. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of February 22, 2002

Proposed Regulation for Partial Exemption for Timber Harvesting Equipment and Machinery
Comparison of Language Proposed by Staff and Industry
 Current as of March 6, 2002

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Industry	Summary Comments
<p>ACTION 2 – Definition of “Commercial Timber Harvesting Operations.”</p>	<p><u>(b) DEFINITIONS.</u> For purposes of this regulation:</p> <p><u>(1) “Commercial timber harvesting operations” means the cutting or removal or both of timber from timberlands that may be sold, offered for sale to others, or used in the creation of commercial wood products. Such activities include, but are not limited to, bucking, bunching, chipping, debarking, delimiting, felling, forwarding, loading, piling, skidding, slashing, topping and yarding operations performed on timber as well as the construction and maintenance of fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for the falling of trees, and logging roads not maintained by the California Department of Transportation or other applicable government agency.</u></p> <p><u>Commercial timber harvesting operations do not include the use of timber in processing activities or other activities resulting in the creation of other commercial wood products for sale to others, including, without limitation, milling, planing, carving, paper manufacturing, the treating of wood with creosote or other preservatives to prevent decay or protect against fire, or the packaging of wood chips for use in preparing food.</u></p>	<p><u>(b) DEFINITIONS.</u> For purposes of this regulation:</p> <p><u>(1) “Commercial timber harvesting operations” means the cutting or removal or both of timber or other solid wood forest products, from timberlands for commercial purposes, together with all the work incidental thereto, including but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for the falling of trees, fire hazard abatement, reforestation, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities. Such activities include, but are not limited to, bucking, bunching, chipping, debarking, delimiting, felling, forwarding, loading, piling, skidding, slashing, topping and yarding operations performed on timber.</u></p> <p><u>Commercial timber harvesting operations do not include the use of timber in processing activities or other activities resulting in the creation of other commercial wood products for sale to others, including, without limitation, milling, planing, carving, paper manufacturing, the treating of wood with creosote or other preservatives to prevent decay or protect against fire, or the packaging of wood chips for use in preparing food</u></p>	<p>Language proposed by staff specifically excludes fire hazard suppression or abatement, reforestation and conservation, or site preparation that involves disturbance of soil or burning of vegetation following timber harvesting operations from the definition of the term “commercial timber harvesting operations.” Language proposed by industry specifically includes these items.</p>

Proposed Regulation for Partial Exemption for Timber Harvesting Equipment and Machinery
Comparison of Language Proposed by Staff and Industry
 Current as of March 6, 2002

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Industry	Summary Comments
	<p><u>Commercial timber harvesting operations also do not include activities incidental to commercial timber harvesting operations including, without limitation, fire hazard suppression or abatement, except as otherwise provided herein, soil erosion, reforestation and conservation, or site preparation that involves disturbance of soil or burning of vegetation following timber harvesting operations.</u></p>		
<p>ACTION 2 – Definition of “Off-road commercial timber harvesting equipment and machinery.”</p>	<p>(2) “Off-road commercial timber harvesting equipment and machinery” means any new or used device that may be powered by an internal combustion engine, electric motor, or otherwise, necessary in complying with any operational requirement of federal, state or local government laws and regulations and designed primarily for use off the highways, to propel, move, draw or cut timber in commercial timber harvesting operations. Such items include, but are not limited to, chainsaws, slashers, debarkers, harvesters, forwarders, feller-bunchers, cable yarding equipment, yarders, chippers, loading helicopters, bulldozers, loading equipment used to lift and move timber, graders, water trucks and similar logging road building and maintenance equipment, fuel storage equipment, all-terrain vehicles, timber harvest preparation equipment, loaders.</p>	<p>(2) “Off-road commercial timber harvesting equipment and machinery” means any new or used device, that may be powered by an internal combustion engine, electric motor, or otherwise, that is necessary in complying with any operational requirements of federal, state, or local government laws and regulations and is designed primarily for use off the highways, to propel, move, draw or cut timber in commercial timber harvesting operations. Such items include, but are not limited to, chainsaws, slashers, debarkers, harvesters, forwarders, feller-bunchers, cable yarding equipment, yarders, loading helicopters, chippers, bulldozers; truck, trailer and loading equipment used to lift and move the equipment; graders; water trucks and similar logging road building and maintenance equipment; equipment service vehicles; fuel storage equipment, site preparation equipment; all-terrain vehicles; fire fighting and safety equipment; timber harvest preparation equipment; reforestation tools and equipment; loaders;</p>	<p>Language proposed by industry specifically includes trucks, trailer and loading equipment used to lift and move the equipment, equipment service vehicles, site preparation equipment, fire fighting and safety equipment as well as reforestation tools.</p>

