



STATE BOARD OF EQUALIZATION

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Fourth District, Los Angeles

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State Controller

CYNTHIA BRIDGES
Executive Director

February 22, 2013

Dear Interested Party:

Staff has reviewed comments received in response to our January 10, 2013, interested parties meeting regarding the proposed amendments to Lumber Products Assessment Regulation 2000, *Retailer Reimbursement Retention*. After considering the comments and information provided to date, staff is recommending amendments to Regulation 2000. Enclosed is the *Second Discussion Paper* on this subject. This document provides the background, a discussion of the issue and explains staff's recommendation in more detail.

A second interested parties meeting is scheduled for **March 7, 2013 at 10:00 a.m.** in Room 122 to discuss the proposed amendments to Regulation 2000. If you are unable to attend the meeting but would like to provide input for discussion, send your submission to the above address or send a fax to 1-916-322-4530 before March 5, 2013. In addition, please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in attending the meeting or presenting their comments.

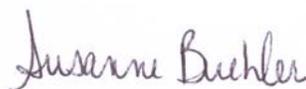
If you plan to attend the meeting on March 7, 2013, or would like to participate via teleconference, please let staff know by contacting Ms. Lynn Whitaker at 1-916-324-8483 or Lynn.Whitaker@boe.ca.gov prior to March 7, 2013. This will allow staff to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing.

Any comments you may wish to submit subsequent to the meeting must be received by **March 22, 2013**. They should be submitted in writing to the above address. After considering all comments, staff will complete a formal issue paper on the proposed amendments to Regulation 2000 for discussion at the Business Taxes Committee meeting scheduled for May 22, 2013. Copies of the formal issue paper will be mailed to you approximately ten days prior to this meeting. Your attendance at the May Business Taxes Committee meeting is welcomed. The meeting is scheduled for 10:00 a.m. in Room 121 at 450 N Street, Sacramento, California.

Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

We look forward to your comments and suggestions. Should you have any questions, please feel free to contact Ms. Kirsten Stark, Supervisor, Business Taxes Committee and Training Section at 1-916-322-0849.

Sincerely,



Susanne Buehler, Chief
Tax Policy Division
Sales and Use Tax Department

SB:lw

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District (MIC 71)
Senator George Runner (Ret.), Member, Second District (MIC 78)
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(via email)

Mr. David Hunter, Board Member's Office, Fourth District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Tim Treichel, Board Member's Office, Third District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Mr. Sean Wallentine, Board Member's Office, Second District
Mr. James Kuhl, Board Member's Office, Second District
Mr. Lee Williams, Board Member's Office, Second District
Mr. Alan Giorgi, Board Member's Office, Second District
Ms. Lynne Kinst, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Cynthia Bridges (MIC 73)
Mr. Randy Ferris (MIC 83)
Mr. Jeffrey L. McGuire (MIC 43)
Mr. Jeff Vest (MIC 85)
Mr. David Levine (MIC 85)
Mr. Robert Tucker (MIC 82)
Mr. Bradley Heller (MIC 82)
Mr. Kevin Smith (MIC 82)
Mr. Stephen Smith (MIC 82)
Mr. Todd Gilman (MIC 70)
Ms. Lauren Simpson (MIC 70)
Mr. Bill Benson (MIC 67)
Mr. Joe Fitz (MIC 67)
Mr. Kevin Hanks (MIC 49)

Mr. Wayne Mashihara (MIC 46)
Ms. Susanne Buehler (MIC 92)
Mr. Bradley Miller (MIC 92)
Ms. Kirsten Stark (MIC 50)
Ms. Lynn Whitaker (MIC 50)
Mr. Michael Patno (MIC 50)

SECOND DISCUSSION PAPER
Lumber Products Assessment
Regulation 2000, Retailer Reimbursement Retention

I. Issue

Adopt a permanent regulation determining the amount of collected lumber products assessment retailers may retain for cost reimbursement.

II. Staff Recommendation

Staff recommends the adoption of Regulation 2000 allowing retailers to retain \$735 per location for reimbursement of startup costs (see Exhibit 1).

III. Other Alternatives Considered

Alternative 1: Readopt emergency Regulation 2000 without amendment. This alternative would allow retailers to retain \$250 per location for reimbursement of startup costs.

Alternative 2: Allow retailers to retain a higher amount for startup costs and an annual amount for reimbursement of ongoing costs.

- West Coast Lumber & Building Material Association (West Coast) requests BOE set the retention amount at \$5,500 per retail lumber location for startup costs and set an annual retention amount of \$1,500 per retail lumber location to accommodate updates and changes in the list of products subject to the assessment (see Exhibit 2).
- Caseywood Corporation (Caseywood) estimates that it will cost their company \$7,000 to implement computer system, internal process, and accounting changes necessary to comply with the new law. They further anticipate ongoing costs of approximately \$1,500 to \$2,000 annually to ensure compliance with the new law (see Exhibit 3).
- Home Depot U.S.A. (Home Depot), represented by Andrew Kugler of Mayer Brown LLP, agrees with other interested parties that the retention amount provided in the emergency regulation is too low and that the statute allows for ongoing reimbursement. Home Depot is currently determining their costs and will update their comments on the issue when that analysis is complete (see Exhibit 4).

IV. Background

Assembly Bill (AB) 1492 (Chapter 289, statutes 2012) 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. As enacted by AB 1492, Public Resources Code (PRC) section 4629.5(a)(3) provides:

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

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Lumber Products Assessment Regulation 2000, *Retailer Reimbursement Retention*

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.

