

Rulemaking File Index
Title 18. Public Revenue
Sales and Use Tax
Regulation 2000 *Retailer Reimbursement Retention*, and Regulation 2001 *Additional Allowed
Retailer Reimbursement Retention*

OAL Approval

Index

1. Final Statement of Reasons
2. Updated Informative Digest
3. Business Tax Committee Minutes, June 11, 2013
4. Reporter's Transcript Business Taxes Committee, June 11, 2013
5. Estimate of Cost or Savings, August 26, 2013
6. Economic and Fiscal Impact Statements, July 15, 2013
7. Notice of Publications
8. Notice to Interested Parties, July 26, 2013
9. Public Comment Michael Tuchman, President, Roadside Lumber and Hardware, Inc.
10. Public Comment Matt Peteresen, Vice President, MeadClark Lumber Company, Inc.
11. Public Comment Will Higman, COO, Reliable Wholesale Lumber, Inc.
12. Public Comment David Templeton, CFO, Central Valley Builders Supply
13. Public Comment David Thom, Owner, Bruce Bauser Lumber & Supply
14. Public Comment Ken, Dunham, Executive Director, West Coast Lumber & Building
Material Association
15. Statement of Compliance
16. Reporter's Transcript, Item F1, September 10, 2013
17. Minutes, September 10, 2013, and Exhibits

State of California
Office of Administrative Law

by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

NOV 27 2013

RECEIVED

In re:

Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections: 2000, 2001

Amend sections:

Repeal sections:

NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE

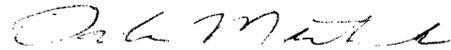
Government Code Section 11349.1 and
11349.6(d)

OAL File No. 2013-1106-01 C

This rulemaking action makes permanent an emergency regulation and adopts a new regulation which together provide for an amount of reimbursement retention allowed to retailers of lumber and engineered wood products for their costs of beginning to collect the one percent tax assessment on these products.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code. Section 2001 shall become effective 1/1/14 pursuant to section 11343.4(a) of the Government Code.

Date: 11/26/2013



Dale P. Mentink
Senior Staff Counsel

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 11/27/2013
RE: Return of Approved Rulemaking Materials
OAL File No. 2013-1106-01C

OAL hereby returns this file your agency submitted for our review (OAL File No. 2013-1106-01C regarding Retailer Reimbursement Retention).

Enclosures If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption applies concerning the effective date of the regulation approved in this file, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the state agency will contain the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's Web site once OAL posts the Internet Web site link to the full text of the regulation that is received from the state agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; and regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION/REGULATION SUBMISSION

CERT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2013-0716-03	REGULATORY ACTION NUMBER 2013-1106-01C	EMERGENCY NUMBER
------------------	---	--	------------------

For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
--------	-------------

ENDORSED FILED IN THE OFFICE OF

2013 NOV 26 PM 3:35

Joann Richmond
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2013, 302		PUBLICATION DATE 7/26/2013	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Retailer Reimbursement Retention	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2012-1128-01E, 2013-0617-04EE, 2013-0913-01EE
--	---

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 2000, 2001
TITLE(S) 18	AMEND
	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Rick Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
-----------------------------------	------------------------------------	---	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE November 5, 2013
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 26 2013

Office of Administrative Law

**Proposed Text California Code of Regulations, Title 8, Sections
2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention***

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 no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

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

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

Regulation 2001. Additional Allowed Retailer Reimbursement Retention

Beginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, 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.

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

Bennion, Richard

From: Bennion, Richard
Sent: Tuesday, November 05, 2013 3:17 PM
To: Bennion, Richard
Subject: Effective Date

The Board has adopted California Code of Regulations, title 18, section (Regulation) 2001, *Additional Allowed Retailer Reimbursement*, to provide that “Beginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as reimbursement for startup costs associated with the collection of the assessment.” Therefore, the Board hereby requests that Regulation 2001 be given an earlier effective date of January 1, 2014, pursuant to Government Code 11343.4, subdivision (b)(3), so that Regulation 2001’s effective date is consistent with the date provided in the regulation’s text and there is no confusion as to when retailers may begin to retain the additional reimbursement specified by the regulation.

Bradley M. Heller, Tax Counsel IV
Board of Equalization Legal Department
Tax and Fee Programs Division
916-323-3091

audio cassette, or computer CD. To request such services or copies in an alternate format, please call or write the person identified in the Inquiries section of this notice. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

After completion of the written comment period/hearing, CDPH may adopt the proposed code if it remains substantially the same as described in the text originally made available to the public. CDPH may make changes to the proposed code prior to its adoption, so long as the text of any modified amendment is made available to the public at least 15 days before CDPH adopts the amendments. A request for the modified text should be made to the person(s) identified in the Inquiries section. CDPH will accept written comments on the modified amendments, addressed to the person identified in the Inquiries section of this notice, for 15 days after the date on which the text of any modified amendment is made available.

INQUIRIES

All inquiries concerning this proposed code and any communications required by this notice should be directed to:

Timothy Ford
 Office of Legal Services
 California Department of Public Health
 1415 L Street
 P.O. Box 997377, MS 0506
 Sacramento, CA 95899-7377
 Phone: (916) 538-6415
 Fax: (916) 440-5104

OR

Cynthia A. Jones
 Political Reform Consultant II
 Fair Political Practices Commission
 428 J Street, Suite 620
 Sacramento, CA 95814
 Phone: (916) 322-5660
 Toll-free 1 (866) 275-3772
 Email: cjones@fppc.ca.gov

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2013-1106-01
 BOARD OF EQUALIZATION
 Retailer Reimbursement Retention

This rulemaking action makes permanent an emergency regulation and adopts a new regulation which together provide for an amount of reimbursement retention allowed to retailers of lumber and engineered wood products for their costs of beginning to collect the one percent tax assessment on these products.

Title 18
 California Code of Regulations
 ADOPT: 2000, 2001
 Filed 11/26/2013
 Effective 01/01/2014
 Agency Contact:
 Richard E. Bennion (916) 445-2130

File# 2013-1120-06
 BOARD OF FORESTRY AND FIRE PROTECTION
 Commercial Species Definitions Amendments, 2013

The Board of Forestry and Fire Protection (Board) amended the definition of "commercial species" as it applies to the Coast Forest District and the Southern Forest District in title 14, California Code of Regulations, section 895.1. The proposed amendments remove eucalyptus trees from the definition and re-designate Monterey pine trees from "Class A" species to "Class B" species, which results in the elimination of the requirement to obtain an approved timber harvest plan from the Board for removing these trees. This will eliminate duplicative permitting requirements under the Board's Forest Practice Rules and CEQA in order to facilitate the removal of these tree species for the treatment of hazardous fuel conditions. The amendments also make two corrections to the scientific names of incense cedar and tanoak trees.

Rulemaking File Index
Title 18. Public Revenue
Sales and Use Tax
Regulation 2000 *Retailer Reimbursement Retention*, and Regulation 2001 *Additional
Allowed Retailer Reimbursement Retention*

1. [Final Statement of Reasons](#)
2. [Updated Informative Digest](#)
3. [Business Tax Committee Minutes, June 11, 2013](#)
 - Minutes
 - BTC Agenda
 - Regulation History
 - Formal Issue Paper 13-005
 - Exhibit 1 Revenue Estimate
 - Exhibit 2 Alternative 1 - \$735 Total Allowed Retention
 - Exhibit 3 Alternative 2 - \$250 Total Allowed Retention
 - Exhibit 4 Submission from Interested Parties Supporting Alternative 2
 - Exhibit 5 Submission from Interested Parties Supporting Alternative 3
4. [Reporter's Transcript Business Taxes Committee, June 11, 2013](#)
5. [Estimate of Cost or Savings, August 26, 2013](#)
6. [Economic and Fiscal Impact Statements, July 15, 2013](#)
7. [Notice of Publications](#)
 - Form 400 and Notice, Publication Date July 26, 2013
 - Proposed Text of Regulation 2000 and 2001
 - Email sent to Interested Parties, July 26, 2013
 - CA Regulatory Notice Register 2013, Volume No. 30-Z
8. [Notice to Interested Parties, July 26, 2013](#)

The following items are exhibited:

 - Notice of Hearing
 - Initial Statement of Reasons
 - Proposed Text of Regulation 2000 and 2001
 - Regulation History
9. [Public Comment Michael Tuchman, President, Roadside Lumber and Hardware, Inc.](#)
10. [Public Comment Matt Peteresen, Vice President, MeadClark Lumber Company, Inc.](#)
11. [Public Comment Will Higman, COO, Reliable Wholesale Lumber, Inc.](#)
12. [Public Comment David Templeton, CFO, Central Valley Builders Supply](#)

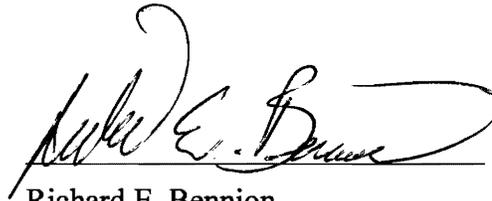
13. [Public Comment David Thom, Owner, Bruce Bauser Lumber & Supply](#)
14. [Public Comment Ken, Dunham, Executive Director, West Coast Lumber & Building Material Association](#)
15. [Statement of Compliance](#)
16. [Reporter's Transcript, Item F1, September 10, 2013](#)
17. [Minutes, September 10, 2013, and Exhibits](#)
 - Notice of Proposed Regulatory Action
 - Initial Statement of Reasons
 - Proposed Text of Regulation 2000 and 2001
 - Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on November 5, 2013 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

November 5, 2013

A handwritten signature in black ink, appearing to read "Richard E. Bennion", written over a horizontal line.

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

**Final Statement of Reasons for the
Adoption of California Code of Regulations,
Title 18, Sections 2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention***

I. Update of the Information in the Initial Statement of Reasons

A. Relevant Background Information Provided in the Initial Statement of Reasons

The initial statement of reasons for the proposed adoption of California Code of Regulations, title 18, sections (Regulations) 2000, *Retailer Reimbursement Retention*, and 2001, *Additional Allowed Retailer Reimbursement Retention*, provides as follows:

Current Law

Public Resources Code section 4629.5

Public Resources Code (PRC) section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products (Lumber Products Assessment) to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the State Board of Equalization (Board) to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain compliance costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, PRC section 4629.5 and the legislative analyses of AB 1492 do not expressly indicate how the Board is to determine the amount of reimbursement that retailers may retain. However, the statute does appear to provide that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers' first returns or next consecutive returns filed immediately after the retailers are required to begin collecting the Lumber Products Assessment on January 1, 2013. And, the statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for “costs to set up collection systems.” (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p. 2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3) provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to the commencement of their collection duties on January 1, 2013. Neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of amounts in excess of the Board-specified reimbursement amount to compensate retailers for ongoing collection costs.

Emergency Regulation 2000

In addition, PRC section 4629.5, subdivision (a)(3), as added by AB 1492, authorizes the Board to “adopt emergency regulations,” pursuant to Government Code section 11346.1, to prescribe the amount retailers may retain from the Lumber Products Assessments they collect, and provides that the adoption of any such regulations “shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.” Therefore, on October 23, 2012, the Board voted to:

- Added new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the Lumber Products Assessment imposed by PRC section 4629.5 can be codified in the new chapter; and
- Adopt California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, which is codified in new chapter 4.1, as an emergency regulation, in order to determine the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), before retailers started collecting the new assessment on January 1, 2013.

Emergency Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

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 no more than \$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.

The \$250 retention amount in emergency Regulation 2000 is based on the Board's understanding of the amount of retailer reimbursement discussed when AB 1492 was drafted. Staff also estimated the \$250 retention amount in emergency Regulation 2000 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 (PricewaterhouseCoopers report). And, emergency Regulation 2000 recognizes that an affected retailer's start-up costs will be affected by the number of retail locations the retailer must get ready to collect the new assessment on January 1, 2013.

An emergency regulation adopted pursuant to Government Code section 11346.1 is effective for a 180-day period. The Office of Administrative Law (OAL) may approve two readoptions of the same emergency regulation, under specified circumstances, each for an effective period of 90 days. However, an emergency regulation will automatically be repealed and deleted from the California Code of Regulations, unless the regulation is readopted through the regular rulemaking process before the emergency regulation ceases to be effective. (Gov. Code, § 11346.1, subds. (e), (g), and (h).)

Emergency Regulation 2000 became effective on January 1, 2013. The Board subsequently readopted emergency Regulation 2000 in accordance with Government Code section 11346.1, subdivision (h). OAL approved the readoption on June 25, 2013, and indicated that readopted emergency Regulation 2000 will not expire until September 24, 2013. Therefore, OAL still has discretion to approve one more readoption of emergency Regulation 2000 before that time, which may extend the effective period of the regulation by an additional 90 days.

Specific Purpose of, Problem Intended to be Addressed by, Necessity for, and Anticipated Benefits from the Proposed Regulations

Business Taxes Committee Process

The California Forestry Association supported the initial adoption of emergency Regulation 2000 and the \$250 reimbursement amount established by the regulation. However, the Board did not immediately propose to adopt emergency Regulation 2000 through the regular rulemaking process because other interested parties, including the California Retailers' Association and the West Coast Lumber & Building Material Association (West Cost), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee (BTC) process to meet with interested parties and discuss the adoption of a regulation, through the regular rulemaking process, to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by PRC section 4629.5 beginning January 1, 2013. However, Board staff was not able to reach a consensus with all of the interested parties regarding the substantive provisions of the permanent regulation during the BTC process. Therefore, Board staff summarized the BTC process and the remaining areas of disagreement in Formal Issue Paper 13-005, and distributed it to the interested parties and Board Members on May 31, 2013.

Start-up Costs and Ongoing Costs

Formal Issue Paper 13-005 explains that some interested parties read PRC section 4629.5, subdivision (a)(3), as providing for reimbursement of "any costs" associated with the collection of the Lumber Products Assessment, including ongoing costs. However, as previously discussed, Board staff believes that PRC section 4629.5, subdivision (a)(3) authorizes the Board to determine and prescribe a specific one-time amount of reimbursement for start-up costs to implement the Lumber Products Assessment on January 1, 2013, that may be retained by all affected retailers, regardless of their actual costs; and staff does not believe that the statute allows retailers to retain a percentage of the assessments they collect or retain unique amounts of reimbursement for their actual start-up or ongoing costs. This is primarily because:

- PRC section 4629.5 expressly provides that retailers may only retain "an amount" determined by the Board and does not authorize retailers to calculate and retain other amounts;
- PRC section 4629.5 requires a retailer to retain the Board prescribed amount of reimbursement from the assessments reported on its "first return or next consecutive returns until the entire reimbursement amount is retained"; and
- PRC section 4629.5 does not expressly provide for the ongoing retention of a percentage of collected assessments, as do the California Tire Fee Law and Covered Electronic Waste Recycling Fee Law, which both expressly authorize retail sellers to retain 1.5 percent (PRC § 42885) and 3

percent (PRC § 42464), respectively, of the fees they collect as ongoing reimbursement of collection costs.

The formal issue paper also explains that staff's understanding of PRC section 4629.5, subdivision (a)(3), is consistent with the Senate and Assembly floor analyses of AB 1492, which refer to retailers being reimbursed for "...costs to set up collection systems," not ongoing costs of collection. The formal issue paper further explains that the interested parties that supported AB 1492, including the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, have confirmed that staff's understanding of PRC section 4629.5, subdivision (a)(3) is consistent with the intent of AB 1492. In addition, the formal issue paper indicates that California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson have recommended to the Board that reimbursement be limited to startup costs.

Amount of Reimbursement for Start-up Costs

In addition, Formal Issue Paper 13-005 explains that Board staff and some interested parties continue to disagree about the "amount" that affected retailers should be permitted to retain as reimbursement for start-up costs. These interested parties believe that the reimbursement amount in emergency Regulation 2000 is too low and that the amount should be increased to compensate most retailers for their actual start-up costs. For example, the formal issue paper explains that Caseywood estimated that it cost \$7,000 to implement computer system, internal process, and accounting changes necessary to comply with the new law. Other retailers advised staff that their current accounting systems could not be updated to calculate the new assessment, and that they were forced to update both software and hardware, at an estimated cost of \$45,000, in order to implement the assessment. Also, West Coast surveyed its members and informed staff that that the members' average cost to implement the assessment was \$5,480 per location.

The formal issue paper explains that, to get a better idea of retailers' average costs to update their software for the Lumber Products Assessment, staff contacted three software companies that provide software packages for the retail lumber industry. One company indicated that it included the update to collect the assessment in its annual software update and did not charge an additional amount to its existing customers, and the other software providers advised staff that for current customers they generally charged \$250 per location to update their software to collect the assessment. The latter providers also explained that they priced their updates to match the amount provided in the Board's emergency regulation as a courtesy to existing customers and as a selling point to attract new customers. The software providers also explained that their charges (if any) did not include the hours spent reviewing inventory and coding SKU's (stock keeping units) for products subject to the assessment. These tasks were typically

completed by a retailer's employees with the expense incurred directly by the retailer. Further, staff learned that retailers who use custom or proprietary accounting software were not able to take advantage of pricing discounts from package software providers and generally paid hourly rates for software technicians to update their systems. Furthermore, staff found that one company estimated that for a new retail account, they would charge about \$30,000 plus a monthly fee to set up a whole new accounting system that performed various functions, including collecting the Lumber Products Assessment.

The formal issue paper also explains that, to get a better idea of retailers' average costs to update their software for the assessment, staff continued to review the available cost data, including the PricewaterhouseCoopers Report, referred to above, and found another reasonable alternative method that could be used to estimate affected retailers' average start-up costs. First, staff found that "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" and that the amount of allowed retention directly affects the revenue the fund receives. Second, in Board staff's September 11, 2012, Legislative Enrolled Bill Analysis of AB 1492, staff estimated that the new one-percent Lumber Products Assessment would generate annual revenue of \$35 million from approximately \$3.5 billion of sales subject to the assessment. Third, during the BTC process, staff estimated, using U.S. Census Bureau data, that there were close to 10,000 retail locations that were required to begin collecting the new assessment on January 1, 2013, and that each location would collect an annual average of \$3,500 in assessments on average annual sales of \$350,000 subject to the assessment.

Fourth, during the BTC process, staff also analyzed the PricewaterhouseCoopers Report in more detail, and found that the \$250 amount in emergency Regulation 2000 accounted for costs to program and service cash registers (and other point-of-sale systems), but did not account for the following seven other categories of compliance costs, included in the study: (1) training personnel; (2) documenting exempt sales; (3) customer service relating to assessment issues other than documenting exempt sales; (4) assessment-related software acquisition and license fees; (5) return preparation, making remittances, refund and credit claims, and research relating to the assessment; (6) dealing with audits and appeals; and (7) other costs (such as costs related to data storage, registration, etc.). Further, staff found that the PricewaterhouseCoopers Report shows an average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry. Furthermore, staff recognized that the percentage was derived from looking at some costs that were not properly classified as start-up costs, such as costs to deal with audits and appeals, but that the percentage also failed to account for some costs that were properly classified as start-up costs, such as costs to identify and code products subject to the assessment. Therefore, staff concluded that it would be reasonable to use the percentage to calculate start-up costs.

As a result, in the formal issue paper, staff calculated that the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, was approximately \$735 per retail location by multiplying the average amount of annual sales subject to the assessment that staff estimated would be made by each retail location (\$350,000) by 0.21 percent. Staff also proposed that affected retailers be permitted to retain an additional \$485 (\$735 - \$250) from the assessments they collect, for start-up costs, beginning January 1, 2014.

Alternative Recommendations

Based upon the above discussion, Formal Issue Paper 13-005 contained the following three recommendations:

1. Staff's recommendation that the Board propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and that the Board also propose to adopt new Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*, through the regular rulemaking process, to provide that "[b]eginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as [additional] reimbursement for startup costs associated with the collection of the assessment";
2. An alternative recommendation that the Board only propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, which is supported by the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, and was recommended by California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson; and
3. Another alternative recommendation that the Board adopt a regulation, through the regular rulemaking process, that permits retailers to initially retain \$5,500 per retail lumber location and annually retain an additional \$1,500 per location on an ongoing basis, based upon a recommendation from West Coast.

BTC Meeting

The Board considered Formal Issue Paper 13-005 during its BTC meeting on June 11, 2013. The Board agreed that the purpose of AB 1492 was to ensure continued sustainable funding for California's forest program to protect the state's forest resources and that it was reasonable to consider how the amount of reimbursement established by the Board affects the revenue available for such purpose. The Board agreed with staff that PRC section 4629.5, subdivision (a)(3) authorizes the Board to determine and prescribe a specific one-time amount of reimbursement for start-up costs to implement the Lumber Products Assessment on January 1, 2013, that may be retained by all affected retailers, regardless of

their actual costs. The Board also tentatively agreed with staff's revised calculation of the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, of approximately \$735 per retail location. Therefore, the Board voted to propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and also to propose to adopt new Regulation 2001, through the regular rulemaking process, to provide an additional \$485 per location, in addition to the \$250 allowed by Regulation 2000, as reimbursement for startup costs associated with the collection of the Lumber Products Assessment.

However, staff's revised calculation of the average start-up costs per retail location relied upon:

- Staff's estimate that the new one-percent Lumber Products Assessment would generate annual revenue of \$35 million from approximately \$3.5 billion of sales;
- Staff's estimate that there were close to 10,000 retail locations that were required to begin collecting the new assessment on January 1, 2013;
- The conclusion, drawn from those estimates, that each retail location would make average annual sales of \$350,000, subject to the assessment; and
- Staff opinion that it was reasonable to use the average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry from the PricewaterhouseCoopers Report to estimate the average start-up costs for the Lumber Products Assessment.

As a result, additional information may change staff's estimates, conclusions, and opinions, help staff identify other, more reliable methods to calculate the average start-up costs per retail location, or both. Therefore, at the conclusion of the BTC meeting, the Board also directed staff to continue to monitor the implementation of the Lumber Products Assessment and review the returns filed for the first and second quarters of 2013 to try to obtain additional information to help verify the number of retail locations that were required to begin collecting the new assessment on January 1, 2013, and the amount of revenue they are actually collecting. And, the Board indicated that, depending upon the additional information obtained, including information regarding the effectiveness of AB 1492 as a source of funding, and staff's recommendation at the public hearing, the Board may decide to adopt proposed Regulation 2000 without making any changes and not adopt proposed Regulation 2001, the Board may decide to adopt both proposed regulations without making any changes, or the Board may decide to adopt both regulations and change the total amount of reimbursement provided to affected retailers.

B. Second Readoption of Emergency Regulation 2000

On August 13, 2013, the Board readopted Regulation 2000 for the second time, as an emergency regulation pursuant to Government Code section 11346.1, subdivision (h), without making any changes to the regulation's text. OAL approved the second readoption of emergency Regulation 2000 on September 23, 2013. OAL also indicated that readopted emergency Regulation 2000 will expire on December 24, 2013, unless the Board adopts Regulation 2000 through the regular rulemaking process and delivers the completed rulemaking file for the adoption of Regulation 2000 to OAL by December 23, 2013.

C. Written Public Comments

The Board received six written comments regarding the proposed adoption of Regulations 2000 and 2001 through the regular rulemaking process. The Board received a September 10, 2013, letter from Ken Dunham, Executive Director of West Coast. In the letter, Mr. Dunham reiterated West Coast's prior comments from the interested parties process that the average cost to implement the Lumber Products Assessment imposed by PRC section 4629.5 was approximately \$5,500 per retail location and that the Board should adopt a regulation that provides \$5,500 of reimbursement per retail location.

In the September 10, 2013, letter, Mr. Durham also indicated that West Coast believes that its estimate of its members' average cost to implement the Lumber Products Assessment (referred to in the initial statement of reasons) is more accurate than Board staff's estimate of the retailers' costs. This is because staff's estimate is based upon the PricewaterhouseCoopers Report on gross retail sales tax compliance costs for programming and servicing cash registers for sales tax rate and bases changes, referred to in the initial statement of reasons, and West Coast believes that it is more complicated and expensive to update complex computer systems to implement the Lumber Products Assessment than update cash registers for sales tax changes. Mr. Durham indicated that West Coast does not agree that the \$250 reimbursement amount prescribed by proposed Regulation 2000 is necessarily consistent with the express language of PRC section 4629.5, subdivision (a)(3) or the Legislature's intent in enacting that subdivision. Mr. Durham indicated that West Coast does not agree with Board staff's estimate of the number of retail locations that were required to begin collecting the Lumber Products Assessment on January 1, 2013, and that West Coast's has estimated that there may only be as many as 3,000 locations. Mr. Dunham also indicated that, based upon revenue from the first two quarters of 2013, West Coast estimates that the Lumber Products Assessment will produce approximately \$30.5 million of revenue in 2013. Therefore, West Coast believes that there should be a significant amount of revenue available to reimburse retailers after the 2013 Lumber Products Assessments are used to provide the funding needed for California's forest program to protect the state's forest resources and the Board's administration of the Lumber Products Assessment, which West Coast estimates to be in the \$20 million range and about \$3 million, respectively.

The Board received an undated letter from David Templeton, CFO of Central Valley Builders Supply (Central Valley). In the letter, Mr. Templeton indicated that Central Valley thinks the \$5,500 of reimbursement per retail location requested by West Coast is reasonable because \$5,500 reflects the actual cost of managing the Lumber Products Assessment. Mr. Templeton also indicated that Central Valley thinks Board staff's estimate of retailers' costs based upon the

PricewaterhouseCoopers Report does not take into account all of the retailers' costs to collect the Lumber Products Assessment.

The Board received a September 4, 2013, letter from Michael Tuchman, President of Roadside Lumber and Hardware, Inc. (Roadside). In the letter, Mr. Tuchman indicated that Roadside thinks Board staff's estimate of retailers' costs based upon the PricewaterhouseCoopers Report does not take into account all of the retailers' costs to collect the Lumber Products Assessment. Mr. Tuchman also stated that Roadside supports West Coast's request for \$5,500 of reimbursement per retail location.

The Board received a September 6, 2013, email from Matt Peterson, Vice President of Mead Clark Lumber Company, Inc. (Mead Clark). In the letter, Mr. Peterson indicated that Mead Clark thinks Board staff's estimate of retailers' costs based upon the PricewaterhouseCoopers Report does not take into account all of the retailers' costs to collect the Lumber Products Assessment. Mr. Peterson stated that Mead Clark incurred close to \$5,500 in costs to implement the Lumber Products Assessment. Mr. Peterson also urged the Board to consider providing the \$5,500 of reimbursement per retail location requested by West Coast, plus some continuing reimbursement for future compliance costs.

The Board received a September 9, 2013, letter from Will Higman, COO of Reliable Wholesale Lumber, Inc. (Reliable). In the letter, Mr. Higman indicated that Reliable thinks Board staff's estimate of retailers' costs based upon the PricewaterhouseCoopers Report does not take into account all of the retailers' costs to collect the Lumber Products Assessment. Mr. Higman said that Reliable has incurred "\$45,000 in IT costs" related to the Lumber Products Assessment. Mr. Higman expressed his understanding that the law provides for full reimbursement of lumber retailers for their costs associated with setting up collection systems. Mr. Higman also urged the Board to provide \$5,500 of reimbursement per retail location for costs to implement the Lumber Products Assessment, plus ongoing annual reimbursement of up to \$1,500 per retail location.

The Board also received a September 10, 2013, letter from David Thom, owner of Bruce Bauer Lumber and Supply (Bruce Bauer). In the letter, Mr. Thom indicated that it was expensive for Bruce Bauer to implement the Lumber Products Assessment and he also urged the Board to consider providing the \$5,500 of reimbursement per retail location requested by West Coast.

D. September 10, 2013, Public Hearing

The Board conducted a public hearing regarding the adoption of proposed Regulations 2000 and 2001 on September 10, 2013. Mr. Dunham appeared at the public hearing on behalf of West Coast and he reiterated the comments from his letter that:

- The average cost to implement the Lumber Products Assessment imposed by PRC section 4629.5 was approximately \$5,500 per location and that the Board should adopt a regulation that provides \$5,500 of reimbursement per retail location;
- West Coast believes that its estimate of its members' average cost to implement the Lumber Products Assessment is more accurate than Board staff's estimate of retailers'

costs based upon the PricewaterhouseCoopers Report, referred to in the initial statement of reasons;

- West Coast does not agree that the \$250 reimbursement amount prescribed by proposed Regulation 2000 is necessarily consistent with the express language of PRC section 4629.5, subdivision (a)(3) or the Legislature's intent in enacting that subdivision; and
- West Coast's has estimated that there may be about 3,000 business locations, plus or minus, that were required to collect the Lumber Products Assessment.

Mr. Dunham also explained that West Coast believes that the Lumber Products Assessment will likely generate more than \$30.5 million of revenue in 2013 and should provide a significant amount of money to reimburse retailers. And, he suggested that the \$5,500 of reimbursement requested by West Coast could be spread out over more time.

Jeff Pardini, CEO of Hills Flat Lumber Company (Hills Flat), appeared at the public hearing. Mr. Pardini described the work that Hills Flat had to do to implement the Lumber Products Assessment and explained how Hills Flat had to do more work to implement the assessment than Hills Flat would normally have to do to implement a change in the sales and use tax rate. Mr. Pardini also said that he estimated that it cost Hills Flat \$9,600 per location to implement the Lumber Products Assessment, but that the average cost in the industry is \$5,500 per location and Hills Flat is willing to acquiesce to \$5,500 of reimbursement.

Augie Venezia, President of Fairfax Lumber and Hardware (Fairfax), also appeared at the public hearing. Mr. Venezia stated that Fairfax's experience implementing the Lumber Products Assessment mirrors the experiences of the other lumber products retailers that submitted the written comments discussed above. Mr. Venezia also asked the Board to use the correct data, and to implement the reimbursement fairly and as provided by law.

During the public hearing, Board staff said that staff has continued to monitor the implementation of the Lumber Products Assessment, in accordance with the Board's direction from the June 11, 2013, BTC meeting, which was referred to in the initial statement of reasons. Board staff explained that staff has reviewed the returns filed for the first and second quarters of 2013 to try to obtain additional information to help verify the number of retail locations that were required to begin collecting the new assessment on January 1, 2013, and the amount of revenue they are actually collecting. And, Board staff stated that staff is still comfortable with an estimate that the Lumber Products Assessment will generate between \$30 and \$35 million in revenue in 2013, which is consistent with the revenue estimate from Board staff's September 11, 2012, Legislative Enrolled Bill Analysis of AB 1492, referred to in the initial statement of reasons.

However, during the public hearing, Board staff also indicated that staff does not have sufficient information, at this time, to provide a more definitive estimate regarding the number of retail locations for which reimbursement may be claimed under proposed Regulations 2000 and 2001. And, the lack of information is mainly due to the fact that the returns filed for the first and second quarters of 2013 only indicate the number of retail locations that were registered to collect the Lumber Products Assessment on January 1, 2013, and have already reported making

sales of products subject to the Lumber Products Assessment from January 1, 2013, to June 30, 2013. But, the returns filed so far do not indicate whether any additional retail locations that were registered to collect the Lumber Products Assessment on January 1, 2013, will make sales of products subject to the assessment from July 1, 2013, to December 31, 2013, or subsequently report sales that they made during the first two quarters of 2013, but did not timely report. And, Board staff also indicated that staff does not anticipate having sufficient information to provide a more definitive estimate until March or April of 2014 when:

- Staff has been able to review all of the returns filed for 2013;
- Determine which registered retail locations actually reported collecting assessments from purchasers of lumber products and engineered wood products during 2013; and
- Determine which registered retail locations, which Board staff originally determined where likely to sell products subject to the Lumber Products Assessment, did not in fact report collecting any assessments because they did not actually sell products subject to the assessment in 2013.

The Board considered all of the oral and written public comments and the comments made by Board staff during the public hearing. The Board affirmed its earlier determination from the June 11, 2013, BTC meeting, which is referred to in the initial statement of reasons, that the purpose of AB 1492 is to ensure continued sustainable funding for California's forest program to protect the state's forest resources. The Board also determined that the Legislature intended for affected lumber retailers to be fairly reimbursed for start-up costs to implement the Lumber Products Assessment. And, the Legislature intended for the Board to consider how the amount of reimbursement established by the Board would affect the revenue available for California's forest program, not focus solely on retailers' costs, in determining what a fair amount of reimbursement is under PRC section 4629.5, subdivision (a)(3).

Furthermore, the Board recognized that there are a number of variables that need to be taken into account in arriving at a fair amount of reimbursement for start-up costs, such as the amount of funding needed for California's forest program, the amount of revenue that will actually be generated by the Lumber Product Assessment in 2013, the number of retail locations that will actually be eligible to retain reimbursement from the assessments they collect, and the timing of their reimbursement. The Board also realized that it would not have sufficient information to take all of the variables into account and determine whether the total amount of reimbursement prescribed by proposed Regulations 2000 and 2001, \$735 per retail location, can be increased without affecting the revenue available for California's forest program, before emergency Regulation 2000 expires. And, the Board realized that it might not even have sufficient information to make that determination, propose substantially related changes to Regulation 2000 or 2001 or both, if necessary, and then adopt the regulations before the current rulemaking action expires under Government Code section 11346.4.

As a result, the Board concluded that it was still comfortable that the Lumber Products Assessment would generate enough revenue to allow affected retailers to retain \$735 of reimbursement per retail location, for start-up costs, without affecting the revenue available for California's forest program. However, due to the uncertainty regarding all of the variables discussed above, the Board concluded that it could not agree, at this time, that the proposed

regulations could be changed to provide affected retailers with \$5,500 of reimbursement per retail location, for start-up costs, without affecting the revenue available for California's forest program. And, based upon the discussion of the express language of PRC section 4629.5, subdivision (a)(3) in Formal Issue Paper 13-005 and the initial statement of reasons, the Board concluded that PRC section 4629.5, subdivision (a)(3), authorizes the Board to determine the amount that affected retailers may retain as reimbursed for start-up costs to implement the Lumber Products Assessment on January 1, 2013, not the ongoing costs of collection. Therefore, the Board did not agree to make changes to Regulations 2000 and 2001 to increase the total amount of reimbursement provided per retail location or to allow affected retailers to retain additional amounts as reimbursement for ongoing costs.

Instead, based upon the current circumstances, the Board concluded that the best thing the Board could do for affected retailers, at this time, was to:

- Adopt proposed Regulation 2000 through the regular rulemaking process to avoid potential confusion that might be created if emergency Regulation 2000 expired before the proposed regulation was adopted;
- Also adopt proposed Regulation 2001 to provide certainty to affected retailers that they can retain up to \$735 of total reimbursement per retail location for start-up costs while the Board tries to obtain sufficient information to determine whether that amount can be increased without affecting the revenue available for California's forest program; and
- Continue to monitor the implementation of the Lumber Products Assessment and seek additional input from the Legislature to determine whether that amount can be increased, sometime in the future, without affecting the revenue available for California's forest program.

Therefore, during the public hearing, the Board directed staff to report to the Board in April 2014 regarding the amount of Lumber Products Assessments reported during 2013 and the number of registered retail locations that were actually collecting the Lumber Products Assessment in 2013. The Board indicated that it would subsequently ask the Board's Legislative Director about the process for getting additional input from the Legislature, on behalf of the affected retailers. And, at the conclusion of the public hearing, the Board voted to adopt proposed Regulations 2000 and 2001 without making any changes.

In the initial statement of reasons, the Board stated that it anticipated that the adoption of proposed Regulations 2000 and 2001 will provide the following benefits:

1. Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
2. Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
3. Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

However, based upon the above discussion, the first anticipated benefit has changed slightly. The Board now anticipates that the adoption of proposed Regulations 2000 and 2001 will

provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5 while the Board tries to obtain sufficient information to determine whether that amount can be increased without affecting the revenue available for California's forest program.

E. Unchanged Information

As explained above, the factual basis, specific purpose, and necessity for, and the problem to be addressed by the proposed adoption of Regulations 2000 and 2001 are the same as provided in the initial statement of reasons. The Board did not make any changes to the text of proposed Regulations 2000 and 2001 prior to adoption.

The adoption of proposed Regulations 2000 and 2001 was not mandated by federal law or regulations and there is no federal regulation that is identical to Regulation 2000 or Regulation 2001.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting Regulations 2000 and 2001 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

In addition, the factual basis has not changed for the Board's initial determination that the proposed regulatory action will not have a significant adverse economic impact on business and the Board's economic impact analysis, which determined that the Board's proposed regulatory action:

- Will neither create nor eliminate jobs in the State of California;
- Nor result in the elimination of existing businesses;
- Nor create or expand business in the State of California; and
- Will not affect the health and welfare of California residents, worker safety, or the state's environment.

The proposed regulation may affect small business.

II. Responses to Public Comments and Determinations Regarding Alternatives

A. Response to Request to Increase the Amount of Reimbursement

The Board received Mr. Dunham's September 10, 2013, letter, discussed above, which requested that the Board adopt a regulation allowing affected retailers to retain \$5,500 per retail location as reimbursement for their costs to collect the Lumber Products Assessment, as an alternative to adopting proposed Regulations 2000 and 2001, which collectively allow affected retailers to retain \$735 of total reimbursement per retail location for start-up costs to collect the assessment. The Board received the letters from Mr. Templeton, Mr. Tuchman, Mr. Higman, and Mr. Thom, and the email from Mr. Peterson, discussed above, which all supported the request that the Board adopt a regulation allowing affected retailers to retain \$5,500 per retail location as reimbursement for their costs to collect the Lumber Products Assessment. The Board also heard

the comments from Mr. Dunham, Mr. Pardini, and Mr. Venezi during the public hearing on September 10, 2013, which supported increasing the amount of reimbursement that may be retained by affected retailers, as discussed above.

As explained above, the Board did not make any changes to proposed Regulations 2000 and 2001 in response to these comments. The Board determined that:

- The purpose of AB 1492 was to ensure continued sustainable funding for California's forest program to protect the state's forest resources;
- The Legislature intended for the Board to consider how the amount of reimbursement established by the Board would affect the revenue available for California's forest program, not focus solely on retailers' costs, in determining what a fair amount of reimbursement is under PRC section 4629.5, subdivision (a)(3);
- There are a number of variables, which are discussed in more detail above, that need to be taken into account in arriving at a fair amount of reimbursement; and
- Due to the uncertainty regarding all of the variables, discussed above, the Board could not agree that the total amount of reimbursement per retail location provided to affected retailers in the proposed regulations could be increased without affecting the revenue available for California's forest program and impairing the effectiveness of AB 1492.

However, the Board has not totally rejected the alternative recommended by Mr. Dunham that the Board adopt a regulation allowing affected retailers to retain \$5,500 per retail location as reimbursement for their costs to collect the Lumber Products Assessment. The Board has indicated that it will seek further input from the Legislature and continue to monitor the implementation of the Lumber Products Assessment to see if the Board can obtain information to indicate that the amount of reimbursement provided to affected retailers for start-up costs, under Regulations 2000 and 2001, can be increased in the future without affecting the revenue available for California's forest program and impairing the effectiveness of AB 1492.

B. Response to Request for Reimbursement for Ongoing Costs

Mr. Peterson's September 6, 2013, email, discussed above, requested that the Board adopt a regulation that provides some continuing reimbursement to affect retailers for future compliance costs. Also, Mr. Higman's September 9, 2013, letter, discussed above, specifically requested that the Board adopt a regulation providing affected retailers with ongoing annual reimbursement of up to \$1,500 per retail location.

As explained above, the Board did not make any changes to proposed Regulations 2000 and 2001 in response to these comments. The Board concluded that PRC section 4629.5, subdivision (a)(3), authorizes the Board to determine the amount that affected retailers may retain as reimbursed for start-up costs to implement the Lumber Products Assessment on January 1, 2013, not the ongoing costs of collection because:

- PRC section 4629.5 expressly provides that retailers may only retain "an amount" determined by the Board and does not authorize retailers to calculate and retain other amounts;

- The express language in PRC section 4629.5, subdivision (a)(3), provides that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers' first returns or next consecutive returns filed immediately after the retailers are required to begin collecting the Lumber Products Assessment on January 1, 2013;
- PRC section 4629.5 does not expressly provide for the ongoing retention of a percentage of collected assessments, as do the California Tire Fee Law and Covered Electronic Waste Recycling Fee Law, which both expressly authorize retail sellers to retain 1.5 percent (PRC § 42885) and 3 percent (PRC § 42464), respectively, of the fees they collect as ongoing reimbursement of collection costs; and
- Both the relevant Senate and Assembly floor analyses of AB 1492 refer to retailers being reimbursed for costs to set up collection systems, not retailers being reimbursed for ongoing compliance costs.