**Proposed Regulation for Partial Exemption for Timber Harvesting Equipment and Machinery
Comparison of Language Proposed by Staff and Industry**

Current as of March 6, 2002

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Industry	Summary Comments
	<p><u>carriages, mobile metal spars, delimiters, chokers, steel cables, grapples, tractors, or skidders used to fell, delimb, cross-cut, measure, sort, bunch, move, and load timber for transport to roadside.</u></p> <p><u>Off-road commercial timber harvesting equipment and machinery does not include junction boxes, switches, conduit and wiring, valves, pipes, tubing incorporated into fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of equipment and machinery.</u></p> <p><u>Off-road commercial timber harvesting equipment and machinery also does not include supplies such as articles of clothing, fuels, real property, materials or fixtures within the meaning of subdivisions (a)(4) and (a)(5), respectively, of Regulation 1521, Construction Contractors, including such items set forth in Appendix A and B of Regulation 1521.</u></p>	<p><u>carriages; skidders; mobile metal spars; delimiters; chokers; steel cables; grapples; front-end loaders, and tractors or rubber tire skidders and other equipment used to fell, delimb, cross-cut, measure, sort, bunch, move and load timber for transport to roadside.</u></p> <p><u>Off-road commercial timber harvesting equipment and machinery does not include junction boxes, switches, conduit and wiring, valves, pipes, tubing incorporated into fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of equipment and machinery.</u></p> <p><u>Off-road commercial timber harvesting equipment and machinery also does not include supplies such as articles of clothing, fuels, real property, materials or fixtures within the meaning of subdivisions (a)(4) and (a)(5), respectively, of Regulation 1521, Construction Contractors, including such items set forth in Appendix A and B of Regulation 1521.</u></p>	

Reference: Section 6356.6, Revenue and Taxation Code.

(a) GENERAL. Commencing on and after September 1, 2001, Section 6356.6 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of off-road commercial timber harvesting equipment and machinery, and parts of off-road commercial timber harvesting equipment and machinery, that is purchased by a qualified person for use primarily in timber harvesting. The terms "off-road commercial timber harvesting equipment and machinery," "parts of off-road commercial timber harvesting equipment and machinery," "qualified person," and "commercial timber harvesting operations" are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

(b) DEFINITIONS. For purposes of this regulation:

(1) "Commercial timber harvesting operations" means the cutting or removal or both of timber from timberlands that may be sold, offered for sale to others, or used in the creation of commercial wood products. Such activities include, but are not limited to, bucking, bunching, chipping, debarking, delimiting, felling, forwarding, loading, piling, skidding, slashing, topping and yarding operations performed on timber as well as the construction and maintenance of fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for the falling of trees, and logging roads not maintained by the California Department of Transportation or other applicable government agency. Commercial timber harvesting operations do not include the use of timber in processing activities or other activities resulting in the creation of other commercial wood products for sale to others, including, without limitation, milling, planing, carving, paper manufacturing, the treating of wood with creosote or other preservatives to prevent decay or protect against fire, or the packaging of wood chips for use in preparing food. Commercial timber harvesting operations also do not include activities incidental to commercial timber harvesting operations including, without limitation, fire hazard suppression or abatement, except as otherwise provided herein, soil erosion, reforestation and conservation, or site preparation that involves disturbance of soil or burning of vegetation following timber harvesting operations.