To ensure that a Board-determined retention amount was authorized before the affected retailers' collection duties begin, the Board approved emergency Regulation 2000, *Retailer Reimbursement Retention* at its October 23, 2012 Board meeting. The regulation allows retailers to retain \$250 per location as reimbursement for startup costs:

Emergency 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.

Regulation 2000 was approved by the Office of Administrative Law (OAL) on December 4, 2012 and became effective January 1, 2013. Approved emergency regulations remain effective for 180 days unless OAL approves a re-adoption of the emergency regulation during that time period. OAL may approve two re-adoptions of the same emergency regulation and each re-adoption may extend the emergency regulation's effective period for up to 90 days. Emergency regulations are repealed when their effective periods expire. However, an emergency regulation can become permanent if the Board re-adopts the regulation through the regular rulemaking process and transmits the completed rulemaking file to OAL during the period the emergency regulation is in effect. Emergency Regulation 2000 will expire on July 2, 2013. In order to work with interested parties through the Business Taxes Committee process, staff intends to request re-adoption of the emergency regulation.

Staff met with interested parties on January 10, 2013 to discuss a permanent regulation. The proposed permanent Regulation 2000 is scheduled to be presented at the May 22, 2013 Business Taxes Committee meeting.

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V. Discussion

Retention for Startup Costs or Startup and Ongoing Costs

Staff recognizes that retailers will have ongoing expenses to comply with the provisions of the Lumber Products Assessment. As new products are added to inventory, retailers will have to determine whether the product is subject to the assessment and adjust their recordkeeping system accordingly. In addition, PRC section 4629.4 requires the Board of Forestry and Fire Protection (BOF) to annually update the regulation that interprets and makes specific the lumber products and engineered wood products that the BOF determines are subject to the assessment. Changes to that regulation may require retailers to review their inventory and update their recordkeeping system as a result.

However, despite these costs, staff believes the language of PRC section 4629.5 and the legislative intent behind AB 1492 only provide for a one-time reimbursement of startup costs to implement the Lumber Products Assessment on January 1, 2013. Staff bases this on the language in PRC 4629.5(a)(3) which explains that the retailer may retain an amount "...to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained." The statute does not authorize retailers to retain additional amounts after a determined amount is retained. Staff believes if retention for ongoing costs was intended, the statute would have explicitly provided an amount or percentage to be routinely claimed on the taxpayer's return as in other Board of Equalization (BOE) programs where taxpayers retain reimbursement amounts.¹

The intent that reimbursement be limited to startup costs was noted in the BOE legislative [analysis](#)² for AB 1492. In addition, the Senate and Assembly floor analysis for AB 1492 refer to retailers being reimbursed for "...costs to set up collection systems." The California Forestry Association, a sponsor of AB 1492, confirmed this intent in their submission supporting the provisions of emergency Regulation 2000 (Exhibit 5).

Several interested parties, however, disagree with staff's interpretation of PRC section 4629.5 and believe BOE should adopt a regulation that recognizes the ongoing costs that retailers will incur complying with the Lumber Products Assessment. In their submission, Home Depot explains:

"...the Paper's conclusion contradicts with the plain language of the statute which does not limit reimbursement to the costs associated with setting up a collection system. Rather, PRC 4629.5(a)(3) specifically authorizes reimbursement for "**any** costs associated with the **collection** of the assessment." Where statutory language

¹ Reimbursement is allowed under the California Tire Fee Law, Covered Electronic Waste Recycling Fee, and the Cigarette and Tobacco Products Tax Law. The California Tire Fee Law and Covered Electronic Waste Recycling Fee Law authorize a retail seller to retain 3 percent and 1.5 percent of the fee, respectively, as reimbursement of collection costs. The Cigarette and Tobacco Products Tax Law provides that cigarette tax stamps are to be sold to licensed distributors at a specified discount, which is intended to help defray the cost (leasing of equipment/labor cost) to the distributor for affixing the stamps.

² <http://www.boe.ca.gov/legdiv/pdf/1492abenr12cw.pdf>

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is clear and unambiguous, there is no need to look at legislative history or to go any further. *Hoeschst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519. We submit that PRC 4629.5(a)(3) is clear and unambiguous and that it authorizes reimbursement for any costs of collection, including ongoing costs.

The statute's reference to reimbursement "on the first return or next consecutive return until the entire reimbursement amount is retained" does not change that plain meaning. Indeed, given that retailers are required to file quarterly returns, that reference likely means that the Legislature intended for BOE to set an annual reimbursement amount that retailers should retain "on the first return or next consecutive return" filed each year. ..."

Home Depot also points out that nothing in the statute suggests that retailers should not be reimbursed for these ongoing programming costs and that it makes no sense to reimburse retailers for initial programming costs and then require them to shoulder those same costs to capture new lumber products. The California Retailers Association (CRA) explained in their first submission that retailers will incur ongoing costs to collect the assessment as long as they sell lumber in California (Exhibit 6). That is, retailers will have ongoing costs to collect the assessment as inventories change and products require evaluation and coding to capture whether they are subject to the assessment (including engineered wood products that are reformulated). Caseywood and West Coast made similar comments in their submissions. Caseywood pointed out that ongoing costs affect sales, distribution, accounting, audit, and other cost centers. They anticipate ongoing costs of approximately \$1,500 to \$2,000 per year to ensure compliance with the new assessment. West Coast commented that changes to the list of products subject to the assessment will require additional computer software modifications, staff training and management oversight by lumber dealers. West Coast recommends an annual reimbursement amount of \$1,500 per retail location be allowed to accommodate updates and changes in the list of products subject to the assessment.