C. General Determinations Regarding Alternatives

By its motion, the Board determined that, at this time, no alternative to proposed Regulations 2000 and 2001 would be more effective in carrying out the purposes for which the regulations are proposed, would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Board could not determine that the alternative allowing affected retailers to retain \$5,500 per retail location for start-up costs would be as effective or more effective than the proposed regulations in achieving the purpose of AB 1492, which was to ensure continued sustainable funding for California's forest program to protect the state's forest resources. And, the Board was and is still concerned that the alternative allowing affected retailers to retain \$5,500 per retail location would actually have a negative effect on the revenue available for California's forest program and, as a result, the alternative would be much less effective than the proposed regulations in accomplishing the purpose of AB 1492.

The Board also determined that the alternative allowing affected retailers to retain future amounts as reimbursement for ongoing compliance costs is inconsistent with the express language of PRC section 4629.5, subdivision (a)(3), the statute being implemented, interpreted, and made specific by the proposed regulations. And, the Board determined that the alternative allowing affected retailers to retain future amounts as reimbursement for ongoing compliance costs is inconsistent with the relevant legislative history regarding the enactment of PRC section 4629.5, subdivision (a)(3), as discussed above. Therefore, the Board determined that the alternative cannot be as effective as the proposed regulations in accomplishing the purpose of implementing, interpreting and making specific PRC section 4629.5, subdivision (a)(3).

D. Reasons for Rejecting Alternatives that Might Lessen Whatever Adverse Economic Impact the Proposed Regulatory Action May Have on Small Businesses

The alternative allowing affected retailers to retain \$5,500 per retail location for start-up costs could potentially lessen whatever adverse economic impact the proposed regulatory action may have on small business by providing those small businesses that are also affected retailers with additional reimbursement for their start-up costs. However, the Board rejected that alternative, at this time, because the purpose of AB 1492 is to ensure continued sustainable funding for California's forest program to protect the state's forest resources, the Board is concerned that the alternative allowing affected retailers to retain \$5,500 per retail location for start-up costs would actually have a negative effect on the revenue available for California's forest program, and, as a result, the alternative would be much less effective than the proposed regulations in accomplishing the purpose of AB 1492 (as discussed in more detail above).

The alternative allowing affected retailers to retain future amounts as reimbursement for ongoing compliance costs could potentially lessen whatever adverse economic impact the proposed regulatory action may have on small business by providing those small businesses that are also affected retailers with additional reimbursement for their ongoing costs associated with collecting the Lumber Products Assessment. However, the Board rejected that alternative because allowing affected retailers to retain future amounts as reimbursement for ongoing compliance costs is inconsistent with the express language of PRC section 4629.5, subdivision (a)(3), and the relevant legislative history regarding the enactment of PRC section 4629.5, subdivision (a)(3), (as discussed in more detail above).

As previously explained, the Board now anticipates that the adoption of proposed Regulations 2000 and 2001 will provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5 while the Board tries to obtain sufficient information to determine whether that amount can be increased without affecting the revenue available for California's forest program;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

III. No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of proposed Regulations 2000 and 2001 does not impose a mandate on local agencies or school districts.

**Updated Informative Digest for the
Adoption of California Code of Regulations, Title 18,
Sections 2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention***

On September 10, 2013, the State Board of Equalization (Board) held a public hearing on and voted to adopt California Code of Regulations, title 18, sections (Regulations) 2000, *Retailer Reimbursement Retention*, and 2001, *Additional Allowed Retailer Reimbursement Retention*, without making any changes to the original proposed text of the regulations. There have not been any changes to the applicable laws directly related to the adoption of Regulations 2000 and 2001 described in the informative digest included in the notice of proposed regulatory action. And, there have not been any changes to the Board’s objective for adopting Regulations 2000 and 2001 or the effect of the Board’s adoption of Regulations 2000 and 2001 described in the informative digest included in the notice of proposed regulatory action. However, the Board did receive and respond to public comments regarding the adoption of Regulations 2000 and 2001, which are discussed below and in the final statement of reasons. And, one of the anticipated benefits from the adoption of Regulations 2000 and 2001 described in the informative digest included in the notice of proposed regulatory action has changed slightly, as discussed in more detail below.

Informative Digest

The informative digest included in the notice of proposed regulatory action provides:

“Current Law

“*PRC section 4629.5*

“PRC section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent Lumber Products Assessment on purchasers of lumber products and engineered wood products to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the Board to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain compliance costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

“Notably, PRC section 4629.5 and the legislative analyses of AB 1492 do not expressly indicate how the Board is to determine the amount of reimbursement that retailers may retain. However, the statute does appear to provide that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers’ first returns or next consecutive returns filed immediately after the retailers are required to begin collecting the Lumber Products Assessment on January 1, 2013. And, the statute does not authorize retailers to retain additional amounts thereafter.

“As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for ‘costs to set up collection systems.’ (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p. 2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3) provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to the commencement of their collection duties on January 1, 2013. Neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of amounts in excess of the Board-specified reimbursement amount to compensate retailers for ongoing collection costs.

“Emergency Regulation 2000

“In addition, PRC section 4629.5, subdivision (a)(3), as added by AB 1492, authorizes the Board to ‘adopt emergency regulations,’ pursuant to Government Code section 11346.1, to prescribe the amount retailers may retain from the Lumber Products Assessments they collect, and provides that the adoption of any such regulations ‘shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.’ Therefore, on October 23, 2012, the Board voted to:

- Added new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the Lumber Products Assessment imposed by PRC section 4629.5 can be codified in the new chapter; and
- Adopt Regulation 2000, which is codified in new chapter 4.1, as an emergency regulation, in order to determine the ‘amount of reimbursement’ a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), before retailers started collecting the new assessment on January 1, 2013.

“Emergency Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

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 no more than \$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.

"The \$250 retention amount in emergency Regulation 2000 is based on the Board's understanding of the amount of retailer reimbursement discussed when AB 1492 was drafted. Staff also estimated the \$250 retention amount in emergency Regulation 2000 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 (PricewaterhouseCoopers report). And, emergency Regulation 2000 recognizes that an affected retailer's start-up costs will be affected by the number of retail locations the retailer must get ready to collect the new assessment on January 1, 2013.

"An emergency regulation adopted pursuant to Government Code section 11346.1 is effective for a 180-day period. The Office of Administrative Law (OAL) may approve two readoptions of the same emergency regulation, under specified circumstances, each for an effective period of 90 days. However, an emergency regulation will automatically be repealed and deleted from the California Code of Regulations, unless the regulation is readopted through the regular rulemaking process before the emergency regulation ceases to be effective. (Gov. Code, § 11346.1, subds. (e), (g), and (h).)

"Emergency Regulation 2000 became effective on January 1, 2013. The Board subsequently readopted emergency Regulation 2000 in accordance with Government Code section 11346.1, subdivision (h). OAL approved the readoption on June 25, 2013, and indicated that readopted emergency Regulation 2000 will not expire until September 24, 2013. Therefore, OAL still has discretion to approve one more readoption of emergency Regulation 2000 before that time, which may extended the effective period of the regulation by an additional 90 days.

"Effect, Objectives, and Benefits of the Proposed Adoption of Regulations 2000 and 2001

“Business Taxes Committee Process

“The California Forestry Association supported the initial adoption of emergency Regulation 2000 and the \$250 reimbursement amount established by the regulation. However, the Board did not immediately propose to adopt emergency Regulation 2000 through the regular rulemaking process because other interested parties, including the California Retailers’ Association and the West Coast Lumber & Building Material Association (West Cost), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee (BTC) process to meet with interested parties and discuss the adoption of a regulation, through the regular rulemaking process, to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by PRC section 4629.5 beginning January 1, 2013.

“Start-up Costs and Ongoing Costs

“During the BTC process, some interested parties read PRC section 4629.5, subdivision (a)(3), as providing for reimbursement of ‘any costs’ associated with the collection of the Lumber Products Assessment, including ongoing costs. However, as previously discussed, Board staff believes that PRC section 4629.5, subdivision (a)(3) authorizes the Board to determine and prescribe a specific one-time amount of reimbursement -for start-up costs to implement the Lumber Products Assessment on January 1, 2013, that may be retained by all affected retailers, regardless of their actual costs; and staff does not believe that the statute allows retailers to retain a percentage of the assessments they collect or retain unique amounts of reimbursement for their actual start-up or ongoing costs. This is primarily because:

- PRC section 4629.5 expressly provides that retailers may only retain ‘an amount’ determined by the Board and does not authorize retailers to calculate and retain other amounts;
- PRC section 4629.5 requires a retailer to retain the Board prescribed amount of reimbursement from the assessments reported on its ‘first return or next consecutive returns until the entire reimbursement amount is retained’; and
- PRC section 4629.5 does not expressly provide for the ongoing retention of a percentage of collected assessments, as do the California Tire Fee Law and Covered Electronic Waste Recycling Fee Law, which both expressly authorize retail sellers to retain 1.5 percent (PRC § 42885) and 3 percent (PRC § 42464), respectively, of the fees they collect as ongoing reimbursement of collection costs.

“Staff’s understanding of PRC section 4629.5, subdivision (a)(3), is consistent with the Senate and Assembly floor analyses of AB 1492, which refer to retailers being reimbursed for ‘...costs to set up collection systems,’ not ongoing costs of collection. The interested parties that supported AB 1492, including the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra

Club, and the Center for Biological Diversity, have confirmed that staff's understanding of PRC section 4629.5, subdivision (a)(3) is consistent with the intent of AB 1492. In addition, California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson have recommended to the Board that reimbursement be limited to startup costs.

“Amount of Reimbursement for Start-up Costs

“In addition, Board staff and some interested parties continued to disagree about the ‘amount’ that affected retailers should be permitted to retain as reimbursement for start-up costs during the BTC process. These interested parties believe that the reimbursement amount in emergency Regulation 2000 is too low and that the amount should be increased to compensate most retailers for their actual start-up costs. For example, Caseywood estimated that it cost \$7,000 to implement computer system, internal process, and accounting changes necessary to comply with the new law. Other retailers advised staff that their current accounting systems could not be updated to calculate the new assessment, and that they were forced to update both software and hardware, at an estimated cost of \$45,000, in order to implement the assessment. Also, West Coast surveyed its members and informed staff that that the members’ average cost to implement the assessment was \$5,480 per location.

“To get a better idea of retailers’ average costs to update their software for the Lumber Products Assessment, staff contacted three software companies that provide software packages for the retail lumber industry. One company indicated that it included the update to collect the assessment in its annual software update and did not charge an additional amount to its existing customers, and the other software providers advised staff that for current customers they generally charged \$250 per location to update their software to collect the assessment. The software providers also explained that their charges (if any) did not include the hours spent reviewing inventory and coding SKU’s (stock keeping units) for products subject to the assessment. These tasks were typically completed by a retailer’s employees with the expense incurred directly by the retailer. Further, staff learned that retailers who use custom or proprietary accounting software were not able to take advantage of pricing discounts from package software providers and generally paid hourly rates for software technicians to update their systems. Furthermore, staff found that one company estimated that for a new retail account, they would charge about \$30,000 plus a monthly fee to set up a whole new accounting system that performed various functions, including collecting the Lumber Products Assessment.

“To get a better idea of retailers’ average costs to update their software for the assessment, staff also continued to review the available cost data, including the PricewaterhouseCoopers Report, referred to above, and found another reasonable alternative method that could be used to estimate affected retailers’ average start-up costs. First, staff found that 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 and that the amount of allowed retention directly affects the revenue the fund

receives. Second, in Board staff's September 11, 2012, Legislative Enrolled Bill Analysis of AB 1492, staff estimated that the new one-percent Lumber Products Assessment would generate annual revenue of \$35 million from approximately \$3.5 billion of sales subject to the assessment. Third, during the BTC process, staff estimated, using U.S. Census Bureau data, that there were close to 10,000 retail locations that were required to begin collecting the new assessment on January 1, 2013, and that each location would collect an annual average of \$3,500 in assessments on average annual sales of \$350,000 subject to the assessment.

“Fourth, staff also analyzed the PricewaterhouseCoopers Report in more detail, and found that the \$250 amount in emergency Regulation 2000 accounted for costs to program and service cash registers (and other point-of-sale systems), but did not account for all of the categories of compliance costs, included in the study. Further, staff found that the PricewaterhouseCoopers Report shows an average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry. Furthermore, staff recognized that the percentage was derived from looking at some costs that were not properly classified as start-up costs, such as costs to deal with audits and appeals, but that the percentage also failed to account for some costs that were properly classified as start-up costs, such as costs to identify and code products subject to the assessment. Therefore, staff concluded that it would be reasonable to use the percentage to calculate start-up costs.

“As a result, during the BTC process, Board staff calculated that the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, was approximately \$735 per retail location by multiplying the average amount of annual sales subject to the assessment that staff estimated would be made by each retail location (\$350,000) by 0.21 percent. Staff proposed that affected retailers be permitted to retain an additional \$485 (\$735 - \$250) from the assessments they collect, for start-up costs, beginning January 1, 2014. Therefore, staff recommended that the Board propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and that the Board also propose to adopt new Regulation 2001, through the regular rulemaking process, to provide that ‘[b]eginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as [additional] reimbursement for startup costs associated with the collection of the assessment.’

“During its BTC meeting on June 11, 2013, the Board tentatively agreed with staff's revised calculation of the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, of approximately \$735 per retail location. Therefore, the Board voted to propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and also to propose to adopt new Regulation 2001, through the regular rulemaking process. The Board's objective for proposing to adopt emergency Regulation 2000 and Regulation 2001 is to have the effect of prescribing \$735 per retail location as the total amount of reimbursement that affected retailers may retain from the Lumber Products Assessments they collect as

reimbursement for start-up costs pursuant to PRC section 4629.5. The regulations are anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

“The Board has performed an evaluation of whether proposed Regulations 2000 and 2001 are inconsistent or incompatible with existing state regulations and determined that the regulations are not inconsistent or incompatible with existing state regulations because they are the only state regulations prescribing the ‘amount of reimbursement’ a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). In addition, there is no federal assessment similar to the Lumber Products Assessment imposed by PRC section 4629.5 and there are no comparable federal regulations or statutes to proposed Regulations 2000 and 2001.”

Second Readoption of Emergency Regulation 2000

On August 13, 2013, the Board readopted Regulation 2000 for the second time, as an emergency regulation pursuant to Government Code section 11346.1, subdivision (h), without making any changes to the regulation’s text. OAL approved the second readoption of emergency Regulation 2000 on September 23, 2013. OAL also indicated that readopted emergency Regulation 2000 will expire on December 24, 2013, unless the Board adopts Regulation 2000 through the regular rulemaking process and delivers the completed rulemaking file for the adoption of Regulation 2000 to OAL by December 23, 2013.

Public Comments and Responses

The Board received six written comments regarding the proposed regulatory action. As relevant here, the September 10, 2013, letter from Ken Dunham, Executive Director of West Coast, reiterated West Coast’s prior comments from the interested parties process that the average cost to implement the Lumber Products Assessment imposed by PRC section 4629.5 was approximately \$5,500 per retail location and that the Board should adopt a regulation that provides \$5,500 of reimbursement per retail location. The undated letter from David Templeton, CFO of Central Valley Builders Supply (Central Valley), indicated that Central Valley thinks the \$5,500 of reimbursement per retail location requested by West Coast is reasonable because \$5,500 reflects the actual cost of managing the Lumber Products Assessment. The September 4, 2013, letter from Michael Tuchman, President of Roadside Lumber and Hardware, Inc. (Roadside), stated that Roadside supports West Coast’s request for \$5,500 of reimbursement per retail location. The September 6, 2013, email from Matt Peterson, Vice President of Mead Clark Lumber

Company, Inc. (Mead Clark), stated that Mead Clark incurred close to \$5,500 in costs to implement the Lumber Products Assessment and urged the Board to consider providing the \$5,500 of reimbursement per retail location requested by West Coast. The September 9, 2013, letter from Will Higman, COO of Reliable Wholesale Lumber, Inc. (Reliable), said that Reliable has incurred "\$45,000 in IT costs" related to the Lumber Products Assessment and urged the Board to provide \$5,500 of reimbursement per retail location for costs to implement the assessment. The September 10, 2013, letter from David Thom, owner of Bruce Bauer Lumber and Supply (Bruce Bauer), also indicated that it was expensive for Bruce Bauer to implement the Lumber Products Assessment and urged the Board to consider providing the \$5,500 of reimbursement per retail location requested by West Coast.

In addition, the September 6, 2013, email from Mr. Peterson urged the Board to consider providing some continuing reimbursement for future compliance costs. And, the September 9, 2013, letter from Mr. Higman urged the Board to provide ongoing annual reimbursement of up to \$1,500 per retail location.

Furthermore, Mr. Dunham appeared at the public hearing on September 10, 2013, and reiterated the comments from his September 10, 2013, letter. Jeff Pardini, CEO of Hills Flat Lumber Company (Hills Flat), appeared at the public hearing. Mr. Pardini said that he estimated that it cost Hills Flat \$9,600 per location to implement the Lumber Products Assessment, but that the average cost in the industry is \$5,500 per location and Hills Flat is willing to acquiesce to \$5,500 of reimbursement. Augie Venezia, President of Fairfax Lumber and Hardware (Fairfax), also appeared at the public hearing. Mr. Venezia stated that Fairfax's experience implementing the Lumber Products Assessment mirrors the experiences of the other lumber products retailers that submitted the written comments discussed above.

During the public hearing on September 10, 2013, Board staff said that staff has continued to monitor the implementation of the Lumber Products Assessment, in accordance with the Board's direction from the June 11, 2013, BTC meeting, which was referred to in the initial statement of reasons for the adoption of Regulations 2000 and 2001. Board staff explained that staff has reviewed the returns filed for the first and second quarters of 2013 to try to obtain additional information to help verify the number of retail locations that were required to begin collecting the new assessment on January 1, 2013, and the amount of revenue they are actually collecting. And, Board staff is still comfortable with an estimate that the Lumber Products Assessment will generate between \$30 and \$35 million in revenue in 2013, which is consistent with the revenue estimate from Board staff's September 11, 2012, Legislative Enrolled Bill Analysis of AB 1492, referred to in the initial statement of reasons and the informative digest included in the notice of proposed regulatory action for the adoption of Regulations 2000 and 2001.

However, during the public hearing, Board staff also indicated that staff does not have sufficient information, at this time, to provide a more definitive estimate regarding the number of retail locations for which reimbursement may be claimed under proposed

Regulations 2000 and 2001. And, the lack of information is mainly due to the fact that the returns filed for the first and second quarters of 2013 only indicate the number of retail locations that were registered to collect the Lumber Products Assessment on January 1, 2013, and have already reported making sales of products subject to the Lumber Products Assessment from January 1, 2013, to June 30, 2013. But, the returns filed so far do not indicate whether any additional retail locations that were registered to collect the Lumber Products Assessment on January 1, 2013, will make sales of products subject to the assessment from July 1, 2013, to December 31, 2013, or subsequently report sales that they made during the first two quarters of 2013, but did not timely report. And, Board staff also indicated that staff does not anticipate having sufficient information to provide a more definitive estimate until March or April of 2014 when:

- Staff has been able to review all of the returns filed for 2013;
- Determine which registered retail locations actually reported collecting assessments from purchasers of lumber products and engineered wood products during 2013; and
- Determine which registered retail locations, which Board staff originally determined were likely to sell products subject to the Lumber Products Assessment, did not in fact report collecting any assessments because they did not actually sell products subject to the assessment in 2013.

The Board considered all of the oral and written public comments and the comments made by Board staff during the public hearing. The Board affirmed its earlier determination from the June 11, 2013, BTC meeting, which is referred to in the initial statement of reasons, that the purpose of AB 1492 is to ensure continued sustainable funding for California's forest program to protect the state's forest resources. The Board also determined that the Legislature intended for affected lumber retailers to be fairly reimbursed for start-up costs to implement the Lumber Products Assessment. And, the Legislature intended for the Board to consider how the amount of reimbursement established by the Board would affect the revenue available for California's forest program, not focus solely on retailers' costs, in determining what a fair amount of reimbursement is under PRC section 4629.5, subdivision (a)(3).

Furthermore, the Board recognized that there are a number of variables that need to be taken into account in arriving at a fair amount of reimbursement for start-up costs, such as the amount of funding needed for California's forest program, the amount of revenue that will actually be generated by the Lumber Product Assessment in 2013, the number of retail locations that will actually be eligible to retain reimbursement from the assessments they collect, and the timing of their reimbursement. The Board also realized that it would not have sufficient information to take all of the variables into account and determine whether the total amount of reimbursement prescribed by proposed Regulations 2000 and 2001, \$735 per retail location, can be increased without affecting the revenue available for California's forest program, before emergency Regulation 2000 expires. And, the Board realized that it might not even have sufficient information to make that determination, propose substantially related changes to Regulation 2000 or 2001 or both,

if necessary, and then adopt the regulations before the current rulemaking action expires under Government Code section 11346.4.

As a result, the Board concluded that it was still comfortable that the Lumber Products Assessment would generate enough revenue to allow affected retailers to retain \$735 of reimbursement per retail location, for start-up costs, without affecting the revenue available for California's forest program. However, due to the uncertainty regarding all of the variables discussed above, the Board concluded that it could not agree, at this time, that the proposed regulations could be changed to provide affected retailers with \$5,500 of reimbursement per retail location, for start-up costs, without affecting the revenue available for California's forest program. And, based upon the discussion of the express language of PRC section 4629.5, subdivision (a)(3) in Formal Issue Paper 13-005, the initial statement of reasons, and the informative digest included in the notice of proposed regulatory action, the Board concluded that PRC section 4629.5, subdivision (a)(3), authorizes the Board to determine the amount that affected retailers may retain as reimbursed for start-up costs, not the ongoing costs of collection. Therefore, the Board did not agree to make changes to Regulations 2000 and 2001 to increase the total amount of reimbursement per retail location for start-up costs or to allow affected retailers to retain additional amounts as reimbursement for ongoing costs.

Instead, based upon the current circumstances, the Board concluded that the best thing the Board could do for affected retailers, at this time, was to:

- Adopt proposed Regulation 2000 through the regular rulemaking process to avoid potential confusion that might be created if emergency Regulation 2000 expired before the proposed regulation was adopted;
- Also adopt proposed Regulation 2001 to provide certainty to affected retailers that they can retain up to \$735 of total reimbursement per retail location for start-up costs while the Board tries to obtain sufficient information to determine whether that amount can be increased without affecting the revenue available for California's forest program; and
- Continue to monitor the implementation of the Lumber Products Assessment and seek additional input from the Legislature to determine whether that amount can be increased, sometime in the future, without affecting the revenue available for California's forest program.

Therefore, during the public hearing, the Board directed staff to report to the Board in April 2014 regarding the amount of Lumber Products Assessments reported during 2013 and the number of registered retail locations that were actually collecting the Lumber Products Assessment in 2013. The Board indicated that it would subsequently ask the Board's Legislative Director about the process for getting additional input from the Legislature, on behalf of the affected retailers. And, at the conclusion of the public hearing, the Board voted to adopt proposed Regulations 2000 and 2001 without making any changes.

In the informative digest included in the notice of proposed regulatory action, the Board stated that it anticipated that the adoption of proposed Regulations 2000 and 2001 will provide the following benefits:

1. Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
2. Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
3. Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

However, based upon the above discussion, the first anticipated benefit has changed slightly. The Board now anticipates that the adoption of proposed Regulations 2000 and 2001 will provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5 while the Board tries to obtain sufficient information to determine whether that amount can be increased without affecting the revenue available for California's forest program.



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: JUNE 11, 2013, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

Title: Proposed Lumber Products Assessment Regulations – Retailer Reimbursement Retention

Issue:

Should the Board authorize publication of new Lumber Products Assessment regulations stating the amount of collected assessment retailers may retain for reimbursement of collection costs?

Committee Discussion:

Staff introduced the topic for discussion. Mr. Ken Dunham representing the West Coast Lumber & Building Material Association stated their support for Alternative 3, which would allow \$5,500 per location for startup costs and \$1,500 per location annually for ongoing costs. Mr. Dunham also expressed his belief that the staff's estimated revenue is low based on expected increases in the lumber sales prices and growth in the construction industry. He also stated that he believes that staff's estimated number of 10,000 retail locations is too high; Mr. Dunham estimates the number is about 3,000 to 3,500.

Mr. Sean Fogarty representing Osborne Lumber also expressed his support for Alternative 3 because it provides an adequate level of reimbursement based on his business' actual costs. Ms. Gina Rodriguez representing the California Taxpayer's Association also stated their support of Alternative 3.

Ms. Yee discussed the difficult position of the Board to ensure that the primary purpose of the assessment, which is to ensure sustained funding for the State's forest programs, is balanced with determining a level of reimbursement to retailers and the data available to date.

Mr. Runner expressed his concern over the lack of data regarding the number of retailers and the amount of revenue that will be received from the assessment. He asked staff when they would have better numbers regarding the number of retailers. Staff explained that if the Board authorized publication of a proposed regulation at this Board meeting, the public hearing could be at the September 2013 Board meeting. This would allow the Board to have new data from second quarter 2013 filings before adopting the regulation(s). Mr. Runner commented that having this additional information will provide a better idea of the number of retailers and the amount of revenue.

Mr. Horton expressed concern over the method of reimbursing on a per location basis which could create inequity between businesses with several locations and businesses with only one.

He commented that the regulation should be open enough to be fair and equitable to retailers while complying with the intended purpose of the legislation and accomplishing its objectives.

Ms. Steel stated that she cannot support Alternative 1 because it does not provide enough reimbursement to retailers for their cost of compliance with the assessment.

Mr. Horton asked staff about the study used by staff to determine the amounts in Alternative 1 and asked that staff look at what variables should be considered when determining costs to modify retailer’s systems to implement the assessment. Ms. Yee asked that staff do more work to find out if the 28,000 zero filers actually sell lumber products. Refining this variable would provide the Board with a better understanding of the universe of retailers affected by assessment.

Lastly, the committee discussed the procedure for revising the amount of the reimbursement at the public hearing. Alternative 1 recommends the Board approve and authorize publication of Regulation 2000, *Retailer Reimbursement Retention*, which allows retailers to retain \$250 per location beginning January 1, 2013, and Regulation 2001, *Additional Allowed Retailer Retention*, which allows retailers to retain an additional \$485 per location beginning January 1, 2014. Staff explained that if Alternative 1 was approved, the \$485 amount in Regulation 2001 could be changed at the public hearing. Such a change would be considered sufficiently related to the initial proposal and following an additional 15-day comment period the regulation could be brought back for adoption at a subsequent public hearing. Alternatively, the Board could adopt only Regulation 2000 at the September public hearing. By not adopting Regulation 2001, the allowed reimbursement retention would be limited to the \$250 provided in Regulation 2000.

Committee Action:

Upon motion by Mr. Runner, seconded by Mr. Horton, the Committee approved and authorized for publication proposed Regulation 2000, *Retailer Reimbursement Retention*, and Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*. Copies of the proposed regulations are attached. The vote was as follows:

MEMBER	Yee	Runner	Steel	Horton	Mandel
VOTE	N	Y	N	Y	Y

/s/ Betty T. Yee

 Honorable Betty T. Yee, Committee Chair

/s/ Cynthia Bridges

 Cynthia Bridges, Executive Director

BOARD APPROVED
 at the 7/17/13 Board Meeting

/s/ Joann Richmond

 Joann Richmond, Chief
 Board Proceedings Division

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 no more than \$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.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Regulation 2001, Additional Allowed Retailer Reimbursement Retention

Beginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, 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.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING AGENDA

HONORABLE BETTY YEE, COMMITTEE CHAIRWOMAN

450 N STREET, SACRAMENTO - ROOM 121

JUNE 11, 2013 – 10:00 A.M.

1. Proposed Lumber Products Assessment Regulations – Retailer Reimbursement Retention

Request approval and authorization to publish proposed Lumber Products Assessment regulations determining the amount of collected assessment retailers may retain for reimbursement of collection costs.

REGULATION HISTORY

TYPE OF REGULATION: Lumber Products Assessment
REGULATION: 2000 and 2001
TITLE: *Retailer Reimbursement Retention*
Additional Allowed Retailer Reimbursement
PREPARATION: Lynn Whitaker / Michael Patno
LEGAL CONTACT: Kevin Smith / Stephen Smith

Proposed Regulation 2000, *Retailer Reimbursement Retention*, to provide the amount of collected Lumber Products Assessment retailers may retain for reimbursement of collection costs beginning January 1, 2013.

Proposed Regulation 2001, *Additional Allowed Retailer Reimbursement*, included in Alternative 1 of Issue Paper 13-003 to allow retailers to retain an additional amount for collection costs beginning January 1, 2014.

HISTORY:

June 11, 2013: Business Taxes Committee (BTC) Meeting
March 7, 2013: 2nd Interested Parties Meeting
January 10, 2013: 1st Interested Parties Meeting
January 1, 2013: Effective Date of Emergency Regulation 2000
December 4, 2012: Emergency Regulation 2000 Approved by the Office of Administrative Law
December 3, 2012: Topic Placed on BTC Calendar
October 23, 2012: Emergency Regulation 2000 Approved by the Board
September 11, 2012: Effective date of Public Resources Code section 4629.5

AGENDA — June 11, 2013 Business Taxes Committee Meeting
Lumber Products Assessment Regulations – Retailer Reimbursement Retention

<p>Action 1 — Proposed Lumber Products Assessment Regulations – Retailer Reimbursement Retention</p> <p>Issue Paper Alternative 1 – Staff Recommendation Agenda, pages 2-4</p> <p>Issue Paper Alternative 2 Agenda, pages 2-4</p> <p>Issue Paper Alternative 3</p>	<p>Approve and authorize publication of:</p> <p>Staff's proposed Regulations 2000, <i>Retailer Reimbursement Retention</i>, and 2001, <i>Additional Allowed Retailer Reimbursement Retention</i>. These regulations allow retailers to retain \$250 per location for reimbursement of startup costs beginning January 1, 2013, and allow retailers to retain an additional \$485 per location beginning January 1, 2014.</p> <p>OR</p> <p>Readopt emergency Regulation 2000 without amendment. This alternative would allow retailers to retain \$250 per location for reimbursement of startup costs.</p> <p>OR</p> <p>Direct staff to draft a regulation that allows retailers to retain a higher amount for startup costs and an annual amount for reimbursement of ongoing costs. West Coast Lumber & Building Material Association requested that BOE set the retention amount at \$5,500 per retail location for startup costs and set an annual retention amount of \$1,500 per retail lumber location.</p>
---	--

AGENDA — June 11, 2013 Business Taxes Committee Meeting
Lumber Products Assessment Regulations – Retailer Reimbursement Retention

<p>Action Item</p>	<p>Alternative 1 - Staff Recommendation proposed Regulations 2000 and 2001</p> <p>Total allowed retention: \$735 per location</p>	<p>Alternative 2 – proposed Regulation 2000</p> <p>Total allowed retention: \$250 per location</p>	<p>Alternative 3 - Allow a higher amount for startup costs and an annual amount for ongoing costs</p>
<p>Action 1 - Proposed Lumber Products Assessment Regulation(s)</p>	<p><u>Regulation 2000, Retailer Reimbursement Retention</u></p> <p><u>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.</u></p> <p><u>A retailer required to collect the Lumber Products Assessment may retain no more than \$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</u></p>	<p><u>Regulation 2000, Retailer Reimbursement Retention</u></p> <p><u>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.</u></p> <p><u>A retailer required to collect the Lumber Products Assessment may retain no more than \$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</u></p>	<p>[No language provided.]</p>

AGENDA — June 11, 2013 Business Taxes Committee Meeting
Lumber Products Assessment Regulations – Retailer Reimbursement Retention

<p>Action Item</p>	<p>Alternative 1 - Staff Recommendation proposed Regulations 2000 and 2001 Total allowed retention: \$735 per location</p>	<p>Alternative 2 – proposed Regulation 2000 Total allowed retention: \$250 per location</p>	<p>Alternative 3 - Allow a higher amount for startup costs and an annual amount for ongoing costs</p>
<p><u>the allowed reimbursement amount is retained.</u> <u>“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.</u></p> <p><u>Regulation 2001, Additional Allowed Retailer Reimbursement Retention</u> <u>Beginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, 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</u></p>	<p><u>the allowed reimbursement amount is retained.</u> <u>“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.</u></p>	<p><u>the allowed reimbursement amount is retained.</u> <u>“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.</u></p>	

AGENDA — June 11, 2013 Business Taxes Committee Meeting
Lumber Products Assessment Regulations – Retailer Reimbursement Retention

<p>Action Item</p>	<p>Alternative 1 - Staff Recommendation proposed Regulations 2000 and 2001 Total allowed retention: \$735 per location</p>	<p>Alternative 2 – proposed Regulation 2000 Total allowed retention: \$250 per location</p>	<p>Alternative 3 - Allow a higher amount for startup costs and an annual amount for ongoing costs</p>
	<p><u>retailer's next consecutive returns until the allowed reimbursement amount is retained.</u> <u>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.</u> <u>“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.</u></p>		

Issue Paper Number 13-005



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

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

Proposed Lumber Products Assessment Regulations - Retailer Reimbursement Retention

I. Issue

Should the Board authorize publication of new Lumber Products Assessment regulations stating the amount of collected assessment retailers may retain for reimbursement of collection costs?

II. Alternative 1 – Staff Recommendation

Staff recommends the Board approve and authorize publication of

- Regulation 2000, *Retailer Reimbursement Retention*, allowing retailers to retain \$250 per location for reimbursement of startup costs beginning January 1, 2013, and
- Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*, allowing retailers to retain an additional \$485 per location beginning January 1, 2014.

To preserve the emergency regulation provisions, the text of proposed Regulation 2000 is identical to the emergency regulation. Staff believes that a separate Regulation 2001 will make it clear that the changes beginning January 1, 2014 do not affect the emergency regulation provisions in place in 2013. See Exhibit 2.

III. Other Alternative Considered

Alternative 2: Readopt emergency Regulation 2000 without amendment. This alternative would allow retailers to retain \$250 per location for reimbursement of startup costs. See Exhibit 3. This alternative is supported by the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity. This alternative was also recommended by California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson. See Exhibit 4.

Alternative 3: Adopt a regulation that allows 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) requested that BOE set the startup cost retention amount at \$5,500 per retail location and the annual retention at \$1,500 per retail lumber location. In addition to West Coast, this alternative is supported by Home Depot, Caseywood, Bruce Bauer Lumber & Supply, Idaho Pacific Lumber, Mead Clark Lumber, Nichols Lumber & Hardware, Van Matre Lumber, Brisco Mill & Lumber, La Mesa Lumber, San Joaquin Lumber, Sunnyvale Lumber, Truckee-Tahoe Lumber, Valley Redwood, Roadside Lumber & Hardware, Ashby Lumber, Reliable Wholesale Lumber, Pine Tree Lumber, Monument Lumber, and Home Lumber. See Exhibit 5.

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 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 provides that retailers may retain \$250 per location registered under the retailer's seller's permit as of January 1, 2013. 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 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. 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 Memo¹ on the adoption of emergency Regulation 2000.)

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.

In order to ensure retailers would be able to continue to claim \$250 in reimbursement while staff worked with interested parties through the Business Taxes Committee process, the Board approved re-adoption of the emergency regulation on May 22, 2013. Staff intends to request a second re-adoption of the emergency regulation while any permanent regulations are in the formal rulemaking OAL approval process.

¹ http://www.boe.ca.gov/meetings/pdf/102312_J1_AB1492_Emergency_Regs.pdf

V. Discussion

Staff and interested parties disagree on two main points: (1) whether PRC 4629.5 limits allowed retention to startup costs, and (2) the amount retailers should be allowed to retain for reimbursement of startup costs.

Retention for Startup Costs or Startup and Ongoing Costs

Staff and interested parties agree that retailers will have ongoing expenses to comply with the provisions of the Lumber Products Assessment. When lumber retailers add new products to inventory, they 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 will require retailers to review their inventory and update their recordkeeping systems.

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 BOE programs where taxpayers retain reimbursement amounts.²

The intent that reimbursement be limited to startup costs was noted in the BOE legislative analysis³ 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." Interested parties that supported AB 1492, including the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity confirm this intent. In their March 20, 2013 submission, California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson also recommended that reimbursement be limited to startup costs (see Exhibit 4).

Several interested parties, however, disagree with staff's interpretation of PRC section 4629.5 and believe BOE should adopt a regulation that compensates retailers for the ongoing costs they will incur complying with the assessment. In their submission, Home Depot explained:

...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 is clear and unambiguous, there is no need to look at legislative history or to go any further.

² 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.

³ <http://www.boe.ca.gov/legdiv/pdf/1492abcnr12cw.pdf>

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 states 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.

West Coast and other lumber retailers 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 requests 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. This amount was also recommended by 15 other lumber retailers in their submissions (see Exhibit 5).

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.

Purpose of AB 1492. 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. 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.

Actual Costs to Implement AB 1492. Most lumber retailers use computerized accounting software to account for inventory and sales. To get an idea of retailers' costs to update their software for the assessment, staff contacted three software companies that provide software packages for the retail lumber industry. These providers advised us that for current customers they generally charged \$250 per location to update their software to collect the Lumber Products Assessment. One company included the change in their annual updates and did not charge an additional amount. The providers explained that they priced updates to match the amount provided in BOE's emergency regulation as a courtesy to existing customers and as a selling point to attract new customers. However, one company estimated that for a new retail account, they would charge about \$30,000 plus a monthly fee to set up a

whole new accounting system that included the lumber assessment. Software providers also explained that their charges did not include the hours spent reviewing inventory and coding SKU's (stock keeping units) for products subject to the assessment. These tasks were typically completed by the retailer's employees with the expense incurred directly by the retailer.

Retailers who use custom or proprietary accounting software were not able to take advantage of pricing discounts from package software providers and generally paid hourly rates for software technicians to update their systems. Caseywood estimated that it cost their company \$7,000 to implement computer system, internal process, and accounting changes necessary to comply with the new law. Other retailers advised us that while their current accounting systems could be readily modified to accommodate a new sales tax rate, they could not be updated to calculate the Lumber Products Assessment (requiring 1% assessment be calculated on identified items and a separate statement of the assessment on the invoice or receipt). Those retailers were forced to update both software and hardware in order to implement the assessment. One retailer estimated their cost to be \$45,000. Single location retailers also noted that while they incurred costs similar to other lumber retailers, they did not benefit from the allowed "per location" reimbursement provision of the emergency regulation. West Coast surveyed their members and estimated the average cost to implement the assessment was \$5,480 per location (see Exhibit 5).

Data from Filed Returns – Number of Locations. An obstacle in interested party discussions has been that BOE does not know the actual number of retail locations selling products subject to the Lumber Products Assessment. The assessment applies to products that could be sold by a variety of stores making it difficult for BOE to estimate the number of retailers required to collect the assessment. Using Census Bureau data, staff estimated in its Second Discussion Paper that the number of locations is close to 10,000.

Identifying these retailers has also been a challenge for BOE. 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 (North American Industry Classification System) 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, 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 received 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 was instructed to 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.

It was hoped that a clearer picture of the number of lumber retailer locations would develop after first quarter 2013 returns were received. For regular quarterly filers, first quarter sales and use tax returns were due April 30, 2013.

FORMAL ISSUE PAPER 13-003

On May 3, 2013, BOE had the following information about lumber schedules and retail locations:

	Taxpayers coded to receive a lumber schedule or filed a lumber schedule for 1 Qtr 2013	Number of sub-locations	Total locations
No sales and use tax return or lumber schedule filed	7,980	2,838	10,818
Reported transactions subject to the Lumber Products Assessment > \$0	1,261	1,192	2,453
Reported transactions subject to the Lumber Products Assessment of \$0	19,065	7,959	27,024
Total	28,306	11,989	40,295

Staff cannot definitively say what a zero return means. Retailers may have reported zero on their lumber schedule because they sell lumber products, but all of their sales were nontaxable in first quarter 2013 or they didn't sell any lumber products in first quarter, but will in subsequent quarters. Other retailers might not sell lumber products, but have not yet contacted BOE to have the lumber schedule removed from their account.