(2) "Off-road commercial timber harvesting equipment and machinery" means any new or used device that may be powered by an internal combustion engine, electric motor, or otherwise, necessary in complying with any operational requirement of federal, state or local government laws and regulations and designed primarily for use off the highways, to propel, move, draw or cut timber in commercial timber harvesting operations. Such items include, but are not limited to, chainsaws, slashers, debarkers, harvesters, forwarders, feller-bunchers, cable yarding equipment, yarders, chippers, loading helicopters, bulldozers, loading equipment used to lift and move timber, graders, water trucks and similar logging road building and maintenance equipment, fuel storage equipment, all-terrain vehicles, timber harvest preparation equipment,

loaders, carriages, mobile metal spars, delimiters, chokers, steel cables, grapples, tractors, or skidders used to fell, delimb, cross-cut, measure, sort, bunch, move, and load timber for transport to roadside. Off-road commercial timber harvesting equipment and machinery does not include junction boxes, switches, conduit and wiring, valves, pipes, tubing incorporated into fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of equipment and machinery. Off-road commercial timber harvesting equipment and machinery also does not include supplies such as articles of clothing, fuels, real property, materials or fixtures within the meaning of subdivisions (a)(4) and (a)(5), respectively, of Regulation 1521, Construction Contractors, including such items set forth in Appendix A and B of Regulation 1521.

(3) Parts of off-road commercial timber harvesting equipment and machinery means:

(A) All component parts and contrivances include, but are not limited to, belts, shafts, pipes, hoses and moving parts, that are parts of off-road commercial timber harvesting equipment and machinery as defined in subdivision (b)(2) that can be separated from the off-road commercial timber harvesting equipment and machinery and replaced. Parts of off-road commercial timber harvesting equipment and machinery do not include items that are consumed (e.g., burned, evaporate, dissolve, dissipate) through the regular use of the off-road commercial timber harvesting equipment and machinery (e.g., gasoline, cleaning agents, solutions, chemicals) which are ordinarily supplies; however, lubricants and fluids not consumed (e.g., engine oil not consumed as part of fuel for a two-stroke engine) is regarded as a component part.

(B) All repair and replacement parts for off-road commercial timber harvesting equipment and machinery as defined in subdivision (b)(2) which replace previous parts and can include parts that are identical to the parts they replace as well as parts that are different from the ones they replace, such as replacement parts added for the purpose of improving or modifying the off-road commercial timber harvesting equipment and machinery, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by a qualified person or another person. Parts of off-road commercial timber harvesting equipment and machinery do not include tangible personal property used in effectuating the repair of any timber harvesting equipment and machinery such as a wrench used to replace a spark plug, except tools used for repair that are designed exclusively for specific off-road commercial timber harvesting equipment and machinery.

(C) All equipment or devices used or required to operate, control, regulate, or maintain the machinery including, without limitation, computers, data processing equipment, and computer software, including both operating programs and application programs. Parts of off-road commercial timber harvesting equipment and machinery do not include tangible personal property used primarily in the administration, management, or marketing of timber harvesting operations.

(4) "Primarily" means used 50 percent or more of the time. As used herein, the qualified property has to be designed for use 50 percent or more of the time off-road in commercial timber harvesting operations and be used 50 percent or more of the time in timber harvesting.

(5) "Qualified person" means a person engaged in commercial timber harvesting operations. A qualified person is not required to be engaged 50 percent or more of the time in commercial timber harvesting operations.

(6) "Qualified property" means off-road commercial timber harvesting equipment and machinery, and the parts thereof, as defined in subdivision (b)(2)-(3) used primarily in timber harvesting.