Amount of Retention for Startup Costs

Staff believes the language in PRC 4629.5(a)(3), "and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations..." means that BOE was given the authority to determine a specific amount for reimbursement. Staff does not believe the Board has the authority to define costs as a percentage of collections, or in a manner that would allow each affected retailer to come up with its own unique reimbursement amount. Below is a discussion of proposed reimbursement amounts and their potential impact on the expected revenue from the Lumber Products Assessment.

\$250 per location. Emergency Regulation 2000 provides that retailers may retain \$250 per location registered under the retailer's seller's permit as of January 1, 2013, and where sales of products subject to the assessment are made. That amount may be retained by retailers without any requirement that the retailer substantiate its costs.

The \$250 retention amount was based on BOE's understanding of the amount of retailer reimbursement discussed when the legislation was drafted. Although the statute and legislative

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analyses do not specify whether “retailer” was intended to mean “registered retailer” or “retail location,” staff believed the statute could be interpreted to allow reimbursement on a per location basis to benefit the taxpayer. Staff supported the \$250 amount by using U.S. Census Bureau data and a 2006 PricewaterhouseCoopers report on gross retail sales tax compliance costs for programming and servicing cash registers for sales tax rate and bases changes. (See October 12, 2012 Chief Counsel [Memo](#)³ on the adoption of emergency Regulation 2000.) The California Forestry Association supported the staff-determined amount and explained that the legislative intent and history was to allow only a one-time amount to cover initial costs of compliance, which the Legislature had been informed would be no more than \$250 per retail establishment (Exhibit 5).

Although staff is recommending a higher amount be allowed, staff believes adopting Emergency Regulation 2000 without amendment remains a viable option for the Board’s consideration. At \$250, this alternative will have the smallest revenue impact on the Timber Regulation and Forest Restoration Fund (TRFR Fund). In addition, it would be the easiest alternative for staff to implement and for retailers to claim. In fact, by the time a permanent regulation can be approved by OAL, some retailers will have already claimed the allowed reimbursement under the emergency regulation (for example, a single location retailer with more than \$25,000 in retail lumber product sales in 2013).

\$735 per location. Staff’s recommended \$735 retention amount was determined using different data from the 2006 PricewaterhouseCoopers report used to support the emergency regulation. Although interested parties argued that this report did not adequately support the amount allowed in the emergency regulation, staff could not find a cost of tax compliance study that was identical to the implementation of the Lumber Products Assessment. Staff believes the PricewaterhouseCoopers report on retailer cost of collections, which was used in the Streamlined Taxable Sales Agreement, is the best available.⁴

To support the \$250 amount provided in the emergency regulation, staff looked at the data for programming and servicing cash registers. However, another portion of the study estimated compliance costs based on eight categories associated with the retail sales tax: (1) training personnel on sales tax; (2) documenting tax-exempt sales; (3) customer service relating to sales tax issues other than documenting exempt sales; (4) sales tax-related software acquisition and license fees; (5) programming and servicing cash registers and other Point-of-Sale (POS) systems to address sales-tax requirements; (6) return preparation, making remittances, refund and credit claims, and research relating to sales tax (tax remittances excluded); (7) dealing with sales tax audits and appeals; and (8) other costs (such as costs related to data storage, sales tax registration, etc.). The study shows an average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry (Table V.B.2b of the study). Staff notes that the PricewaterhouseCoopers study reports costs of sales tax collections as percentages of taxable sales (instead of actual dollar costs). Accordingly, staff does not believe it is necessary to adjust

³ http://www.boe.ca.gov/meetings/pdf/102312_J1_AB1492_Emergency_Regs.pdf

⁴ *Retail Sales Tax Compliance Costs: A National Estimate*, Volume One: Main Report, PricewaterhouseCoopers, LLP, Prepared for Joint Cost of Collection Study, National Economic Consulting, April 7, 2006.
<http://www.bacssuta.org/Cost%20of%20Collection%20Study%20-%20SSTP.pdf>

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the study results for changes in producer or consumer prices since the study was released in 2006.

While staff recognizes that these categories do not include lumber retailers' costs to identify and code products subject to the assessment, the categories do include areas that are not related to startup costs associated with the assessment (for example, documenting tax-exempt sales, return preparation and making remittances, and dealing with tax audits and appeals). Staff believes that overall the 0.21 percent factor is fair to use as an estimate of costs. To calculate the \$735 amount, staff looked at the estimated number of retail locations and estimated revenue for the assessment.

The actual number of retail locations selling products subject to the Lumber Products Assessment in California is unknown. The most recent U.S. Census Bureau data indicate that there were 7,050 establishments in California in NAICS (North American Industry Classification System) industry 444, "Building material and garden equipment and supplies dealers," in 2010.⁵ However, other retailers in different NAICS industries may sell lumber and wood products. Based on the Census Bureau numbers and allowing for additional sellers in other NAICS industries, staff believes the number of locations selling lumber and wood products is likely to be close to 10,000.

The revenue estimate of \$35 million cited in the analysis of AB 1492 implies lumber sales of \$3.5 billion since the assessment is one percent of lumber sales. If there are 10,000 locations, this implies average lumber sales of \$350,000 per location. Assuming average compliance costs of 0.21 percent implies an estimate of \$735 per location.