We also note that when fiscal year and annual filers complete their returns in July 2013 and January 2014 additional retailers may contact BOE to receive a lumber schedule. That is, the retailer collected the lumber assessment, but did not realize they needed to be coded to receive the lumber schedule until their returns were due.

Data from Filed Returns – Amount of Reported Assessment. In addition to regular quarterly filers, the following table includes lumber retailers with special reporting periods. The amounts received from these special filers include January sales, but not February and March transactions (approximately the month of January; special filer reporting periods do not begin exactly at the beginning of the month). First quarter 2013 returns for these special filers (February, March, and April sales) were not available at the time of this paper.

On May 3, 2013 reported amounts from all filers were:

Transactions subject to the Lumber Products Assessment	\$573,096,454
Gross Lumber Products Assessment	\$5,730,973
Reimbursement claimed	\$200,809
Net Assessment reported	\$5,530,509

Using the simplest projection method (multiplying amounts reported by regular filers by four quarters and special filers by twelve months), staff estimates \$28.7 million could be reported in gross Lumber Products Assessment in 2013. Staff notes that this projection is skewed by limited information available from special filers. In addition, January is generally regarded as a slow construction month and staff expects that lumber product sales will be greater in other months.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends the Board approve and authorize publication of

- Regulation 2000, *Retailer Reimbursement Retention*, allowing retailers to retain \$250 per location for reimbursement of startup costs beginning January 1, 2013, and
- Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*, allowing retailers to retain an additional \$485 per location beginning January 1, 2014.

To preserve the emergency regulation provisions, the text of proposed Regulation 2000 is identical to the emergency regulation. Staff believes that a separate Regulation 2001 will make it clear that the changes beginning January 1, 2014 do not affect the emergency regulation provisions in place in 2013.

Staff's recommendation results in a total \$735 retention amount. This amount was determined using additional 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).

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

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.baacsuta.org/Cost%20of%20Collection%20Study%20-%20SSTP.pdf>

FORMAL ISSUE PAPER 13-003

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.

As explained in the Discussion section, the actual number of retail locations selling products subject to the assessment is still unknown. Using Census Bureau data staff estimated in its Second Discussion Paper that the number of locations selling lumber and wood products is likely to be close to 10,000. Although the number of locations reporting more than \$0 in taxable sales for the first quarter 2013 was under 3,000, staff believes the 10,000 location estimate is reasonable given our uncertainty from thousands of unfiled returns and filed zero returns. Staff also believes it is reasonable to think that the revenue estimate of \$35 million cited in the BOE analysis of AB 1492 may be realized given the amounts already reported and expected increases in lumber product sales as the construction season begins.

Revenue of \$35 million equals lumber sales of \$3.5 billion since the assessment is one percent of lumber sales. If there are 10,000 locations, this means average lumber sales of \$350,000 per location. An assumption of average compliance costs of 0.21 percent results in 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 2). We expected this date to coincide with the effective date of a permanent Regulation 2000. 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 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.

B. Pros of Alternative 1

- Staff believes this alternative provides retailers with an amount that will recover some of their costs to implement AB 1492 without a devastating revenue loss to the Timber Regulation and Forest Restoration (TRFR) Fund.
- Providing that the additional retention be allowed prospectively limits the refund claims, making implementation easier.

C. Cons of Alternative 1

- The proposed amount is less than the amount lumber retailers' reported they spent to implement AB 1492.
- This alternative does not allow retailers to retain an amount for reimbursement of ongoing costs retailers incur as new lumber products are added to their inventory or as the BOF's list of products subject to the assessment changes.
- Retailers who collect small amounts of assessment will need to keep track of an additional declining balance of unused allowed retention amounts.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require adoption of new regulations.

E. Operational Impact of Alternative 1

Staff will publish proposed Regulations 2000 and 2001 and thereby begin the formal rulemaking process. Staff will also send a special notice to retailers advising them of the increased retention amount, update the BOE Lumber Products Assessment webpage, and issue a Tax Information Bulletin (TIB) article. Staff will also revise the Lumber Products Assessment schedule instructions to explain the additional allowed retention beginning January 1, 2014.

F. Administrative Impact of Alternative 1**1. Cost Impact**

The workload associated with publishing the regulation, sending a special notice, preparing the TIB article, updating the BOE webpage, and revising the schedule instructions is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

2. Revenue Impact

Assuming 10,000 locations, staff estimates the allowed retention in 2013 would be \$2,500,000 (\$250 per location). The additional allowed retention beginning 2014 would be \$4,850,000. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

Retailers with small amounts of lumber product sales will need to keep track of an adjusted declining balance of unused retention amounts.

H. Critical Time Frames of Alternative 1

Staff expects the approval of the regulations by the Office of Administrative Law will be completed before emergency Regulation 2000 expires.

VII. Alternative 2**A. Description of Alternative 2**

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

This alternative is supported by the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity. This alternative was also recommended by California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson.

This alternative provides the safest option to protect the fund as BOE remains uncertain of the actual number of lumber retailers that could retain reimbursement amounts. The interested parties supporting this alternative believe that a retailer reimbursement level greater than \$250 would jeopardize the overall purpose of enacting the Lumber Products Assessment. They explained in their submissions that the Governor's proposed 2013/2014 budget proposes the expenditure of \$26.7 million including adding 49.3 new positions to the state's timber harvest review program.

FORMAL ISSUE PAPER 13-003

Both the Assembly and Senate Budget subcommittees responsible for this budget item have already adopted the Governor's proposed budget level regarding expenditures from the TRFR Fund. They further note that comments received during recent Legislative budget hearings pointed to the hope that in future years additional funding from the TRFR Fund would be available for forest land restoration projects.

B. Pros of Alternative 2

- This alternative has the smallest revenue impact on the TRFR Fund. By providing the fund with the maximum amount, the alternative will do the most to support the purpose of AB 1492 – funding a robust timber harvest review program and support existing restoration grant programs.
- Because the provisions are the same as the emergency regulation, this alternative is the easiest for retailers to understand and to claim. Many retailers will have already claimed the amount in 2013 (for example, a single location retailer with more than \$25,000 in retail lumber product sales in 2013). For retailers with small amounts of lumber product sales, they may not need to keep track of an adjusted declining balance of unused retention amounts.

C. Cons of Alternative 2

- The proposed amount is less than the amount lumber retailers' reported they spent to implement AB 1492.
- This alternative does not allow retailers to retain an amount for reimbursement of ongoing costs retailers incur as new lumber products are added to their inventory or as the BOF's list of products subject to the assessment changes.

D. Statutory or Regulatory Changes for Alternative 2

No statutory change is required. The alternative requires the adoption of a new regulation.

E. Operational Impact of Alternative 2

Staff will publish proposed Regulation 2000 and thereby begin the formal rulemaking process. Since this alternative continues the amount allowed by the emergency regulation, staff would not need to send a special notice to retailers. Staff will update the BOE Lumber Products Assessment webpage and issue a TIB article explaining the provisions of the emergency regulation were made permanent.

F. Administrative Impact of Alternative 2**1. Cost Impact**

The workload associated with publishing the regulation, preparing the TIB article, and updating the BOE webpage is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

2. Revenue Impact

Assuming 10,000 locations, staff estimates the total allowed retention would be \$2,500,000. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

There would be no change to the Lumber Products Assessment schedule. Retailers with small amounts of lumber product sales may not need to keep track of an additional adjusted declining balance of unused retention amounts. Retailers will likely not be reimbursed for actual incurred costs to implement AB 1492.

H. Critical Time Frames for Alternative 2

Staff expects the approval of the regulation by the Office of Administrative Law will be completed before emergency Regulation 2000 expires.

VIII. Alternative 3

A. Description of Alternative 3

Adopt a regulation that allows retailers to retain a higher amount for startup costs and an annual amount for reimbursement of ongoing costs. Interested parties did not provide specific regulation language, however, in their January 21, 2013 submission West Coast requested that BOE set the startup cost retention amount at \$5,500 per retail location and the annual retention at \$1,500 per retail lumber location.

Several interested parties submitted comments explaining that the \$250 and \$735 amounts proposed in staff's second discussion paper are unreasonably low given retailers' actual costs to change their reporting systems to collect the assessment. Both West Coast and Home Depot believe that PRC section 4629.5(a)(3) authorizes reimbursement for any costs associated with the collection of the assessment. They also disagree that the PricewaterhouseCoopers study should be used as support for any determined amount. They point out that 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. They believe that a better determination of actual costs of collection would be made from a survey of retailers throughout the state.

If this alternative is chosen, staff recommends two regulations be drafted, a Regulation 2000 with provisions identical to emergency Regulation 2000, and a Regulation 2001 with the new provisions beginning January 1, 2014.

B. Pros of Alternative 3

- This alternative come the closest to reimbursing retailers for the costs they incurred implementing AB 1492.
- The alternative would provide continuing reimbursement for expected ongoing costs to comply with the assessment.

C. Cons of Alternative 3

- This alternative would have the greatest reduction to the TRFR Fund, thus jeopardizing the overall objectives of AB 1492.
- Some retailers may be reimbursed for more than their actual startup costs.

FORMAL ISSUE PAPER 13-003

- Staff disagrees there is statutory authority to allow for retention of the assessment beyond reimbursement for startup costs.

D. Statutory or Regulatory Changes for Alternative 3

Interested parties believe no statutory change is required to allow retention for ongoing costs. The alternative requires the adoption of new regulations.

E. Operational Impact of Alternative 3

Staff will publish the proposed regulations and thereby begin the formal rulemaking process. Staff will also send a special notice to retailers advising them of the increased retention amount, update the BOE Lumber Products Assessment webpage, and issue a TIB article. Staff will also revise the Lumber Products Assessment schedule instructions to explain the additional allowed retention for startup costs and ongoing retention beginning January 1, 2014.

F. Administrative Impact of Alternative 3**1. Cost Impact**

The workload associated with publishing the regulation, sending a special notice, preparing a TIB article, updating the BOE webpage, and revising the schedule instructions is considered routine. Any corresponding cost would be absorbed within the Board's existing budget. Since this alternative provides for ongoing retention, staff may consider building system checks to ensure that the retention amount is not over claimed in future years.

2. Revenue Impact

Assuming 10,000 locations, staff estimates the allowed retention in 2013 would be \$2,500,000 (\$250 per location). Allowing an additional \$5,250 for startup costs in 2014, the allowed retention beginning 2014 would be \$2,500,000. Allowing \$1,500 each year for ongoing costs would be \$15,000,000 each year. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 3

The Lumber Products Assessment schedule instructions would be revised to explain the additional allowed retention beginning January 1, 2014. Retailers with small amounts of lumber product sales will need to keep track of an additional adjusted declining balance of unused retention amounts; these retailers may not pay an assessment amount for several years.

H. Critical Time Frames for Alternative 3

Staff would need to work quickly with interested parties to develop language for this proposal so the regulation could be approved by the Office of Administrative Law before emergency Regulation 2000 expires.

Preparer/Reviewer Information

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

Current as of: May 23, 2013

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



Proposed Lumber Products Assessment Regulations - Retailer Reimbursement Retention

I. Issue

Should the Board authorize publication of new Lumber Products Assessment regulations stating the amount of collected assessment retailers may retain for reimbursement of collection costs?

II. Alternative 1 – Staff Recommendation

Staff recommends the Board approve and authorize publication of

- Regulation 2000, *Retailer Reimbursement Retention*, allowing retailers to retain \$250 per location for reimbursement of startup costs beginning January 1, 2013, and
- Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*, allowing retailers to retain an additional \$485 per location beginning January 1, 2014.

To preserve the emergency regulation provisions, the text of proposed Regulation 2000 is identical to the emergency regulation. Staff believes that a separate Regulation 2001 will make it clear that the changes beginning January 1, 2014 do not affect the emergency regulation provisions in place in 2013. See Exhibit 2.

III. Other Alternative Considered

Alternative 2: Readopt emergency Regulation 2000 without amendment. This alternative would allow retailers to retain \$250 per location for reimbursement of startup costs. See Exhibit 3. This alternative is supported by the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity. This alternative was also recommended by California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson.

Revenue Estimate

Alternative 3: Adopt a regulation that allows 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) requested that BOE set the startup cost retention amount at \$5,500 per retail location and the annual retention at \$1,500 per retail lumber location. In addition to West Coast, this alternative is supported by Home Depot, Caseywood, Bruce Bauer Lumber & Supply, Idaho Pacific Lumber, Mead Clark Lumber, Nichols Lumber & Hardware, Van Matre Lumber, Brisco Mill & Lumber, La Mesa Lumber, San Joaquin Lumber, Sunnyvale Lumber, Truckee-Tahoe Lumber, Valley Redwood, Roadside Lumber & Hardware, Ashby Lumber, Reliable Wholesale Lumber, Pine Tree Lumber, Monument Lumber, and Home Lumber.

Background, Methodology, and Assumptions

We obtained U.S. data on lumber sales from the U.S. Census Bureau *2007 Economic Census* ("Wholesale Trade: Industry Series: Preliminary Product Lines Statistics by Kind of Business for the United States: 2007"). Taking California's 12 percent share of U.S. population and applying a typical retail margin, we estimate that California lumber retail sales were about \$7.0 billion in 2007. The economic recession that started December 2007 had a dramatic impact on California's housing and building material industry. Housing permits have declined by about 50 percent from 2007 to 2012. If we assume that lumber sales declined in a manner closely following the decline in housing permits, we estimate that 2012 California retail lumber sales were about \$3.5 billion.

An assessment of one percent on the retail value on those products would amount to \$35 million in annual state revenues.

The number of retail locations selling lumber and wood products in California is unknown. The most recent U.S. Census Bureau *County Business Patterns* data indicate that there were 6,834 establishments in California in NAICS industry 444, "Building material and garden equipment and supplies dealers," in 2011. Not all of these establishments necessarily sell lumber products. 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, we believe the number of locations selling lumber and wood products is likely to be close to 10,000.

Revenue Estimate

Revenue Summary

Revenues, cost reimbursement estimates and revenues after cost reimbursements are shown in the table below. Without reimbursements, revenues are estimated to be about \$35 million.

Alternative and Cost Reimbursement Amount	Revenue Estimate	Cost Reimbursement (Assume 10,000 Locations)	Revenues After Cost Reimbursement
Alternative 1 (\$735)	\$35,000,000	\$7,350,000	\$27,650,000
Alternative 2 (\$250)	\$35,000,000	\$2,500,000	\$32,500,000
Alternative 3 (\$5,500)	\$35,000,000	\$55,000,000	-\$20,000,000
Ongoing annual reimbursement (\$1,500)	\$35,000,000	\$15,000,000	\$20,000,000

- **Alternative 1.** The staff recommendation will reduce revenues by \$7.350 million. Revenues after reimbursements are estimated to be \$27.650 million.
- **Alternative 2.** This recommendation will reduce revenues by \$2.500 million. Revenues after reimbursements are estimated to be \$32.500 million.
- **Alternative 3.** This recommendation will reduce revenues by \$55.000 million for startup costs. Revenues after reimbursements are estimated to be *negative* \$20.000 million.

Preparation

Mr. Joe Fitz, Chief Economist, Board of Equalization. For additional information, please contact Mr. Fitz at 916-323-3802.

May 23, 2013.

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 no more than \$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 2001, Additional Allowed Retailer Reimbursement Retention

Beginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, 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.

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 no more than \$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.

Issue Paper Number 13-005
Submission from Interest Parties Supporting Alternative 2

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0007
(916) 319-2099
FAX (916) 319-2199

Assembly
California Legislature



ASSEMBLY COMMITTEE ON BUDGET

BOB BLUMENFIELD, CHAIR
ASSEMBLYMEMBER, FORTIETH DISTRICT

Exhibit 4
Page 1 of 6

CHIEF CONSULTANT
CHRISTIAN GRIFFITH

COMMITTEE SECRETARIES
SANDY PEREZ
CHRISTINA GUZMAN

CONSULTANTS
SARA BACHEZ
MARVIN DEON
MISTY FEUSAHRENS
MARK IBELE
ANDREA MARGOLIS
MARK MARTIN
GABRIELLE MEINDL
NICOLE VAZQUEZ

March 20, 2013

Jerome E. Horton, Chairman
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279

Dear Chairman Horton:

As part of the 2012-13 budget package, the Assembly Budget Committee authored AB 1492, a bill intended to fund a robust timber harvest review program and support existing restoration grant programs. As chair and members of the Assembly Budget Committee, we respectfully request that you adopt the recommendations in Chief Counsel Randy Ferris' October 12, 2012 report, which suggests a \$250 reimbursement for each retail location that collects the lumber product assessment. We believe that this reimbursement amount is necessary to uphold the primary purpose of AB 1492: to ensure sustainable funding for a robust timber harvest review program.

As you may know, for several years leading up to AB 1492, General Fund budget cuts had seriously compromised the state's timber harvest permitting program. For example, the Department of Fish and Wildlife was forced to eliminate participation in timber-related activities in the Sierra and reduce its participation by more than half in other areas of northern California, leaving a small program on the north coast.

Since a timber harvest plan must be the "functional equivalent" of a CEQA analysis, and since CEQA requires interdisciplinary review, the cuts to the state's timber harvest review program put the entire program in legal jeopardy. This issue was highlighted when an environmental group submitted a demand letter to the Secretary for Natural Resources, John Laird, requesting the decertification of the timber harvest review program.



The General Fund cuts and the legal pressure to decertify the program prompted the Legislature to consider various proposals, including one that would have required timber companies and landowners to cover all regulatory costs associated with timber harvest plans. The timber industry concluded that paying for the entire cost of the program would stagger what is left of an industry that produces less than half the volume it did just a few decades ago.

The Legislature ultimately decided that a one percent lumber product assessment would be the most appropriate way to fund the state's timber harvest review program and ensure adequate interdisciplinary review. AB 1492 received broad support among environmentalists and industry, which led to a rare supermajority vote in the Legislature.

To meet the intent of AB 1492 and develop a program that can conduct "functional equivalent" timber harvest reviews, the Governor's office has asked the Legislature to add 49.3 new positions to the program. With these new positions, the program's costs will exceed \$20 million. The Board of Equalization estimates that the lumber product assessment will generate \$35 million in annual state revenues. As such, once these new positions are approved by the Legislature, there will be less than \$15 million to cover other AB 1492 expenses (e.g. retailer reimbursement, refunds, and the Board of Equalization's costs).

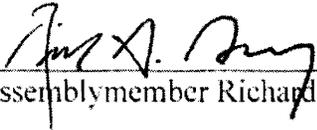
According to the Board of Equalization's Second Discussion Paper on the retailer reimbursement issue, a \$250 reimbursement per retailer will cost \$2.5 million to \$10 million. Reimbursement at this amount does not interfere with the staffing plan proposed by the Governor and contemplated by AB 1492. However, if the reimbursement amount is \$735, as recommended in the Second Discussion Paper, the AB 1492 fund will likely experience a deficit in 2014 and positions will have to be cut from the timber harvest review program. If the reimbursement amount is \$5,500 with an additional \$1,500 in annual on-going reimbursement, as recommended by the West Coast Lumber and Building Material Association¹, there is a potential that all positions in the timber harvest review program will be eliminated until the fund reaches a positive amount in 2021. This would be an absurd result and defeat the primary purpose of AB 1492, which as stated above, is to ensure sustainable funding for a robust timber harvest review program. Additionally, every legislative analysis for AB 1492 states that any reimbursement is for "set up" costs only.

It should be clear from the circumstances surrounding AB 1492, the legislative analyses of AB 1492, and AB 1492 itself, that the Legislature did not intend to have the retailer reimbursement issue act as an impediment to developing a program that can conduct "functional equivalent" timber harvest reviews. Moreover, we anticipate that the Legislature will approve the Governor's request for 49.3 new positions since the relevant budget subcommittees in the Assembly and Senate have already approved these positions. This approval should be construed as the Legislature's intent to limit the retailer reimbursement amount to a level that will allow these new positions to be funded.

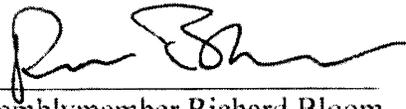
Sincerely,


Assemblymember Bob Blumenfield, Chair

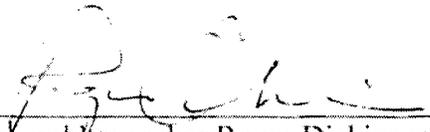

Assemblymember Wesley Chesbro



Assemblymember Richard S. Gordon



Assemblymember Richard Bloom



Assemblymember Roger Dickinson

cc: The Honorable Betty T. Yee, First District
The Honorable George Runner, Second District
The Honorable Michelle Steel, Third District
The Honorable John Chiang, California State Controller

¹ It should be noted that the West Coast Lumber and Building Material Association (WCLBMA) “strongly opposed” AB 1492 last year, stating, among other things, that “[c]ollecting an additional tax at the point of sale requires, at the least, a significant and costly reconfiguration of computer based programs that monitor sales taxes.” Based on this statement, one can reasonably assume that WCLBMA expected to absorb costs associated with collecting the lumber assessment.

California Native Plant Society
Forests Forever
Pacific Forest Trust
Sierra Club
Center for Biological Diversity

March 21, 2013

Ms. Susanne Buehler, Chief
Tax Policy Division (MIC: 92)
Board of Equalization
PO Box 942879
Sacramento CA 94279-4530

Dear Ms. Buehler:

Subject: Lumber Products Assessment

We appreciate the opportunity to submit these brief comments regarding an appropriate Retailer Reimbursement Retention for the costs of collecting the new Lumber Products Assessment. Each of our organizations was a party to the negotiations and discussions between the Administration, Legislature, timber industry, and public stakeholders. And each of our organizations has a major interest in ensuring the intent of the assessment is realized – namely fully funding the State’s forest management program to protect public environmental resources.

We support and agree with the staff analysis and conclusions regarding the reimbursement question. The legislation provides a modest one-time set up reimbursement for each retail location at which lumber and lumber products subject to the assessment are sold. The reasons supporting this are as follows:

1. The plain language of Section 4629.5(a)(3), PRC, refers to a specified amount of reimbursement and authorizes retailers to retain from the collected assessment “until the entire reimbursement amount is retained,” clearly indicating the amount retained was to be a finite amount. It is inappropriate to add, as some have, words to the Section stating an “annual” reimbursement was intended, it is simply not there.
2. This conclusion that a single reimbursement for start up costs is also consistent with both formal and informal discussions during the Legislature’s consideration of the implementing AB 1492 and this is clearly documented in Legislative bill analyses.
3. A principle in legislative drafting and interpretation holds that the Legislature is consistent and intentional in drafting of statutes. As the Board’s staff has noted, where the Legislature has in other circumstances intended annual ongoing reimbursement for collection costs an explicit amount or percentage was clearly provided.

RECEIVED
MAR 25 2013

TAX POLICY DIVISION

4. Reflecting the Governor's interpretation and intent in approving AB 1492, the 2013/14 FY Administration budget for forest management purposes from the Timber Regulation and Forest Restoration Fund (TRFR) proposes the expenditure of \$26.7 million. A retailer reimbursement greater than the emergency rate of \$250 would more than likely preempt this budget amount.
5. Likewise, both the Assembly and Senate Budget subcommittees responsible for this budget item have already adopted the Governor's proposed budget level regarding expenditures from the TRFR Fund, affirming the Legislative intent regarding the enactment of the Lumber Products Assessment.
6. Numerous comments during recent Legislative budget hearings pointed to the hope that in future years additional funding from the TRFR Fund would be available for forest land restoration projects, another primary reason for enacting AB 1492 but an impossible scenario under the high annual reimbursements proposed by some retailers.
7. Accepting the unreasonable recommendation of some in the retail sector would, as the Board's staff has estimated, prevent consideration of the current budget initiative for several years. It is dubious to think the Legislature and Governor approved a forest management funding mechanism in order to have the bulk of the funding annually go to upgrading and maintaining the sales, distribution and accounting systems of retailers.

For these reasons we urge the Board of Equalization to make permanent the emergency Regulation 2000, providing a \$250 per retail sales location reimbursement and not undermine the intent of the Lumber Products Assessment enacted into law in 2012.

Thank you for considering our views on this matter and we will be available for further discussion as appropriate.

Sincerely,

Greg Suba
California Native Plant Society

Luke Breit
Forests Forever

Paul Mason
Pacific Forest Trust

Kathryn Phillips
Sierra Club

Justin Augustine
Center for Biological Diversity

Contact: Vern Goehring, 444-8194, vern@cal.net



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,

A handwritten signature in black ink, appearing to read "David A. Bischel".

David A. Bischel
President

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

MAYER • BROWN

Mayer Brown LLP
350 South Grand Avenue
25th Floor
Los Angeles, California 90071-1503

Main Tel +1 213 229 9500
Main Fax +1 213 625 0248
www.mayerbrown.com

Andrew T. Kugler
Direct Tel +1 213 621 9462
Direct Fax +1 213 576 8126
akugler@mayerbrown.com

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 \text{ million} \times .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.

CASEYWOOD
CORPORATION

February 22, 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:

- 1) The \$735 recommended one-time compensation forces the cost burden for this new legislation onto business owners. It is an indirect tax on business. The compliance cost should be fully funded by the revenue from this new legislation. In our case, we will pay approximately \$7,000 the first year and between \$1,500 and \$2,000 each year after that to comply with this new law. It will cost a large percentage of the \$735 reimbursement just to have my accounting firm figure out how to get the reimbursement credit.
- 2) Cost of sales tax compliance and collection is dramatically different for small retailers than large retailers. This is supported by the data in the Pricewaterhouse Coopers study. A scaled reimbursement should be calculated based on annual receipts.
- 3) The Pricewaterhouse Coopers study is a good analysis but is not pertinent to this discussion. **The extraordinary cost that retailers will incur from the Lumber Tax Assessment is due to the fact that not all items that lumber retailers sell are being taxed the same.** The analysis in the exhibits provided by individual retailers and the CRA points to a start up cost that is five to ten times what staff is suggesting. (This gap needs to be explained!!!)

Sincerely,

Brent Frasier
Chief Financial Officer
Caseywood Corporation12249 Charles Drive Grass Valley, CA 95945
(530)273-3883 Fax (530) 273-5780 (800) 772-6671
www.caseywood.com sales@caseywood.com**RECEIVED**
FEB 22 2013
216
TAX POLICY DIVISION

From: Brent Fraser [mailto:fraserb@caseywood.com]
Sent: Monday, March 25, 2013 7:31 AM
To: Whitaker, Lynn; Stark, Kirsten
Subject: RE: Lumber Products Assessment regulation - issue postponed until June 11, 2013

Lynn/Kirsten,

One more piece of information that might help staff and board members as they discuss this matter. From 1/1/2013 to 3/25/13 (less than three months) our company has collected \$16,251.91 in lumber assessment tax revenue. There was a lot of discussion during the last meeting about how long it would take the fund to collect the money required to reimburse retailers before it would start accumulating tax revenue. The people in the meeting guessed that it would take a year or more for the fund to be cash positive. **Again, the lack of data and analysis is a huge problem.** If the BOE were to reimburse my company \$7,000 for implementation and \$2,000 per year for compliance, the fund would have already collected \$7,251.91 of net tax revenue with over nine months remaining in the year. In addition, January to March are the slowest months in the construction industry so the monthly tax revenue for the balance of the year will be much higher.

***** report generated directly from our transaction/ERP system*****

ADDONS	AMOUNT	MEMO	AMOUNT	MEMO
3 FORKLIFT RENTAL	1.90		1.90	
4 RESTOCKING	33.85		33.85	
9 FREIGHT-IN	416.32		1,716.38	
19 DOOR SHOP LABOR	1,393.14		3,554.47	
30 LUMBER ASSESS TAX 1%	4,103.34		16,251.91	
	-----		-----	
TOTAL	5,948.55		21,558.51	

This is the type of hard data and analysis that is critical for your decision making process. It is not fair to tax without adequate research and analysis. The BOE cannot rely on hearsay, guesses, irrelevant data, etc.

Please forward this submission to the appropriate board members and decision makers.

Thank you.

Brent Fraser
Caseywood Corporation

brent.fraser@caseywood.com
PH 530.273.3883
FAX 530.273.5780

From: [Connie Nickerson](#)
To: [Whitaker, Lynn](#)
Cc: [Ken Dunham \(KenD@lumberassociation.org\)](#); [dave](#); [Darryl Thom](#)
Subject: Lumber Tax Reimbursement letter
Date: Friday, March 15, 2013 10:14:09 AM
Attachments: [Lumber Tax Reimbursement letter.docx](#)
Importance: High

Dear Lynn,

Please read the attached letter regarding the proposed retailer reimbursement. In addition to the costly and time consuming computer software and hardware updates, there has been a significant amount of time training staff to ensure they capture the tax at the point of sale since the majority of products we sell at our establishment are not subject to this tax. The cost of tracking the information for purposes of reporting on our sales tax return has also consumed an inordinate amount of my time. If I can provide additional clarification to justify what we are asking, please don't hesitate to contact me directly.

Cordially,

Connie Nickerson
Comptroller
Bruce Bauer Lumber & Supply
134 San Antonio Circle
Mountain View, CA. 94040
650-948-1089 x223
www.brucebauer.com (check out our new updated website)

NOTE: This electronic message may contain PRIVILEGED AND CONFIDENTIAL INFORMATION intended only for the use of the addressee(s) named above. If you are not the intended recipient of this electronic message, or the employee or agent responsible for delivering it to the intended recipient, you have no legal right to read this message and are hereby notified that any dissemination, copying or disclosure of this message is strictly prohibited. If you have received this message in error, please notify the sender immediately via reply electronic message then delete the original message.



March 15, 2013

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company Bruce Bauer Lumber & Supply I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation is a significant cost to my business and is difficult to implement and comply with. Most retail lumber business have had costly and time-consuming computer software and hardware updates.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,

Connie Nickerson
Comptroller, Bruce Bauer Lumber & Supply
134 San Antonio Circle
Mountain View, CA. 94040
650-948-1089 x223



March 15, 2013

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company, Idaho Pacific Lumber, I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation is a significant cost to retail lumber businesses and is difficult to implement and comply with. Most retail lumber business have had costly and time-consuming computer software and hardware updates.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Grandeen', written over a white background.

Eric Grandeen
President
Idaho Pacific Lumber

RECEIVED

MAR 20 2013

TAX POLICY DIVISION

From: [Matt Petersen](#)
To: [Whitaker, Lynn](#)
Cc: [Ken Dunham](#)
Subject: Lumber Assessment TAX
Date: Friday, March 15, 2013 9:07:52 AM
Attachments: [ole0.bmp](#)



3/15/2013
Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company, Mead Clark Lumber, I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation is a significant cost to my business and is difficult to implement and comply with. Our company spent an enormous amount of time reviewing our entire inventory and filtering out what we needed to collect the additional tax on what items didn't get the extra tax. Our software supplier also invested considerable time on our behalf re-writing the programming to enable us to collect and list the new tax

separately on all of our invoice copies. We expect we will need to update our computer on a regular basis in order to comply with this new tax regulation.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,

Matt Petersen

Vice President

707 576 3333

Mead Clark Lumber Co.

Nichols

LUMBER & HARDWARE CO.

13470 DALEWOOD • BALDWIN PARK, CA 91706
TEL (626) 960-4802 • FAX (626) 962-1067



March 15, 2013

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company, *(Nichols Lumber & Hardware Company)*, I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation is a significant cost to my business and is difficult to implement and comply with. Most retail lumber business have had costly and time-consuming computer software and hardware updates that are still being worked on in order to comply with the destination tax that works in conjunction with this tax. There are many programs that have to be rewritten in order to make this happen. It takes more than a simple tax code program change.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,


Rick Deen, V.P.

VAN MATRE
Lumber Co., Inc.

03/15/2013

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company, Van Matre Lumber Company, Inc., I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation is a significant cost to retail lumber businesses and is difficult to implement and comply with. Most retail lumber business have had costly and time-consuming computer software and hardware updates.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,



William Van Matre
CFO

RECEIVED

MAR 18 2013

TAX POLICY DIVISION

From: [Howard Mankins](#)
To: [Whitaker, Lynn](#)
Cc: kend@lumberassociation.org
Subject: Proposed Regulation 2000, reimbursement retention
Date: Monday, March 18, 2013 3:19:58 PM

Brisco Mill & Lumber
1005 El Camino Real
Arroyo Grande, California 93420
SINCE 1909

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, Ca 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Brisco Lumber Yard would like to ask the Board of Equalization to provide the reimbursement of up to \$ 5,000.00 for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing disbursement of up to \$ 1,500.00 to enable ongoing changes to the list of assessed products.

This legislation was enacted without any consideration of the costs to small retail lumber dealers such as ours. We are a small family business and over the past 104 years, we have been inundated with more and more government regulations, taxation and restrictions, that make it nearly impossible to maintain a family business. You have heard about the "straw that broke the camels back", well that is just about where we are!

Please consider the above request or still better, ask for the removable of this legislation permanently

Thank you most sincerely for your consideration.

Howard D. Mankins 4th generation lumber dealer
Brisco Mill & Lumber Yard



8255 UNIVERSITY AVE., P.O. BOX 156, LA MESA, CA 91944-0156 (619) 466-0511 FX (619) 466-1200 E-MAIL info@lamesalumber.com WEBSITE lamesalumber.com

March 18, 2013

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company, La Mesa Lumber Co., I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation is a significant cost to my business and is difficult to implement and comply with. My company was forced to upgrade software and hardware at a cost of \$6,000 simply to facilitate the collection of the Lumber Assessment. Most retail lumber business have had costly and time-consuming computer software and hardware updates.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,

Carol Baxter
President

**San Joaquin
Lumber Co.**

STOCKTON (209) 465-5651

MANTECA (209) 823-3175

"A Provider of Quality Building Materials Since 1910"

March 18, 2013

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

It has been brought to my attention that the Board of Equalization is debating the cost of implementing the recently passed Lumber Assessment Fee. I cannot express how frustrating it has been trying to get our computer system to cooperate with calculating and displaying the assessment. The system we have was not designed to charge multiple taxes and our current invoices and quotes are not laid out to display multiple taxes. In order for us to comply with this "emergency" regulation, we must calculate what is taxable and what is not taxable by hand and write in the totals. For us to become fully automated, we would have to 1) purchase a new computer system, 2) purchase new paper products. The cost of doing this will far exceed the proposed amount being debated at this time.

Our system is old, but until now it has served us very well and my staff knows the system inside and out. With our economic struggles the past four years, we cannot afford an upgrade now.

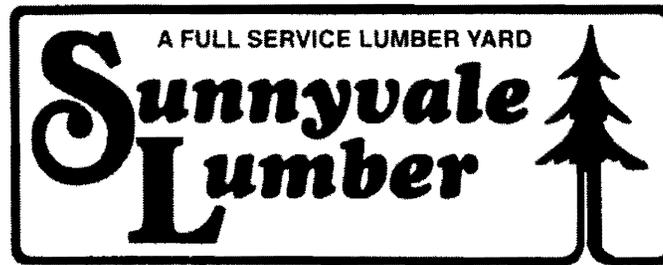
Again, I cannot express my frustration in the way this regulation was passed with total disregard to the tax payer, the method for collecting the tax and the insulting amount of reimbursement for implementation.

Respectfully,

Jeff French
General Manager
San Joaquin Lumber Company
Stockton, California

SUNNYVALE

870 W. Evelyn Ave.
Sunnyvale, CA 94086
(408) 736-5411
FAX (408) 736-6738



FREMONT

44580 Old Warm Springs Blvd.
Fremont, CA 94538
(510) 651-8730
FAX (510) 651-6563

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, Ca 94279-0092

03/18/13

Re: Proposed Regulation 2000, Retailer Reimbursement Retention.

Ladies and Gentlemen,

On behalf of Sunnyvale Lumber Inc, I urge the B.O.E. to provide the actual cost to us of implementing the "Lumber Assessment". It is my understanding that the original legislation required that we be reimbursed for the rather substantial costs of implementing this legislation.

The original amount of \$250 per location was an insult to us and clearly did not fulfill the requirements of the legislation as written. Our costs so far are close to \$8,000 and we continue to spend time and effort as the list of items subject to the tax evolves.

Our company uses a proprietary software system and in its original form there was nothing in the inventory master file for each sku to be taxed or not. All of the things we sell are subject to sales tax so all were treated the same. Now every sku needs one additional field to list if it is taxable or not for the lumber tax. We have over 20,000 sku's so this is a monumental task.

We have many different ways we can give a customer a quote (phone, fax, email in person etc.) and each of these involves a



separate program in our software. The tax needs to be figured correctly for each process and honestly this has been a nightmare. We have over 100 hours of programming time involved to date and more in the future as the list of taxable or non taxable items changes. In addition to the software we have hundreds of hours of clerical staff time checking that the correct items are being taxed and that the tax is figured properly.

This tax is going to bring in large amounts of money to the state treasury and is unconscionable to cheat the retailers out of our fair reimbursement as promised in the legislation. I urge you to do what was required in the original legislation and pay all retailers a fair and reasonable amount to defray their costs for implementing this law. In my mind, anything less than \$8,000 per location is short changing the retailers and is a violation of the text of the law as written.

Sincerely,



Rick Roberts
CEO Sunnyvale Lumber Inc.



March 18, 2013

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Via e-mail to: Lynn.whitaker@boe.ca.gov

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company, Truckee-Tahoe Lumber Company, I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as it has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation is a significant cost to my business and is difficult to implement and comply with. Most retail lumber business have had costly and time-consuming computer software and hardware updates, and in my case, it took my IT Manager 48 hours at \$100, i.e. \$4,800.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Cross", written over a horizontal line.

Andrew Cross
Owner, President & CEO



VALLEY REDWOOD INC

"The One Stop Yard Improvement Center"

4836 Auburn Blvd., Sacramento, CA 95841 • (916) 334-9500

March 18, 2013

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company, Valley Redwood, Inc., I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation is a significant cost to retail lumber businesses and is difficult to implement and comply with. Most retail lumber business have had costly and time-consuming computer software and hardware updates.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,

Steven C Triebwasser, President

RECEIVED
MAR 21 2013

TAX POLICY DIVISION



"Where Professionals Buy"

29112 Roadside Drive • PO Box 339 • Agoura Hills • California • 91301
Telephone No.: 1.818.991.1880
Fax No.: 1.818.991.2262

March 19, 2013

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of our company, Roadside Lumber & Hardware, Inc., I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 relied on seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations. Every retail lumber dealer has had to modify its computer programs to accommodate this legislation incurring either internal or external programming costs to target specific lumber products subject to this assessment and to modify the printing of the invoice segregating this assessment charge.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for retail lumber dealers to implement the assessment.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,

Roadside Lumber & Hardware, Inc.

A handwritten signature in black ink, appearing to read "Michael Tuchman", with a long horizontal line extending to the right.

Michael Tuchman
President

RECEIVED
MAR 21 2013
TAX POLICY DIVISION

ASHBY LUMBER

Hardware and Building Materials

824 Ashby Avenue • Berkeley, CA 94710-2804 • Phone 510.843.4832 • Fax 510.843.1080
2295 Arnold Industrial Way • Concord, CA 94520-5344 • Phone 925.689.8999 • Fax 925.288.9368

3/22/13

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of Ashby Lumber, I urge the Board of Equalization to provide a reimbursement of \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment" and to provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

This legislation and subsequent regulation has created significant cost to my business as it is a change to the way in which items have traditionally been taxed in the State of California. Items have been taxed or non-taxable, and the rate of taxation has been based on region. Implementation to add a tax to only specified items, in addition to regional taxes, has required most retail lumberyards to have costly and time-consuming computer software and hardware updates. In our case, we have spent over 163 hours implementing the necessary changes at a cost of \$9,650. Should any changes be necessary to the list of assessed products, each time changes are made, it will require an estimated 24 hours of programming work.

We understand that only 30% of the lumber sold is grown and harvested in the State of California. We have invested many hours of our time for you to collect additional revenue on the 70% of lumber sold in the State, but grown and harvested outside the State. The increase in revenues will be substantial and the program should not be a burden to those attempting to comply with the assessment.

The rationale and data used to implement the "emergency" regulation in October 2012 was seriously flawed, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports without proper consideration of the costs, complexity, and difficulty for the retail lumber dealer to implement the assessment.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Building is just beginning to recover. We have suffered enough. Please do not make it even more difficult for us to operate in California.

