



STATE BOARD OF EQUALIZATION

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State Controller

CYNTHIA BRIDGES
Executive Director

December 22, 2014

Dear Interested Party:

Enclosed is the Initial Discussion Paper on proposed Regulation 2002, *FeePAYERS, Retailers and Low-Volume Retailers*. Before the issue is presented at the Board's May 27, 2015 Business Taxes Committee meeting, staff would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, an interested parties meeting is scheduled as follows:

January 14, 2015
Room 122 at 10:00 a.m.
450 N Street, Sacramento, CA

If you would like to participate by teleconference, call 1-888-808-6929 and enter access code 7495412. You are also welcome to submit your comments to me at the address or fax number in this letterhead or via email at Susanne.Buehler@boe.ca.gov by January 28, 2015. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics refer to our webpage at (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of discussion or issue papers, minutes, a procedures manual, and calendars arranged according to subject matter and by month.

Thank you for your consideration. We look forward to your comments and suggestions. Should you have any questions, please feel free to contact our Business Taxes Committee supervisor Mr. Clifford Oakes at 1-916-322-5271, who will be leading the meeting.

Sincerely,

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

SB:map
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 (via email)
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(via email)

Mr. David Hunter, Board Member's Office, Fourth District
Ms. Jaclyn Appleby, Board Member's Office, Fourth District
Ms. Shellie Hughes, 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. Yvette Stowers, Board Member's Office, First District
Mr. Ramon Salazar, Board Member's Office, First District
Mr. Sean Wallentine, 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. Tanya Vandrick, 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. David Gau (MIC 101)
Mr. Jeffrey L. McGuire (MIC 43)
Mr. Todd Gilman (MIC 70)
Mr. Robert Tucker (MIC 82)
Mr. Mark Durham (MIC 67)
Mr. Jeff Vest (MIC 85)
Mr. Wayne Mashihara (MIC 46)
Mr. Kevin Hanks (MIC 49)
Mr. John Thiella (MIC 73)
Mr. Bradley Heller (MIC 82)
Mr. Stephen Smith (MIC 82)
Mr. Jeff Angeja (MIC 85)
Mr. David Levine (MIC 85)
Mr. Kevin Smith (MIC 82)
Ms. Kirsten Stark (MIC 50)
Mr. Clifford Oakes (MIC 50)
Mr. Bill Benson (MIC 67)
Mr. Marc Alviso (MIC 101)
Mr. Chris Lee (MIC 101)
Mr. Bradley Miller (MIC 92)
Ms. Karina Aguilar (MIC 46)
Ms. Laureen Simpson (MIC 70)
Ms. Tracy McCrite (MIC 50)
Mr. Michael Patno (MIC 50)

INITIAL DISCUSSION PAPER

Proposed Regulation 2002, *FeePAYERS, Retailers and Low-Volume Retailers*

Issue

Should the Board approve proposed Regulation 2002, *FeePAYERS, Retailers and Low-Volume Retailers*, to clarify Public Resources Code (PRC) section 4629.5, as amended by Assembly Bill (AB) 2031 (Stats. 2014. Ch. 810), which no longer requires retailers to collect and report the Lumber Products Assessment (LPA) if their sales of qualified lumber products are less than \$25,000 in the previous calendar year?

Background

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 a retailer at the time of sale. As enacted by AB 1492, Public Resources Code (PRC) section 4629.5(a)(1) provides:

There is hereby imposed an assessment on a person who purchases a lumber product or an engineered wood product for storage, use, or other consumption in this state, at the rate of 1 percent of the sales price.

With the passage of AB 2031 in September 2014, PRC section 4629.5 was amended to exclude certain retailers from the definition of a retailer in PRC section 4629.5. Excluded retailers are those with sales of qualified lumber products that are less than \$25,000 in the previous calendar year. These excluded retailers are no longer required to collect and remit the LPA. AB 2031 states that an excluded retailer must provide notice to purchasers of lumber products and engineered wood products of their responsibility for paying the assessment directly to the Board of Equalization (BOE).

Defining a Retailer for the Lumber Products Assessment

Specific definitions for the terms “feepayer,” “retailer” and “low-volume retailer” are included in the proposed regulation to help clarify who is responsible for the assessment and how the implementation of AB 2031 affects them. See Exhibit 1 for staff’s proposed Regulation 2002.