To implement the staff's proposed increase in the allowed retention amount for startup costs, staff recommends an additional \$485 be allowed beginning January 1, 2014 (see Exhibit 1). This date will coincide with the expected effective date of permanent Regulation 2000.⁶ In addition, this prospective change will be easier to implement as it would limit the number of refund claims. Under staff's proposal, retailers who continue to sell lumber products will claim the additional amount on their Lumber Product Assessment schedules for reporting periods beginning January 1, 2014. Retailers who no longer sell products subject to the assessment, however, may file a claim for refund for assessment amounts paid in 2013 up to \$485. For example, a single-location retailer who had \$65,000 in retail lumber product sales subject to the assessment in 2013 would have paid \$400 in assessment on those sales (\$650 assessment collected - \$250 retained for cost reimbursement under the provisions of Emergency Regulation 2000). If the retailer discontinues selling wood products in 2014, the retailer may file a claim for refund for \$400.

\$5,500 per location. Several interested parties have explained that the amount allowed in emergency Regulation 2000 is unreasonably low given retailers' actual costs to change their

⁵ 2010 County Business Patterns, California, U.S. Census Bureau.

⁶ Expected dates for approval of Regulation 2000: Board authorization to publish 5/22/2103, public hearing 8/13/2013, deadline for OAL approval 10/23/2013, effective date of regulation 1/1/2014.

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Lumber Products Assessment **Regulation 2000, *Retailer Reimbursement Retention***

reporting systems to collect the assessment. West Coast requested that the reimbursement amount be set at \$5,500 per retail lumber location. In October 2012, West Coast surveyed their members and estimated the average cost of implementation to be \$4,251. Since that time, many retail lumber dealers have received more complete estimates, have paid for software upgrades and reconfigurations, or made the necessary changes to in-house computer systems. West Coast now estimates the average cost to implement the assessment is \$5,480 per lumber location (see Exhibit 2).

Caseywood also agreed that the \$250 amount was inadequate. Although they did not expressly suggest an amount to be included in the regulation, Caseywood estimated that it will cost their company \$7,000 to implement computer system, internal process, and accounting changes necessary to comply with the new law.

Home Depot explained that their interpretation of PRC section 4629.5(a)(3) authorizes reimbursement for any costs associated with the collection of the assessment. They pointed out that the PricewaterhouseCoopers study data referenced as support emergency regulation only covers the cost of programming and servicing cash registers. However, other costs should be considered in setting a reimbursement amount such as training personnel and purchasing tax-related software. In addition, the study analyzed programming costs associated with a general sales tax, while programming for the assessment requires more time and resources because it only applies to specific products identified by the BOF. Home Depot does not believe the PricewaterhouseCoopers study should be relied on to set a reimbursement amount. Instead, a better determination of actual costs of collection could be made from a poll of retailers throughout the state. They further explained that Home Depot is determining its own costs and will provide these costs when that analysis is complete.

Purpose of AB 1492 and impact of allowed retention amounts. As noted in BOE's legislative bill analysis, the purpose of AB 1492 was, among other things, to ensure continued sustainable funding for California's forest program to protect the state's forest resources and to replace the current piecemeal funding structure with a single funding source. In that analysis, BOE estimated AB 1492 could generate an additional \$35 million in annual state revenues for the TRFR Fund established by the bill. Since retailers are allowed to retain a determined amount for reimbursement for costs before paying the assessment, the amount of allowed retention directly affects the revenue the fund receives. Staff believes this revenue impact and the overall purpose of AB 1492 should be considered when determining the amount of allowed retention.

A complicating factor in determining the revenue impact is that BOE does not know the actual number of retail locations selling products subject to the assessment. As noted on page 6, based on Census Bureau data, staff estimates the number of locations to be 10,000. However, because the assessment applies to products that could be sold by a variety of stores, staff cannot readily identify those retailers.

In November 2012, BOE sent notices to 54,000 retailers advising them that they may be required to collect the Lumber Products Assessment. Retailers were identified by the NAICS noted in BOE records (based on the type of products primarily sold). In addition to lumber and construction material retailers, the selected retailers included hardware stores, home centers,

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nursery and garden centers, department stores, and general merchandise sellers. If the retailer filed sales and use tax returns more than once a year (28,000 of the noticed retailers), the retailer's account was adjusted so that the retailer will receive a Lumber Products Assessment schedule with their sales and use tax return. If the retailer does not sell products subject to the assessment, the retailer must contact BOE to have the schedule removed. The remaining retailers (26,000 yearly and fiscal yearly filers) must contact BOE in order to receive a schedule to report the assessment. As of January 2, 2013, there were approximately 27,500 retailers with 12,500 sub-locations (total of 40,000 locations) that were registered to receive the Lumber Products Assessment schedule.

Using a range of 10,000 to 40,000 estimated retail locations, the impact of the suggested reimbursement amounts is shown in the tables below.⁷ The tables assume that any increase in allowed retention amount would be taken after January 1, 2014 (prospective treatment). Accordingly, the impact on the TRFR Fund revenue for 2013 will be based on the \$250 amount provided in the emergency regulation.

Estimated 2013 Impact on TRFR Fund - Emergency Regulation 2000			
Estimated number of retail locations	Allowed retention per retail location	Total allowed retention	Estimated revenue to Fund
10,000 to 40,000	\$250	\$2,500,000 to \$10,000,000	\$32,500,000 to \$25,000,000

For illustrative purposes, the table above shows the entire allowed retention will be claimed in 2013. In reality, retailers with less than \$25,000 in retail sales of products subject to the assessment in 2013 will carry forward unused retention amounts to future reporting years.

⁷ In these examples, we assume constant revenues of \$35 million. However, the \$35 million figure is a forecast. Actual lumber sales may be higher or lower. Lumber sales are extremely variable and highly dependent on economic conditions.