Sincerely,



Kathleen Brown
President, Ashby Lumber



RELIABLE WHOLESALE LUMBER, INC.

7800 REDONDO CIRCLE / P.O. BOX 191 / HUNTINGTON BEACH, CALIFORNIA 92648
 TELEPHONES (714) 848-8222 / FAX (714) 847-1805 / SALES FAX (714) 848-5286
 WEBSITE: www.rwli.net

3/22/13

Tax Policy Division
 Board of Equalization
 PO Box 942879
 Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company, Reliable Wholesale Lumber, Inc., I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation is a significant cost to my business and is difficult to implement and comply with. To date, we have incurred over \$45,000.00 in IT costs to comply with this new regulation. Most retail lumber businesses have had costly and time-consuming computer software and hardware updates.

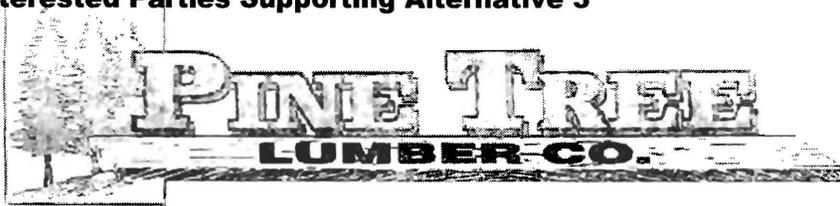
The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,

Will Higman - COO

RECEIVED
 APR 2 2013

TAX POLICY DIVISION



April 1, 2013

Tax Policy Division

Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company, Pine Tree Lumber Company, I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation has been time consuming to our business and was difficult to implement and remains so to comply with. Most retail lumber business have had costly and time-consuming computer software and hardware updates.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,

Gail Esqueda
Office Manager

RECEIVED
APR 4 2013

TAX POLICY DIVISION



Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company, Monument Lumber Co, I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation is a significant cost to my business and is difficult to implement and comply with. Most retail lumber business have had costly and time-consuming computer software and hardware updates.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,

RECEIVED
MAR 25 2013

TAX POLICY DIVISION



1130 N. Main Street • Bishop, CA 93514 • 760-873-6379 • FAX 760-873-7999

May 2, 2013

Tax Policy Division
Board of Equalization
PO Box 942879
Sacramento, CA 94279-0092

Re: Proposed Regulation 2000, Retailer Reimbursement Retention

Ladies and Gentlemen:

On behalf of my company, Home Lumber Company, I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per retail lumber location for set-up costs to implement the "Lumber Assessment", and provide for an annual ongoing reimbursement of up to \$1,500 to enable ongoing changes to the list of assessed products.

The rationale and data used to implement the "emergency" regulation in October 2012 used seriously flawed data, as has been well-documented by others. That same flawed data continues to be used in subsequent staff reports.

The costs of implementation per business location are also well-documented and significantly more than present staff recommendations.

The legislation that enacted this assessment was ill-advised and passed on a so-called "emergency" basis without any considerations of the costs, complexity and difficulty for the retail lumber dealer to implement the assessment.

This legislation and subsequent regulation is a significant cost to my business and is difficult to implement and comply with. My small location in Bishop, Ca cost me \$3,200 in programming alone. Most retail lumber business have had costly and time-consuming computer software and hardware updates.

The law, as passed, clearly provides for the full reimbursement of lumber retailers for their costs associated with setting up the collection system. Please do not make it even more difficult for businesses to operate in California.

Sincerely,

A handwritten signature in black ink that reads "Brent M. Johnson". The signature is written in a cursive style with a long horizontal line extending to the right.

Brent M. Johnson
President

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

JUNE 11, 2013

BUSINESS TAXES COMMITTEE

Reported by: Juli Price Jackson

No. CSR 5214

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

P R E S E N T

For the Board
of Equalization:

Betty T. Yee
Chair

Michelle Steel
Member

Jerome Horton
Member

George Runner
Member

Marcy Jo Mandel
Appearing for John
Chiang, State
Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief, Board
Proceedings Division

---oOo---

For Staff:

Kirsten Stark
Business Taxes
Committee & Training
Section
Supervising Tax
Auditor III

Joe Fitz
Research &
Statistics Division
CEA II

Bradley H. Heller
Legal Administration
Tax & Fee Programs
Division
Tax Counsel IV

Stephen Smith
Legal Administration
Tax & Fee Programs
Division
Tax Counsel IV

---oOo---

1 INDEX OF SPEAKERS

2 ---o0o---

3	Name	Page
4	Ken Dunham	6
5	West Coast Lumber & Building Material Association	
6		
7	Sean Fogarty	9
8	Osborne Lumber Company	
9		
10	Gina Rodriguez	10
11	State Tax Policy for California Taxpayers Association	

12 ---o0o---

- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 JUNE 11, 2013

4 ----oOo----

5 MR. HORTON: Good morning. Good morning,
6 Members. Let us call the meeting of the Board of
7 Equalization to order.

8 Ms. Richmond, what is our first item?

9 MS. RICHMOND: Good morning, Chairman
10 Horton and Board Members.

11 The first item on this morning's agenda is
12 the Business Taxes Committee. Ms. Yee is the Chair
13 of that committee.

14 Ms. Yee.

15 MS. YEE: Thank you very much,
16 Ms. Richmond.

17 Good morning, Members. We will now call
18 the Business Taxes Committee to order. The first
19 item on the agenda relates to the adoption of
20 permanent Regulation 2000 relating to retailer
21 reimbursement retention and Regulation 2001,
22 additional allowed retailer reimbursement retention,
23 all related to lumber products assessment.

24 We'll have staff introduce the issue. And
25 we do have speakers on this item. If you'll make
26 your way forward.

27 Mr. Sean Fogarty, Mr. Ken Dunham and Miss
28 Gina Rodriguez, if you'll come forward?

1 And as they do so, let me look to staff to
2 introduce the issue.

3 Good morning.

4 MS. STARK: Good morning. I'm Kirsten
5 Stark with the Sales and Use Tax Department and I am
6 speaking on behalf of Suzanne Beuhler, who is on
7 vacation today.

8 We have one agenda item for your
9 consideration this morning. With me today are
10 Mr. Steve Smith from our Legal Department and
11 Mr. Joe Fitz from our Research and Statistics
12 Section.

13 Agenda item 1: For agenda item 1 we
14 request your approval and authorization to publish
15 proposed lumber products assessment regulations
16 determining the amount of collected assessments
17 retailers may return for reimbursement of collection
18 costs.

19 There are three alternatives for your
20 consideration. Staff recommends approval of
21 Alternative 1, adoption of Regulation 2000, retailer
22 reimbursement retention, and Regulation 2001,
23 additional allowed retailer reimbursement retention.

24 These regulations allow retailers to retain
25 \$250 per location for reimbursement of startup costs
26 beginning January 1, 2013 and allow retailers to an
27 \$485 per location beginning January 1 2014.

28 Or Alternative 2, readopt emergency

1 Regulation 2000 without amendment. This alternative
2 would allow retailers to retain \$250 per location
3 for reimbursement of startup costs.

4 Or Alternative 3, direct staff to draft a
5 regulation that allows retailers to retain a higher
6 amount for startup costs and an annual amount for
7 reimbursement of ongoing costs.

8 Although specific regulatory language was
9 not provided, interested parties have suggested that
10 BOE set the retention amount at \$5500 per location
11 for startup costs and an annual retention amount of
12 \$1500 per location for ongoing costs.

13 We have speakers on this agenda item. We
14 would be happy to answer any questions you may have
15 after their presentation.

16 MS. YEE: Thank you very much.

17 Let's move to the speakers. If you'll
18 introduce yourself for the record and take three
19 minutes each.

20 ---o0o---

21 KEN DUNHAM

22 ---o0o---

23 MR. DUNHAM: You want me to go first?

24 Good morning, I am Ken Dunham. I'm the
25 Executive Director of the West Coast Lumber &
26 Building Material Association. We're an industry
27 trade association, multistate, with our primary
28 membership here in California.

1 We represent about 200 individual locations
2 of retail lumberyards, in addition to the people
3 that supply and service the industry.

4 We're here, obviously, to request and urge
5 the Board to adopt Alternative No. 3, the \$5500,
6 plus the annual cost to upgrade it as new products
7 are added and deleted, as per the activity of the
8 Department of Forestry.

9 Back in January 2013, and even before that
10 when we first met on this issue back in October, '
11 we produced figures from our membership, surveyed
12 them, got 74 responses from businesses of all
13 different sizes. And it worked out that the average
14 cost of it was \$5,480.

15 Ironically, if you take the amount of money
16 that the Home Depot said it would cost them to do
17 that and divide by the 260 plus locations they have
18 in the State of California, that number came up
19 almost that same number. So, obviously, we'd like
20 to see that kind of reimbursement out there.

21 We continue to object to the staff use of
22 that 2006 retail sales tax compliant cost to the
23 Price Waterhouse Cooper report that used 203
24 (verbatim) data.

25 Remember in Culver City that there was some
26 humor about the fact that I seemed to be the only
27 guy in America that had ever read that darn thing
28 and gave up a Giants baseball game to do it that

1 night. And I've -- I've read that.

2 It -- it has -- that report covers cash
3 registers, not complex computer systems. It's --
4 it's inaccurate. And even the staff in that report,
5 they talked about coverage error, missing data,
6 measurement error, sampling error.

7 You know, I realize that staff needs to be
8 able to tie something to a third party, but, gosh,
9 using that one is -- is really a stretch. Staff
10 continues to adjust downward the number of
11 businesses that will be affected by this. If you
12 recall back in the first time it was 10,000 to
13 40,000 businesses. And now in the last data, I
14 think in March, they settled on ten, I'm told that
15 somebody said eight.

16 We're here to say that it's about 3,000 to
17 3500 businesses. We know pretty much who they are
18 in the State of California as the trade association.
19 We know who are the people that are not part of
20 it -- large, big box retail stores. There's 3,000
21 to 3500 businesses in the State of California that
22 will be affected by this.

23 Your materials that you -- you have
24 provided to you show that 2,543 locations provided
25 information that they did have some sort of lumber
26 assessment on the January numbers. So, taking into
27 account that some of the people are annual filers
28 and some may have not gotten it to you yet and some

1 missed it, that -- that 3,000 to 3500 number is
2 still pretty darn solid.

3 MS. RICHMOND: Time's expired.

4 MR. DUNHAM: Yeah, thank you.

5 MS. YEE: Thank you.

6 Next speaker, please.

7 ---o0o---

8 SEAN FOGARTY

9 ---o0o---

10 MR. FOGARTY: Hi there, my name is Sean
11 Fogarty. I'm Vice President and Chief Financial
12 Officer of Osborne Lumber Company. We're a small,
13 family owned and operated lumberyard in Newark,
14 California.

15 I am seeking your assistance in getting
16 fair and adequate reimbursement for the
17 implementation and management costs of this tax as
18 stated in the bill.

19 The \$250 reimbursement previously allowed
20 is severely inadequate. We support option No. 3.
21 Speaking for my business alone, we've spent \$4200 to
22 implement this -- to implement managing this tax and
23 an estimated \$2400 a year ongoing.

24 These figures are calculated by, No. 1, a
25 software upgrade, which was a one-time cost, one
26 server, eight work stations at \$520.

27 We had employee training, which is one
28 hour, ten employees, \$250. We had software

1 configuration, update tax codes and 3300 SKUs to
2 update differentiate lumber versus non lumber items.
3 That was 16 hours at a cost of \$1,040, one-time
4 cost.

5 We have daily auditing and invoicing at a
6 cost of \$1600 a year. We have monthly reporting,
7 tracking and auditing at a total of \$780 a year.

8 What makes that tax complicated is that
9 most lumberyards sell both lumber and non lumber
10 items, including nails, screws, Sheetrock, metal
11 fasteners, concrete, nuts, bolts, insulation and
12 other building materials that are not subject to the
13 tax. It's up to the lumberyard to differentiate and
14 adequately pass along this assessment.

15 Managing this complexity costs money and it
16 could be a heavy burden to a struggling industry
17 that is very slowly coming out of the recession.

18 Please do what's right and ensure
19 lumberyards are reimbursed, as stated in the bill.

20 MS. YEE: Thank you very much.

21 Next speaker, please.

22 ---o0o---

23 GINA RODRIQUEZ

24 ---o0o---

25 MS. RODRIQUEZ: Thank you.

26 Gina Rodriguez, I'm the Vice President of
27 State Tax Policy for California Taxpayers
28 Association.

1 The only thing I'd like to add to what Ken
2 and Sean already stated is that the -- you know, the
3 legislature placed this burden upon the lumber
4 retailers and they need to be properly reimbursed.

5 They're telling you 250 is not enough.
6 They're asking you to adopt Alternative No. 3 and I
7 would ask your support for that recommendation.

8 Thank you.

9 MS. YEE: Thank you very much.

10 Okay, you know, maybe just by way of update
11 since we had this matter before us last, perhaps
12 just kind of a review of the issues that are before
13 us that, hopefully, will help us determine which
14 alternative makes sense.

15 But the argument about the level of
16 reimbursement, whether the statute contemplated
17 actual as compared to aggregate or marginal costs,
18 can staff speak to that?

19 MR. SMITH: Steve Smith from Legal.

20 The statute really grants the Board wide
21 discretion in setting the amount. It says, "for any
22 cost."

23 It's staff position that it's only startup
24 costs because of the statutory language about "has
25 to be claimed on the first return" and the other
26 legislative history.

27 MS. YEE: Uh-huh. So, the limitation about
28 the way that it's claimed would suggest that it's --

1 MR. SMITH: It's startup costs --

2 MS. YEE: -- it's startup --

3 MR. SMITH: -- only and not ongoing
4 costs.

5 MS. YEE: Okay, all right.

6 And then with respect to this issue that
7 continues to, I think, somewhat elude us and that is
8 the retail universe, the population of retailers
9 that we're talking about. Obviously, as the months
10 have passed we're getting more information and more
11 updated data.

12 Speak to us a little bit about the data
13 that's before us and is -- is it reflective of what
14 you believe are the retailers that would be
15 essentially assessing this lumber?

16 MS. STARK: Yes, it is. This is Kirsten
17 Stark with Sales and Use Tax Department.

18 The data we have right now shows that we
19 have approximately 3100 locations that are reporting
20 a dollar or more. We have 28,000 locations that
21 file a zero dollar return. And we don't know if
22 they will report any assessment in the future. We
23 have approximately 7500 locations that have not
24 reported at all. And again we don't know if they
25 will report an assessment in the future.

26 We also have approximately 500 fiscal year
27 and yearly filers that we do anticipate reporting
28 assessment.

1 MS. MANDEL: I'm am sorry, how many?

2 MS. STARK: 500.

3 MS. YEE: 500.

4 MS. MANDEL: Oh, okay.

5 MS. YEE: So, if we were to wait for
6 additional filings, the number of retailers
7 indicating that they are -- that would be reporting
8 the lumber assessment would likely go up?

9 MS. STARK: That's correct, yes.

10 MS. YEE: Okay. And I guess before I open
11 it up for comments and questions, I think one of the
12 frustrating things we talked about burden, I feel
13 that this Board's been placed under a burden by the
14 legislature and that is that we have a little bit of
15 a -- of a -- we're in a very untenable position of
16 being assured that certainly the primary purpose for
17 the assessment, which is to continue funding for our
18 forest programs in California is sustained.

19 And in order to do that, having to balance
20 what we do with respect to this regulation and,
21 obviously, the level of reimbursement based on the
22 data that we -- we have to date.

23 Okay. Questions or comments, Members?

24 Mr. Runner, please.

25 MR. RUNNER: Yeah, just a couple of
26 follow-up on a couple of those items.

27 First of all, on the number of retailers,
28 the assumption is that it will go up. The question

1 is -- it's a big difference between 3100 and 10,000.

2 MS. STARK: That's correct, yes.

3 MR. RUNNER: So, going up -- again, we
4 don't know whether it's going to go up by a few
5 hundred or whether it's going to go up by 5,000.

6 MS. STARK: Yes.

7 MR. RUNNER: Okay. I think that -- and,
8 so, certainly one of the issues that would add --
9 help us at that point would be additional time.

10 MS. STARK: That's correct, yes.

11 MR. RUNNER: Because then we'll get --
12 we'll get a better idea of who the filers are and
13 what they're doing.

14 'Cause otherwise right now we're assuming
15 like -- what would that be, 100 percent -- a 200
16 percent noncompliance rate, which would be pretty --
17 be pretty unusual?

18 MS. STARK: Yes.

19 MR. RUNNER: Okay. So, time would help us
20 be able to narrow that down.

21 And in terms of -- 'cause I do agree, one
22 of the concerns and discussions that we had at the
23 last meeting was in terms of trying to find the
24 number and, that is, we were -- we were -- the Board
25 -- the majority of the Board was trying to hold, I
26 guess, together the amount of money that was going
27 to be going to the -- to the forestry programs.

28 And there are two factors, it seems to me,

1 that -- that deal with that. One is the number of
2 retailers and then the -- and the amount of
3 reimbursement, but also the amount of revenue that's
4 going to come into the program.

5 And I think I'd like to speak to that for a
6 minute. And let me ask the industry, first of all.
7 In terms of what was projected as the total revenue,
8 when the budget -- when this was being talked about,
9 what are we anticipating -- do we anticipate a
10 greater amount of revenue than what was originally
11 anticipated when the legislature -- when the
12 legislation was done?

13 MR. DUNHAM: Yes, uhmm --

14 MR. RUNNER: What kind of degree?

15 MR. DUNHAM: -- Ken Dunham for the
16 industry.

17 At one point they were talking about 23
18 million being generated from this fund and at
19 another point there was the 30 million. In your
20 staff report here, it's -- you have got one number
21 that's 30 -- 28.7 million, but there's another part
22 where it's 31 million.

23 We think those are low, based on the fact
24 that, obviously, the economy has turned around
25 significantly and lumber prices have increased. And
26 this is -- this is an assessment on retail numbers.

27 That was one of our concerns in the -- in
28 the US Census Bureau data from 2007. You can't use

1 2007 data to project what's happening in 2013.

2 MR. RUNNER: So, the lumber -- the prices
3 that were set previously were based on 2007 lumber
4 prices?

5 MR. DUNHAM: Yeah.

6 MR. RUNNER: And what has happened to
7 lumber prices since 2007?

8 Any idea? I mean, you guys sell lumber,
9 tell me what's going on.

10 MR. DUNHAM: It mirrors the stock market.
11 That's probably the best thing to say.

12 Your -- your collections -- your January
13 projections you took in 5.7 million in lumber
14 assessment in that one month alone.

15 Now can you spread that out and say that's
16 indicative for 12 months? Well, maybe, maybe not.
17 But certainly the -- the 35 million or so out there
18 is a low number.

19 And with the State -- with the Forestry
20 people wanting 23, 24 million and your needs of
21 three million or so to administer this, the needs of
22 the legislation are going to be met.

23 And that's why we think these people should
24 be fully reimbursed.

25 MR. RUNNER: Let me ask our statistics
26 folks.

27 What do we anticipate in terms of the
28 lumber industry or value of lumber, say -- you know,

1 we saw what the base was in 2007, what do we
2 anticipate it to be as we are today and going into
3 the future?

4 MR. FITZ: Certainly. Joe Fitz, Research
5 and Statistics.

6 Our revenue estimate made originally about
7 a year ago was 35 million. And recently I examined
8 the industry to see what sort of updated information
9 there may be. And one of the key pieces of
10 information are the first quarter returns that we
11 have that would suggest, correct me if I'm wrong
12 here, Kirsten, but approximately \$7 million from
13 first quarter regular and irregular filers. So,
14 that would project out to approximately 28 million,
15 which the first quarter may be a little bit low in
16 terms of usually there is a little more housing
17 activity -- and the industry folks can speak to this
18 better -- in other quarters of the year.

19 But it seems to me the 35 million probably
20 isn't a bad number as far as with a little bit more
21 growth, seasonality aspects of more home building
22 activity just naturally, it seems to me the 35
23 million is -- is still a pretty solid number from
24 everything I have --

25 MR. RUNNER: For this current year?

26 MR. FITZ: -- including -- what's that?

27 MR. RUNNER: For this current year?

28 MR. FITZ: For this current year.

1 MR. RUNNER: Right. And what do we
2 anticipate as we look to the future?

3 MR. FITZ: Well, I would expect that number
4 to go up by several million per year. It's hard to
5 say exactly. The housing industry is so volatile, I
6 would certainly expect some increases.

7 MR. RUNNER: Okay. So, we're anticipating
8 35. Let me go back to the issue. And -- and again
9 the original legislation was to try to -- was to
10 move how much money towards some of these forestry
11 programs?

12 MR. DUNHAM: I believe it was 23 million at
13 one point in some early discussion. And I think it
14 was moved to about 30 million magically at the -- at
15 the end --

16 MR. RUNNER: Okay.

17 MR. DUNHAM: -- they thought this would
18 generate.

19 And that was based before the economy
20 turned around significantly.

21 MR. RUNNER: Okay, okay.

22 Okay. You know, here -- you know, my -- I
23 guess I'm -- I'm open to the idea of going with
24 Recommendation 1, I guess, with a little bit of a
25 caveat.

26 Because I do believe that it's moving in
27 the right direction. I think it's open -- it
28 certainly is, you know, a part of our discussion

1 before was trying to figure out what our
2 responsibility was. I -- I still believe our
3 responsibility is full reimbursement. I -- I think
4 that the law is pretty clear that they're supposed
5 to get reimbursed.

6 I don't see anywhere in the law where we
7 try to find out that it's -- that it's partial or
8 that we -- you know, it seems to me the cost is.

9 I understand that there was concern in
10 regards to if we did that, what that would do to the
11 fund itself and what the fund then could -- could
12 meet its obligations that the legislature intended.

13 It seems to me that on two bases that we
14 can figure out how it is that we can calculate that
15 to a different number, based upon two issues. No.
16 1, the revenue's going to be higher and the number
17 of sites is going to go down. Therefore, the
18 reimbursement is able to be a little more flexible
19 toward the -- toward a better reimbursement.

20 But it's clear what we need is better
21 numbers. And, so, again my understanding is that
22 right now where we're at is if we move forward with
23 this and take Recommendation No. 1, we're accepting
24 this in the -- in the committee, this will come back
25 to us, so -- when? September or so to the Board?

26 MS. MANDEL: When are the minutes --

27 MR. SMITH: August is my -- my
28 understanding is it will come back before the Board

1 for public hearing in August at the earliest.

2 MR. RUNNER: At the earliest?

3 Could it -- could it take -- I wonder -- I
4 wonder if took like another month or two, would we
5 still be able to be able to successfully meet
6 deadlines in order to get the regulation adopted,
7 but yet at that time we would have better numbers?

8 Let me go back to the Department. At that
9 point -- at what point do we believe that we would
10 have at least a better idea of numbers of retailers?

11 MS. STARK: Well, I would assume with the
12 next quarter going through the summer season we
13 would have better numbers after that.

14 MR. RUNNER: So, if it came back to us in
15 September, that would actually be better for
16 numbers?

17 MS. STARK: Correct, yeah.

18 MR. RUNNER: Okay. You know, then the idea
19 is at least in September, when it's before us for
20 final adoption, we could at least have the staff
21 continue to review the numbers. We could -- we
22 could get a better idea of the number of retailers
23 that are still out there.

24 And, again -- and, quite frankly, a better
25 number of revenue at that point. And again --
26 'cause I think this is a balance between
27 reimbursement, that I believe the legislature gave
28 us responsibility for, and also then keeping whole

1 the intent of the legislation in regards to the
2 number of dollars that they want to collect for the
3 programs.

4 It seemed to me we could do that in a
5 couple of steps. I know we can go forward this much
6 and then go forward there.

7 So, based on that, I'd move for
8 Recommendation 1.

9 MS. YEE: Okay. We have a motion to adopt
10 Recommendation No. 1.

11 Let me just give it a courtesy second so we
12 can continue the discussion.

13 Mr. Horton.

14 MR. HORTON: Thank you, Madam Chair.

15 I just want to express a couple of concerns
16 relative to the process -- not the process, but the
17 end results, if you will.

18 Members, what we seem to have before us is
19 incomplete legislature. The legislature had the
20 option of being -- certainly being more clear than
21 they were. So, it put -- it positions us to try to
22 interpret the intent of the legislation because of
23 the lack of clarity, from my perspective.

24 In that regard, I must share that the
25 methodology of reimbursing per location creates some
26 concern in that you can have on one end of the
27 spectrum somewhat of a windfall if you happen to
28 have a significant number of locations and then your

1 smaller retailers could be at a loss because they
2 only have one location or two locations and so
3 forth. So, inherently, there is some inequity in
4 the methodology itself. And that's a little bit
5 concerning.

6 Then it seems to be -- it seems to me to be
7 clear that the intent of the legislature, as
8 articulated by the staff, was, unfortunately, not to
9 reimburse ongoing. And as we know, there is the
10 ongoing expense of administering sales tax and all
11 the other fees that we administer as an agency.

12 And, so, I think that's -- I would agree
13 with my colleague that it is the startup costs that
14 we are looking at and trying to figure out exactly
15 what that it is.

16 So what we have, in essence here, is
17 somewhat of a moving target. And I took archery for
18 a while and it's most difficult to hit a moving
19 target. And, so, you end up aiming at where the
20 target is, but in order to really hit a moving
21 target, you have to do as Mr. Runner said, sort of
22 anticipate where the target's going to be.

23 And, so, how do we accomplish that
24 objective? And one way I believe that we can
25 accomplish that objective is to look at this whole
26 notion of true up and true down that we have dealt
27 with in the past and leave the regulation open
28 enough so that we can be fair and equitable to the

1 retailers; at the same time comply with the intended
2 purpose of the legislation as it relates to the
3 program in and of itself.

4 Because I doubt very seriously if the
5 legislature -- legislature meant to create a program
6 that couldn't fund itself, couldn't accomplish its
7 objective -- their primary objective and -- which is
8 a dual purpose, if you will: One is to provide the
9 funding for the forestry activity and, at the same
10 time, provide the reimbursement for the startup.

11 So, I would be supportive of Alternative
12 No. 1 as well and would give consideration,
13 actually, to Alternative No. 3. And, so, would like
14 to have an -- Alternative No. 1 that actually had an
15 opener that would allow us to take a look at this
16 whole balancing act at a subsequent date to see if,
17 in fact, we were right or we were wrong based on
18 what comprehensive data.

19 MS. YEE: Thank you, Mr. Horton.

20 Ms. Steel.

21 MS. STEEL: Alternative No. 1, it's like
22 \$250 start and then are we adjusting it later if we
23 vote for that?

24 MR. RUNNER: Uh-huh.

25 MS. STARK: Well, Alternative 1 includes
26 \$250 --

27 MS. STEEL: Just \$250?

28 MS. STARK: -- plus the 485 for a second

1 regulation --

2 MS. STEEL: That's it?

3 MS. STARK: -- to go in effect, yes.

4 MS. STEEL: Okay. I have a little problem
5 with that because when legislators -- when they
6 decide that give up the reimbursement, full
7 reimbursement to the industries because this kind of
8 regulations, it's burdensome to meet the compliance
9 of the law for these businesses. So, that's the
10 reason that they decide to give full -- some
11 reimbursement to the companies.

12 As I heard that, you know, software
13 upgrades and employee training, it's going to cost
14 much more than 250 plus \$485 per each businesses.

15 That's the reason they opened the door for
16 us to decide today. So, if we give 250 plus that
17 485 per locations, I don't think that's going to
18 meet, really, cost reimbursement here as in
19 California hard to run the business. And then we
20 are, you know, making all the regulations tighter,
21 plus additional taxes to ask them to collect.

22 At least we should be on the business side
23 to make sure that their cost has to be reimbursed.
24 I don't know how much it's going to cost for 5500,
25 you know, retail locations per, but I think that's
26 kind of closer to covering the cost of compliance at
27 this point. So, I really can not go for the
28 Alternative No. 1.

1 MS. YEE: Okay, thank you, Ms. Steel.

2 MR. HORTON: Madam Chair, if I may?

3 MS. MANDEL: Yes, Mr. Horton.

4 MR. HORTON: Maybe we can go back to
5 Mr. Fitz and -- what empirical data did you use in
6 order to come up with these numbers?

7 I mean, we have information that goes from
8 one spectrum to the other, which makes sense,
9 actually, because it depends on the level of
10 sophistication of your entire system.

11 And when it comes to updating and
12 implementing and changing something, if your
13 system's antiquated, of course, it's going to cost a
14 lot more because there's a lot more involved in
15 upgrading your system. If your system is state of
16 the art, it may be just a matter of the pushing of a
17 couple of buttons.

18 And, so, as we begin to balance this, I'd
19 like to just know what our starting point is and how
20 we got there in determining this cost reimbursement.

21 MR. FITZ: So, you're asking me to speak to
22 the cost reimbursement or the revenues? I guess
23 -- I --

24 MR. HORTON: A little bit of both.

25 MR. FITZ: -- okay. Let me start with the
26 revenues. The most comprehensive data we have are
27 from the Census -- US Census Bureau.

28 MR. HORTON: Strike that, strike that.

1 Just the cost, my apologies.

2 MR. FITZ: Okay. The costs are based on
3 this Price Waterhouse report which, obviously, there
4 are many difficulties with that.

5 The additional reimbursement is for
6 building and lumber supply dealers. So, it
7 specifically speaks to that group of people.

8 Now whether this report is valid or not may
9 be another question, but it's one of the few pieces
10 of information out there that provides some
11 reasonably objective measure of what it costs
12 retailers to do something similar to this.

13 So, that's about all I can say about the
14 costs is that it is based on this report. It's a
15 survey.

16 MR. HORTON: My understanding of the
17 report -- my apologies, but my understanding of the
18 report basically is the basis of the 250.

19 You have an additional factor in there of
20 400 some dollars per location. And how did you
21 arrive at that?

22 MR. FITZ: At the 250?

23 MR. HORTON: No.

24 MS. MANDEL: At the 485, Mr. Fitz.

25 MR. FITZ: Oh.

26 MS. MANDEL: Did you continue to use the --

27 MR. FITZ: Well --

28 MS. MANDEL: -- my understanding -- I'm

1 sorry, Mr. Horton, was that there was an -- it was
2 still based on the report but there was an
3 adjustment from the last time.

4 MR. FITZ: -- yes, the 485 --

5 MS. MANDEL: -- he was looking for the
6 whole number, how did you --

7 MR. FITZ: It's a -- is specific to the
8 building materials industry. And it's a more
9 comprehensive view of the costs, including not just
10 the cost of programming.

11 My initial understanding was more cost of
12 programming. Well, as we found out, that's only one
13 of the costs, there's training and all these other
14 aspects to it.

15 MR. HORTON: So, but what is it based on?
16 And let me just qualify myself a little bit. I am
17 asking leading questions to some degree.

18 So, what is it based on? Is there a basis
19 in some statistical analysis? Is it based on actual
20 information provided by retailers? Or is it based
21 on a calculation based on the Price Waterhouse
22 proposal? What is the basis for it and what's the
23 source of the information?

24 MR. FITZ: Well, the source of the
25 information is this Price Waterhouse report, which
26 reports in percentage terms at that point in time
27 when retailers were surveyed -- many retailers, I
28 forget exactly how many were surveyed -- and the

1 report results were presented in terms of
2 percentages.

3 So, those percentages were applied to the
4 2011 or '12, I think at the time it was 2011
5 information, to get an idea of the -- of the cost.

6 So, that is, I believe, at least in a
7 certain way, accounting for the inflation between
8 2003 and 2011.

9 MR. HORTON: Okay. Let me go to the -- to
10 the representatives from the industry.

11 Are there any changing variables between
12 2011-2012 that would cause that study to fluctuate
13 one way or the other?

14 MR. DUNHAM: It -- it continues to just
15 simply be inaccurate data. I think that at one
16 point there is -- at one of the points, the
17 average -- they used the figure that the average
18 lumberyard did \$2.7 million a year in business.

19 Most lumberyards, kind of the median number
20 for lumberyards in the State of California is
21 probably about 7.5 million. A lumberyard doing 2.5
22 million is -- is pretty low. And I think that
23 played some discussion into where they came up with
24 the additional 485.

25 And, you know, there's been so many figures
26 rolled around for the last six months on this thing.

27 MR. HORTON: Uh-huh.

28 MR. DUNHAM: But the inherent inaccuracy

1 certainly remains there.

2 MR. RUNNER: Can I ask a question in
3 regards to the study just to clarify?

4 MS. YEE: Mr. Runner.

5 MR. RUNNER: Just -- just to clarify in the
6 study itself, my understanding of the study that was
7 looked at, the Price Waterhouse study, the intent of
8 that study was how much does it cost to -- to do
9 cash register upgrades when you have across the
10 board sales tax increase?

11 And that -- right? Wasn't that the nature
12 of that study?

13 MR. FITZ: Yes, as I understand it.

14 MR. RUNNER: Okay, right. So, I just want
15 to point out, I don't -- I mean I have trouble with
16 that study because that's not what's taking place
17 here.

18 I don't think the study is an appropriate
19 benchmark to start with. And this -- and it's --
20 and it's very different than the study in the sense
21 that remember what's happening is not all goods are
22 being taxed.

23 So -- so, that assumed that all goods are
24 being taxed. So, on this particular issue, not all
25 goods are being taxed, so, that -- that means that
26 there is a -- you don't -- you just can't apply it
27 to everything that comes across the cash register.
28 Now you've got to be able to apply it to certain

1 items and you've got to go in and SKU certain items.
2 You've got to do additional work.

3 In addition to that, that -- this -- the
4 law requires a separate line on the receipt. And
5 when the study was done there was no consideration
6 as a new kind of receipt that had to be printed,
7 correct?

8 MR. FITZ: Yes.

9 MR. RUNNER: Okay. So, I -- again, I just
10 find trouble with the -- with the study as a
11 baseline in terms of that.

12 So, the idea that we're trying to use that
13 as some kind of a document that says,

14 "Hey, we've got this study that
15 demonstrates what the real cost is,"
16 it seems to me is a bit difficult.

17 Now in regards to what the legislature did,
18 I mean I don't know if I consider their work
19 incomplete or the fact that they actually didn't
20 want to get into the business of figuring out what
21 the cost of reimbursement was.

22 And, so, therefore, they said, "Board of
23 Equalization, that's your job." So, I kind of think
24 that that's kind of what we're doing.

25 In regards to the issue of why I would
26 support No. 1, let me make this clear why I would
27 support No. 1. I support No. 1 because it begins
28 the process of trying to get to a fair

1 reimbursement.

2 But it always leaves open the possibility
3 with new data -- because the problem is we have
4 incomplete data right now. We don't know what the
5 new revenues are going to be and we don't know the
6 number of sites -- both of which will drive
7 potential reimbursement.

8 So, the idea that says we adopt something
9 now, which is an increase, and then with new
10 information, as this comes before us, say in
11 September, we can readjust it to whatever the new
12 information is and still keep the intent of the
13 legislature whole.

14 So, it seems to me -- I'm looking at this
15 as kind of an incremental process that is trying to
16 be fair in -- in that regard. Because I think -- I
17 do believe that the staff, as we came up with that
18 250, we really didn't -- we just kind of used that
19 as the base. We didn't go back and actually do a
20 study as to how much this particular application of
21 law was going cost retailers, did we?

22 MR. FITZ: No, not to my knowledge.

23 MR. RUNNER: Okay, okay. So, I -- that's
24 why I'm okay with this as a first step, but
25 acknowledging the fact that more information should
26 be able to drive that, even as we come back in
27 September.

28 MS. YEE: Okay. Thank you, Mr. Runner.

1 MR. HORTON: Madam Chair, if I may?

2 MS. YEE: Yes, please.

3 MR. HORTON: I think it may behoove us
4 to -- to take a look at the study and sort of,
5 henceforth, if you will -- and sort of have some
6 discussions about the methodology.

7 For me, for example, statistically in this
8 particular case, the gross receipts, I don't know
9 that that has bearing whether the gross receipts or
10 the sales or volume relative to a machine being able
11 to -- to -- to -- to either print on a receipt a
12 particular statement or account for the various
13 different products and the distinction in those
14 products.

15 I think the -- the issue relative to costs,
16 of course including the training and all of the
17 conditions subsequent to the actual programming, are
18 costs, somewhat fixed in that, you know, you can
19 train one, you can train 100 people all depending on
20 the size of the room.

21 But yet still we still have that variable
22 as it relates to one store versus 100 stores. And
23 100 stores can train 100 individuals. One store
24 only has to train one, but the cost of training is
25 still going to be the same.

26 And, so, what variables do we take into
27 consideration in computing this I think will play an
28 important role in getting us where we need to be, as

1 close to the actual costs, if not above, 'cause that
2 in and of itself is going to vary -- vary.

3 So, I'd like to hear back from the
4 Department as to what they feel -- and maybe in a
5 consultation with our IT Department so that our IT
6 Department can give us some -- some idea as to what
7 the variables are in determining costs.

8 For example, one variable, in my mind,
9 would be the distinguishable products that are
10 taxable, what's taxable, what's not taxable.

11 And the other concern is that -- my
12 understanding is that that can actually change. I
13 mean, we have a regulation that deals with medicine
14 and it's ongoing and it's forever changing.

15 And therein is where the legislature, it
16 appears -- I, at least, am relying on the intent and
17 not the actual language of the bill to determine
18 whether or not we're allowed to -- whether the Board
19 of Equalization has the authority for a one-time
20 setup fee versus ongoing reimbursement.

21 I believe that staff has articulated that
22 the bill intent and the -- and the strategies
23 imposed upon the retailer as to when they have to
24 report it sort of implies -- it's not clear, but it
25 does imply -- that it is just a startup and setup
26 fee.

27 So, based on the intended purpose of the
28 legislation, I would be in supportive of that. It

1 seems like that's where we are. So, if staff can
2 report back and let's see if we can figure out a
3 quantitative as well as a qualitative way of
4 determining exactly what the cost is. That would be
5 helpful.

6 MS. YEE: Thank you, Mr. Horton.

7 It appears that there is a sentiment to
8 have staff continue to work on this, to refine the
9 data.

10 Let me just offer another approach because
11 I do think we have a responsibility of -- I mean,
12 I'm acknowledging the legislative history with
13 respect to the --

14 MR. HORTON: Madam Chair, if I may?

15 MS. YEE: Yes.

16 MR. HORTON: But I would be supportive
17 today of Alternative 1, with that open end as a
18 caveat.

19 MS. YEE: Okay. And I'm not yet today.

20 So, I want to just kind of describe another
21 approach, if possible.

22 I think legislative history, as staff has
23 suggested, has us essentially looking at one-time
24 costs as compared to ongoing costs.

25 The issue of whether we're talking about
26 actual costs as compared to aggregate or marginal
27 costs, I think that's still a subject of -- of
28 debate and, obviously, very sympathetic to the

1 businesses that have to comply with this new lumber
2 assessment and the costs attendant to doing so.

3 I also think we ought not lose sight of,
4 obviously, the legislative intent about anything
5 that we decide relative to the level of
6 reimbursement that would be then held up -- be able
7 to be claimed by an eligible population with,
8 obviously, count against whatever revenue would come
9 in to sustain the program.

10 I guess what I'm frustrated about is really
11 the data that we have about the filers. It seems to
12 me that there's got to be a way of getting a better
13 handle on some of these numbers.

14 The 28,000 zero returns really frustrates
15 me because that's a lot. And do we have -- happen
16 to have any more kind of qualitative feel for, you
17 know, who they are? Do they sell lumber products?
18 Have they ever not --

19 MS. STARK: Well, we did do an analysis on
20 the zero filers.

21 MS. YEE: Yes.

22 MS. STARK: And we just kind of tried to
23 look at it logically.

24 You know, if we've got a filer with five
25 sub locations and they don't report anything in --
26 you know, in a quarter or two, likely they are not
27 going to be reporting anything.

28 And of those, we actually had -- let me see

1 here, we had 300 accounts with 4500 subaccounts that
2 would fall into that category. And then if we moved
3 it up to three or more sub locations it increased
4 the data to 750 total accounts with about 6200
5 subaccounts. So, about 7 -- we would eliminate
6 about 7,000 locations, essentially.

7 MS. YEE: Uh-huh.

8 MS. STARK: So, that would still leave us
9 with about 19,000 zero filers that would be more
10 challenging to make an assessment on at this time.