Per PRC section 4629.5 (d)(2), purchasers of lumber products and engineered wood products are liable for the assessment until it has been paid directly to the state or has been paid to a retailer for remittance to the state. AB 2031 amends the language in PRC section 4629.5(a)(2)(c) to clarify these purchasers are included in the term feepayers as provided in the Fee Collection Procedures Law. The amended language further defines a feepayer to include a retailer of lumber products and engineered wood products.

Defining the terms “retailer” and “low-volume retailer” is necessary in order to provide clarity about how the amendments provided by AB 2031 affect persons involved in the sale or purchase, use or other consumption of lumber products. A retailer is defined as a business with sales of \$25,000 or more of lumber products and engineered wood products in the previous calendar year. Retailers are required to collect the LPA in the manner set forth in PRC section 4629.5.

INITIAL DISCUSSION PAPER

Proposed Regulation 2002, *FeePAYERS, Retailers and Low-Volume Retailers*

A low-volume retailer is a retailer whose sales of qualified lumber products or engineered wood products are less than \$25,000 during the previous calendar year. To determine if the threshold is met, a retailer's sales of qualifying products from all its retail locations must be included in the calculation. For example, if a retailer has three locations and each location makes \$20,000 in sales of products subject to the assessment for the year, that retailer is not a low-volume retailer because its total sales of lumber products or engineered wood products for the year are \$60,000.

The \$25,000 threshold for determining whether a person is a low-volume retailer is not prorated for businesses that did not operate the entire preceding calendar year. For example, a business with a start date of November 1, 2015, and qualified lumber sales in calendar year 2015 under \$25,000, would not be required to collect the LPA in 2016. A low-volume retailer is excluded from the definition of a retailer.

The Responsibilities of Low-Volume Retailers With the Enactment of AB 2031

Retailers who qualify as low-volume retailers are not required to collect and remit the LPA. However, they must provide notice to their customers who purchase lumber products and engineered wood products of their obligation to remit the fee directly to the BOE.

In addition, a low-volume retailer must maintain records of their qualified lumber products transactions, on an annual basis, to document that their sales of such products are under the \$25,000 threshold. If they exceed the threshold in lumber products or engineered wood products sales for a calendar year, they would be required to collect the LPA in the following year and remit it to the BOE.

Summary

Staff proposes Regulation 2002, *FeePAYERS, Retailers and Low-Volume Retailers*, to clarify AB 2031 and its amendments to PRC section 4629.5. Staff welcomes any comments, suggestions, and input from interested parties on this issue. Staff also invites interested parties to participate in the January 14, 2015, interested parties meeting. The deadline for interested parties to provide written responses regarding this discussion paper is January 28, 2015.

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

Current as of 12/16/2014

Regulation 2002, Feepayers, Retailers and Low-Volume Retailers

(a) Definitions:

(1) Feepayer. A “Feepayer” is a person who purchases a qualified lumber product or an engineered wood product for storage, use, or other consumption in this state and is liable for the assessment until it has been paid to the Board of Equalization. The term also applies to retailers.

(2) Retailer. A “Retailer” has the same meaning as in Revenue and Taxation Code Section 6015. A retailer shall charge a purchaser the lumber products assessment as an amount that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser.

(3) Low-Volume Retailer. A “Low-Volume Retailer” is a retailer whose sales of qualified lumber products or engineered wood products are less than \$25,000 during the previous calendar year. For purposes of meeting the threshold, retailers that have more than one location must include sales of qualified lumber products and engineered wood products from all locations when determining if the threshold is met.

(b) Section 4629.5 of the Public Resources Code imposes an assessment on a feepayer at the rate of one percent (.01) of the sales price. The feepayer is liable for the assessment until it is paid to the state. The payment of the assessment to a retailer relieves the feepayer from the lumber assessment liability. Any assessment collected from a feepayer that has not been remitted to the Board of Equalization shall be a debt owed to the state by the retailer.

(c) Beginning January 1, 2015, a low-volume retailer is not considered a retailer for purposes of this section and is therefore not required to collect or remit the lumber products assessment. However, they shall provide notice to purchasers (feepayers) of the purchaser’s responsibility for payment of the assessment to the Board of Equalization.

A retailer in operation for less than a year and whose sales of qualified lumber products and engineered wood products is less than \$25,000 in that calendar year will be considered a low-volume retailer.

A low-volume retailer must maintain records of their annual sales of qualified lumber products and engineered wood products to determine if they continue to fall under the \$25,000 threshold.