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Estimated 2014 - 2016 Impact on TRFR Fund					
Estimated number of retail locations	Allowed retention per retail location	Total allowed retention	Estimated revenue to Fund 2014	Estimated revenue to Fund 2015	Estimated revenue to Fund 2016
10,000 to 40,000	\$250	\$2,500,000 to \$10,000,000	\$35,000,000	\$35,000,000	\$35,000,000
10,000 to 40,000	\$485	\$4,850,000 to \$19,400,000	\$30,150,000 to \$15,600,000	\$35,000,000	\$35,000,000
10,000 to 40,000	\$5,250	\$52,500,000 to \$210,000,000	\$0	\$17,500,000 to \$0	\$35,000,000 to \$0*

*At 40,000 locations, the fund would not reach a positive amount until 2021 (7 years).

The \$485 amount represents staff's recommended increase in allowed retention (total retention of \$735); the \$5,250 represents West Coast recommendation adjusted for staff's suggestion that any increase be treated prospectively (total retention of \$5,500). Again, for illustrative purposes, the table shows the entire allowed retention will be claimed each year. Thus, for the \$250 amount, the table shows no additional retention in 2014. In reality, many retailers will likely carry forward unused retention amounts depending on their retail sales of lumber products for that year. For example, at \$5,250 allowed retention, retailers with less than \$525,000 in retail sales of products subject to the assessment would carry forward unused amounts.

In addition to the proposed allowed retention for startup costs, interested parties have requested \$1,500 annually for reimbursement of ongoing costs to comply with the assessment. For 10,000 retail locations, that would be an annual \$15 million revenue reduction to the TRFR Fund.

VI. Summary

Staff continues to believe that the statute only allows for reimbursement of startup costs to implement the assessment. Based on input from lumber retailers, staff agrees the \$250 retention amount in the emergency regulation is inadequate. However, given the potential impact to the TRFR Fund revenue, staff does not consider the recommendations from industry to be feasible and has suggested an alternative amount. Although not discussed in interested party submissions, staff recommends any increase in the allowed retention amount be prospective.

A second interested parties meeting is scheduled for March 7, 2013, to continue discussing this issue. Staff welcomes any comments or suggestions from interested parties.

Prepared by the Tax Policy Division, Sales and Use Tax Department

Current as of 2/20/2013

(NOTE: The underlined and strikeout text shows revisions from Emergency Regulation 2000.)

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.

From January 1, 2013 to December 31, 2013, Aa 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.

Beginning January 1, 2014 a retailer required to collect the Lumber Products Assessment may retain an additional \$485 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 after January 1, 2014 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. If the retailer no longer sells products subject to the assessment, the retailer may file a claim for refund for assessment amounts paid in 2013 up to \$485.

"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.

WEST COAST LUMBER & BUILDING MATERIAL ASSOCIATION

177 Parkshore Drive • Folsom, California 95630 Telephone 916/235-7490 Fax 916/235/7496
www.lumberassociation.org

January 21, 2013

Ms. Susanne Buehler, Chief
Tax Policy Division (MIC:92)
Board of Equalization
450 N Street
PO Box 942879
Sacramento CA 94279-0092

Re: Proposed Regulation 2000, *Retailer Reimbursement Retention*

Ladies and Gentlemen:

The West Coast Lumber & Building Material Association (WCLBMA) recommends the following as a permanent regulation establishing the amount of collected lumber products assessment retailers may retain for costs reimbursement.

WCLBMA is a regional lumber and building material trade association with more than 300 member firms, the majority of whom are in California. Within that total membership are 172 separate retail lumber locations, representing 92 separate firms. The association represents in excess of 80% of the retail lumber dealers in California.

WCLBMA requests the following:

- 1. Set the reimbursement amount at \$5,500 per retail lumber location.**
- 2. Set an annual reimbursement amount of \$1,500 per retail lumber location to accommodate updates and changes in the list of products subject to the assessment.**

Comments:

1. The source of the \$250 "emergency rule" reimbursement is open to question and concern. The manner in which the enabling legislation, AB 1492, was passed by the legislature in the early morning hours of the final day of the 2012 session was a charade. Passing such a significant piece of legislation with major implications and costs for those responsible for collecting the

assessment was an injustice. Calling the hastily cobbled-together legislation an “emergency,” thus circumventing any hearings, debate or discussion of the legislation was a mistake.

- a. The Board of Equalization staff counsel’s memorandum proposing the \$250 reimbursement in October, 2012, was based largely on a 2006 “*Retail Sales Tax Compliance Costs: A National Estimate*,” prepared by PriceWaterhouseCooper. That report has been demonstrated to be inaccurate, incomplete and non-germane.
 - i. The report used data from 2003, compiled in 2006, and is seriously out of date.
 - ii. The report focuses on updating “cash registers” for sales tax collection. This current issue involves complex computer software systems, not cash registers.
 - iii. The report focuses on this as a sales tax issue, which it is not. It is the collection of an additional assessment on selected products, not a general sales tax increase.
 - iv. The reports itself acknowledges its inaccuracies and irrelevance with numerous comments of “coverage error,” “missing data,” “measurement error,” and “sampling error.” It notes a significant non-response and incomplete response rate.
 - v. The report appears to be a sample based on response from some general retail businesses, certainly not retail lumber retailers.
 - b. There has been discussion on the legislative intent of what “reimbursement” actually meant to those involved. Several who were part of the late night actions of AB 1492 acknowledge their understanding that what was passed included full reimbursement of costs involved in implementing the tax.
2. WCLBMA presented data at the October, 2012, BOE hearing that the average cost of implementation reported by lumber retailer respondents was \$4,251. At the time, WCLBMA noted this was based on estimates lumber retailers had received from computer software providers and estimates of time involved internally to enact the assessment.