11 MS. YEE: Okay. And it's been complicated
12 because instead of -- I mean, this has all been done
13 through e-filing, right?

14 MS. STARK: Yes.

15 MS. YEE: So, we don't have that --

16 MS. STARK: Yes.

17 MS. YEE: -- additional qualitative feel
18 for what's really going on.

19 Okay. I mean, I really would like some
20 more work done to the extent possible of, you know,
21 what the universe -- you know, who they really are.

22 Because I do think that is the one variable
23 that ought to drive then what the reimbursement
24 ought to be so that we're not placed in the position
25 of then, you know, frustrating the original purpose
26 of this assessment, which is to sustain forests from
27 that funding.

28 And this is all in recognition, obviously,

1 of the cost to businesses that have to comply. But
2 these are just such large numbers that if there's a
3 way to really try to parse them further in terms of
4 -- and then at what point do we actually deregister
5 them?

6 MS. STARK: Well, we feel that after four
7 quarters if there's a zero filing that essentially
8 they were not engaged in this business as of
9 January 1, 2013.

10 MS. YEE: Uh-huh.

11 MS. STARK: And, so, we would be -- we
12 think we have the legal authority at that point to
13 deregister them.

14 MS. YEE: Okay, okay. And the 250 that
15 we've been speaking about so far, has there been any
16 action by claimants to actually look at applying or
17 claiming that?

18 MS. MANDEL: They've retained it?

19 MS. STARK: Yes, we have had some
20 retention.

21 MS. YEE: Okay.

22 MS. STARK: We had -- of the registered
23 location -- the 33 -- I am sorry -- 3100 registered
24 locations did claim some retention, depending on how
25 much they actually assessed.

26 The total retention that's been claimed so
27 far is just over \$200,000.

28 MS. YEE: Okay, all right.

1 So, that's suggests that more time --
2 over time we're going to see more?

3 MS. STARK: Yes.

4 MS. YEE: Okay, all right.

5 MS. MANDEL: Can I just ask a question?

6 MS. YEE: Yes, Ms. Mandel, please.

7 MS. MANDEL: I guess I don't -- on the
8 e-filing, can you just explain what it is about
9 e-filing that makes it that you can't do a more
10 qualitative analysis of it?

11 I didn't quite understand that about why
12 e-filing is --

13 MS. STARK: It's not supposed to say
14 e-filing --

15 MS. MANDEL: -- different than if it came
16 in on paper.

17 MS. STARK: -- it's just really
18 understanding who will fall into these categories.
19 We're using MICs codes and trying to assess it, but
20 there's a lot of variables involved in that.

21 MS. MANDEL: Okay, I guess I --

22 MS. YEE: But you don't have a separate
23 schedule for -- I mean, if we were on a paper filing
24 system --

25 MS. MANDEL: How is it -- how is it -- how
26 is the lumber assessment reported --

27 MS. STARK: We do have --

28 MS. MANDEL: -- in the e-filing?

1 MS. STARK: -- a schedule for lumber, yes.
2 But it just asks two questions: What is the amount
3 of assessment collected and what is the retention
4 amount that you're claiming?

5 MS. MANDEL: Oh, so, it doesn't ask -- it's
6 like a sales tax return with the gross receipts and
7 netting it -- taking out deductions of things?

8 MS. STARK: Right.

9 MS. MANDEL: So, that's why your paper says
10 that there could be some filers who reported zero
11 who may have only had exempt --

12 MS. STARK: Correct.

13 MS. MANDEL: -- transactions because it
14 only asks, "Did ask you collect the assessment? How
15 much assessment did you collect?"

16 Okay, thank you.

17 MS. STARK: You're welcome.

18 MS. YEE: Other comments or questions,
19 Members?

20 MR. RUNNER: Just -- just the other thing I
21 guess we should remind ourselves is just because
22 somebody's collecting it, it doesn't mean that
23 they're going to get the full -- whatever the
24 reimbursement is, the full reimbursement.

25 For instance, some of these might be moving
26 very little of this product. I'm -- you know, I'm
27 trying -- if I use an example, I'm afraid also the
28 example's going to be one of those that has been

1 exempted. So, I am hesitant to do that.

2 MS. MANDEL: Well, at \$200,000 of
3 reimbursement retained and however many thousand --
4 I mean, if they -- it's not everybody hasn't
5 collected the full -- hasn't retained the full
6 amount yet because it -- the math wouldn't work,
7 right?

8 MS. STARK: That's correct.

9 MR. RUNNER: Or it would take a very, very
10 long time for them if they're a nursery, for
11 instance.

12 And again I'm going to use an example that
13 might have been exempted, but I'll do it anyhow
14 because there's got to be similar type products and
15 you've got a stake for a tree.

16 MR. DUNHAM: Hardware store.

17 MR. RUNNER: Uh?

18 MR. DUNHAM: Hardware store.

19 MR. RUNNER: A hardware store and you have
20 to sell stakes for trees, but you don't sell any
21 other product. But that particular product does get
22 the -- the -- the -- the -- the assessment. It's
23 going to take you a long time before you ever get up
24 to your total reimbursement at that point.

25 So, I guess in terms of cost that needs to
26 be a part of the factor in regards -- and it's not
27 like everybody else is going to get that all --
28 whatever the new cost is going to be -- everybody's

1 going to get that in the first year anyhow.

2 It's going to take many places a long time
3 to get their reimbursement simply because they don't
4 move that much of that particular product, I guess,
5 is my point.

6 MS. MANDEL: Uhmm --

7 MR. HORTON: Madam Chair?

8 MS. YEE: Yes, Mr. Horton.

9 MR. HORTON: Of the legislative team,
10 I'll -- it causes me to sort of wonder if the intent
11 of the legislature was actually to include
12 incidental transactions, such as a hardware store,
13 that may not be in the business of selling lumber,
14 but was in the business of selling some sort of wood
15 for some other purpose of a sort.

16 And maybe I should go to the industry
17 'cause they --

18 MR. DUNHAM: I would just simply say that,
19 sir, that the -- the manner in which that was passed
20 on that last night at 2:45 in the morning, I don't
21 think anybody knew anything that they were doing.

22 And I -- I think the complexity of -- the
23 complexity of what products were included and what's
24 exempt goes on.

25 I have a stack in my office of questions
26 put to me, everything from surveyor stakes to garden
27 stakes --

28 MR. HORTON: Right.

1 MR. DUNHAM: -- gosh, some of it's pretty
2 creative.

3 MS. MANDEL: And that's a function the
4 legislature put on the Board of Forestry, right --

5 MR. HORTON: Yeah.

6 MS. MANDEL: -- to define the --

7 MR. DUNHAM: That's correct.

8 MR. RUNNER: Uh-huh.

9 MR. HORTON: So, inevitably, even if --
10 even at 250 or 7 or 800, whatever the number might
11 be, you're still going to have those individuals
12 that may not fully reimburse themselves as a result
13 of this?

14 MR. DUNHAM: That's correct.

15 MR. RUNNER: Uh-huh.

16 MR. HORTON: And, quite frankly, may not
17 have been intended to be included in the legislation
18 and I guess that's the debate that you guys will
19 take to the Department of Forestry, to try to --

20 MR. RUNNER: Or the legislature.

21 MR. HORTON: -- exclude those -- or back to
22 the legislature for some clarification to try to
23 exclude those individuals who incidentally make
24 sales of wood products.

25 MR. DUNHAM: If I may throw in, I think the
26 Board of Forestry did an admirable job in about two
27 weeks of a pretty complete list of what's there.
28 There's a few omissions -- they left molding out of

1 it and that means -- there was some question.

2 But George over there at Board of Forestry
3 did a -- did a pretty darn good job on that.

4 MR. HORTON: Excellent. Well, kudos to
5 George.

6 MR. DUNHAM: George Gentry, the Exec over
7 there.

8 MR. HORTON: Question, the \$250 or
9 Alternative 1, is that -- would you consider that to
10 be a reasonable -- I don't want to do that.

11 Is it somewhere in the ballpark, even if
12 it's on the low end, is it somewhere in the
13 ballpark?

14 MR. DUNHAM: The number -- what number,
15 sir?

16 MR. HORTON: The numbers provided in
17 Alternative 1?

18 MR. DUNHAM: No.

19 MR. FOGARTY: No, not even close.

20 MS. RODRIQUEZ: Not even close.

21 MR. HORTON: Not even close.

22 MR. FOGARTY: If somebody could do it for
23 \$250, I would hire that person immediately.

24 That's -- that is a -- that's an extremely
25 low number.

26 MS. RODRIQUEZ: I mean, the consulting fee
27 alone probably to get somebody out is \$250.

28 MS. MANDEL: Well, and Alternative 1 is the

1 735. I know it's -- you don't think it's much more
2 than -- but Alternative 1 is 735, right?

3 MS. STARK: Yes.

4 MS. MANDEL: Correct?

5 MS. YEE: The 250 plus 485.

6 MR. HORTON: I'm mindful there are those
7 who would do it free for the larger retailers.

8 So, I think we're -- I still think we're
9 safe with Alternative 1 if we leave it open-end to
10 true it up later down the road to --

11 MS. MANDEL: Let me ask --

12 MR. HORTON: -- take into consideration --

13 MS. YEE: Yes.

14 MR. HORTON: -- the balancing act that
15 we've been asked to play.

16 MS. YEE: Okay. Ms. Mandel.

17 MS. MANDEL: Just a -- a procedural
18 question, so -- 'cause I'm hearing sort of different
19 things.

20 I'm hearing Alternative 1, the request
21 today is that it get authorized into the public
22 rulemaking and then there would be the public
23 hearing.

24 I'm hearing some people say, "Well, and
25 you'll continue to look at data and maybe there'll
26 be a different number at that time," whether it's a
27 different recommendation or whether the -- a
28 majority of the Board thinks there's a different

1 number that would be appropriate under the facts and
2 circumstances as the reimbursement amount.

3 I'm hearing some about -- which I'm not
4 sure about whether, you know, that should wait
5 without going to publication now. Maybe I
6 misunderstood, but that was the -- okay, that's --
7 so, assuming that it goes to publication now and you
8 have a public hearing and then additional factual
9 information that causes there to be a change in the
10 number, that -- is that a substantive change? Is
11 that going to require another 45-day notice?

12 I see Mr. Heller because if -- I'm just --
13 I just want to understand the mechanics of it
14 because, you know, more and better information is
15 always fabulous. But I want to -- I want to make
16 sure what the -- what the -- what the --

17 MR. HORTON: Procedural.

18 MS. MANDEL: -- procedural mechanics are.
19 And -- okay, that's sort of the basic.

20 MR. HELLER: Ms. Mandel, this --

21 MS. MANDEL: You've probably thought of
22 this.

23 MR. HELLER: -- Bradley Heller from the
24 Board's Legal Department.

25 Essentially, we think there would be a
26 substantially related change. And, so, if the -- if
27 there was a material basis to change the number, we
28 think we could refer it to the 15-day file for

1 additional public notice and comment and then have
2 the Board adopt it after we've done the 15-day
3 referral.

4 MS. MANDEL: Oh.

5 MR. HELLER: And mainly because it is all
6 regarding the -- you know, the amount of
7 reimbursement, the issue's not changing.

8 And we do believe we can write up the
9 notices to make the public aware that is a
10 potentially, you know, related change that could --
11 could potentially result and I think that's kind of
12 been the gist of the discussion today as well.

13 MS. MANDEL: Okay. Well, that was one
14 question.

15 Did you have a follow-up question?

16 MS. YEE: Just a follow-up question that
17 just relates to the -- to the amount.

18 So, what about the basis for how we decide
19 the amount. So, if we were to -- if there were,
20 say, a division among us between Alternative 1 and 2
21 and we wanted to have staff go back and continue to
22 refine the data that -- if we adopt, say,
23 Alternative 1 today and the data suggests that, you
24 know, maybe Alternative 2 was really what we needed
25 to do, I mean, if there's some --

26 MS. MANDEL: If -- so -- so, if at the
27 public hearing the Board -- a Board majority
28 decided -- 'cause if it went forward now as

1 Alternative 1, there is two regs going forward,
2 Reg 2000 is at the 250 and 2001 has the additional
3 amount.

4 So, if at the public hearing, I think the
5 question is -- I'm sorry, I just want to make sure
6 I'm clear in my head -- if the -- if at the public
7 hearing the Board decides to go forward with
8 Reg 2000, but not Reg 2001?

9 So, they adopt 2000, but not 2001 at the
10 public hearing, does that create an issue?

11 Is that your question?

12 MS. YEE: That's my question.

13 MR. HELLER: That doesn't create a
14 procedural issue. The Board has discretion to
15 choose not to adopt a proposed regulation. And
16 they're separate regulations.

17 It would be more difficult if they were all
18 part of the same regulation. The Board would have
19 to adopt all or -- all or nothing in one regulation.

20 But because we're doing it separately, I
21 believe the Board could just decide to adopt 2000
22 and not 2001 or to adopt them both or make a related
23 change.

24 MS. MANDEL: Okay.

25 MS. YEE: Okay. So, if we were to adopt
26 2000 subsequently, when it came back for public
27 hearing, that would then be -- what time period
28 would then be triggered?

1 MR. HELLER: Well, if -- well, basically,
2 we're -- I guess what we're thinking about having
3 the public hearing in the September Board meeting.

4 MS. YEE: Okay.

5 MR. HELLER: So, the Board could adopt
6 Regulation 2000 at that Board meeting and it takes
7 about two weeks to get everything over to OAL and I
8 think -- I believe that one would go front --
9 actually becomes effective immediately after it's
10 approved by the Office of Administrative Law because
11 we're completing the admin -- we're kind of
12 completing the permanent adoption of an emergency
13 regulation with regard to Regulation 2000.

14 MS. MANDEL: So -- so unlike some change
15 that's made inside one of the regs, if -- if the
16 Board adopts Regulation 2000 at the public hearing,
17 but doesn't adopt Regulation 2001, it wouldn't have
18 to come back to the Board on the -- any kind of
19 15-day or anything like that.

20 It's just -- it goes on its way,
21 Regulation 2000 just goes on its way to OAL in the
22 regular process.

23 MR. HELLER: That's right. We would just
24 file Regulation 2000 and request that that be
25 published in the Cal -- in the Code of
26 Regulations.

27 MS. MANDEL: All right.

28 MS. YEE: Thank you, Mr. Heller.

1 Okay, Ms. Mandel.

2 MS. MANDEL: Okay. Then the -- I guess I
3 just had two things I wanted to make sure I was
4 doing my -- my math right.

5 With respect to the legislators' comment
6 about an amount of 2 and a half to \$10 million, the
7 735, the 10,000 -- you guys feel pretty good about
8 10,000 retailers being a max at this point?

9 MS. STARK: That's correct, yes.

10 MS. MANDEL: So, the 10,000 at 735 is still
11 within the range that they had in their letter that
12 they thought was workable with the -- okay.

13 And then the secondary -- there's been
14 comments about a secondary purpose of the
15 legislation -- and maybe I don't know enough about
16 how forestry programs work, I know less and less --
17 is that additional revenues beyond the basic program
18 costs as years go on was to go to various
19 environmental-type programs is that -- or is that in
20 legislation or is that just the hope that certain
21 programs that we have get -- get -- or are more
22 robust? I'll use that word.

23 I wanted to understand this.

24 MR. SMITH: I don't really have an answer
25 to that.

26 MS. MANDEL: Okay, all right.

27 MS. YEE: I think, Ms. Mandel, that was all
28 part of the negotiated agreement that we weren't

1 parties to, but certainly the idea was that, to the
2 extent that this lumber assessment could provide
3 funding that could be sustained for our existing
4 forest programs, which previously had been supported
5 through a patchwork system of funding, that whatever
6 additional revenue may be realized could then be
7 directed towards restoration efforts that have been
8 is severely curtailed in the past.

9 MS. MANDEL: Okay. I always appreciate
10 your finance experience.

11 MS. YEE: It's not finance, it's just kind
12 of --

13 MS. MANDEL: Being around.

14 MS. YEE: -- negotiation, okay?

15 MS. MANDEL: Thank you.

16 MS. YEE: We do have a motion the table.

17 Mr. Runner, I'm going to ask, would you be
18 willing to rescind the motion and remake the motion?

19 I gave it a courtesy second and I would
20 like to undo that.

21 MR. RUNNER: Okay.

22 MS. MANDEL: Okay.

23 MR. RUNNER: Yeah, the motion is to adopt
24 Recommendation 1 as it -- as staff recommendation.

25 And that was the motion and the discussion
26 behind the motion, I think, has been shared by a
27 number of other people that gives us still some time
28 for new data to come in and for us then to see data

1 then in September, which would give us better
2 numbers on the number of retailers, the revenue,
3 which are all driven -- which are all part of the
4 parts, kind of like moving pieces when it comes to
5 the reimbursement rate.

6 So, it's Recommendation No. 1 is the
7 motion.

8 MS. YEE: Okay. We have a motion by
9 Mr. Runner to adopt Alternative 1.

10 Is there a second?

11 MR. HORTON: Members, I would -- I would
12 second the motion, but --

13 MS. YEE: Second by Mr. Horton.

14 Mr. Horton.

15 MR. HORTON: -- and -- but once it sort of
16 clarified that the -- part of the purpose is is to
17 give some clarity to the industry and to the
18 issue -- clarity on a couple of matters, which we
19 can do later.

20 And I concur that we can accomplish this
21 later is Alternative 3 speaks to an ongoing
22 reimbursement in which the legislature just -- one
23 thing they seem to be clear on, even though we are
24 having to stretch to the intent area, is that that
25 was not the intent of the legislation and we don't
26 have the authority to -- to accomplish that and may
27 be running a risk as it relates to the AA -- Office
28 of Administrative Law in that regard, one -- one

1 vision.

2 The other is to preserve the funding source
3 set forth by the legislature. I think it's
4 important -- and I agree with Member Yee in that
5 regard -- it's important that we preserve that
6 funding source.

7 And then, secondarily, that we seek to
8 reimburse. But it appears that the information that
9 we are receiving thus far seems to imply that we can
10 actually do both by virtue of a change in the
11 economy and the economy is getting better, the
12 number and quantity is getting better and, so, we
13 can actually preserve the 26, \$28 million and still
14 provide some level of reimbursement.

15 It is hitting that moving target that we
16 seem to have a challenge with, which this whole true
17 up concept seems will give us that latitude to
18 accomplish that objective subsequent to this
19 process.

20 So, in the effort to communicate those
21 things to the industry and not to have to debate
22 those as we leave the dais and between now and the
23 time that we accomplish whatever we're going to
24 accomplish, I'm going to take those things off the
25 table from my -- from my perspective.

26 MS. YEE: Okay. Thank you, Mr. Horton for
27 the clarification.

28 We have a motion by Mr. Runner, second by

1 Mr. Horton. And I will just say I am going to be a
2 no vote today until we -- I get some more refined
3 information, but certainly agree with the -- the
4 tender of the direction in which we're moving.

5 Okay, please call the roll.

6 MS. RICHMOND: Ms. Yee?

7 MS. YEE: No.

8 MS. RICHMOND: Mr. Hort -- Mr. Runner?

9 MR. RUNNER: Aye.

10 MS. RICHMOND: Ms. Steel?

11 MS. STEEL: No.

12 MS. RICHMOND: Mr. Horton?

13 MR. HORTON: Aye.

14 MS. RICHMOND: Ms. Mandel?

15 MS. MANDEL: Aye.

16 MS. YEE: Motion --

17 MS. RICHMOND: Motion --

18 MS. YEE: -- carries.

19 MS. RICHMOND: -- carries.

20 MS. YEE: Okay, thank you very much.

21 That concludes the Businesses Taxes
22 Committee.

23 ---o0o---

24

25

26

27

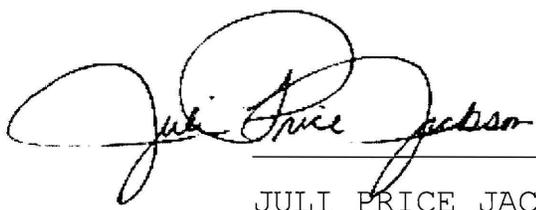
28

REPORTER'S CERTIFICATE.

State of California)
) ss
County of Sacramento)

I, JULI PRICE JACKSON, Hearing Reporter for the California State Board of Equalization certify that on JUNE 11, 2013 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 53 constitute a complete and accurate transcription of the shorthand writing.

Dated: AUGUST 5, 2013

JULI PRICE JACKSON

Hearing Reporter

**ESTIMATE OF COST OR SAVINGS RESULTING
FROM PROPOSED REGULATORY ACTION**

Proposed Amendment of Sales and Use Tax Regulation 2000, *Retailer Reimbursement Retention*, and Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*

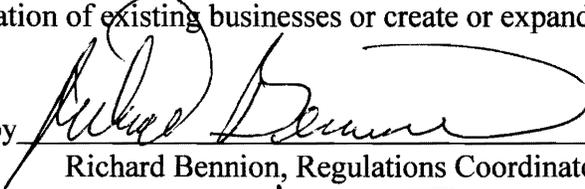
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

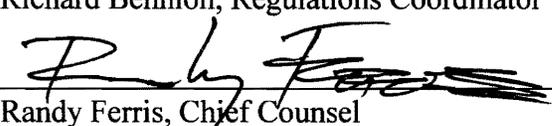
The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement Prepared by  Date 8-26-13
Richard Bennion, Regulations Coordinator

Approved by  Date 8/26/13
Randy Ferris, Chief Counsel

If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and Chief, Board Proceedings Division, are Required

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 6660 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 2000, Retailer Reimbursement Retention		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts businesses and/or employees
- b. Impacts small businesses
- c. Impacts jobs or occupations
- d. Impacts California competitiveness
- e. Imposes reporting requirements
- f. Imposes prescriptive instead of performance
- g. Impacts individuals
- h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) Please see the attached .

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: Statewide Local or regional (List areas.): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

Yes No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ _____

4. Will this regulation directly impact housing costs? Yes No If yes, enter the annual dollar cost per housing unit: _____ and the number of units: _____

5. Are there comparable Federal regulations? Yes No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? Yes No

Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? Yes No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: \$ _____ Cost-effectiveness ratio: \$ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____ (FISCAL YEAR)

2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in _____

b. implements the court mandate set forth by the _____ court in the case of _____ vs. _____

c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ election; (DATE)

d. is issued only in response to a specific request from the _____, which is/are the only local entity(s) affected;

e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Section _____ of the _____ Code;

f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

g. creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

3. Savings of approximately \$ _____ annually.

4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

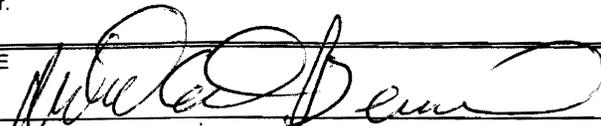
5. No fiscal impact exists because this regulation does not affect any local entity or program.
6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
- a. be able to absorb these additional costs within their existing budgets and resources.
- b. request an increase in the currently authorized budget level for the _____ fiscal year.
2. Savings of approximately \$ _____ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any State agency or program.
4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
2. Savings of approximately \$ _____ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
4. Other.

SIGNATURE		TITLE
		Regulations Coordinator
AGENCY SECRETARY ¹	APPROVAL/CONCURRENCE 	DATE
DEPARTMENT OF FINANCE ²		DATE
APPROVAL/CONCURRENCE	PROGRAM BUDGET MANAGER	
	Exempt under SAM section 6660	

7-15-13

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

**Attachment to Economic and Fiscal Impact
Statement (STD. 399 (Rev. 12/2008)) for the Proposed Adoption
of California Code of Regulations, Title 18, Sections
2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention***

Public Resources Code (PRC) section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products (Lumber Products Assessment) to be collected by retailers at the time of sale, and any start-up or ongoing costs that retailers incur in compliance with PRC section 4629.5 are imposed by that statute and not a regulatory action. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the State Board of Equalization (Board) to adopt regulations to determine the amount retailers may retain from the assessments they collect, as reimbursement for start-up costs. However, the statute is silent as to how the Board should determine the amount. And, there is no single amount that will compensate all affected retailers for their actual start-up costs, but not more. Therefore, the Board is proposing to adopt California Code of Regulations, title 18, sections (Regulations) 2000 and 2001 to implement, interpret and make specific PRC section 4629.5 by prescribing \$735 per retail location as a reasonable, average amount of reimbursement for start-up costs based upon information indicating that some retailers will incur more and some retailers will incur less actual start-up costs, and information indicating that providing more reimbursement may impair the effectiveness of the Lumber Products Assessment as a source of revenue.

Further, the proposed regulations will allow affected retailers to retain the Board-prescribed amount of reimbursement without having to incur additional, non-reimbursable costs to substantiate their actual start-up costs. Therefore, there is no basis to conclude that affected retailers will incur any costs in reasonable compliance with proposed Regulations 2000 and 2001 and, the Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

Furthermore, the adoption of proposed Regulations 2000 and 2001 is anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

Therefore, the Board understands that the enactment of PRC section 4629.5 may have an economic impact on business. However, based upon the foregoing information and all of the information in the rulemaking file, the Board has determined that the adoption of proposed Regulations 2000 and 2001:

- Will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states;
- Will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California;
- Will not have a significant effect on housing costs;
- Will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California; and
- Will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2013-0716-03	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
------------------	---	--------------------------	------------------

For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

JUL 18 '13 JUL 26 '13

Office of Administrative Law

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Retailer Reimbursement Retention		TITLE(S) 18	FIRST SECTION AFFECTED 2000	2. REQUESTED PUBLICATION DATE July 26, 2013
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Rick Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

ACTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S)	

3. TYPE OF FILING

- Regular Rulemaking (Gov. Code §11346)
 Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
 Emergency (Gov. Code, §11346.1(b))
- Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
 Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- Emergency Readopt (Gov. Code, §11346.1(h))
 File & Print
 Other (Specify) _____
- Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
 Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) Effective on filing with Secretary of State §100 Changes Without Regulatory Effect Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- Department of Finance (Form STD. 399) (SAM §6660) Fair Political Practices Commission State Fire Marshal
 Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
-------------------	------------------	-----------------------	---------------------------

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

For use by Office of Administrative Law (OAL) only

Notice of Proposed Regulatory Action
The State Board of Equalization Proposes to Adopt
California Code of Regulations, Title 18, Sections
2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention*

NOTICE IS HEREBY GIVEN

Public Resources Code (PRC) section 4629.5, subdivision (a)(1) imposes a one-percent assessment on purchasers of lumber products and engineered wood products (Lumber Products Assessment) on and after January 1, 2013. PRC section 4629.5, subdivision (a)(3) requires retailers to collect the assessment and provides that retailers “may retain an amount [from the assessments they collect] equal to the amount of reimbursement, as determined by the State Board of Equalization [(Board)] pursuant to regulations, for any costs associated with the collection of the assessment” imposed by subdivision (a)(1). The Board, pursuant to the authority vested in it by PRC section 4629.5, subdivision (a)(3) has adopted California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, as an emergency regulation pursuant to Government Code section 11346.1, to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). The Board now proposes to adopt emergency Regulation 2000, through the regular rulemaking process, to comply with Government Code section 11346.1, and proposes to adopt new Regulation 2001, *Additional Allowed Retailer Reimbursement*, to specify an additional amount of reimbursement that a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), beginning January 1, 2014.

PUBLIC HEARING

The Board will conduct a meeting in the Auditorium Room, at the California Public Utilities Commission’s headquarters, located at 505 Van Ness Avenue, San Francisco, California, on September 10, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on September 10, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed Regulations 2000 and 2001.

AUTHORITY AND REFERENCE

PRC section 4629.5

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

PRC section 4629.5

PRC section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent Lumber Products Assessment on purchasers of lumber products and engineered wood products to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the Board to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain compliance costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, PRC section 4629.5 and the legislative analyses of AB 1492 do not expressly indicate how the Board is to determine the amount of reimbursement that retailers may retain. However, the statute does appear to provide that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers' first returns or next consecutive returns filed immediately after the retailers are required to begin collecting the Lumber Products Assessment on January 1, 2013. And, the statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for "costs to set up collection systems." (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p. 2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3) provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to the commencement of their collection duties on January 1, 2013. Neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of amounts in excess of the Board-specified reimbursement amount to compensate retailers for ongoing collection costs.

Emergency Regulation 2000

In addition, PRC section 4629.5, subdivision (a)(3), as added by AB 1492, authorizes the Board to “adopt emergency regulations,” pursuant to Government Code section 11346.1, to prescribe the amount retailers may retain from the Lumber Products Assessments they collect, and provides that the adoption of any such regulations “shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.” Therefore, on October 23, 2012, the Board voted to:

- Added new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the Lumber Products Assessment imposed by PRC section 4629.5 can be codified in the new chapter; and
- Adopt Regulation 2000, which is codified in new chapter 4.1, as an emergency regulation, in order to determine the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), before retailers started collecting the new assessment on January 1, 2013.

Emergency Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

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 no more than \$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.

The \$250 retention amount in emergency Regulation 2000 is based on the Board’s understanding of the amount of retailer reimbursement discussed when AB 1492 was drafted. Staff also estimated the \$250 retention amount in emergency Regulation 2000 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 (PricewaterhouseCoopers report). And, emergency Regulation 2000

recognizes that an affected retailer's start-up costs will be affected by the number of retail locations the retailer must get ready to collect the new assessment on January 1, 2013.

An emergency regulation adopted pursuant to Government Code section 11346.1 is effective for a 180-day period. The Office of Administrative Law (OAL) may approve two readoptions of the same emergency regulation, under specified circumstances, each for an effective period of 90 days. However, an emergency regulation will automatically be repealed and deleted from the California Code of Regulations, unless the regulation is readopted through the regular rulemaking process before the emergency regulation ceases to be effective. (Gov. Code, § 11346.1, subds. (e), (g), and (h).)

Emergency Regulation 2000 became effective on January 1, 2013. The Board subsequently readopted emergency Regulation 2000 in accordance with Government Code section 11346.1, subdivision (h). OAL approved the readoption on June 25, 2013, and indicated that readopted emergency Regulation 2000 will not expire until September 24, 2013. Therefore, OAL still has discretion to approve one more readoption of emergency Regulation 2000 before that time, which may extend the effective period of the regulation by an additional 90 days.

Effect, Objectives, and Benefits of the Proposed Adoption of Regulations 2000 and 2001

Business Taxes Committee Process

The California Forestry Association supported the initial adoption of emergency Regulation 2000 and the \$250 reimbursement amount established by the regulation. However, the Board did not immediately propose to adopt emergency Regulation 2000 through the regular rulemaking process because other interested parties, including the California Retailers' Association and the West Coast Lumber & Building Material Association (West Cost), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee (BTC) process to meet with interested parties and discuss the adoption of a regulation, through the regular rulemaking process, to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by PRC section 4629.5 beginning January 1, 2013.

Start-up Costs and Ongoing Costs

During the BTC process, some interested parties read PRC section 4629.5, subdivision (a)(3), as providing for reimbursement of "any costs" associated with the collection of the Lumber Products Assessment, including ongoing costs. However, as previously discussed, Board staff believes that PRC section 4629.5, subdivision (a)(3) authorizes the Board to determine and prescribe a specific one-time amount of reimbursement for start-up costs to implement the Lumber Products Assessment on January 1, 2013, that may be retained by all affected retailers, regardless of their actual costs; and staff does not believe that the statute allows retailers to retain a percentage of the assessments they

collect or retain unique amounts of reimbursement for their actual start-up or ongoing costs. This is primarily because:

- PRC section 4629.5 expressly provides that retailers may only retain “an amount” determined by the Board and does not authorize retailers to calculate and retain other amounts;
- PRC section 4629.5 requires a retailer to retain the Board prescribed amount of reimbursement from the assessments reported on its “first return or next consecutive returns until the entire reimbursement amount is retained”; and
- PRC section 4629.5 does not expressly provide for the ongoing retention of a percentage of collected assessments, as do the California Tire Fee Law and Covered Electronic Waste Recycling Fee Law, which both expressly authorize retail sellers to retain 1.5 percent (PRC § 42885) and 3 percent (PRC § 42464), respectively, of the fees they collect as ongoing reimbursement of collection costs.

Staff’s understanding of PRC section 4629.5, subdivision (a)(3), is consistent with the Senate and Assembly floor analyses of AB 1492, which refer to retailers being reimbursed for “...costs to set up collection systems,” not ongoing costs of collection. The interested parties that supported AB 1492, including the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, have confirmed that staff’s understanding of PRC section 4629.5, subdivision (a)(3) is consistent with the intent of AB 1492. In addition, California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson have recommended to the Board that reimbursement be limited to startup costs.

Amount of Reimbursement for Start-up Costs

In addition, Board staff and some interested parties continued to disagree about the “amount” that affected retailers should be permitted to retain as reimbursement for start-up costs during the BTC process. These interested parties believe that the reimbursement amount in emergency Regulation 2000 is too low and that the amount should be increased to compensate most retailers for their actual start-up costs. For example, Caseywood estimated that it cost \$7,000 to implement computer system, internal process, and accounting changes necessary to comply with the new law. Other retailers advised staff that their current accounting systems could not be updated to calculate the new assessment, and that they were forced to update both software and hardware, at an estimated cost of \$45,000, in order to implement the assessment. Also, West Coast surveyed its members and informed staff that that the members’ average cost to implement the assessment was \$5,480 per location.

To get a better idea of retailers’ average costs to update their software for the Lumber Products Assessment, staff contacted three software companies that provide software packages for the retail lumber industry. One company indicated that it included the update to collect the assessment in its annual software update and did not charge an

additional amount to its existing customers, and the other software providers advised staff that for current customers they generally charged \$250 per location to update their software to collect the assessment. The software providers also explained that their charges (if any) did not include the hours spent reviewing inventory and coding SKU's (stock keeping units) for products subject to the assessment. These tasks were typically completed by a retailer's employees with the expense incurred directly by the retailer. Further, staff learned that retailers who use custom or proprietary accounting software were not able to take advantage of pricing discounts from package software providers and generally paid hourly rates for software technicians to update their systems. Furthermore, staff found that one company estimated that for a new retail account, they would charge about \$30,000 plus a monthly fee to set up a whole new accounting system that performed various functions, including collecting the Lumber Products Assessment.

To get a better idea of retailers' average costs to update their software for the assessment, staff also continued to review the available cost data, including the PricewaterhouseCoopers Report, referred to above, and found another reasonable alternative method that could be used to estimate affected retailers' average start-up costs. First, staff found that 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 and that the amount of allowed retention directly affects the revenue the fund receives. Second, in Board staff's September 11, 2012, Legislative Enrolled Bill Analysis of AB 1492, staff estimated that the new one-percent Lumber Products Assessment would generate annual revenue of \$35 million from approximately \$3.5 billion of sales subject to the assessment. Third, during the BTC process, staff estimated, using U.S. Census Bureau data, that there were close to 10,000 retail locations that were required to begin collecting the new assessment on January 1, 2013, and that each location would collect an annual average of \$3,500 in assessments on average annual sales of \$350,000 subject to the assessment.

Fourth, staff also analyzed the PricewaterhouseCoopers Report in more detail, and found that the \$250 amount in emergency Regulation 2000 accounted for costs to program and service cash registers (and other point-of-sale systems), but did not account for all of the categories of compliance costs, included in the study. Further, staff found that the PricewaterhouseCoopers Report shows an average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry. Furthermore, staff recognized that the percentage was derived from looking at some costs that were not properly classified as start-up costs, such as costs to deal with audits and appeals, but that the percentage also failed to account for some costs that were properly classified as start-up costs, such as costs to identify and code products subject to the assessment. Therefore, staff concluded that it would be reasonable to use the percentage to calculate start-up costs.

As a result, during the BTC process, Board staff calculated that the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, was approximately \$735 per retail location by multiplying the average amount of annual sales

subject to the assessment that staff estimated would be made by each retail location (\$350,000) by 0.21 percent. Staff proposed that affected retailers be permitted to retain an additional \$485 (\$735 - \$250) from the assessments they collect, for start-up costs, beginning January 1, 2014. Therefore, staff recommended that the Board propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and that the Board also propose to adopt new Regulation 2001, through the regular rulemaking process, to provide that “[b]eginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as [additional] reimbursement for startup costs associated with the collection of the assessment.”

During its BTC meeting on June 11, 2013, the Board tentatively agreed with staff’s revised calculation of the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, of approximately \$735 per retail location. Therefore, the Board voted to propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and also to propose to adopt new Regulation 2001, through the regular rulemaking process. The Board’s objective for proposing to adopt emergency Regulation 2000 and Regulation 2001 is to have the effect of prescribing \$735 per retail location as the total amount of reimbursement that affected retailers may retain from the Lumber Products Assessments they collect as reimbursement for start-up costs pursuant to PRC section 4629.5. The regulations are anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

The Board has performed an evaluation of whether proposed Regulations 2000 and 2001 are inconsistent or incompatible with existing state regulations and determined that the regulations are not inconsistent or incompatible with existing state regulations because they are the only state regulations prescribing the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). In addition, there is no federal assessment similar to the Lumber Products Assessment imposed by PRC section 4629.5 and there are no comparable federal regulations or statutes to proposed Regulations 2000 and 2001.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulations 2000 and 2001 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulations 2000 and 2001 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of proposed Regulations 2000 and 2001 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed Regulations 2000 and 2001 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of proposed Regulations 2000 and 2001 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of proposed Regulations 2000 and 2001 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of proposed Regulations 2000 and 2001 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed regulations should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on September 10, 2013, or as soon thereafter as the Board begins the public hearing regarding the adoption of proposed Regulations 2000 and 2001 during the September 10, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt proposed Regulations 2000 and 2001. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored versions of the text of Regulations 2000 and 2001 illustrating the express terms of the proposed regulations and an initial statement of reasons for the adoption of the proposed regulations, which includes the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulations are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt proposed Regulations 2000 and 2001 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. Additional information could change staff's calculation of \$735 as the average start-up costs per retail location to implement the Lumber Products Assessment, help staff identify other, more reliable methods to calculate the average start-up costs per retail location, or both, as discussed in detail in the initial statement of reasons. Therefore, at the conclusion of the June 11, 2013, BTC meeting, the Board directed staff to continue to monitor the implementation of the Lumber Products Assessment and review the returns filed for the first and second quarters of 2013 to try to obtain additional information to help verify the number of retail locations that were required to begin collecting the new assessment on January 1, 2013, and the amount of revenue they are actually collecting. And, the Board indicated that, depending upon the additional information obtained, including information regarding the effectiveness of AB 1492 as a source of funding, and staff's recommendation at the public hearing, the Board may decide to adopt proposed Regulation 2000 without making any changes and not adopt proposed Regulation 2001, the Board may decide to adopt both proposed regulations without making any changes, or the Board may decide to adopt both regulations and change the total amount of reimbursement provided to affected retailers.

If a sufficiently related change is made to either proposed regulation, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts proposed Regulations 2000 and 2001, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

**Proposed Text of California Code of Regulations, Title 18, Sections
2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention***

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 no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

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

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

Regulation 2001. Additional Allowed Retailer Reimbursement Retention

Beginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, 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.

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

Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change
<Legal.Regulations@BOE.CA.GOV>
Sent: Friday, July 26, 2013 10:11 AM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 2000 and 2001

The State Board of Equalization proposes to adopt Regulations 2000, *Retailer Reimbursement Retention*, and 2001, *Additional Allowed Retailer Reimbursement Retention*. A public hearing regarding the adoption of the proposed regulations will be held in the Auditorium Room, at the California Public Utilities Commission's headquarters, located at 505 Van Ness Avenue, San Francisco, California, at 10:00 a.m., or as soon thereafter as the matter may be heard, on Tuesday, September 10, 2013.

The Board has proposed to adopt the regulations to prescribe the amount of reimbursement retailers may retain pursuant to Public Resources Code section 4629.5.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/reg_2000_2001_2013.htm

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

Please DO NOT REPLY to this message, as it was sent from an "announcement list."