(7) "Timber" means trees of any species maintained for eventual harvest for forest products or other forest purposes, whether planted or of natural growth, standing or down, including Christmas trees, on privately or publicly owned land, but does not mean nursery stock.

(8) "Timberland" means privately or publicly owned land which is devoted to and used for growing or timber harvesting, or for growing and timber harvesting and compatible uses, and which is capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre.

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) IN GENERAL. Qualified persons who purchase or lease qualified property from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified person, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified property, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the qualified property to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate that is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the specific property to a qualified person and the property was primarily used in a qualifying manner. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a qualified person may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. Qualified persons must include in the partial exemption certificate a description of the qualified property. If purchasing tangible personal property not qualifying for the partial exemption, the qualified person must clearly state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) FORM OF PARTIAL EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the purchaser is engaged in commercial timber harvesting operations, and that the property purchased is primarily designed for off-road use in commercial timber harvesting operations and will be used primarily in timber harvesting.

(E) Description of property purchased.

(F) Date of execution of document.

(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a qualified person for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where a qualified person states that he or she is engaged in commercial timber harvesting operations and states that the property purchased is primarily designed for off-road use in commercial timber harvesting operations and will be used primarily in timber harvesting. If the qualified person is buying property of a kind not normally used in timber harvesting, the seller should require a statement as to how the specific property purchased will be used. However, an exemption certificate cannot be accepted in good faith where the seller has knowledge that the property is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a qualified person to claim a partial exemption from use tax on purchases of qualified property from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to

the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on June 30, 2002, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before September 30, 2002. The retailer must refund the tax or tax reimbursement directly to the purchaser or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a qualified person filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of a qualified person at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION.

(1) PROPERTY USED IN A MANNER NOT QUALIFYING FOR THE PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property that is used in a manner not qualifying for the partial exemption under this regulation.

(2) PURCHASES BY NON-QUALIFIED PERSONS. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property if a purchaser is not a qualified person.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses that tangible personal property in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for tangible personal property that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was purchased.

(h) LEASES TO QUALIFYING PERSONS.

(1) LEASES—IN GENERAL. Leases of tangible personal property which are classified as “continuing sales” and “continuing purchases” of tangible personal property, in accordance with Regulation 1660, “Leases of Tangible Personal Property – In General,” may qualify for the partial exemption subject to all the limitations and conditions set forth in this regulation. This partial exemption may apply to rentals payable paid by a qualified person on or after September 1, 2001 with respect to a lease of qualified property to the qualified person, which qualified property is used primarily in timber harvesting, notwithstanding the fact that the lease was entered into prior to the effective date of this regulation. For purposes of this subdivision, a non-qualified person may purchase property for resale and subsequently lease the property to a qualified person subject to the partial exemption.

(2) LEASES—ACQUISITION SALE AND LEASEBACK. A qualified person will be regarded as having paid sales tax reimbursement or use tax with respect to that qualified person's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the qualified person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.

(3) SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION. If a qualified person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rentals payable.

(i) RECORDS. Adequate and complete records must be maintained by the qualified person as evidence that the qualified property purchased was primarily designed for off-road use in commercial timber harvesting operations and was used by the qualified person primarily in timber harvesting.

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APPENDIX A

PARTIAL EXEMPTION CERTIFICATE

STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Timber Harvesting Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

I, as the undersigned purchaser, hereby certify I am engaged in commercial timber harvesting operations. The property purchased or leased is primarily designed for off-road use in commercial timber harvesting operations and will be used primarily in timber harvesting in accordance with Revenue & Taxation Code Section 6356.6.

Type of Timber Harvesting Equipment and Machinery (and the parts¹ thereof)*

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (if applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		PERMIT NUMBER (If applicable) ²
TITLE		TELEPHONE NUMBER
ADDRESS	CITY	STATE, ZIP

¹ If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in timber harvesting equipment and machinery performing qualified timber harvesting activities.

² If you are not required to hold a seller's permit, please enter "Not Applicable."