Since that time, many retail lumber dealers have received more complete estimates, have in some cases paid for software upgrades and reconfigurations, or made the necessary programming changes to in-house computer systems. **The average cost to implement the assessment is \$5,480 per lumber location as reported by 74 independent lumber retail locations.**

See Exhibit A. Costs estimated to Implement California Lumber Tax

3. WCLBA also requests an annual reimbursement per retail lumber location of \$1,500 beginning in 2014 to reimburse lumber retailers for the anticipated updates as products subject to the assessment or not subject to the assessment are determined by the California State Board of Forestry and Fire Protection.

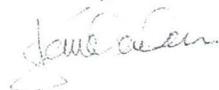
At the September 2012 public hearing conducted by the Board of Forestry and Fire Protection, staff acknowledged their short time period in which to develop an “emergency regulation” to produce the list of products subject to and not subject to the assessment. The board also recognized the complexity of the product list and included a provision for annual review of the lumber products lists. Any changes to the list of products will require additional computer

software modifications, staff training and management oversight by retail lumber dealers. It is the opinion of WCLBMA that this additional cost is reimbursable under the language of AB 1492.

The California independent retail lumber dealers have objected to this unfortunate piece of legislation that was drafted behind closed doors and passed with tawdry deal-making and inappropriate pressure from the administration. Nevertheless the legislation is now law and the retail lumber dealers are making every possible good faith effort to comply.

There are many watching this process to observe if state government can and will rectify as much as possible a most unfortunate legislative action.

Sincerely,



KEN DUNHAM
Executive Director

CC: BOE Members
Governor of California
California Forestry Association
California Taxpayers Association

**EXHIBIT A - COSTS ESTIMATED TO IMPLEMENT CALIFORNIA LUMBER
ASSESSMENT (AB1492)**

FIRM(names dedacted)	TOTAL COST	PER LOCATION
a	\$30,000	\$4,285
b	\$6,000	\$6,000
c	\$42,000	\$3,500
d	\$44,250	\$4,425
e	\$8,000	\$4,000
f	\$8,000	\$8,000
g	\$5,400	\$5,400
h	\$28,000	\$7,000
i	\$15,000	\$3,750
j	\$24,000	\$4,000
k	\$2,270	\$2,270
l	\$6,900	\$6,900
m	\$1,250	\$1,250
n	\$16,000	\$4,000
o	\$6,250	\$6,250
p	\$25,000	\$25,000
q	\$5,600	\$5,600
r	\$18,000	\$6,000
s	\$90,000	\$10,000
t	\$6,000	\$6,000
u	\$12,000	\$6,000
xv	\$5,600	\$5,600
74 retail locations reporting data	\$405,520	
Average cost per location		\$5,480



CASEYWOOD
CORPORATION

January 15, 2013

Susanne Buehler, Chief
Tax Policy Division (MIC 92)
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

RE: Emergency Regulations - AB 1492 Timber Assessment

Dear Susanne Buehler:

I am an owner of Caseywood Corporation which is a single location independent building materials retailer located in Grass Valley, California. I am writing in regards to the emergency regulations that the Board of Equalization (BOE) will be adopting in the next several weeks relative to the recently enacted timber assessment. It is our hope that the BOE uses their expertise and authority in this area in determining a vendor compensation scheme that is both fair and equitable while recognizing the ongoing costs that retailers will incur in complying with AB 1492.

Product-specific point of sale fees add significant compliance cost and liability to retailers. The continued addition of regulation and taxation to businesses is making it difficult if not impossible for businesses to comply. The effect on small businesses is significantly higher than large businesses because we cannot spread the cost over multiple locations. This law will drive some small businesses to close. It does not seem that the process of drafting and passing of this law gave adequate consideration to this possibility.

It is highly likely that many retailers in California will not be able to modify their computer systems to collect a product specific point of sale fee. Most software packages are not initially designed to handle such transactions and many retailers in our industry use legacy software systems. Software companies that own and support legacy software systems eventually stop performing system upgrades and modifications as they phase out older software packages. The only option is to purchase and implement a new software system. Given the state of the economy and its dramatic effect on our industry, this is cost prohibitive.

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www.caseywood.com sales@caseywood.com



CASEYWOOD
CORPORATION

In addition to initial compliance costs, there will be significant ongoing cost to comply with this new law. Those costs will be incurred in sales, distribution, accounting, audit, and other cost centers. It is very difficult to quantify the ongoing cost of a law that touches so many parts of a retail organization.

I don't believe the intent of AB 1492 was to impose new indirect taxes and unproductive cost overhead on retailers. I also don't believe the intent was to give large businesses a significant competitive advantage over small businesses. If there is not significant reimbursement for actual compliance costs, this will be the result. Please consider this as the BOE determines a fair scheme for compensating retailers for compliance with this new law.



We estimate that it will cost approximately \$7,000 initially to implement computer system, internal process, and accounting changes to comply with the new law. In addition, we anticipate ongoing cost of approximately \$1,500 - \$2,000 per year to ensure compliance with the new assessment. These are estimates because we are still figuring out how to design and implement the changes that are required.

Thanks for your consideration.

Sincerely,



Brent Fraser
Chief Financial Officer
Caseywood Corporation

MAYER • BROWN

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January 22, 2013

BY FACSIMILE & U.S. MAIL

Ms. Susanne Buehler, Chief
Tax Policy Division (MIC:92)
Board of Equalization
450 N. Street
P.O. Box 942879
Sacramento, CA 94279-0092

Re: Comments to Initial Discussion Paper -
Lumber Products Assessment Regulation 2000

Dear Ms. Buehler:

On behalf of Home Depot U.S.A., Inc. ("Home Depot"), below are comments to the Initial Discussion Paper (the "Paper") for the Lumber Products Assessment (the "Assessment"), Regulation 2000.