Subscription Information: To unsubscribe from this list please visit the page: <http://www.boe.ca.gov/aprc/index.htm>

Privacy Policy Information: Your information is collected in accordance with our Privacy Policy
<http://www.boe.ca.gov/info/privacyinfo.htm>

Technical Problems: If you cannot view the link included in the body of this message, please contact the Board's webmaster at webmaster@boe.ca.gov

Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change
Sent: Friday, July 26, 2013 11:53 AM
To: 'abegolomb@yahoo.com'; 'ackoch@sbcglobal.net'; 'AKugler@mayerbrown.com'; Vassar, Alex; 'amiele@mpaa.org'; 'bdombrowski@calretailers.com'; 'bmaterials@aol.com'; 'Bobb@big-creek.com'; 'Brenda.Narayan@MuniServices.com'; 'brent.fraser@caseywood.com'; 'Brent.Johnson@hlcbishop.com'; 'Bryan.cash@resources.ca.gov'; 'btoman@reedsmith.com'; 'carlsend@84lumber.com'; 'carol@lamesalumber.com'; 'cathy@md-astc.com'; 'ccooper@salestaxpros.com'; 'ccraft@kpmg.com'; 'cmicheli@apreamicheli.com'; 'cmicheli@apreamicheli.com'; 'connie@brucebauer.com'; 'craigevans@learnedlumber.com'; 'darryl@brucebauer.com'; 'dave@caltax.org'; 'david.snieszko@ey.com'; 'david@emanuelsjones.com'; 'davidb@foresthealth.org'; 'dbuaas@contractmgmt.com'; 'dcarrigg@cacities.org'; 'defox@deloitte.com'; 'denise.o.ruwe@exxonmobil.com'; 'drennie@deloitte.com'; 'fran.mancia@muniservices.com'; 'FRANCISCO_URIBE@homedepot.com'; 'gabystrom@msn.com'; 'Gentry'; Rodriguez, Gina; 'goyee@meeks.com'; 'GPG@Surewest.net'; 'gturner@cost.org'; 'Gwen.evans@ryan.com'; 'hfine@labusinessjournal.com'; 'jacklyn.m.thomas@exxonmobil.com'; 'james.b.levinson@us.pwc.com'; 'james.speed@thompson-tax.com'; 'Jana.Bohlman@safeway.com'; 'janis.varney@muniservices.com'; 'jaugustine@biologicaldiversity.org'; 'jbholat@equityrs.com'; 'jeff'; 'jeffreyvarga@paulhastings.com'; 'jeffreyvarga@paulhastings.com'; 'jenebernard@kpmg.com'; 'jennifer.barrera@calchamber.com'; 'jeremy.merz@calchamber.com'; 'jfrench@sanjoaquinlumber.com'; 'jgamper@cbbf.com'; CSAC-Hurst; 'joan.armenta-roberts@us.pwc.com'; 'johanklehs@comcast.net'; 'joseph@salestaxexpert.net'; 'jvanburkleo@costco.com'; 'kaimickey@salestaxspecialists.com'; 'kelly.l.gibson@exxonmobil.com'; 'kend@lumberassociation.org'; 'kenm@big-creek.com'; 'krozario@deloitte.com'; 'lbrown@ksacsacramento.com'; 'lga@cal.net'; 'luke@forestsforever.org'; 'Lynn@dubug7.com'; 'Lynn_Monsalvatge@HomeDepot.com'; 'maggie@nicholslumber.com'; 'Mario.debernardo@asm.ca.gov'; 'Martha.Guzman-Aceves@gov.ca.gov'; 'matt@meadclark.com'; 'mdakessian@reedsmith.com'; 'mhendrick@collinsco.com'; 'mira@politicalsolutions.us'; 'mjani@mendoco.com'; 'mlee@calretailers.com'; 'mslobby@earthlink.net'; 'ncremers@cbbf.com'; 'ninak@calforests.org'; 'philipplant@comcast.net'; 'pmason@pacificforest.org'; 'PRecht@mayerbrown.com'; 'pwilliams@calretailers.com'; 'rhalverson@halversontax.com'; 'rob.fitzpatrick@sprucecomputer.com'; 'Robert.Wils@muniservices.com'; 'robertecendejas@aol.com'; 'roy.hui@thompson-tax.com'; 'royd.baik@dsfgroup.com'; 'rrichman@deloitte.com'; 'rschrotenboer@fenwick.com'; 'RSturdivant@hdlcompanies.com'; 'soldroyd@bdo.com'; 'spencer@agamsi.com'; 'Stacey.matthew@us.gt.com'; 'steve.foti@thompson-tax.com'; 'steve@politicalsolutions.us'; 'steven.cabrera@us.gt.com'; 'sylvieP@ttlco.com'; Casazza, Teresa; 'thompsontax@msn.com'; 'tpolley@apataxlaw.com'; 'tsnethen@myerstiresupply.com'; 'turkovichl@84lumber.com'; 'vern@cal.net'; 'wade.downey@dsfgroup.com'; 'wlasher@ebay.com'; 'yujin.weng@adp.com'; Stowers, Yvette
Subject: State Board of Equalization - Announcement of Regulatory Change 2000 and 2001

The State Board of Equalization proposes to adopt Regulations 2000, *Retailer Reimbursement Retention*, and 2001, *Additional Allowed Retailer Reimbursement Retention*. A public hearing regarding the adoption of the proposed regulations will be held in the

Auditorium Room, at the California Public Utilities Commission's headquarters, located at 505 Van Ness Avenue, San Francisco, California, at 10:00 a.m., or as soon thereafter as the matter may be heard, on Tuesday, September 10, 2013.

The Board has proposed to adopt the regulations to prescribe the amount of reimbursement retailers may retain pursuant to Public Resources Code section 4629.5.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/reg_2000_2001_2013.htm

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

Please do not reply to this message.

Board Proceedings Division, MIC:80
Rick Bennion
Regulations Coordinator
Phone (916) 445-2130
Fax (916) 324-3984
Richard.Bennion@boe.ca.gov

Website Access: Materials regarding this proposal can be found at www.rn.ca.gov/regulations/proposed.

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt California Code of Regulations, Title 18, Sections 2000, *Retailer Reimbursement Retention*, and 2001, *Additional Allowed Retailer Reimbursement Retention*

NOTICE IS HEREBY GIVEN

Public Resources Code (PRC) section 4629.5, subdivision (a)(1) imposes a one-percent assessment on purchasers of lumber products and engineered wood products (Lumber Products Assessment) on and after January 1, 2013. PRC section 4629.5, subdivision (a)(3) requires retailers to collect the assessment and provides that retailers “may retain an amount [from the assessments they collect] equal to the amount of reimbursement, as determined by the State Board of Equalization [(Board)] pursuant to regulations, for any costs associated with the collection of the assessment” imposed by subdivision (a)(1). The Board, pursuant to the authority vested in it by PRC section 4629.5, subdivision (a)(3) has adopted California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, as an emergency regulation pursuant to Government Code section 11346.1, to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). The Board now proposes to adopt emergency Regulation 2000, through the regular rulemaking process, to comply with Government Code section 11346.1, and proposes to adopt new Regulation 2001, *Additional Allowed Retailer Reimbursement*, to specify an additional amount of reimbursement that a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), beginning January 1, 2014.

PUBLIC HEARING

The Board will conduct a meeting in the Auditorium Room, at the California Public Utilities Commission’s headquarters, located at 505 Van Ness Avenue, San Francisco, California, on September 10, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available

on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on September 10, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed Regulations 2000 and 2001.

AUTHORITY AND REFERENCE

PRC section 4629.5

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

PRC section 4629.5

PRC section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent Lumber Products Assessment on purchasers of lumber products and engineered wood products to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the Board to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain compliance costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, PRC section 4629.5 and the legislative analyses of AB 1492 do not expressly indicate how the Board is to determine the amount of reimbursement that retailers may retain. However, the statute does appear to provide that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers’ first returns or next consecutive returns filed immediately after the retailers are required to begin collecting the Lumber Products Assessment on January 1, 2013. And, the statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for “costs to set up collection systems.” (See p. 2 of the September 1, 2012, Assembly Floor Analysis of

AB 1492 and p. 2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3) provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to the commencement of their collection duties on January 1, 2013. Neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of amounts in excess of the Board-specified reimbursement amount to compensate retailers for ongoing collection costs.

Emergency Regulation 2000

In addition, PRC section 4629.5, subdivision (a)(3), as added by AB 1492, authorizes the Board to “adopt emergency regulations,” pursuant to Government Code section 11346.1, to prescribe the amount retailers may retain from the Lumber Products Assessments they collect, and provides that the adoption of any such regulations “shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.” Therefore, on October 23, 2012, the Board voted to:

- Add new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the Lumber Products Assessment imposed by PRC section 4629.5 can be codified in the new chapter; and
- Adopt Regulation 2000, which is codified in new chapter 4.1, as an emergency regulation, in order to determine the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), before retailers started collecting the new assessment on January 1, 2013.

Emergency Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

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 no more than \$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.

The \$250 retention amount in emergency Regulation 2000 is based on the Board’s understanding of the amount of retailer reimbursement discussed when AB 1492 was drafted. Staff also estimated the \$250 retention amount in emergency Regulation 2000 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 (PricewaterhouseCoopers report). And, emergency Regulation 2000 recognizes that an affected retailer’s start-up costs will be affected by the number of retail locations the retailer must get ready to collect the new assessment on January 1, 2013.

An emergency regulation adopted pursuant to Government Code section 11346.1 is effective for a 180-day period. The Office of Administrative Law (OAL) may approve two readoptions of the same emergency regulation, under specified circumstances, each for an effective period of 90 days. However, an emergency regulation will automatically be repealed and deleted from the California Code of Regulations, unless the regulation is readopted through the regular rulemaking process before the emergency regulation ceases to be effective. (Gov. Code, § 11346.1, subs. (e), (g), and (h).)

Emergency Regulation 2000 became effective on January 1, 2013. The Board subsequently readopted emergency Regulation 2000 in accordance with Government Code section 11346.1, subdivision (h). OAL approved the readoption on June 25, 2013, and indicated that readopted emergency Regulation 2000 will not expire until September 24, 2013. Therefore, OAL still has discretion to approve one more readoption of emergency Regulation 2000 before that time, which may extend the effective period of the regulation by an additional 90 days.

Effect, Objectives, and Benefits of the Proposed Adoption of Regulations 2000 and 2001

Business Taxes Committee Process

The California Forestry Association supported the initial adoption of emergency Regulation 2000 and the \$250 reimbursement amount established by the regulation. However, the Board did not immediately propose to adopt emergency Regulation 2000 through the regular rulemaking process because other interested parties, including the California Retailers' Association and the West Coast Lumber & Building Material Association (West Coast), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee (BTC) process to meet with interested parties and discuss the adoption of a regulation, through the regular rulemaking process, to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by PRC section 4629.5 beginning January 1, 2013.

Start-up Costs and Ongoing Costs

During the BTC process, some interested parties read PRC section 4629.5, subdivision (a)(3), as providing for reimbursement of "any costs" associated with the collection of the Lumber Products Assessment, including ongoing costs. However, as previously discussed, Board staff believes that PRC section 4629.5, subdivision (a)(3) authorizes the Board to determine and prescribe a specific one-time amount of reimbursement for startup costs to implement the Lumber Products Assessment on January 1, 2013, that may be retained by all affected retailers, regardless of their actual costs; and staff does not believe that the statute allows retailers to retain a percentage of the assessments they collect or retain unique amounts of reimbursement for their actual start-up or ongoing costs. This is primarily because:

- PRC section 4629.5 expressly provides that retailers may only retain "an amount" determined by the Board and does not authorize retailers to calculate and retain other amounts;
- PRC section 4629.5 requires a retailer to retain the Board-prescribed amount of reimbursement from the assessments reported on its "first return or next consecutive returns until the entire reimbursement amount is retained"; and
- PRC section 4629.5 does not expressly provide for the ongoing retention of a percentage of collected assessments, as do the California Tire Fee Law and Covered Electronic Waste Recycling Fee Law, which both expressly authorize retail sellers to retain 1.5 percent (PRC § 42885) and 3 percent

(PRC § 42464), respectively, of the fees they collect as ongoing reimbursement of collection costs.

Staff's understanding of PRC section 4629.5, subdivision (a)(3), is consistent with the Senate and Assembly floor analyses of AB 1492, which refer to retailers being reimbursed for ". . . costs to set up collection systems," not ongoing costs of collection. The interested parties that supported AB 1492, including the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, have confirmed that staff's understanding of PRC section 4629.5, subdivision (a)(3) is consistent with the intent of AB 1492. In addition, California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson have recommended to the Board that reimbursement be limited to startup costs.

Amount of Reimbursement for Start-up Costs

In addition, Board staff and some interested parties continued to disagree about the "amount" that affected retailers should be permitted to retain as reimbursement for startup costs during the BTC process. These interested parties believe that the reimbursement amount in emergency Regulation 2000 is too low and that the amount should be increased to compensate most retailers for their actual start-up costs. For example, Caseywood estimated that it cost \$7,000 to implement computer system, internal process, and accounting changes necessary to comply with the new law. Other retailers advised staff that their current accounting systems could not be updated to calculate the new assessment, and that they were forced to update both software and hardware, at an estimated cost of \$45,000, in order to implement the assessment. Also, West Coast surveyed its members and informed staff that the members' average cost to implement the assessment was \$5,480 per location.

To get a better idea of retailers' average costs to update their software for the Lumber Products Assessment, staff contacted three software companies that provide software packages for the retail lumber industry. One company indicated that it included the update to collect the assessment in its annual software update and did not charge an additional amount to its existing customers, and the other software providers advised staff that for current customers they generally charged \$250 per location to update their software to collect the assessment. The software providers also explained that their charges (if any) did not include the hours spent reviewing inventory and coding SKUs (stock keeping units) for products subject to the assessment. These tasks were typically completed by a retailer's em-

ployees with the expense incurred directly by the retailer. Further, staff learned that retailers who use custom or proprietary accounting software were not able to take advantage of pricing discounts from package software providers and generally paid hourly rates for software technicians to update their systems. Furthermore, staff found that one company estimated that for a new retail account, they would charge about \$30,000 plus a monthly fee to set up a whole new accounting system that performed various functions, including collecting the Lumber Products Assessment.

To get a better idea of retailers' average costs to update their software for the assessment, staff also continued to review the available cost data, including the PricewaterhouseCoopers Report, referred to above, and found another reasonable alternative method that could be used to estimate affected retailers' average start-up costs. First, staff found that 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 and that the amount of allowed retention directly affects the revenue the fund receives. Second, in Board staff's September 11, 2012, Legislative Enrolled Bill Analysis of AB 1492, staff estimated that the new one-percent Lumber Products Assessment would generate annual revenue of \$35 million from approximately \$3.5 billion of sales subject to the assessment. Third, during the BTC process, staff estimated, using U.S. Census Bureau data, that there were close to 10,000 retail locations that were required to begin collecting the new assessment on January 1, 2013, and that each location would collect an annual average of \$3,500 in assessments on average annual sales of \$350,000 subject to the assessment.

Fourth, staff also analyzed the PricewaterhouseCoopers Report in more detail, and found that the \$250 amount in emergency Regulation 2000 accounted for costs to program and service cash registers (and other point-of-sale systems), but did not account for all of the categories of compliance costs included in the study. Further, staff found that the PricewaterhouseCoopers Report shows an average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry. Furthermore, staff recognized that the percentage was derived from looking at some costs that were not properly classified as start-up costs, such as costs to deal with audits and appeals, but that the percentage also failed to account for some costs that were properly classified as startup costs, such as costs to identify and code products subject to the assessment. Therefore, staff concluded that it would be reasonable to use the percentage to calculate start-up costs.

As a result, during the BTC process, Board staff calculated that the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, was approximately \$735 per retail location by multiplying the average amount of annual sales subject to the assessment that staff estimated would be made by each retail location (\$350,000) by 0.21 percent. Staff proposed that affected retailers be permitted to retain an additional \$485 (\$735-\$250) from the assessments they collect, for start-up costs, beginning January 1, 2014. Therefore, staff recommended that the Board propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and that the Board also propose to adopt new Regulation 2001, through the regular rulemaking process, to provide that "[b]eginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as [additional] reimbursement for startup costs associated with the collection of the assessment."

During its BTC meeting on June 11, 2013, the Board tentatively agreed with staff's revised calculation of the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, of approximately \$735 per retail location. Therefore, the Board voted to propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and also to propose to adopt new Regulation 2001, through the regular rulemaking process. The Board's objective for proposing to adopt emergency Regulation 2000 and Regulation 2001 is to have the effect of prescribing \$735 per retail location as the total amount of reimbursement that affected retailers may retain from the Lumber Products Assessments they collect as reimbursement for start-up costs pursuant to PRC section 4629.5. The regulations are anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

The Board has performed an evaluation of whether proposed Regulations 2000 and 2001 are inconsistent or incompatible with existing state regulations and determined that the regulations are not inconsistent or incompatible with existing state regulations because they

are the only state regulations prescribing the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). In addition, there is no federal assessment similar to the Lumber Products Assessment imposed by PRC section 4629.5 and there are no comparable federal regulations or statutes to proposed Regulations 2000 and 2001.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulations 2000 and 2001 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulations 2000 and 2001 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of proposed Regulations 2000 and 2001 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed Regulations 2000 and 2001 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of proposed Regulations 2000 and 2001 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of proposed Regulations 2000 and 2001 will not affect the health and welfare of California residents, worker safety, or the state’s environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of proposed Regulations 2000 and 2001 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed regulations should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board’s consideration, notice of intent to present testimony or witnesses at the

public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on September 10, 2013, or as soon thereafter as the Board begins the public hearing regarding the adoption of proposed Regulations 2000 and 2001 during the September 10, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt proposed Regulations 2000 and 2001. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored versions of the text of Regulations 2000 and 2001 illustrating the express terms of the proposed regulations and an initial statement of reasons for the adoption of the proposed regulations, which includes the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulations are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt proposed Regulations 2000 and 2001 with changes that are nonsubstantial or solely

grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. Additional information could change staff's calculation of \$735 as the average start-up costs per retail location to implement the Lumber Products Assessment, help staff identify other, more reliable methods to calculate the average start-up costs per retail location, or both, as discussed in detail in the initial statement of reasons. Therefore, at the conclusion of the June 11, 2013, BTC meeting, the Board directed staff to continue to monitor the implementation of the Lumber Products Assessment and review the returns filed for the first and second quarters of 2013 to try to obtain additional information to help verify the number of retail locations that were required to begin collecting the new assessment on January 1, 2013, and the amount of revenue they are actually collecting. And, the Board indicated that, depending upon the additional information obtained, including information regarding the effectiveness of AB 1492 as a source of funding, and staff's recommendation at the public hearing, the Board may decide to adopt proposed Regulation 2000 without making any changes and not adopt proposed Regulation 2001, the Board may decide to adopt both proposed regulations without making any changes, or the Board may decide to adopt both regulations and change the total amount of reimbursement provided to affected retailers.

If a sufficiently related change is made to either proposed regulation, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts proposed Regulations 2000 and 2001, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe@ca.gov.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

50 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80
916-445-2130 • FAX 916-324-3984
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

July 26, 2013

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

**Proposed to Amend Regulations 2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention***

NOTICE IS HEREBY GIVEN

Public Resources Code (PRC) section 4629.5, subdivision (a)(1) imposes a one-percent assessment on purchasers of lumber products and engineered wood products (Lumber Products Assessment) on and after January 1, 2013. PRC section 4629.5, subdivision (a)(3) requires retailers to collect the assessment and provides that retailers “may retain an amount [from the assessments they collect] equal to the amount of reimbursement, as determined by the State Board of Equalization [(Board)] pursuant to regulations, for any costs associated with the collection of the assessment” imposed by subdivision (a)(1). The Board, pursuant to the authority vested in it by PRC section 4629.5, subdivision (a)(3) has adopted California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, as an emergency regulation pursuant to Government Code section 11346.1, to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). The Board now proposes to adopt emergency Regulation 2000, through the regular rulemaking process, to comply with Government Code section 11346.1, and proposes to adopt new Regulation 2001, *Additional Allowed Retailer Reimbursement*, to specify an additional amount of reimbursement that a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), beginning January 1, 2014.

PUBLIC HEARING

The Board will conduct a meeting in the Auditorium Room, at the California Public Utilities Commission’s headquarters, located at 505 Van Ness Avenue, San Francisco, California, on September 10, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on September 10, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed Regulations 2000 and 2001.

AUTHORITY AND REFERENCE

PRC section 4629.5

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

PRC section 4629.5

PRC section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent Lumber Products Assessment on purchasers of lumber products and engineered wood products to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the Board to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain **compliance** costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, PRC section 4629.5 and the legislative analyses of AB 1492 do not expressly indicate how the Board is to determine the amount of reimbursement that retailers may retain. However, the statute does appear to provide that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers' first returns or next consecutive returns filed immediately after the retailers are required to begin collecting the Lumber Products Assessment on January 1, 2013. And, the statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for "costs to set up collection systems." (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p. 2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3)

provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to the commencement of their collection duties on January 1, 2013. Neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of amounts in excess of the Board-specified reimbursement amount to compensate retailers for ongoing collection costs.

Emergency Regulation 2000

In addition, PRC section 4629.5, subdivision (a)(3), as added by AB 1492, authorizes the Board to “adopt emergency regulations,” pursuant to Government Code section 11346.1, to prescribe the amount retailers may retain from the Lumber Products Assessments they collect, and provides that the adoption of any such regulations “shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.” Therefore, on October 23, 2012, the Board voted to:

- Added new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the Lumber Products Assessment imposed by PRC section 4629.5 can be codified in the new chapter; and
- Adopt Regulation 2000, which is codified in new chapter 4.1, as an emergency regulation, in order to determine the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), before retailers started collecting the new assessment on January 1, 2013.

Emergency Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

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 no more than \$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.

The \$250 retention amount in emergency Regulation 2000 is based on the Board’s understanding of the amount of retailer reimbursement discussed when AB 1492 was drafted. Staff also estimated the \$250 retention amount in emergency Regulation 2000 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 (PricewaterhouseCoopers report). And, emergency Regulation 2000 recognizes that an affected retailer’s start-up costs will be affected by the number of retail locations the retailer must get ready to collect the new assessment on January 1, 2013.

An emergency regulation adopted pursuant to Government Code section 11346.1 is effective for a 180-day period. The Office of Administrative Law (OAL) may approve two readoptions of the same emergency regulation, under specified circumstances, each for an effective period of 90 days. However, an emergency regulation will automatically be repealed and deleted from the California Code of Regulations, unless the regulation is readopted through the regular rulemaking process before the emergency regulation ceases to be effective. (Gov. Code, § 11346.1, subs. (e), (g), and (h).)

Emergency Regulation 2000 became effective on January 1, 2013. The Board subsequently readopted emergency Regulation 2000 in accordance with Government Code section 11346.1, subdivision (h). OAL approved the readoption on June 25, 2013, and indicated that readopted emergency Regulation 2000 will not expire until September 24, 2013. Therefore, OAL still has discretion to approve one more readoption of emergency Regulation 2000 before that time, which may extended the effective period of the regulation by an additional 90 days.

Effect, Objectives, and Benefits of the Proposed Adoption of Regulations 2000 and 2001

Business Taxes Committee Process

The California Forestry Association supported the initial adoption of emergency Regulation 2000 and the \$250 reimbursement amount established by the regulation. However, the Board did not immediately propose to adopt emergency Regulation 2000 through the regular rulemaking process because other interested parties, including the California Retailers’ Association and the West Coast Lumber & Building Material Association (West Cost), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee (BTC) process to meet with interested parties and discuss the adoption of a regulation, through the regular rulemaking process, to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by PRC section 4629.5 beginning January 1, 2013.

Start-up Costs and Ongoing Costs

During the BTC process, some interested parties read PRC section 4629.5, subdivision (a)(3), as providing for reimbursement of “any costs” associated with the collection of the Lumber Products Assessment, including ongoing costs. However, as previously discussed, Board staff believes that PRC section 4629.5, subdivision (a)(3) authorizes the Board to determine and prescribe a specific one-time amount of reimbursement for start-up costs to implement the Lumber Products Assessment on January 1, 2013, that may be retained by all affected retailers, regardless of their actual costs; and staff does not believe that the statute allows retailers to retain a percentage of the assessments they collect or retain unique amounts of reimbursement for their actual start-up or ongoing costs. This is primarily because:

- PRC section 4629.5 expressly provides that retailers may only retain “an amount” determined by the Board and does not authorize retailers to calculate and retain other amounts;
- PRC section 4629.5 requires a retailer to retain the Board prescribed amount of reimbursement from the assessments reported on its “first return or next consecutive returns until the entire reimbursement amount is retained”; and
- PRC section 4629.5 does not expressly provide for the ongoing retention of a percentage of collected assessments, as do the California Tire Fee Law and Covered Electronic Waste Recycling Fee Law, which both expressly authorize retail sellers to retain 1.5 percent (PRC § 42885) and 3 percent (PRC § 42464), respectively, of the fees they collect as ongoing reimbursement of collection costs.

Staff’s understanding of PRC section 4629.5, subdivision (a)(3), is consistent with the Senate and Assembly floor analyses of AB 1492, which refer to retailers being reimbursed for “...costs to set up collection systems,” not ongoing costs of collection. The interested parties that supported AB 1492, including the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, have confirmed that staff’s understanding of PRC section 4629.5, subdivision (a)(3) is consistent with the intent of AB 1492. In addition, California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson have recommended to the Board that reimbursement be limited to startup costs.

Amount of Reimbursement for Start-up Costs

In addition, Board staff and some interested parties continued to disagree about the “amount” that affected retailers should be permitted to retain as reimbursement for start-up costs during the BTC process. These interested parties believe that the reimbursement amount in emergency Regulation 2000 is too low and that the amount should be increased to compensate most retailers for their actual start-up costs. For example, Caseywood estimated that it cost \$7,000 to implement computer system, internal process, and accounting changes necessary to comply with the new law. Other retailers advised staff that their current accounting systems could not be updated to calculate the new assessment, and that they were forced to update both software and

hardware, at an estimated cost of \$45,000, in order to implement the assessment. Also, West Coast surveyed its members and informed staff that that the members' average cost to implement the assessment was \$5,480 per location.

To get a better idea of retailers' average costs to update their software for the Lumber Products Assessment, staff contacted three software companies that provide software packages for the retail lumber industry. One company indicated that it included the update to collect the assessment in its annual software update and did not charge an additional amount to its existing customers, and the other software providers advised staff that for current customers they generally charged \$250 per location to update their software to collect the assessment. The software providers also explained that their charges (if any) did not include the hours spent reviewing inventory and coding SKU's (stock keeping units) for products subject to the assessment. These tasks were typically completed by a retailer's employees with the expense incurred directly by the retailer. Further, staff learned that retailers who use custom or proprietary accounting software were not able to take advantage of pricing discounts from package software providers and generally paid hourly rates for software technicians to update their systems. Furthermore, staff found that one company estimated that for a new retail account, they would charge about \$30,000 plus a monthly fee to set up a whole new accounting system that performed various functions, including collecting the Lumber Products Assessment.

To get a better idea of retailers' average costs to update their software for the assessment, staff also continued to review the available cost data, including the PricewaterhouseCoopers Report, referred to above, and found another reasonable alternative method that could be used to estimate affected retailers' average start-up costs. First, staff found that 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 and that the amount of allowed retention directly affects the revenue the fund receives. Second, in Board staff's September 11, 2012, Legislative Enrolled Bill Analysis of AB 1492, staff estimated that the new one-percent Lumber Products Assessment would generate annual revenue of \$35 million from approximately \$3.5 billion of sales subject to the assessment. Third, during the BTC process, staff estimated, using U.S. Census Bureau data, that there were close to 10,000 retail locations that were required to begin collecting the new assessment on January 1, 2013, and that each location would collect an annual average of \$3,500 in assessments on average annual sales of \$350,000 subject to the assessment.

Fourth, staff also analyzed the PricewaterhouseCoopers Report in more detail, and found that the \$250 amount in emergency Regulation 2000 accounted for costs to program and service cash registers (and other point-of-sale systems), but did not account for all of the categories of compliance costs, included in the study. Further, staff found that the PricewaterhouseCoopers Report shows an average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry. Furthermore, staff recognized that the percentage was derived from looking at some costs that were not properly classified as start-up costs, such as costs to deal with audits and appeals, but that the percentage also failed to account for some costs that were properly classified as start-up costs, such as costs to identify and code products subject to

the assessment. Therefore, staff concluded that it would be reasonable to use the percentage to calculate start-up costs.

As a result, during the BTC process, Board staff calculated that the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, was approximately \$735 per retail location by multiplying the average amount of annual sales subject to the assessment that staff estimated would be made by each retail location (\$350,000) by 0.21 percent. Staff proposed that affected retailers be permitted to retain an additional \$485 (\$735 - \$250) from the assessments they collect, for start-up costs, beginning January 1, 2014. Therefore, staff recommended that the Board propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and that the Board also propose to adopt new Regulation 2001, through the regular rulemaking process, to provide that “[b]eginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as [additional] reimbursement for startup costs associated with the collection of the assessment.”

During its BTC meeting on June 11, 2013, the Board tentatively agreed with staff’s revised calculation of the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, of approximately \$735 per retail location. Therefore, the Board voted to propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and also to propose to adopt new Regulation 2001, through the regular rulemaking process. The Board’s objective for proposing to adopt emergency Regulation 2000 and Regulation 2001 is to have the effect of prescribing \$735 per retail location as the total amount of reimbursement that affected retailers may retain from the Lumber Products Assessments they collect as reimbursement for start-up costs pursuant to PRC section 4629.5. The regulations are anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

The Board has performed an evaluation of whether proposed Regulations 2000 and 2001 are inconsistent or incompatible with existing state regulations and determined that the regulations are not inconsistent or incompatible with existing state regulations because they are the only state regulations prescribing the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). In addition, there is no federal assessment similar to the Lumber Products Assessment imposed by PRC section 4629.5 and there are no comparable federal regulations or statutes to proposed Regulations 2000 and 2001.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulations 2000 and 2001 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulations 2000 and 2001 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of proposed Regulations 2000 and 2001 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed Regulations 2000 and 2001 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of proposed Regulations 2000 and 2001 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of proposed Regulations 2000 and 2001 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of proposed Regulations 2000 and 2001 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed regulations should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on September 10, 2013, or as soon thereafter as the Board begins the public hearing regarding the adoption of proposed Regulations 2000 and 2001 during the September 10, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt proposed Regulations 2000 and 2001. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored versions of the text of Regulations 2000 and 2001 illustrating the express terms of the proposed regulations and an initial statement of reasons for

the adoption of the proposed regulations, which includes the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulations are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt proposed Regulations 2000 and 2001 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. Additional information could change staff's calculation of \$735 as the average start-up costs per retail location to implement the Lumber Products Assessment, help staff identify other, more reliable methods to calculate the average start-up costs per retail location, or both, as discussed in detail in the initial statement of reasons. Therefore, at the conclusion of the June 11, 2013, BTC meeting, the Board directed staff to continue to monitor the implementation of the Lumber Products Assessment and review the returns filed for the first and second quarters of 2013 to try to obtain additional information to help verify the number of retail locations that were required to begin collecting the new assessment on January 1, 2013, and the amount of revenue they are actually collecting. And, the Board indicated that, depending upon the additional information obtained, including information regarding the effectiveness of AB 1492 as a source of funding, and staff's recommendation at the public hearing, the Board may decide to adopt proposed Regulation 2000 without making any changes and not adopt proposed Regulation 2001, the Board may decide to adopt both proposed regulations without making any changes, or the Board may decide to adopt both regulations and change the total amount of reimbursement provided to affected retailers.

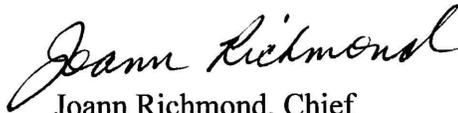
If a sufficiently related change is made to either proposed regulation, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

July 26, 2013

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts proposed Regulations 2000 and 2001, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION

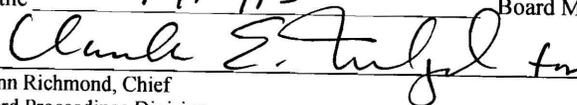


BOARD APPROVED

At the

9/10/13

Board Meeting



Joann Richmond, Chief
Board Proceedings Division

**Initial Statement of Reasons for
Proposed Adoption of California Code of Regulations,
Title 18, Sections 2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention***

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY,
AND ANTICIPATED BENEFITS

Current Law

Public Resources Code section 4629.5

Public Resources Code (PRC) section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products (Lumber Products Assessment) to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the State Board of Equalization (Board) to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain compliance costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, PRC section 4629.5 and the legislative analyses of AB 1492 do not expressly indicate how the Board is to determine the amount of reimbursement that retailers may retain. However, the statute does appear to provide that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers' first returns or next consecutive returns filed immediately after the retailers are required to begin collecting the Lumber Products Assessment on January 1, 2013. And, the statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for "costs to set up collection systems." (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p. 2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3) provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to

set up collection systems prior to the commencement of their collection duties on January 1, 2013. Neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of amounts in excess of the Board-specified reimbursement amount to compensate retailers for ongoing collection costs.

Emergency Regulation 2000

In addition, PRC section 4629.5, subdivision (a)(3), as added by AB 1492, authorizes the Board to “adopt emergency regulations,” pursuant to Government Code section 11346.1, to prescribe the amount retailers may retain from the Lumber Products Assessments they collect, and provides that the adoption of any such regulations “shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.” Therefore, on October 23, 2012, the Board voted to:

- Added new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the Lumber Products Assessment imposed by PRC section 4629.5 can be codified in the new chapter; and
- Adopt California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, which is codified in new chapter 4.1, as an emergency regulation, in order to determine the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), before retailers started collecting the new assessment on January 1, 2013.

Emergency Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

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 no more than \$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.

The \$250 retention amount in emergency Regulation 2000 is based on the Board’s understanding of the amount of retailer reimbursement discussed when AB 1492 was drafted. Staff also estimated the \$250 retention amount in emergency Regulation 2000 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 (PricewaterhouseCoopers report). And, emergency Regulation 2000 recognizes that an affected retailer’s start-up costs will be affected by the number of retail locations the retailer must get ready to collect the new assessment on January 1, 2013.

An emergency regulation adopted pursuant to Government Code section 11346.1 is effective for a 180-day period. The Office of Administrative Law (OAL) may approve two readoptions of the same emergency regulation, under specified circumstances, each for an effective period of 90 days. However, an emergency regulation will automatically be repealed and deleted from the California Code of Regulations, unless the regulation is readopted through the regular rulemaking process before the emergency regulation ceases to be effective. (Gov. Code, § 11346.1, subs. (e), (g), and (h).)

Emergency Regulation 2000 became effective on January 1, 2013. The Board subsequently readopted emergency Regulation 2000 in accordance with Government Code section 11346.1, subdivision (h). OAL approved the readoption on June 25, 2013, and indicated that readopted emergency Regulation 2000 will not expire until September 24, 2013. Therefore, OAL still has discretion to approve one more readoption of emergency Regulation 2000 before that time, which may extend the effective period of the regulation by an additional 90 days.

Specific Purpose of, Problem Intended to be Addressed by, Necessity for, and Anticipated Benefits from the Proposed Regulations

Business Taxes Committee Process

The California Forestry Association supported the initial adoption of emergency Regulation 2000 and the \$250 reimbursement amount established by the regulation. However, the Board did not immediately propose to adopt emergency Regulation 2000 through the regular rulemaking process because other interested parties, including the California Retailers’ Association and the West Coast Lumber & Building Material Association (West Cost), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee (BTC) process to meet with interested parties and discuss the adoption of a regulation, through the regular rulemaking process, to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by PRC section 4629.5 beginning January 1, 2013. However,

Board staff was not able to reach a consensus with all of the interested parties regarding the substantive provisions of the permanent regulation during the BTC process. Therefore, Board staff summarized the BTC process and the remaining areas of disagreement in Formal Issue Paper 13-005, and distributed it to the interested parties and Board Members on May 31, 2013.

Start-up Costs and Ongoing Costs

Formal Issue Paper 13-005 explains that some interested parties read PRC section 4629.5, subdivision (a)(3), as providing for reimbursement of “any costs” associated with the collection of the Lumber Products Assessment, including ongoing costs. However, as previously discussed, Board staff believes that PRC section 4629.5, subdivision (a)(3) authorizes the Board to determine and prescribe a specific one-time amount of reimbursement for start-up costs to implement the Lumber Products Assessment on January 1, 2013, that may be retained by all affected retailers, regardless of their actual costs; and staff does not believe that the statute allows retailers to retain a percentage of the assessments they collect or retain unique amounts of reimbursement for their actual start-up or ongoing costs. This is primarily because:

- PRC section 4629.5 expressly provides that retailers may only retain “an amount” determined by the Board and does not authorize retailers to calculate and retain other amounts;
- PRC section 4629.5 requires a retailer to retain the Board prescribed amount of reimbursement from the assessments reported on its “first return or next consecutive returns until the entire reimbursement amount is retained”; and
- PRC section 4629.5 does not expressly provide for the ongoing retention of a percentage of collected assessments, as do the California Tire Fee Law and Covered Electronic Waste Recycling Fee Law, which both expressly authorize retail sellers to retain 1.5 percent (PRC § 42885) and 3 percent (PRC § 42464), respectively, of the fees they collect as ongoing reimbursement of collection costs.

The formal issue paper also explains that staff’s understanding of PRC section 4629.5, subdivision (a)(3), is consistent with the Senate and Assembly floor analyses of AB 1492, which refer to retailers being reimbursed for “...costs to set up collection systems,” not ongoing costs of collection. The formal issue paper further explains that the interested parties that supported AB 1492, including the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, have confirmed that staff’s understanding of PRC section 4629.5, subdivision (a)(3) is consistent with the intent of AB 1492. In addition, the formal issue paper indicates that California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson have recommended to the Board that reimbursement be limited to startup costs.

Amount of Reimbursement for Start-up Costs

In addition, Formal Issue Paper 13-005 explains that Board staff and some interested parties continue to disagree about the “amount” that affected retailers should be permitted to retain as reimbursement for start-up costs. These interested parties believe that the reimbursement amount in emergency Regulation 2000 is too low and that the amount should be increased to compensate most retailers for their actual start-up costs. For example, the formal issue paper explains that Caseywood estimated that it cost \$7,000 to implement computer system, internal process, and accounting changes necessary to comply with the new law. Other retailers advised staff that their current accounting systems could not be updated to calculate the new assessment, and that they were forced to update both software and hardware, at an estimated cost of \$45,000, in order to implement the assessment. Also, West Coast surveyed its members and informed staff that that the members’ average cost to implement the assessment was \$5,480 per location.

The formal issue paper explains that, to get a better idea of retailers’ average costs to update their software for the Lumber Products Assessment, staff contacted three software companies that provide software packages for the retail lumber industry. One company indicated that it included the update to collect the assessment in its annual software update and did not charge an additional amount to its existing customers, and the other software providers advised staff that for current customers they generally charged \$250 per location to update their software to collect the assessment. The latter providers also explained that they priced their updates to match the amount provided in the Board’s emergency regulation as a courtesy to existing customers and as a selling point to attract new customers. The software providers also explained that their charges (if any) did not include the hours spent reviewing inventory and coding SKU’s (stock keeping units) for products subject to the assessment. These tasks were typically completed by a retailer’s employees with the expense incurred directly by the retailer. Further, staff learned that retailers who use custom or proprietary accounting software were not able to take advantage of pricing discounts from package software providers and generally paid hourly rates for software technicians to update their systems. Furthermore, staff found that one company estimated that for a new retail account, they would charge about \$30,000 plus a monthly fee to set up a whole new accounting system that performed various functions, including collecting the Lumber Products Assessment.

The formal issue paper also explains that, to get a better idea of retailers’ average costs to update their software for the assessment, staff continued to review the available cost data, including the PricewaterhouseCoopers Report, referred to above, and found another reasonable alternative method that could be used to estimate affected retailers’ average start-up costs. First, staff found that “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” and that the amount of allowed retention directly affects the revenue the fund receives. Second, in Board staff’s September 11, 2012, Legislative Enrolled Bill Analysis of AB 1492, staff estimated that the new one-percent Lumber Products Assessment would generate annual revenue of \$35 million from approximately \$3.5 billion of sales subject to the assessment. Third, during the BTC process, staff estimated, using U.S. Census Bureau data, that there were close to 10,000 retail locations

that were required to begin collecting the new assessment on January 1, 2013, and that each location would collect an annual average of \$3,500 in assessments on average annual sales of \$350,000 subject to the assessment.

Fourth, during the BTC process, staff also analyzed the PricewaterhouseCoopers Report in more detail, and found that the \$250 amount in emergency Regulation 2000 accounted for costs to program and service cash registers (and other point-of-sale systems), but did not account for the following seven other categories of compliance costs, included in the study: (1) training personnel; (2) documenting exempt sales; (3) customer service relating to assessment issues other than documenting exempt sales; (4) assessment-related software acquisition and license fees; (5) return preparation, making remittances, refund and credit claims, and research relating to the assessment; (6) dealing with audits and appeals; and (7) other costs (such as costs related to data storage, registration, etc.). Further, staff found that the PricewaterhouseCoopers Report shows an average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry. Furthermore, staff recognized that the percentage was derived from looking at some costs that were not properly classified as start-up costs, such as costs to deal with audits and appeals, but that the percentage also failed to account for some costs that were properly classified as start-up costs, such as costs to identify and code products subject to the assessment. Therefore, staff concluded that it would be reasonable to use the percentage to calculate start-up costs.

As a result, in the formal issue paper, staff calculated that the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, was approximately \$735 per retail location by multiplying the average amount of annual sales subject to the assessment that staff estimated would be made by each retail location (\$350,000) by 0.21 percent. Staff also proposed that affected retailers be permitted to retain an additional \$485 (\$735 - \$250) from the assessments they collect, for start-up costs, beginning January 1, 2014.

Alternative Recommendations

Based upon the above discussion, Formal Issue Paper 13-005 contained the following three recommendations:

1. Staff's recommendation that the Board propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and that the Board also propose to adopt new Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*, through the regular rulemaking process, to provide that "[b]eginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as [additional] reimbursement for startup costs associated with the collection of the assessment";
2. An alternative recommendation that the Board only propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, which is supported by the California Forestry Association, California

Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, and was recommended by California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson; and

3. Another alternative recommendation that the Board adopt a regulation, through the regular rulemaking process, that permits retailers to initially retain \$5,500 per retail lumber location and annually retain an additional \$1,500 per location on an ongoing basis, based upon a recommendation from West Coast.

BTC Meeting

The Board considered Formal Issue Paper 13-005 during its BTC meeting on June 11, 2013. The Board agreed that the purpose of AB 1492 was to ensure continued sustainable funding for California's forest program to protect the state's forest resources and that it was reasonable to consider how the amount of reimbursement established by the Board affects the revenue available for such purpose. The Board agreed with staff that PRC section 4629.5, subdivision (a)(3) authorizes the Board to determine and prescribe a specific one-time amount of reimbursement for start-up costs to implement the Lumber Products Assessment on January 1, 2013, that may be retained by all affected retailers, regardless of their actual costs. The Board also tentatively agreed with staff's revised calculation of the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, of approximately \$735 per retail location. Therefore, the Board voted to propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and also to propose to adopt new Regulation 2001, through the regular rulemaking process, to provide an additional \$485 per location, in addition to the \$250 allowed by Regulation 2000, as reimbursement for startup costs associated with the collection of the Lumber Products Assessment.

However, staff's revised calculation of the average start-up costs per retail location relied upon:

- Staff's estimate that the new one-percent Lumber Products Assessment would generate annual revenue of \$35 million from approximately \$3.5 billion of sales;
- Staff's estimate that there were close to 10,000 retail locations that were required to begin collecting the new assessment on January 1, 2013;
- The conclusion, drawn from those estimates, that each retail location would make average annual sales of \$350,000, subject to the assessment; and
- Staff opinion that it was reasonable to use the average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry from the PricewaterhouseCoopers Report to estimate the average start-up costs for the Lumber Products Assessment.

As a result, additional information may change staff's estimates, conclusions, and opinions, help staff identify other, more reliable methods to calculate the average start-up costs per retail location, or both. Therefore, at the conclusion of the BTC meeting, the Board also directed staff to continue to monitor the implementation of the Lumber

Products Assessment and review the returns filed for the first and second quarters of 2013 to try to obtain additional information to help verify the number of retail locations that were required to begin collecting the new assessment on January 1, 2013, and the amount of revenue they are actually collecting. And, the Board indicated that, depending upon the additional information obtained, including information regarding the effectiveness of AB 1492 as a source of funding, and staff's recommendation at the public hearing, the Board may decide to adopt proposed Regulation 2000 without making any changes and not adopt proposed Regulation 2001, the Board may decide to adopt both proposed regulations without making any changes, or the Board may decide to adopt both regulations and change the total amount of reimbursement provided to affected retailers.

PRC section 4629.5 creates a problem, within the meaning of Government Code section 11346.2, because it permits affected retailers to retain a Board-prescribed amount of the Lumber Product Assessments they collect as reimbursement for collection costs, but section 4629.5 and the legislative analyses of AB 1492 do not expressly indicate how the Board is to determine the amount of reimbursement. The Board has determined that the adoption of proposed Regulations 2000 and 2001 is reasonably necessary for the specific purpose of specifying the amount of reimbursement that affected retailers may retain pursuant to PRC section 4629.5, and addressing this problem. The regulations are anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

The adoption of proposed Regulations 2000 and 2001 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to proposed Regulation 2000 or 2001.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 13-005, the exhibits to the formal issue paper, and the comments made during the Board's discussion of the formal issue paper during its June 11, 2013, BTC meeting in deciding to propose the adoption of Regulations 2000 and 2001 described above.

ALTERNATIVES CONSIDERED

As previously discussed, the Board considered two alternatives to the proposed regulatory action. The first alternative was for the Board to only propose to adopt emergency Regulation 2000 through the regular rulemaking process. The second alternative was for the Board to adopt a regulation, through the regular rulemaking

process, that permits retailers to initially retain \$5,500 per retail lumber location and annually retain an additional \$1,500 per location on an ongoing basis.

The Board has not decided to pursue the first or second alternatives at this time. However, the Board has decided to propose to adopt emergency Regulation 2000 through the rulemaking process, and the Board has indicated that it may eventually decide to adopt emergency Regulation 2000 without adopting proposed Regulation 2001. Therefore, the Board is still considering and has not rejected the first alternative.

In addition, the Board has indicated that it may decide to increase the amount of reimbursement for start-up costs provided to affected retailers by the proposed regulations prior to their adoption. Therefore, the Board is still considering and has not completely rejected the part of the second alternative pertaining to the amount of reimbursement for start-up costs, although it does not appear likely that new information will support increasing the amount of reimbursement provided for start-up costs from \$735 to \$5,500 per retail location.

The Board has rejected the part of the second alternative regarding the proposed adoption of a regulation providing retailers with reimbursement of ongoing costs because the Board determined that providing reimbursement for ongoing costs is inconsistent with PRC section 4629.5.

No other alternatives have been identified and brought to the Board's attention, and no reasonable alternative has been identified and brought to the Board's attention that would be less burdensome and equally effective in achieving the purposes of the proposed regulatory action in a manner that ensures full compliance with PRC section 4629.5 and achieves the purpose of AB 1492.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(6) AND ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

PRC section 4629.5 imposes the Lumber Products Assessment and any start-up or ongoing costs that retailers incur in compliance with PRC section 4629.5 are imposed by that statute and not a regulatory action. PRC section 4629.5 also provides that affected retailers may retain a Board-prescribed amount, as reimbursement for start-up costs. However, the statute is silent as to how the Board should determine the amount. And, there is no single amount that will compensate all affected retailers for their actual start-up costs, but not more. Therefore, the Board is proposing to adopt Regulations 2000 and 2001 to implement, interpret and make specific PRC section 4629.5 by prescribing \$735 per retail location as a reasonable, average amount of reimbursement for start-up costs based upon information indicating that some retailers will incur more and some retailers will incur less actual start-up costs, and information indicating that providing more reimbursement may impair the effectiveness of the Lumber Products Assessment as a source of revenue.

Further, the proposed regulations will allow affected retailers to retain the Board-prescribed amount of reimbursement without having to incur additional, non-reimbursable costs to substantiate their actual start-up costs. Therefore, there is no basis to conclude that affected retailers will incur any costs in reasonable compliance with proposed Regulations 2000 and 2001.

Furthermore, the adoption of proposed Regulations 2000 and 2001 is anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

Therefore, the Board understands that the enactment of PRC section 4629.5 may have an economic impact on business. However, the Board has determined that the adoption of proposed Regulations 2000 and 2001 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

In addition, proposed Regulations 2000 and 2001 will not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed regulations will not affect the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of proposed Regulations 2000 and 2001 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

**Proposed Text of California Code of Regulations, Title 18, Sections
2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention***

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 no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

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

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

Regulation 2001. Additional Allowed Retailer Reimbursement Retention

Beginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, 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.

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

Regulation History

Type of Regulation: Lumber Products Assessment

Regulations: 2000 and 2001

Title: 2000, *Retailer Reimbursement Retention*

2001, *Additional Allowed Retailer Reimbursement Retention*

Preparation: Bradley Heller

Legal Contact: Bradley Heller

The proposed adoption of Lumber Products Assessment Regulations 2000, *Retailer Reimbursement Retention*, and 2001, *Additional Allowed Retailer Reimbursement Retention*, to prescribe the amount of reimbursement retailers may retain pursuant to Public Resources Code section 4629.5.

History of Proposed Regulation:

September 10, 2013	Public Hearing
July 26, 2013	OAL publication date; 45-day public comment period begins; Interested Parties mailing
July 16, 2013	Notice to OAL
June 11, 2013	Business Tax Committee, Board Authorized Publication (Vote 3-2)

Sponsor: NA

Support: NA

Oppose: NA



"Where Professionals Buy"

29112 Roadside Drive • PO Box 339 • Agoura Hills • California • 91301

Telephone No.: 1.818.991.1880

Fax No.: 1.818.991.2262

Mr. Rick Bennion, Regulations Coordinator
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0080

RECEIVED

SEP 9 2013

Board Proceedings

Dear Sir:

We are pleased that we are provided an opportunity to comment on the limit contemplated by the Board of Equalization on reimbursement of costs incurred by lumber retailers to set up and implement the lumber assessment collection.

It is imperative that the Board use current relative data for that decision rather than rely on outdated data that was based on sales tax collection changes on cash registers. We are in the modern computer programming times. This matter of selecting individual lumber products subject to the lumber assessment is far more complicated to set up and implement than modifying a cash register.

As a lumber and building materials distributor in Agoura Hills for over 35 years using thousands of SKUs to track inventory and cost of sales, we understand the complexity and time needed to identify and tag only those lumber products subject to the lumber assessment and then to modify the sales invoice to separately post that assessment on the invoice.

It has taken us many days of staff time to scroll through the entire inventory files and tag those selected items subject to the lumber assessment. This is a job that is a work in process.

Based on our own experience, we support the request being spearheaded by the West Coast Lumber & Building Material Association seeking a recovery of up to \$5,500 per retail location to setup and implement the Lumber Assessment.

Respectfully,



Michael Tuchman
President

From: Matt Petersen
Sent: Thursday, September 05, 2013 3:13 PM
To: Board Member Betty Yee
Subject: The Honorable Betty Yee.doc



The Honorable Betty Yee
State Board of Equalization
PO Box 942879
Sacramento, CA 94279-0080

Commissioner Yee,

We are a family owned building materials supplier in the North Bay, Santa Rosa. Our business has been located here for over 100 years and we employ over 80 people and provide lumber and building materials to a wide range of consumers. We urge the B.O.E. to seriously consider a more equitable dollar amount for setup and implementation of the "Lumber Assessment" costs we have incurred this year and continued costs to keep our point of sales computer system in compliance of this new tax. The W.C.L.B.M.A.'s has done a thorough analysis of it's members and we believe the amount of \$5,500 per retail location is very close to what our costs were to modify our systems to begin charging all consumers the extra 1% on the wide range of products we sell. The law clearly states retail lumber dealers are to be reimbursed for their costs in setting up the assessment collection process. We are charged with monitoring every product we handle to see if it's to be included in the scope the new law, which already is a moving target. The data used by the B.O.E. staff in trying to determine what the reimbursement should be is simply not relevant when compared to the complexity and variables we work with in the building materials we offer. The 2006 report is based on flipping a couple switches on a cash register vs. properly analyzing the percentage of wood in each product we provide to our customers are not even in the same ballpark. So we and our employees would appreciate your reconsidering the reimbursement amount allowed to us and other retailers throughout California.

Sincerely,

Matt Petersen
Vice President

**RELIABLE WHOLESALE LUMBER, INC.**

7600 REDONDO CIRCLE / P.O. BOX 191 / HUNTINGTON BEACH, CALIFORNIA 92648
TELEPHONES (714) 848-8222 / FAX (714) 847-1605 / SALES FAX (714) 848-5286
WEBSITE: www.rwl.net

September 9, 2013

Mr. Rick Bennion, Regulations Coordinator
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0080

On behalf of my company, Reliable Wholesale Lumber, Inc., I urge the Board of Equalization to provide the reimbursement of up to \$5,500 per location for costs to set up and implement the requirements to adhere to the law set forth by AB-1492, also known as the "Lumber Assessment" as stated in PRC Section 4629.5. As well as an ongoing annual reimbursement of up to \$1500 to enable ongoing changes to the list of assessed products.

We feel that the data used by the Board of Equalization staff in an attempting to find comparative costs data continues to be erroneous, outdated, and not relevant to the issue at hand. A 2006 PricewaterhouseCooper report (using data from 2003) of costs to implement sales tax changes in cash registers is clearly not the same as complex computer systems used in our industry and involves selective wood products to be included or not included under the assessment.

This legislation and subsequent regulations are a significant cost to my business and was difficult to implement and to comply with. To date, we have incurred over \$45,000.00 in IT costs to comply with this new regulation. Most of my peers in the retail lumber business have also had costly and time-consuming computer software and hardware updates.

The law, as passed, clearly provides for the FULL REIMBURSEMENT of lumber retailers for their costs associated with setting up the collection system. Please do not make it any more difficult my business, and the 110 employees of Reliable Lumber Co., to do business and operate in California.

Sincerely,

A handwritten signature in black ink that reads "Will Higman".

Will Higman - COO



CENTRAL VALLEY BUILDERS SUPPLY

Est. 1955

Rick Bennion, Regulations Coordinator
State Board of Equalization
PO Box 942879
Sacramento, CA 94279-0080

The Honorable Betty T. Yee
State Board of Equalization
PO Box 942879
Sacramento, CA 94279-0080

Dear Coordinator Bennion,

The West Coast Lumber and Building Material Association has done a fine job of analyzing the true costs of implementing the "Lumber Assessment." We believe the \$5,500 recommendation per retail location to set up and implement this "Lumber Assessment" is reasonable.

We appreciate the complexities facing you in your decision to reimburse the "Lumber Assessment" costs. As we understand it, the criteria used for the Board's report in 2006 are based on 2003 data of tax collection at cash registers. The report does not take into consideration the specialized lumberyard point of sale system used to track and monitor such items. Nor does it take into consideration the matter of individual lumberyards having to select, track, and monitor individual products.

Central Valley Builders Supply is a family-owned lumberyard founded in St. Helena in 1955. We have approximately 37,000 SKUs between four retail facilities, a distribution yard, and an export division. The current \$250 reimbursement for start-up costs and the additional \$485 reimbursement do not accurately offset all the ongoing costs associated with identifying, tracking, and managing all of these specific lumber codes on a daily basis. Fifty-five hundred dollars reflects the actual cost of managing the "Lumber Assessment" more realistically.

Respectfully,

David Templeton
CFO



Bruce Bauer
LUMBER
& SUPPLY

September 10, 2013

Mr. Rick Bennion
Regulations Coordinator
State Board of Equalization
PO Box 942879
Sacramento, Ca 94279-0080

Dear Mr. Bennion,

I am the third generation owner of a retail lumber yard founded in 1938. I am fifty-eight years of age and have worked here since I was a child. It has been my only job in life. At this time we employ about twenty five individuals.

The period we now call the "Great Recession" has been a tremendous struggle for our company. Many lumber yards of our size and type are no longer with us due to the times we have faced. The implementation of the Lumber Assessment could not have come at a worse time for our particular business as well as many others.

Our computers and other electronic devices are outdated and replacing them is not an option. Trying to implement the 1% lumber tax was difficult and time consuming. Needless to say it was expensive for a small business like ours. I would urge you to consider providing the \$5,500 per retail location that WCLBMA has requested.

David Thom
650-888-4902
David@BruceBauer.com
Bruce Bauer Lumber and Supply
134 San Antonio Circle
Mountain View, CA 94040

WEST COAST LUMBER & BUILDING MATERIAL ASSOCIATION

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

COMMENTS

**California State Board of Equalization
September 10, 2013**

I am Ken Dunham, Executive Director of the West Coast Lumber & Building Material Association. This organization is trade association comprised of retail lumber businesses, wood products wholesalers, producers and distributors, as well as other business providing products and services to this industry. Our membership consists of nearly 200 individual lumberyard locations in California, as well as more than 150 additional member businesses in supply and service categories. Our lumber dealer membership represents approximately 85 per cent of such businesses in the state. This is a \$4 billion industry in California and employs in excess of 55,000 people.

I want to focus on four points for your consideration.

1. Your staff report on the costs of implementation is based on inaccurate, out-of-date and non-germane data. What was used at the first hearing back in October, 2012, and continues to be cited, is a 2006 report from PriceWaterhouseCooper that attempted to calculate the cost of updating “cash registers” for sales tax changes. The report itself noted “coverage errors,” “missing data,” “measurement errors,” and “sampling errors.” The lumber retailers must manage complex computer system changes and updates required to collect this assessment. These are not cash registers and it is not a general sales tax calculation.

We’ve provided statistically accurate data from California lumber retailers on their costs to implement this assessment. The average cost of implementation is \$5,500 per location and that number is generally consistent for lumber businesses from the independent dealer to the national chain lumber businesses. That’s what we are asking – allow lumber retailers to retain up to \$5,500 on lumber assessment remittances.

2. The number of businesses that may be subject to the lumber assessment is a changing number. Your early staff reports indicated that as many as 40,000 California businesses could be affected. Now there are revised figures that say perhaps as many as 26,729 locations could be subject to the assessment but that figure is only obtained by including a figure of 26,177 accounts reporting no lumber assessment remittance. Of course not; they don’t sell lumber or don’t sell products subject to the assessment.

Your own reports showed returns from 2,543 reporting locations subject to the assessment at the end of the first quarter of 2013. The most recent data, through two quarters of reporting show 2,674 accounts showing lumber assessment payments. That is highly consistent with our own industry estimates of perhaps 3,000 affected businesses

3. The issue of “legislative intent” was raised in March when five members of the State Assembly Budget Committee, and not the whole committee, just five members, wrote you a letter and claimed that somehow the original \$250 reimbursement was their intent. No hearings, no debate, no discussion and some backroom deals and yet these legislators claim to know what the intent was. I asked Assemblymember Roger Dickenson recently very directly what he thought the intent was, and why he signed such a letter. He couldn’t answer me. He did not want to talk about it.

The relevant section of the statute says:

“The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to relations, for any costs associated with the collection of the assessment....”

That’s very clear. It says “any costs associated with the collection of the assessment.”

4. Finally, the issue of the amount of revenue to be generated from this assessment is highly relevant.. Your latest staff report, through two quarters of 2013 show \$15,214,467 collected to date and simply multiplying that by two gets a projected revenue number of \$30,428,984. That’s very much in line with previous estimates.

If we can rely on the estimates of what the various affected agencies need to carry out the provisions of AB 1492, that figure is in the \$20 million range. Your agency is additionally requesting about \$3 million to set up the collection process.

That leaves an significant amount of money to reimburse lumber retailers at a reasonable level as provided for in the legislation. A number of businesses will not get to a reimbursement and retention level of \$5,500 in one year; others have already remitted more than that. Spread out this reimbursement over enough time to get lumber retailers to that level. This assessment is likely going to be collected for years into the future.

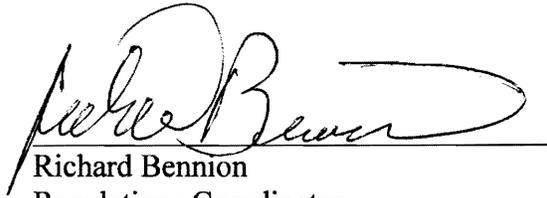
Provide lumber dealers up to \$5,500 in their costs to collect this ongoing assessment.

**WEST COAST
LUMBER &
BUILDING MATERIAL
ASSOCIATION**

Statement of Compliance

The State Board of Equalization, in process of adopting Lumber Products Assessment Regulations: 2000, *Retailer Reimbursement Retention*, and Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on July 26, 2013, 46 days prior to the public hearing.

August 20, 2013

A handwritten signature in black ink, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION
505 VAN NESS AVENUE, AUDITORIUM
SAN FRANCISCO, CALIFORNIA

REPORTER'S TRANSCRIPT
SEPTEMBER 10, 2013

ITEM F PUBLIC HEARING
F1. PROPOSED ADOPTION OF LUMBER PRODUCTS ASSESSMENT
REGULATIONS 2000, RETAILER REIMBURSEMENT RETENTION,
AND 2001, ADDITIONAL ALLOWED RETAILER REIMBURSEMENT
RETENTION

REPORTED BY: Kathleen Skidgel
CSR NO. 9039

P R E S E N T

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For the Board
of Equalization:

Jerome E. Horton
Chairman

Michelle Steel
Vice-Chairwoman

Betty T. Yee
Member

George Runner
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief, Board Proceedings
Division

For Board of
Equalization Staff:

Bradley Heller
Tax Counsel IV
Legal Department

Stephen Smith
Tax Counsel IV
Legal Department

Susanne Buehler
Chief, Sales and Use Tax
Tax Policy Division

---oOo---

INDEX OF SPEAKERS

1		
2	SPEAKER	PAGE
3	Ken Dunham	6, 39
4	Executive Director	
5	West Coast Lumber & Building Material Association	
6	Jeff Pardini	10
7	CEO	
8	Hills Flat Lumber Co.	
9	Augie Venezia	12
10	President	
11	Fairfax Lumber & Hardware	

---oOo---

1 505 VAN NESS AVENUE, AUDITORIUM

2 SAN FRANCISCO, CALIFORNIA

3 SEPTEMBER 10, 2013

4 ---oOo---

5 MR. HORTON: Members, let us reconvene the
6 meeting of the Board of Equalization.

7 Ms. Richmond, what is our next matter?

8 MS. RICHMOND: Our next item is F, Public
9 Hearing; F1, Proposed Adoption of Lumber Products
10 Assessment Regulations 2000, Retailer Reimbursement
11 Retention, and 2001, Additional Allowed Retailer
12 Reimbursement Retention.

13 And I believe we do have a couple of
14 speakers.

15 MR. HORTON: Okay. As Mr. Heller comes --
16 oh, Mr. Heller, would -- would you please introduce
17 the issues in this case?

18 MR. HELLER: Good evening, Chairman Horton.
19 I'm Bradley Heller from the Board's Legal
20 Department. I'm here with Stephen Smith, also from
21 the Board's Legal Department.

22 MR. HORTON: Welcome, Mr. Smith, Mr.
23 Heller.

24 MR. HELLER: Thank you.

25 We're here to request that the Board vote
26 adopt proposed Regulations 2000 and 2001 to
27 determine the amount of -- amount of -- excuse me --
28 the amount retailers may retain from the lumber

1 products assessments they collect as reimbursement
2 for startup costs associated with the collection of
3 the assessment.

4 We can answer any questions you may have.

5 MR. HORTON: Thank you very much.

6 Members, we want to welcome our guest
7 speakers today: Eric Roberts, CEO of Sunnyvale
8 Lumber Incorporated, as well as Jeff Pardini, CEO of
9 Hills Flat Lumber Company, and Mr. Ken Dunham, the
10 Executive Director of West Coast Lumber and Building
11 Materials Association.

12 Uhm --

13 MR. VENEZIA: You missed me.

14 MR. HORTON: Okay.

15 MR. VENEZIA: Augie Venezia, President
16 Fairfax Lumber and Hardware.

17 MR. HORTON: Welcome, sir. Thank you so
18 very much for your participation in the hearing.

19 Sir, we'd start with you, and then move to
20 your right, if you will, in your testimony.

21 MR. VENEZIA: Actually, I'd prefer if Ken
22 Dunham start.

23 MR. HORTON: We'll follow your directions,
24 sir.

25 MR. VENEZIA: Yes, please.

26 MR. HORTON: Ken, would you please. You're
27 on stage.

28 MR. DUNHAM: And Eric Roberts had to get

1 back to Sunnyvale. He has a daughter in soccer and
2 he remembered that he had the soccer balls in his
3 trunk.

4 MR. HORTON: Well, he did the right thing
5 irregardless of that.

6 ---oOo---

7 KEN DUNHAM

8 ---oOo---

9 MR. DUNHAM: I'm Ken Dunham. I'm the
10 Executive Director of West Coast Lumber Building
11 Material Association. We're a trade association
12 comprised of retail lumber businesses, wood product
13 wholesalers, producers, distributors, as well as a
14 number of other businesses that provide services to
15 this industry. Our membership is more than 200
16 individual lumber yards and related businesses in
17 California, as well as more than 150 additional
18 members throughout the timber wood products
19 industry.

20 We're -- we -- our -- our association
21 represents about 85 percent of the lumber yard,
22 independent lumber yards in the State of California.
23 It's a \$4 billion industry in California, and
24 employs in excess of 55,000 people at this time and
25 coming back.

26 I want to focus today on four points, some
27 of which we've talked about at previous hearings.
28 Your staff report on the costs of implementation is

1 based on inaccurate, out-of-date, and non germane
2 data. What was used at that first hearing back in
3 October 2012 and continues to be cited is a 2000
4 report that attempted to calculate the cost of
5 updating cash registers for sales tax changes. The
6 report itself noted coverage errors, missing data,
7 measurement errors, and sampling errors throughout
8 that report.

9 Lumber retailers must manage complex
10 computer systems and updates required to collect
11 this assessment. These are not cash registers and
12 it is not a general sales tax calculation.

13 We provided statistically accurate data
14 from California lumber retailers to the Board in the
15 past, to implement this assessment. Average cost of
16 implementation is \$5500 per location. And that
17 number is fairly consistent from lumber businesses,
18 all the way through the independent dealers, to the
19 large national chain lumber yards in the State of
20 California. That's what we're asking for a lot of
21 the lumber retailers, to retain up to \$5,500 on the
22 lumber assessment remittances.

23 Your -- the number of businesses that may
24 be subject to the lumber tax has been one that's
25 been of question. If you'll recall, back in October
26 2012 the figure of 40,000 businesses could be
27 affected was thrown out. It was later revised down
28 to perhaps now it says there's 26,729 locations that

1 could be subject to the tax or the assessment.

2 That figure, though, includes 26,000 and
3 some businesses that are not even probably in the
4 lumber business. They haven't made a -- they have
5 not made any kind of a filing back to the Board.
6 The number -- your own report showed returns of
7 2,543 at the end of the first quarter; end of the
8 second quarter you showed 2,674 businesses making
9 returns. That's very consistent with our position
10 of about 3,000, plus or minus, businesses in
11 California that will be affected by this lumber
12 assessment.

13 The issue of legislative intent was raised
14 in March by five members of the State Assembly
15 Budget Committee; not the whole committee, just five
16 members. They wrote a letter, claimed that somehow
17 the original \$250 reimbursement was their intent.
18 This is legislation that was passed with no
19 hearings, no debate, no discussion and a back-room
20 deal passed at 2:45 in the morning on the final
21 night of the session.

22 I asked Assembly Member Roger Dickinson
23 very pointedly what he thought the intent was. He
24 couldn't answer me, and he did not want to talk
25 about it.

26 The relevant section of that statute
27 says -- it's very clear -- it says, "any cost
28 associated with the collection of the assessment."

1 Finally, our fourth point, the amount of
2 revenue to be generated from this assessment is
3 highly relevant to the issue here. Your latest
4 staff report, through two quarters of 2013, show
5 that \$15,214,000 has been collected to date. Simply
6 multiplying that by two gets you to about 30,000
7 five -- 30,000,500 by the end of the year. That's
8 probably low. Probably the third quarter of the
9 year will be the best quarter for most of the lumber
10 dealers in the state. That's very much in line with
11 the previous estimates.

12 So if we can rely on the estimates of what
13 the various affected agencies wanted, to carry out
14 the provisions of AB 1492, that figure is in the 20
15 to \$22 million range. We haven't seen anything
16 different on that.

17 Your agency is requesting three million
18 plus to implement that, to implement the collection
19 process and cover your costs of doing business on
20 this. That leaves a significant amount of money to
21 reimburse the lumber retailers at a reasonable
22 level, as provided for in the legislation. A number
23 of the businesses will not get to that reimbursement
24 or retention level of \$5500 for some time. Others
25 are already there. We've heard a number of them
26 have already paid in excess of 30 to \$40,000 into
27 this fund.

28 Um, you spread out the reimbursement over

1 enough time to give these people enough time to
2 recoup up to \$5,500, uh, it -- it won't take all
3 that long for everybody to get there.

4 This assessment is likely going to be
5 collected for a number of years. We urge and
6 request that you provide the lumber dealers up to
7 \$5,500 in their costs for implementing this
8 assessment.

9 Thank you very, very much.

10 ---oOo---

11 JEFF PARDINI

12 ---oOo---

13 MR. PARDINI: Good afternoon. Jeff
14 Pardini, Hills Flat Lumber Company.

15 MR. HORTON: Welcome.

16 MR. PARDINI: Thank you.

17 Very interesting day today. I can't wait
18 to get online and find out how all these cases turn
19 out.

20 Anyway, I just kind of wanted to fill you
21 in on what was, uh, required of us to make this
22 assessment possible.

23 The first thing is, is we, in our two
24 stores, carry about 128,000 different items, SKUs in
25 our store. So we had to go through and flag
26 departments.

27 Within departments we have one that's
28 called "specialty decking" which includes composite

1 lumbers. Some of the composite lumbers contain ten
2 percent wood. Some did not; some were all plastics.
3 So then we were having to try to break out items
4 within the departments.

5 It took the person that buys the lumber at
6 least a week to go through that. And then we also
7 have another person that buys our commodity items.
8 There was -- we were going back and forth with our
9 HardiePlank in there and things of that nature. So
10 he had to spend about another week or two.

11 Now, a sales tax change is really simple.
12 We just change the sales tax. We deliver into 17
13 different tax codes, so we'd have to go through and
14 change 17 tax codes.

15 The problem lied in the situation where we
16 have customers that have a master account and then
17 they have jobs; some have up to 50 jobs under the
18 customer account, and each one of these may be
19 delivering into up to 17 different tax codes. So
20 what we had to do is we had to build a whole set of
21 17 new tax codes with the extra one percent on 'em.
22 We had to go in and hand-change 25,000 accounts. It
23 took our entire accounting staff the last three
24 weeks of the year to do this.

25 So, that -- that's some of the dilemma. We
26 came up with actually more like \$9600 per location.
27 But the average seems to be around 5500. So we're
28 willing to acquiesce and drop down to 5500. But,

1 trust me, the cost was a lot higher than that.

2 If it was a simple sales tax change, this
3 would have been easy. We would have been -- 250
4 bucks would have covered it per location. But this
5 was not a simple sales tax change. It was very
6 complex.

7 Thank you.

8 MR. HORTON: Thank you.

9 ---oOo---

10 AUGIE VENEZIA

11 ---oOo---

12 MR. VENEZIA: As I stated, my name is Augie
13 Venezia. I'm president of Fairfax Lumber and
14 Hardware, in Fairfax, California. Fairfax Lumber
15 and Hardware was founded in 1912 and has been
16 independently owned since. Today we are 100 percent
17 employee-owned.

18 I'm also the 2013 President of the West
19 Coast Lumber and Building Materials Association
20 which you've heard from in past hearings. This
21 association has been active in California for more
22 than a hundred years under several organizational
23 names.

24 The points made in letters being sent to
25 you and in testimony today mirror our experience in
26 having to implement the lumber assessments. It has
27 been costly, time consuming, and, I can add,
28 difficult to explain to the public that simply sees

1 this as yet another tax on being a resident or
2 contractor in this state. We've had to explain this
3 issue at the customer level, and that has been
4 difficult and even provocative at times.

5 Our business is very typical of a Calif- --
6 of California retailers. Many are more than a
7 hundred years old and most are independently owned,
8 and all of us are very subject to the challenges of
9 the economy. More than 80 lumber yard locations
10 have closed in this state in the past seven years
11 and others are wondering about their future, even in
12 this so-called improving economy.

13 Lumber -- the lumber and wood products
14 association was hit especially hard by the recession
15 of the past several years. Yet those businesses
16 surviving all this have stepped up, grudgingly at
17 times, and made the necessary business changes to
18 collect this unpopular assessment.

19 We are simply asking for the Board of
20 Equalization to use the correct data and implement
21 this reimbursement fairly and as the law says.

22 Thank you.

23 MR. HORTON: Thank you very much.

24 Members? Member Yee.

25 MS. YEE: Thank you very much,

26 Mr. Chairman.

27 I, um -- I think since this matter was last
28 before us we -- the staff has a little bit more data

1 to try to get comfortable around what it is that
2 we're looking at in terms of the number of retailers
3 that are potentially eligible for the -- the
4 reimbursements.

5 So, any -- can we get an update about that?

6 MS. BUEHLER: Good afternoon, Members. I
7 am Susanne Buehler, Chief of the Sales and Use Tax
8 Policy Division.

9 Yes, we have been working diligently to try
10 and refine the numbers, the number of locations and
11 retailers that should be coded with the lumber
12 account feature for our systems.

13 We've reduced the number of locations now
14 to just shy of 25,000 locations, and we continue to
15 work with retailers to try and refine it further.

16 We have sent out notices and email blasts
17 to those accounts that have been, uh -- supposed to
18 be lumber, but either haven't reported lumber or are
19 still delinquent and asked them, "Are you selling
20 lumber? And if not, please call us, email us, and
21 we'll remove it from your account."

22 With that in mind, we removed over 9,000 of
23 the accounts from this, and that's how we're able to
24 get down to the 24,000, 25,000 number at this
25 point.

26 MS. YEE: Mm-hmm, okay.

27 MS. BUEHLER: But we still do have a lot of
28 unknowns.

1 MS. YEE: All right. I guess at what point
2 do we essentially kind of make an assumption that
3 some of these retailers aren't selling engineered
4 wood products?

5 MS. BUEHLER: Our current plan is after one
6 year of full reporting if they've reported zero
7 lumber on each of their returns, then we will remove
8 that from their account characteristic code, from
9 their account, and assume they are not going to be
10 reporting any lumber in the future.

11 MS. YEE: Okay. So we have -- so the
12 statute identifies the retailers as those selling
13 engineered wood products effective January 1st of
14 2013?

15 MS. BUEHLER: Correct.

16 MS. YEE: So if there are four successive
17 quarters of zero reporting or reporting zero, then
18 you would essentially deregister them?

19 MS. BUEHLER: Right.

20 MS. YEE: Okay. All right. So there's
21 kind of some finiteness to that.

22 MS. BUEHLER: Yes.

23 MS. YEE: Okay. And the frustrating
24 part -- and I want to just say I really appreciate
25 the patience of our retailer community here. This
26 has been, I know, very, very frustrating. And at
27 the same time I -- I -- that I agree with the
28 legislative intent, not necessarily, you know,

1 having us land at the \$250. I also think there is a
2 broader legislative intent with respect to the
3 purpose of the assessment, and -- and that's what I
4 really want to kind of bring into focus because we
5 have a little bit of a balancing act to try to
6 achieve here.

7 And obviously what we set as the
8 reimbursement amount is very much dependent and
9 reliant on the information about the number of
10 retailers, but also the more global perspective
11 about the intent of the assessment providing a -- a
12 sustainable funding source for the -- the Force
13 Resources Program. So -- and I know the revenue
14 estimates, I believe, have slipped a little bit from
15 what was originally, I think, estimated; is that
16 correct?

17 MS. BUEHLER: I believe -- and I don't want
18 to speak for Joe Fitz, but I believe he's
19 comfortable with between the 30 and \$35 million
20 revenue estimate at this point.

21 MS. YEE: Okay. I guess given that -- that
22 the numbers with some of these variables are still
23 fluid, I'm a little reluctant without further, I
24 guess, direction from the legislature to -- to move
25 here.

26 And it's not that I don't want to because
27 this has been a very, very frustrating program to
28 implement. And, uh -- and I do agree with you, it's

1 not like imposing new sales tax rate or a rate
2 change. Very, very complicated.

3 But at the same time, I think as we set
4 the, uh -- the reimbursement level, we can't lose
5 sight of the fact that the assessment was put into
6 place for a specific purpose and that the level
7 can't be so high as to, you know, frustrate that
8 original purpose.

9 So, uh, I think what we have currently
10 before us is the original 250 and then plus the
11 additional \$435 per location that's before us now.

12 MS. BUEHLER: Yes.

13 MS. YEE: Okay.

14 Thank you.

15 MR. RUNNER: Mr. Chair?

16 MR. HORTON: Mr. Runner.

17 MR. RUNNER: Yeah, let me, just -- a couple
18 of issues in regards to that. Because I think,
19 again, it is that balancing act, trying to figure
20 out how to keep whole the intent of the legislature
21 in regards to the amount of money that they had
22 focused on.

23 And then the two factors then that we've
24 got in regards to the reimbursement rate, in terms
25 of trying to keep that whole, it seems to be there
26 are two primary issues. One is, you know, this
27 issue in regards to how many retailers we're going
28 to reimburse and how much revenue's going to come

1 in.

2 The challenge that we have is that we have
3 maybe a little better number but not a lot better
4 number than we did a couple months ago. And I --
5 and I -- and, you know, it's going to be a challenge
6 because I think right now we're at 25,000 retailers
7 and my understanding is folks like Bloomingdales,
8 you know, there's some, you know, trash companies,
9 there's a number of folks that are still on that
10 list.

11 And what -- and the process that we have,
12 in order to get a new number -- or the process we
13 have right now requires them to proactively call us
14 and say, no, we don't plan to collect that. Well,
15 there's no real motivation for somebody who's in
16 business to try to figure out how to pick up the
17 phone and tell us to do that. There's no penalty
18 for them. There's no -- they got their business to
19 run, why do they need to do that?

20 So I don't think we're going to get the
21 real number until after we go through this year and
22 we -- and we see the reporting is zero. And I think
23 at that point we're going to have the number at that
24 point.

25 Uhm, the other issue is, I think we are
26 dealing with a bit of a business cycle. And so I
27 would assume that, um -- that we're going to see --
28 we have first and second quarter numbers. I assume

1 third quarter's probably going to be better than
2 second quarter; and I assume fourth quarter's
3 probably, because the cycle, going to be better
4 than -- than -- than third cycle. So I think we're
5 going to see those numbers after a year, too.

6 So I guess the bottom line is, I think we
7 will have more information. So my -- my observation
8 I guess or question is, number one, I'd like to see
9 us at least move forward with a reimbursement
10 increase that we've got. Because certainly that's
11 an increase and going in the right direction. But
12 at the same time what would be the process if, you
13 know, um, next -- after we go through a year of
14 reporting, we drop off all these retailers then
15 after the year and we -- and we get a year of
16 revenue then at that point so we can -- we can make
17 sure that the intent of the legislature is being --
18 was -- was -- is, uh -- is made -- kept whole, what
19 would be the process then that we would need to do
20 in order to kind of reopen this with -- with
21 basically numbers that are more reliable?

22 MR. HELLER: Senator Runner, I think the --
23 the Board could request that staff report back
24 sometime after the beginning of the year; I think
25 probably a little bit after January 1 would be
26 necessary for us to --

27 MS. BUEHLER: March or April.

28 MR. HELLER: Yeah, March or April.

1 MR. RUNNER: I was going to say I'd rather
2 almost wait a few more months with -- for better
3 information than come earlier with information that
4 is still -- we're still trying to wrestle with.

5 MS. BUEHLER: Right.

6 MR. RUNNER: So, you know, I'd rather have
7 a good report, you know, in -- in April or May than
8 all of a sudden be frustrated because we don't have
9 the full numbers, you know, in February.