Startup Costs or Continuous Reimbursement

The first issue raised in the Paper is whether the authorizing statute allows retailers to retain an amount sufficient to cover their ongoing costs of collecting the Assessment or merely initial costs of setting up a collection system. The Paper appears to acknowledge that PRC 4629.5(a)(3) does not explicitly limit reimbursement to one-time startup costs. However, it effectively concludes that the statute does so by implication, citing the requirement that the reimbursement "be taken on the first return or next consecutive returns until the entire reimbursement amount is retained." According to the Paper, if the Legislature had intended ongoing reimbursement, the statute would have explicitly provided an amount or percentage to be routinely claimed.

We respectfully disagree for two reasons. First, the Paper's conclusion contradicts the plain language of the statute, which does not limit reimbursement to the costs associated with setting up a collection system. Rather, PRC 4629.5(a)(3) specifically authorizes reimbursement for "*any* costs associated with the *collection* of the assessment." Where statutory language is clear and unambiguous, there is no need to look at legislative history or to go any further. *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519. We submit that PRC 4629.5(a)(3) is clear and unambiguous and that it authorizes reimbursement for any costs of collection, including ongoing costs.

The statute's reference to reimbursement "on the first return or next consecutive return until the entire reimbursement amount is retained" does not change that plain meaning. Indeed,

Ms. Susanne Buehler, Chief
January 22, 2013
Page 2

given that retailers are required to file quarterly returns, that reference likely means that the Legislature intended for BOE to set an annual reimbursement amount that retailers should retain “on the first return or next consecutive return” filed each year.

Second, the Paper’s conclusion fails to appreciate that retailers will face ongoing costs to maintain their collection systems. The list of lumber products and engineered wood products subject to the Assessment is not static, nor is the retailer’s product mix. Although the list is to be updated each year by the Board of Forestry, items sold in the retailer’s store are changing weekly. PRC 4629.4(a). That necessarily means that retailers will have to reprogram their collection systems continually to capture new products. Nothing in the statute suggests that retailers should not be reimbursed for these ongoing programming costs and, indeed, it makes no sense to reimburse retailers for initial programming costs and then require them to shoulder those same costs to capture new lumber products. The proposed interpretation is also unfair given that other retailers are reimbursed for their ongoing costs of collecting the California Tire Fee, Covered Electronic Waste Recycling Fee and Cigarette and Tobacco Products Tax.

We thus respectfully submit that PRC 4629.5(a)(3) requires BOE to set an amount sufficient to reimburse retailers for their ongoing costs of collecting the Assessment.

Amount of Reimbursement

The second issue raised in the Paper concerns the amount of the reimbursement. The Paper concludes that a \$250 per location reimbursement is sufficient because (1) a PricewaterhouseCoopers study concluded that the average cost of programming and servicing cash registers to collect sales tax is .01% of taxable sales; and (2) a 2007 economic census says 50% of retail lumber establishments had taxable sales of \$2.5 million or less (\$2.5 million x .01 = \$250).

Again, however, this analysis contradicts the plain language of the statute. PRC 4629.5(a)(3) authorizes reimbursement for *any* costs associated with the collection of the assessment. But the .01% figure referenced in the PricewaterhouseCoopers study only covers the costs of programming and servicing cash registers. There are various other costs cited in that study, including training personnel and purchasing tax-related software, that go into tax collection. In fact, the total weighted cost of all the collection factors in the PricewaterhouseCoopers study is .19%, not .01%. Given the plain language of PRC 4629.5(a)(3), all of these costs must be considered in setting the reimbursement amount.

Another problem with the Paper’s use of the PricewaterhouseCoopers study is that the study analyzed programming costs associated with a general sales tax. By contrast, the Assessment only applies to the lumber products and engineered wood products specified in the regulation updated annually by the Board of Forestry. Programming an assessment for specific lumber products will necessarily require more time and resources than a sales tax that can be uniformly applied across all products.

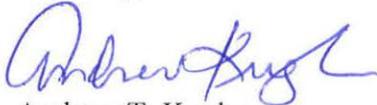
Mayer Brown LLP

Ms. Susanne Buehler, Chief
January 22, 2013
Page 3

We thus respectfully submit that BOE should not rely on the PricewaterhouseCooper study to set the reimbursement amount, but rather poll retailers throughout the State to ascertain the actual costs of collection. To that end, we note that the West Coast Lumber & Building Material Association estimated that the average cost per location is \$4,521. Home Depot is currently determining its own costs and will update these comments when that analysis is complete.

We appreciate the opportunity to submit these comments and look forward to continuing to work with BOE on a final rule.

Sincerely,



Andrew T. Kugler

cc: Ms. Karen Polyakov, Home Depot U.S.A., Inc.
Ms. Lynn Monsalvatge, Home Depot U.S.A., Inc.



CALIFORNIA FORESTRY ASSOCIATION

PHONE 916.444.6592 • FAX 916.444.0170 • E-MAIL cfa@cwo.com • www.foresthealth.org

1215 K STREET • SUITE 1830 • SACRAMENTO, CA 95814

October 19, 2012

Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, 1st District
Senator George Runner, 2nd District
Honorable John Chiang, State Controller

California State Board of Equalization
450 N Street
Sacramento, CA 95814

Re: Support for Staff Recommendation on Lumber Products Assessment

Dear Chairman Horton and Board Members:

On behalf of the California Forestry Association, I write to urge your adoption of the staff recommendation for the emergency regulations to implement AB 1492, the forestry reform package, including the 1% assessment on the purchase of lumber products in this state. This is in the State Board of Equalization (SBE) Board Meeting agenda for October 23 under Chief Counsel Matters – Item J – Rulemaking – Adoption of Emergency Regulation – Lumber Products Assessment.

CFA was a key sponsor of AB 1492, working closely with the Legislature and the administration, and we believe that the staff's recommendation reflects the legislative intent regarding retailer compensation. Therefore, we urge you to approve and adopt proposed Regulation 2000, Retailer Reimbursement Retention for implementation of the Lumber Products Assessment. AB 1492 provides the SBE with the authority to adopt an emergency regulation to determine the amount of reimbursement retailers may retain for their compliance costs for collecting the fee beginning January 1, 2013. We concur with the staff's analysis that the legislative intent and history was to allow only a one-time amount to cover initial costs of compliance, which the Legislature had been informed would be no more than \$250 per retail establishment.

As you may be aware, in instances wherein retailers receive ongoing compensation for collection of a fee, the underlying statutes clearly specify an amount and that they are ongoing reimbursements to the retailer.

No such provisions exist in AB 1492. Therefore, there is no authority to provide retailers with reimbursement of actual or ongoing costs of compliance.

Thank you for your consideration. If you have any questions, please feel free to contact me.

Sincerely,


David A. Bischel
President



September 24, 2012

The Honorable Jerome Horton
Board of Equalization
450 N Street, MIC:72
Sacramento, CA 95814

RE: Emergency Regulations – AB 1492 Timber Assessment

Dear Boardmember Horton:

The California Retailers Association (CRA) writes in regards to the emergency regulations that the Board of Equalization (BOE) will be adopting in the next several weeks relative to the recently enacted timber assessment. It is our hope that the BOE uses their expertise and authority in this area in determining a vendor compensation scheme that is both fair and equitable while recognizing the ongoing costs that retailers will incur in complying with AB 1492.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, supermarkets, fast food restaurants, chain drug and convenience stores, as well as specialty retailers such as auto, book and home improvement stores. CRA works on behalf of California's retail industry, which currently operates over 164,200 stores with sales in excess of \$571 billion annually and employing 2,776,000 people – nearly one fifth of California's total employment.

AB 1492 is a comprehensive forestry reform package that augments the General Fund the revenue from a lumber products fee assessment to offset timber review costs to the industry. In order to support increased regulatory activities, AB 1492 charges consumers a new 1% assessment on the purchase of lumber products at the point of sale. CRA has historically opposed product-specific point of sale fees because it increases costs and liability for retailers and is an unsustainable model given the hundreds, if not thousands of products that many of our members carry.

CRA worked very closely with the Administration after AB 1492 was introduced in the May Revision to carefully construct language to this bill that made the bill more workable for the retail industry. This included:

- Requiring that the fee be separately stated on the receipt so the consumer can understand the new change.
- Clarifying that the fee is to be collected from the consumer at the point of sale. The original language required the retailer to pay the fee.
- Allowing the BOE to promulgate regulations relative to vendor compensation.

With these amendments, we adopted a neutral position on the measure as it moved through the Legislature. There were many discussions that took place on the issue of whether there should be any vendor allowance provided, whether the allowance would be one-time or ongoing, and what the amount should be. Since consensus could not be reached, all parties agreed to defer these decisions to the BOE, since the Board is already very familiar with the administration of vendor allowances.

The reality for our members is that ongoing costs will be incurred for as long as they continue to sell lumber in the state of California. Effective January 2013, we will begin collecting, reporting, and remitting these fees to the BOE. Our members will also spend a tremendous amount of time and resources reprogramming their systems and testing these changes to our systems. After building the systems, they will interconnect them to all retail locations nationwide while ensuring that the systems have been properly changed. These efforts are by no means one-time. Inventories change on an ongoing basis and we will be subject to audits in the future. In fact, our members review thousands of SKUs on a monthly basis for compliance purposes and they will have to do that to comply with AB 1492. Additionally, vendors commonly reengineer products while maintaining the same SKU. These products may have more wood product and our members will have to figure out if the timber assessment applies. We fully recognize that the first year of implementation will be a trial and error period. The main concern is that there remains a lot of uncertainty around which products must be assessed and given our constantly changing inventories, it seems the uncertainty will inevitably remain moving forward.

Some questions include:

1. What happens if a retailer sells a product for which a fee should have been collected?
2. Does the assessment apply when we inbound inventory or just when items are sold?
3. Is the timber fee included in the tax base subject to retail sales tax?
4. Is the timber fee refundable if merchandise is returned for a refund?
5. How will the timber fee be handled if merchandise is exchanged in a net zero transaction?
6. Is the fee due on sales made in California stores, but shipped to customers outside of the state?
7. Is the fee due on sales made from stores outside of the state but shipped to customers inside California?

8. Is the fee due on a tax exempt sale? (Sales to a registered CA lumber reseller, the federal government, a Native American reservation)

These are important issues that our members need clarity on before the effective date that we are required to collect the timber fee. It is also our hope that the BOE acknowledges the ongoing nature of collecting this fee recognizes these areas of concern.

It is our understanding that the Board plans to move forward with emergency regulations on this matter in the next several weeks. We strongly urge the BOE to conduct an independent cost analysis that factors in all of the costs that we will incur from collecting this fee in making their determination. We would also respectfully request a meeting with you to discuss this matter further and to answer any questions you may have. Thank you for your attention to this matter.

Sincerely,



BILL DOMBROWSKI
President & CEO
California Retailers Association

cc: The Honorable Betty Yee
The Honorable Michelle Steel
The Honorable George Runner
The Honorable John Chiang