10 MR. HELLER: Yes, Senator Runner, I think
11 after -- as part of that, staff could be directed to
12 report back to the Board with the updated
13 information. And then the Board could be given
14 options as whether or not they want to, uh, direct
15 staff to begin in additional rulemaking process --

16 MR. RUNNER: Sure.

17 MR. HELLER: -- to provide for more
18 reimbursement or if there's any other actions of the
19 Board as necessary.

20 MR. RUNNER: I -- I would think it's
21 appropriate for a report back to the Board once we
22 get that better information. And then at that point
23 we can tell whether or not we need to -- we can go
24 forward or whether or not we can't because we can't
25 fulfill the intent of the legislature; uhm, or
26 whether or not, boy, the numbers have really dropped
27 down and instead of 25,000 it's actually, you know,
28 6,000. And, uh -- and instead of \$30 million

1 collected, it's, you know, \$38 million. And then
2 that gives us more information, I think, and -- and
3 be able to still hold -- keep, uh, retailers as
4 whole as possible in the process but at the same
5 time meet the conditions of the legislature. So --

6 MS. YEE: Mr. Chairman?

7 MR. HORTON: Member Yee.

8 MS. YEE: I always think more information
9 is obviously better.

10 Process question: What -- what do we do in
11 terms of the matters before us today, as we're
12 waiting for additional information?

13 MR. HELLER: Right now staff is requesting
14 that the Board vote to adopt the regulations. We've
15 started the rulemaking process, and the
16 notices are -- this rulemaking process will stay
17 active for one year from the date that we publish
18 the notice and will expire if the Board doesn't take
19 any action by then.

20 MS. YEE: Okay.

21 MR. HELLER: In the meantime, the Board
22 could vote to adopt, or the Board could direct us to
23 make changes, or the Board could just vote to --

24 MS. YEE: Okay.

25 MS. MANDEL: There's -- there's something
26 else though on Regulation -- I mean, that's the
27 general rules.

28 MR. HELLER: Yeah, I wasn't talking about

1 the emergency issue if that's what you're --

2 MS. MANDEL: That's what I was -- yeah,
3 because there's the emergency issue.

4 MR. HELLER: That's correct.

5 And to Ms. Mandel's mentioning of the
6 emergency issue, we've -- the Board has previously
7 adopted Regulation 2000 as an emergency regulation
8 and then readopted it twice. The second
9 readoption's going to be submitted to OAL, I
10 believe, early next week. Assuming that's approved,
11 that will extend the effective period of Regulation
12 2000, the emergency regulation, for another,
13 approximately, 90 days, depending on --

14 MS. MANDEL: That doesn't take us -- that
15 takes us just maybe into the new year, on the
16 emergency reg.

17 MR. HELLER: That's right. And then it
18 would just expire as if it was not in the California
19 Code of Regulations anymore.

20 MS. MANDEL: Okay. So what happens if
21 it -- if it -- that's the regulation that was for
22 1/1/12, right?

23 MR. HELLER: 1/1/13.

24 MS. MANDEL: 1/1 -- 1/1/13, yeah. I'm
25 getting older even as I sit here.

26 MR. HELLER: It's been a busy year.

27 MS. MANDEL: Um, 1/1/13.

28 So if it -- if it stayed as an emergency

1 regulation and then just expired, it was still good
2 for the 1/1/13? I mean --

3 MR. HELLER: Well, let me say it was in
4 effect while it was -- while it was -- while it was
5 effective, it was valid. I'm not totally certain
6 what the affect of it is once it's expired. And I
7 think the way that the -- the Administrative
8 Procedure Act is written is it's as if it's been
9 repealed, the language.

10 So -- so, I think we would probably
11 recommend adopting Regulation 2000 to avoid having
12 it expire while we're reporting back to the Board.

13 MS. MANDEL: Okay. Because the -- the
14 discussion is over the additional amount, that's why
15 you're saying that.

16 MR. HELLER: That's correct. And the Board
17 has never adopted Regulation 2001 --

18 MS. MANDEL: Right.

19 MR. HELLER: -- and you could consider
20 that.

21 MS. MANDEL: Right. Okay.

22 MR. RUNNER: And I -- I -- I think that's a
23 good process for us, to adopt the regulation before
24 us but leave open the issue of report back to us
25 once better numbers come, and then we could just --

26 MS. MANDEL: And then we could --

27 MR. HORTON: Is that a motion, Mr. Runner?

28 MR. RUNNER: That's my motion.

1 MS. MANDEL: Can I -- can I --

2 MR. HORTON: So moved.

3 MS. MANDEL: Okay. Can I just ask as part
4 of that report --

5 MR. HORTON: Let me see if there's a second
6 really quick.

7 MS. MANDEL: Okay.

8 MR. HORTON: Is there a second?

9 MS. YEE: Mm-hmm.

10 MR. HORTON: Second.

11 Member Mandel.

12 MS. MANDEL: One other thing is that --
13 that, uh -- that -- that the -- one of the gentlemen
14 mentioned, which I see all these numbers that we get
15 of how many accounts, how many sub accounts -- we
16 have 25,000 accounts still alive, whatever -- and
17 then we have the revenue numbers. Then to the
18 extent we have the consideration of the legislative
19 intent of making sure the programs work and have the
20 money --

21 MR. RUNNER: Mm-hmm.

22 MS. MANDEL: -- all that kind of stuff.
23 Every time I just see, well, it's this many accounts
24 and this is how much a reimbursement someone might
25 be requesting, you know, it's -- it's -- it's
26 simplistic -- although that's what I do because
27 those are the only two numbers I have -- to multiply
28 them together and say then this is the amount.

1 What one of the gentlemen mentioned is some
2 retailers may have already -- you know, they -- they
3 may sell so much stuff and have so much of this fee
4 being collected that they -- they may be already
5 reimbursed at -- assuming, you know, their -- it's
6 not -- it's not a one-for-one because there's some
7 people who maybe will take them quite some time
8 before they're reimbursed, even at whatever number.
9 And some people maybe could have already been
10 reimbursed if the number was higher.

11 So it's not just multiply accounts. Like I
12 had done this thing here with my crummy little math
13 somewhere on one of these pages that had like 3,000
14 retailers. If I was looking at the Assembly Budget
15 Committee Members' letter where they gave a range of
16 dollars that they thought was the range they were
17 thinking of for reimbursement, that 3,000 retailers,
18 it was -- if my math was right -- at the upper limit
19 of 10 million range, it was like 3333.

20 But, um, it seemed to me if I was just
21 looking -- and that's just like one -- that assumes
22 it all comes in one year. And there seemed to be
23 more a little bit of complications potentially on
24 when the reimbursement is coming in and whether
25 there's some retailer out there who sells so much --

26 I mean, I don't know how that plays in, but
27 to the extent you're considering the -- the
28 budgetary purpose --

1 MR. HORTON: Yeah.

2 MS. MANDEL: -- it seems that those are at
3 least things to have some -- I'm being incredibly
4 inarticulate. But it seemed to me that those were
5 things to try to consider because I -- every time I
6 type it this way I think I'm not really thinking of
7 it right because it's not necessarily that all the
8 money's going to come out in that first year. And
9 if it's a one-time thing that we do, um, it's not
10 like it's going to be coming out every single year.
11 And maybe that's a job for Mr. Fitz; I -- I don't
12 know.

13 So I don't know how they fold that into a
14 report or if there's a way to at least address that,
15 but it's something that's been bothering me, kind of
16 all along.

17 MR. HORTON: I share your concern, Member
18 Mandel. And, you know, at some point we very well
19 may want to seek additional direction from the
20 legislature. However, there's going to be windfalls
21 at each end of the spectrum. Those individuals who
22 have a significant number of stores and a per capita
23 basis, or a per store location, there could very
24 well be a windfall, depending on -- on the amount.
25 And then on the back end, those who have fewer
26 stores would end up absorbing more of the cost.

27 We seem to have a consensus though on
28 establishing that the legislation -- legislative

1 intent was to in fact be able to fund the activity
2 that was set forth in the legislation. There's also
3 a question, but at the same time to what extent can
4 we try to keep the taxpayers whole as possible
5 within those -- within those guidelines?

6 So --

7 MS. STEEL: I have objection.

8 MR. HORTON: We, um -- we, um, would look
9 forward to the additional data from the staff in
10 that regard and keeping those -- you know, those
11 concerns in mind, if you will, even if it means -- I
12 mean, I think the legislation gave us quite a bit of
13 latitude to try to, to the best of our ability, to
14 keep the taxpayer whole, uhm, and at the same time
15 meet the objective of the legislation. So, even if
16 that means spreading the reimbursement out over more
17 than just one period of time.

18 I see you pulling the mic. I'm going to go
19 to Member Steel first, if in fact she --

20 MS. STEEL: Well, I have objection here
21 because it sounds rational that we going to start
22 giving the reimbursement startup cost from 250, and
23 next year four hundred -- whatever it comes out.
24 But those numbers from 25,000 to -- it's going to be
25 dropped down next year, that we're going to see the
26 number first.

27 And second, that this is a startup cost so
28 each locations they need money right away to change

1 all the cash registers and other stuffs. So why
2 don't we just give them the higher number, and then
3 we going to adjust for next year that whatever comes
4 in, then we can refigure out. Because definitely
5 it's going to be less than 25,000 locations that we
6 have to give them.

7 So I think that that startup cost has to be
8 higher.

9 MR. HORTON: Okay.

10 So there's a motion on the floor to adopt
11 staff recommendation to adopt the permanent
12 Regulation 2000 and 2001, setting the rate of
13 one-time reimbursement of 735.

14 Also, it seems to me that that is modified
15 to allow the option of the Board to reconsider
16 increasing that rate to reflect, as closely as
17 possible, to the actual amount based on the
18 accumulation of data provided by the industry and
19 that in which the Department can solidify,
20 particularly in relation -- in relationship to the
21 fixed cost and variable cost, I'd like to have some
22 understanding of what those are. What your fixed
23 costs are in relationship to the calculation as
24 well.

25 Objection noted, I think.

26 Ms. Richmond, please call the roll.

27 MS. RICHMOND: Mr. Horton.

28 MR. HORTON: Aye.

1 MS. RICHMOND: Ms. Steel.

2 MS. STEEL: No.

3 MS. RICHMOND: Mr. Runner.

4 MR. RUNNER: Aye.

5 MS. RICHMOND: Ms. Yee.

6 MS. YEE: Aye.

7 MS. RICHMOND: Ms. Mandel.

8 MS. MANDEL: Aye.

9 MS. RICHMOND: Motion carries.

10 MS. YEE: Can I ask a question?

11 MR. HORTON: Member -- Member Yee?

12 MS. YEE: Uh, just in terms of the
13 rulemaking process, is there a next natural
14 timeframe that this is back before us to talk about
15 update and the data?

16 MR. HELLER: My understanding is we
17 would -- the Board's adopted Regulations 2000/2001
18 so we'll complete the rulemaking process and file
19 the, um -- the rulemaking file with OAL to make
20 those permanent regulations. Then the staff will
21 report back in, um -- I think we said by April of
22 next year --

23 MR. RUNNER: Mm-hmm.

24 MR. HELLER: -- with the updated
25 information and try to address the issues as far as,
26 um -- as how quickly retailers would be able to
27 recoup their reimbursement amount, depending on how
28 much sales they make, I think to address

1 Ms. Mandel's concern.

2 Then at that time the Board would be able
3 to reconsider whether it wants to take any other
4 regulatory action at that time.

5 MS. MANDEL: Right. But at that -- but
6 that would -- if the Board says, yes, we think it
7 should be more than the additio- -- than whatever
8 it's been, it's a new rulemaking process.

9 MR. HELLER: That would be correct.

10 MR. HORTON: Mm-hmm.

11 MR. HELLER: It would start a new
12 process.

13 MS. MANDEL: Okay.

14 MS. YEE: I -- I'm just --

15 MR. HORTON: There seemed to be some --

16 MS. YEE: No. And then I --

17 MS. MANDEL: I just want to make sure
18 that --

19 MS. YEE: Yeah.

20 MR. HORTON: Member Yee.

21 MS. YEE: So -- so --

22 MS. MANDEL: It's a new notice.

23 MS. YEE: That's right.

24 MS. MANDEL: Right? A new notice of
25 rulemaking if they decide that it's -- that the
26 Board decides it wants a different number?

27 MR. RUNNER: We're kind of -- I mean, we're
28 kind of stuck, aren't we? Because there's really

1 not another option because we got the emergency
2 rule, uh, expiring.

3 MS. YEE: Yeah.

4 MR. RUNNER: And so we -- and what we have
5 before us is an increase.

6 MS. YEE: And -- and my only concern is
7 that April seems far out there. And I agree with
8 Ms. Mandel, we're talking about then a new process
9 that would -- if we wanted to pursue anything
10 different, at that point in time would be a new
11 rulemaking process.

12 I just did not want to cut off any
13 opportunity to go back to the legislature as we
14 learn more for additional direction or guidance. So
15 it just seems like April puts us into a period of
16 where we may be losing an opportunity to express,
17 you know, any potential --

18 MR. HORTON: Let's see --

19 MS. YEE: -- ideas or proposals.

20 MR. HORTON: Let's see if staff can report
21 back, let's say around the first of the year, as to
22 the data that they have.

23 MS. YEE: They won't have the data because
24 it's a full year and --

25 MS. BUEHLER: The fourth quarter returns
26 aren't due until January 31st.

27 MS. YEE: Yeah.

28 MS. BUEHLER: And we have to allow

1 everything to be entered into the system because we
2 do have some folks who are still doing manual
3 returns --

4 MS. YEE: Mm-hmm.

5 MS. BUEHLER: -- that are some of the
6 larger taxpayers. So we need to make sure we have
7 all the data in.

8 So I would expect mid to late February we
9 will be able to start pulling the information out of
10 our mainframe and then build the reports for you.

11 MS. YEE: And -- and then maybe a thing to
12 do would be to just reserve some discussion around
13 this with the legislature, whether it be through the
14 budget process or otherwise. If we wait until
15 April, I think we may miss an opportunity to get it
16 in front of them.

17 MR. HORTON: So let's -- let's have a
18 discussion with the Legislative Director about
19 setting forth a process by which we can have that
20 conversation with the legislature on behalf of the
21 retailers as well as on behalf of the --

22 MS. YEE: Yeah.

23 MS. MANDEL: Okay.

24 MR. HORTON: Then the other concern?

25 MS. MANDEL: Well, you know, I know there's
26 a motion but we're still sitting here. And the
27 motion passed.

28 But when I heard the -- I mean in terms of

1 sort of process, uhm, between adopting them both
2 now and going through the formal -- you know,
3 finishing the process with OAL and then these are
4 final adopted regs, we get a report back in the
5 April time period, the Board looks at everything and
6 figures out. And maybe -- maybe nothing happens.
7 Maybe the Board (inaudible) happens. And then
8 something happens, it's a new Notice of Public
9 Hearing, new rulemaking process. As opposed to
10 adopting Rule 2000 which is the one you're concerned
11 about the with the emergency reg and continuing a
12 hearing on 2001 until some -- I mean, I'm not sure
13 process-wise or whether --

14 MR. HORTON: Members, if we may, um --

15 MS. MANDEL: It's just that option --

16 MR. HORTON: Just to keep us legal, if you
17 will, uhm, I would entertain a motion to rescind
18 the, um -- the original, uh -- uh, vote, to open the
19 item back up for the discussion.

20 MS. YEE: So move.

21 MR. HORTON: So moved by Member Yee, second
22 by Member Mandel.

23 Without objection, Members, such will be
24 the order.

25 The matter's now back before us for
26 discussion.

27 MS. MANDEL: Thank you.

28 MR. HORTON: Yeah. The Members bring up

1 some complexity as it relates to the expiration
2 dates. And I -- and I share this with the retailers
3 more than anything else.

4 You know, as the emergency legislation
5 expires and the desire to have this dialogue with
6 the legislative body, uhm, in gathering information
7 from a rulemaking perspective, we are in a better
8 position in order to expedite the process when we do
9 get some information is to start the rulemaking
10 process as closely as we can to when the information
11 is coming forth and to continue with the emergency
12 regulation activity. Is that the consensus?

13 MR. RUNNER: Does that mean there's a new
14 time frame?

15 MS. MANDEL: Well --

16 MR. RUNNER: Is that --

17 MR. HORTON: Well, it actually --

18 MS. YEE: It actually puts --

19 MR. HORTON: -- shortened the time frame.

20 MS. YEE: Yeah.

21 MR. RUNNER: No, I mean -- yeah, help me
22 understand the dates or what that -- what that
23 means.

24 MS. MANDEL: So this is -- so Mr. Heller,
25 emergency Regulation 2000, which is, now we have the
26 Regulation 2000.

27 So what I was talking about was sort of
28 what you said earlier which was adopt emergency

1 Regulation 2000 because there's no -- doesn't seem
2 to be any -- you know, it is what it is, and you
3 didn't want to have any sort of confusion about if
4 it goes away and expires.

5 MR. RUNNER: Mm-hmm.

6 MS. MANDEL: You spoke earlier about the
7 general Administrative Procedures Act rules that
8 says once we start the formal rulemaking process,
9 it's good for a year. We're still in that. This is
10 the public hearing, focused on 2000 and -- the
11 Regulation 2001.

12 So, um, if the Board adopts 2001, as it's
13 written, at this hearing, it goes final. If we get
14 the information in April and, um, decide to do
15 something more, other or different than what's in
16 2001 as it's written now, we would have to start a
17 new formal rulemaking process, propose a
18 new regula- -- propose an amendment to the
19 regulation, hold another public hearing on a 45-day
20 notice, that takes time, and do what we're doing
21 now, right?

22 MR. HELLER: That's correct.

23 MS. MANDEL: Okay. Okay.

24 The other thing that I was talking about
25 was, because we have a year, one of the things we
26 talked about when we set this public hearing was --
27 you know, we're still looking at the 435, or
28 whatever the number is, or thinking about it -- was

1 if there's an interest in having the more
2 information from April, one of the things when I
3 first heard talking about we'll know more after we
4 get the year's worth of returns is, is it an option
5 to continue the public hearing on 2001, adopt
6 Regulation 2000 so you don't have the emergency
7 mess-up --

8 MR. HORTON: Mm-hmm.

9 MS. MANDEL: -- continue the public hearing
10 on 2001 until after we have that report?

11 MS. YEE: Mm-hmm.

12 MR. HORTON: Mr. Heller.

13 MS. MANDEL: And then -- so that's what I
14 was thinking was a possible option. But I didn't --
15 I sort of heard it and didn't really hear it, so --

16 MR. HELLER: Sure.

17 MR. HORTON: Mr. Heller.

18 MR. HELLER: Ms. Mandel, you're totally
19 correct. What I said, the notice started the
20 one-year period for this rulemaking and started on
21 July 26. So we essentially have to July 25th of
22 2014 to complete rulemaking and have the complete
23 file delivered to OAL.

24 MS. YEE: Mm-hmm.

25 MR. HELLER: The only thing I'd add as a
26 caveat is essentially we -- we have Regulation 2001
27 with proposed text. If the Board does want to
28 change it, we would have to do the 15-day file

1 process and then come back.

2 I think we could still probably -- it's
3 still possible, assuming the Board meetings all line
4 up, that we could get that done in time. But I'm
5 not sure it's -- I wouldn't guarantee it a hundred
6 percent. It -- it seems logistically possible. I
7 just don't want to say it's --

8 MS. MANDEL: Because you haven't looked at
9 the calendar for next year and where July 26th is
10 compared to where any Board meetings might be?

11 MR. HELLER: Right. And I understand
12 there's not a schedule, I don't believe, yet --

13 MS. MANDEL: Not yet.

14 MR. HELLER: -- that's been adopted, so
15 I can't look at it to tell you.

16 And then, in addition, I just have not had
17 the experience yet with OAL where we adopted some
18 regulations in proposed notice and not others, and
19 where we tried to finish the rulemaking process as
20 to some. I don't -- I've never read a statute that
21 says we couldn't do it, so I think we can. And I'll
22 check into OAL if that's the Board's decision. I
23 just wanted to mention that.

24 MS. YEE: Mm-hmm.

25 MR. RUNNER: But what that would -- I mean,
26 yeah, that certainly keeps us open in this
27 discussion and gets us then before we end up, in
28 theory, then adopting Regulation 2001 with this new

1 and additional information, if indeed that all works
2 out. But then what it -- the -- the downside of
3 that would be that retailers then do not have that
4 extra reimbursement during this period of time.

5 MS. MANDEL: Oh, yeah, there's that.

6 MR. RUNNER: Right? I mean, that -- that's
7 the other side of that. They're capped at the 250
8 as opposed to the -- as opposed to the 735.

9 So, you know, I'm not in the business, but
10 I mean if I was in the business, I'd say give me
11 my -- make sure I get my money now and we can talk
12 about what money you're going to give me later, uh,
13 later, uh, would be kind of my --

14 MS. YEE: Yeah.

15 MR. RUNNER: -- thought.

16 MS. MANDEL: I just -- I -- when I heard
17 "what else could we do" and that's what I --

18 MR. RUNNER: Yeah.

19 MS. MANDEL: -- that's what came to my
20 mind.

21 MS. YEE: Yeah.

22 MR. HORTON: Okay, Members. I think we
23 have a consensus here.

24 MR. RUNNER: I think we're back to the
25 original motion.

26 MR. HORTON: Can we just --

27 MS. MANDEL: And I don't feel guilty then.

28 MS. YEE: No.

1 MR. HORTON: I'm going to go to the
2 industry for a one-minute comment, just to make sure
3 that we're -- we're not --

4 ---oOo---

5 KEN DUNHAM

6 ---oOo---

7 MR. DUNHAM: Well, at this point the -- the
8 lumber dealers have made the investment necessary to
9 do this.

10 Uh, \$250, if that's going to ultimately be
11 what they get, that's -- that's -- that's -- that's
12 not acceptable.

13 MR. HORTON: Okay.

14 MR. DUNHAM: If we move on to a more
15 realistic number in the future and that's possible,
16 based on more accurate numbers of how many retail
17 dealers are out there -- excuse me -- and how much
18 money is generated by the assessment, yeah, that --
19 that -- that gets to the point.

20 I'm -- I'm more concerned about the
21 legislative intent at this point. The legislative
22 intent is fairly clear, it's to fund the several
23 programs that were defined in AB 1492.

24 MS. YEE: Mm-hmm.

25 MR. DUNHAM: The law is equally clear that
26 says the lumber shall -- lumber dealers shall be
27 reimbursed. And that was the way that piece of
28 legislation, in the limited amount of discussion it

1 had, was sold to some people that signed on to
2 that.

3 MR. HORTON: Okay.

4 MR. RUNNER: Well, let me just, again to
5 kind of make -- my understanding here is that
6 what -- what is before us is if we adopt this 2001
7 now, that ratchets up from the 250 to the -- to,
8 what, the 735. So, you know, we at least jump to
9 there. And then it still leaves us the possibility
10 of going back. Now, true, you have to open up a
11 new -- a new process at that point, but at least
12 we've moved up to the 735.

13 MR. DUNHAM: That's accepted.

14 MR. RUNNER: If we wait and not move on --
15 on 2001 now, we stay at the 250, then come back and
16 address whatever the new number is in the future.
17 So that's --

18 MR. HORTON: I'll take that as a motion.
19 Mr. Runner moves. Ms. Mandel seconds.

20 Without objection, Members, such will be
21 the order.

22 MS. YEE: Ms. Steel objects.

23 MS. STEEL: Still object.

24 MR. HORTON: Noting the objection of Ms.
25 Steel on the recommendation to adopt staff
26 recommendation to adopt permanent Regulation 2000
27 and 2001, set forth the rate of one-time
28 reimbursement 735, giving consideration to the

1 rulemaking process, and also being conscious of all
2 the sunsets that are involved.

3 Ms. Richmond, please call the roll.

4 MS. RICHMOND: Mr. Horton.

5 MR. HORTON: Aye.

6 MS. RICHMOND: Ms. Steel.

7 MS. STEEL: No.

8 MS. RICHMOND: Mr. Runner.

9 MR. RUNNER: Aye.

10 MS. RICHMOND: Ms. Yee.

11 MS. YEE: Aye.

12 MS. RICHMOND: Ms. Mandel.

13 MS. MANDEL: Aye.

14 MS. RICHMOND: Motion carries.

15 MR. HORTON: Thank you very much.

16 ---oOo---

17

18

19

20

21

22

23

24

25

26

27

28

REPORTER'S CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on September 10, 2013 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 41 constitute a complete and accurate transcription of the shorthand writing.

Dated: September 20, 2013

Kathleen Skidgel



KATHLEEN SKIDGEL, CSR #9039
Hearing Reporter

Tuesday, September 10, 2013

RRS Johal Corporation, 511276 (CH)

1-1-05 to 3-31-08, \$49,532.73 Tax, \$0.00 Negligence Penalty

For Petitioner:

Rajinder Johal, Taxpayer

Butch Kruse, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the understatement of reported taxable sales.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Jethani & Associates, Inc., 560580, 611299, 563266 (GH)

7-1-02 to 12-31-05, \$1,999.28 Claim for Refund

7-1-06 to 6-30-09, \$17,311.59 Tax, \$0.00 Negligence Penalty

For Petitioner/Claimant:

Ram Jethani, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues in the matters of 560580, and 611299:

Whether claimant is entitled to a refund based on adjustments to the audited understatement of taxable sales.

Whether claimant is entitled to a refund based on additional credits for unclaimed prepaid sales tax paid to fuel suppliers.

Issue in the matter of 563266:

Whether any additional adjustments to the amount of unreported taxable sales are warranted.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 6:01 p.m. and reconvened at 6:09 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

PUBLIC HEARINGS**Proposed Adoption of Lumber Products Assessment Regulations 2000, Retailer Reimbursement Retention, and 2001, Additional Allowed Retailer Reimbursement Retention**Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed adoption of Lumber Products Assessment Regulations 2000, *Retailer Reimbursement Retention*, and 2001, *Additional Allowed Retailer Reimbursement Retention*, to prescribe the amount of reimbursement retailers may retain pursuant to Public Resources Code section 4629.5 (Exhibit 9.3).

Tuesday, September 10, 2013

Speakers: Ken Punham, Executive Director, West Coast Lumber & Building Material Association
Jeff Pardini, CEO, Hills Flat Lumber Company
Augie Venezia, President, Fairfax Lumber & Hardware

Action: (Motion expunged.)
Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that its previous motion be expunged.

Upon motion of Mr. Runner, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board adopted permanent Regulations 2000 and 2001 as recommended by staff.

The Board directed staff to gather data and report to the Board in April 2014 regarding the amount of lumber assessment reported as well as the number of retailers reporting the lumber product assessment.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

All Star Tamales, Inc., 578981 (CH)
4-1-08 to 3-31-11, \$34,596.53 Tax

Action: Redetermine as recommended by the Appeals Division.

Juan Luis Carbajal and Antonio Carbajal, 561633, 606872 (JH)
1-1-07 to 3-31-10, \$61,981.26, \$4,314.06 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Daniel Reynoso De La Torre, 554179 (JH)
10-1-06 to 9-30-09, \$79,391.77 Tax, \$7,939.18 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Elaine Florence Gunnari, 572734 (CH)
1-1-09 to 12-31-09, \$18,942.00 Tax

Action: Redetermine as recommended by the Appeals Division.

John W. MacDonald, 549046 (JH)
4-1-07 to 6-30-07, \$0.00 Tax, \$4,471.20 Late Filing Penalty

Action: Redetermine as recommended by the Appeals Division.

Francis Odo, 561670 (CH)
7-1-06 to 9-30-09, \$42,418.50 Tax, \$4,241.89 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80
916-445-2130 • FAX 916-324-3984
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

July 26, 2013

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

**Proposed to Amend Regulations 2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention***

NOTICE IS HEREBY GIVEN

Public Resources Code (PRC) section 4629.5, subdivision (a)(1) imposes a one-percent assessment on purchasers of lumber products and engineered wood products (Lumber Products Assessment) on and after January 1, 2013. PRC section 4629.5, subdivision (a)(3) requires retailers to collect the assessment and provides that retailers “may retain an amount [from the assessments they collect] equal to the amount of reimbursement, as determined by the State Board of Equalization [(Board)] pursuant to regulations, for any costs associated with the collection of the assessment” imposed by subdivision (a)(1). The Board, pursuant to the authority vested in it by PRC section 4629.5, subdivision (a)(3) has adopted California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, as an emergency regulation pursuant to Government Code section 11346.1, to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). The Board now proposes to adopt emergency Regulation 2000, through the regular rulemaking process, to comply with Government Code section 11346.1, and proposes to adopt new Regulation 2001, *Additional Allowed Retailer Reimbursement*, to specify an additional amount of reimbursement that a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), beginning January 1, 2014.

PUBLIC HEARING

The Board will conduct a meeting in the Auditorium Room, at the California Public Utilities Commission’s headquarters, located at 505 Van Ness Avenue, San Francisco, California, on September 10, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on September 10, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed Regulations 2000 and 2001.

AUTHORITY AND REFERENCE

PRC section 4629.5

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

PRC section 4629.5

PRC section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent Lumber Products Assessment on purchasers of lumber products and engineered wood products to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the Board to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain **compliance** costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, PRC section 4629.5 and the legislative analyses of AB 1492 do not expressly indicate how the Board is to determine the amount of reimbursement that retailers may retain. However, the statute does appear to provide that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers' first returns or next consecutive returns filed immediately after the retailers are required to begin collecting the Lumber Products Assessment on January 1, 2013. And, the statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for "costs to set up collection systems." (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p. 2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3)

provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to the commencement of their collection duties on January 1, 2013. Neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of amounts in excess of the Board-specified reimbursement amount to compensate retailers for ongoing collection costs.

Emergency Regulation 2000

In addition, PRC section 4629.5, subdivision (a)(3), as added by AB 1492, authorizes the Board to “adopt emergency regulations,” pursuant to Government Code section 11346.1, to prescribe the amount retailers may retain from the Lumber Products Assessments they collect, and provides that the adoption of any such regulations “shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.” Therefore, on October 23, 2012, the Board voted to:

- Added new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the Lumber Products Assessment imposed by PRC section 4629.5 can be codified in the new chapter; and
- Adopt Regulation 2000, which is codified in new chapter 4.1, as an emergency regulation, in order to determine the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), before retailers started collecting the new assessment on January 1, 2013.

Emergency Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

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 no more than \$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.

The \$250 retention amount in emergency Regulation 2000 is based on the Board’s understanding of the amount of retailer reimbursement discussed when AB 1492 was drafted. Staff also estimated the \$250 retention amount in emergency Regulation 2000 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 (PricewaterhouseCoopers report). And, emergency Regulation 2000 recognizes that an affected retailer’s start-up costs will be affected by the number of retail locations the retailer must get ready to collect the new assessment on January 1, 2013.

An emergency regulation adopted pursuant to Government Code section 11346.1 is effective for a 180-day period. The Office of Administrative Law (OAL) may approve two readoptions of the same emergency regulation, under specified circumstances, each for an effective period of 90 days. However, an emergency regulation will automatically be repealed and deleted from the California Code of Regulations, unless the regulation is readopted through the regular rulemaking process before the emergency regulation ceases to be effective. (Gov. Code, § 11346.1, subs. (e), (g), and (h).)

Emergency Regulation 2000 became effective on January 1, 2013. The Board subsequently readopted emergency Regulation 2000 in accordance with Government Code section 11346.1, subdivision (h). OAL approved the readoption on June 25, 2013, and indicated that readopted emergency Regulation 2000 will not expire until September 24, 2013. Therefore, OAL still has discretion to approve one more readoption of emergency Regulation 2000 before that time, which may extend the effective period of the regulation by an additional 90 days.

Effect, Objectives, and Benefits of the Proposed Adoption of Regulations 2000 and 2001

Business Taxes Committee Process

The California Forestry Association supported the initial adoption of emergency Regulation 2000 and the \$250 reimbursement amount established by the regulation. However, the Board did not immediately propose to adopt emergency Regulation 2000 through the regular rulemaking process because other interested parties, including the California Retailers’ Association and the West Coast Lumber & Building Material Association (West Cost), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee (BTC) process to meet with interested parties and discuss the adoption of a regulation, through the regular rulemaking process, to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by PRC section 4629.5 beginning January 1, 2013.

Start-up Costs and Ongoing Costs

During the BTC process, some interested parties read PRC section 4629.5, subdivision (a)(3), as providing for reimbursement of “any costs” associated with the collection of the Lumber Products Assessment, including ongoing costs. However, as previously discussed, Board staff believes that PRC section 4629.5, subdivision (a)(3) authorizes the Board to determine and prescribe a specific one-time amount of reimbursement for start-up costs to implement the Lumber Products Assessment on January 1, 2013, that may be retained by all affected retailers, regardless of their actual costs; and staff does not believe that the statute allows retailers to retain a percentage of the assessments they collect or retain unique amounts of reimbursement for their actual start-up or ongoing costs. This is primarily because:

- PRC section 4629.5 expressly provides that retailers may only retain “an amount” determined by the Board and does not authorize retailers to calculate and retain other amounts;
- PRC section 4629.5 requires a retailer to retain the Board prescribed amount of reimbursement from the assessments reported on its “first return or next consecutive returns until the entire reimbursement amount is retained”; and
- PRC section 4629.5 does not expressly provide for the ongoing retention of a percentage of collected assessments, as do the California Tire Fee Law and Covered Electronic Waste Recycling Fee Law, which both expressly authorize retail sellers to retain 1.5 percent (PRC § 42885) and 3 percent (PRC § 42464), respectively, of the fees they collect as ongoing reimbursement of collection costs.

Staff’s understanding of PRC section 4629.5, subdivision (a)(3), is consistent with the Senate and Assembly floor analyses of AB 1492, which refer to retailers being reimbursed for “...costs to set up collection systems,” not ongoing costs of collection. The interested parties that supported AB 1492, including the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, have confirmed that staff’s understanding of PRC section 4629.5, subdivision (a)(3) is consistent with the intent of AB 1492. In addition, California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson have recommended to the Board that reimbursement be limited to startup costs.

Amount of Reimbursement for Start-up Costs

In addition, Board staff and some interested parties continued to disagree about the “amount” that affected retailers should be permitted to retain as reimbursement for start-up costs during the BTC process. These interested parties believe that the reimbursement amount in emergency Regulation 2000 is too low and that the amount should be increased to compensate most retailers for their actual start-up costs. For example, Caseywood estimated that it cost \$7,000 to implement computer system, internal process, and accounting changes necessary to comply with the new law. Other retailers advised staff that their current accounting systems could not be updated to calculate the new assessment, and that they were forced to update both software and

hardware, at an estimated cost of \$45,000, in order to implement the assessment. Also, West Coast surveyed its members and informed staff that that the members' average cost to implement the assessment was \$5,480 per location.

To get a better idea of retailers' average costs to update their software for the Lumber Products Assessment, staff contacted three software companies that provide software packages for the retail lumber industry. One company indicated that it included the update to collect the assessment in its annual software update and did not charge an additional amount to its existing customers, and the other software providers advised staff that for current customers they generally charged \$250 per location to update their software to collect the assessment. The software providers also explained that their charges (if any) did not include the hours spent reviewing inventory and coding SKU's (stock keeping units) for products subject to the assessment. These tasks were typically completed by a retailer's employees with the expense incurred directly by the retailer. Further, staff learned that retailers who use custom or proprietary accounting software were not able to take advantage of pricing discounts from package software providers and generally paid hourly rates for software technicians to update their systems. Furthermore, staff found that one company estimated that for a new retail account, they would charge about \$30,000 plus a monthly fee to set up a whole new accounting system that performed various functions, including collecting the Lumber Products Assessment.

To get a better idea of retailers' average costs to update their software for the assessment, staff also continued to review the available cost data, including the PricewaterhouseCoopers Report, referred to above, and found another reasonable alternative method that could be used to estimate affected retailers' average start-up costs. First, staff found that 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 and that the amount of allowed retention directly affects the revenue the fund receives. Second, in Board staff's September 11, 2012, Legislative Enrolled Bill Analysis of AB 1492, staff estimated that the new one-percent Lumber Products Assessment would generate annual revenue of \$35 million from approximately \$3.5 billion of sales subject to the assessment. Third, during the BTC process, staff estimated, using U.S. Census Bureau data, that there were close to 10,000 retail locations that were required to begin collecting the new assessment on January 1, 2013, and that each location would collect an annual average of \$3,500 in assessments on average annual sales of \$350,000 subject to the assessment.

Fourth, staff also analyzed the PricewaterhouseCoopers Report in more detail, and found that the \$250 amount in emergency Regulation 2000 accounted for costs to program and service cash registers (and other point-of-sale systems), but did not account for all of the categories of compliance costs, included in the study. Further, staff found that the PricewaterhouseCoopers Report shows an average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry. Furthermore, staff recognized that the percentage was derived from looking at some costs that were not properly classified as start-up costs, such as costs to deal with audits and appeals, but that the percentage also failed to account for some costs that were properly classified as start-up costs, such as costs to identify and code products subject to

the assessment. Therefore, staff concluded that it would be reasonable to use the percentage to calculate start-up costs.

As a result, during the BTC process, Board staff calculated that the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, was approximately \$735 per retail location by multiplying the average amount of annual sales subject to the assessment that staff estimated would be made by each retail location (\$350,000) by 0.21 percent. Staff proposed that affected retailers be permitted to retain an additional \$485 (\$735 - \$250) from the assessments they collect, for start-up costs, beginning January 1, 2014. Therefore, staff recommended that the Board propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and that the Board also propose to adopt new Regulation 2001, through the regular rulemaking process, to provide that “[b]eginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as [additional] reimbursement for startup costs associated with the collection of the assessment.”

During its BTC meeting on June 11, 2013, the Board tentatively agreed with staff’s revised calculation of the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, of approximately \$735 per retail location. Therefore, the Board voted to propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and also to propose to adopt new Regulation 2001, through the regular rulemaking process. The Board’s objective for proposing to adopt emergency Regulation 2000 and Regulation 2001 is to have the effect of prescribing \$735 per retail location as the total amount of reimbursement that affected retailers may retain from the Lumber Products Assessments they collect as reimbursement for start-up costs pursuant to PRC section 4629.5. The regulations are anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

The Board has performed an evaluation of whether proposed Regulations 2000 and 2001 are inconsistent or incompatible with existing state regulations and determined that the regulations are not inconsistent or incompatible with existing state regulations because they are the only state regulations prescribing the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). In addition, there is no federal assessment similar to the Lumber Products Assessment imposed by PRC section 4629.5 and there are no comparable federal regulations or statutes to proposed Regulations 2000 and 2001.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulations 2000 and 2001 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulations 2000 and 2001 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of proposed Regulations 2000 and 2001 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed Regulations 2000 and 2001 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of proposed Regulations 2000 and 2001 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of proposed Regulations 2000 and 2001 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of proposed Regulations 2000 and 2001 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed regulations should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on September 10, 2013, or as soon thereafter as the Board begins the public hearing regarding the adoption of proposed Regulations 2000 and 2001 during the September 10, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt proposed Regulations 2000 and 2001. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored versions of the text of Regulations 2000 and 2001 illustrating the express terms of the proposed regulations and an initial statement of reasons for

the adoption of the proposed regulations, which includes the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulations are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt proposed Regulations 2000 and 2001 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. Additional information could change staff's calculation of \$735 as the average start-up costs per retail location to implement the Lumber Products Assessment, help staff identify other, more reliable methods to calculate the average start-up costs per retail location, or both, as discussed in detail in the initial statement of reasons. Therefore, at the conclusion of the June 11, 2013, BTC meeting, the Board directed staff to continue to monitor the implementation of the Lumber Products Assessment and review the returns filed for the first and second quarters of 2013 to try to obtain additional information to help verify the number of retail locations that were required to begin collecting the new assessment on January 1, 2013, and the amount of revenue they are actually collecting. And, the Board indicated that, depending upon the additional information obtained, including information regarding the effectiveness of AB 1492 as a source of funding, and staff's recommendation at the public hearing, the Board may decide to adopt proposed Regulation 2000 without making any changes and not adopt proposed Regulation 2001, the Board may decide to adopt both proposed regulations without making any changes, or the Board may decide to adopt both regulations and change the total amount of reimbursement provided to affected retailers.

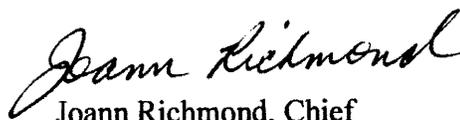
If a sufficiently related change is made to either proposed regulation, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

July 26, 2013

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts proposed Regulations 2000 and 2001, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,


Joann Richmond, Chief
Board Proceedings Division

JR:reb

**Initial Statement of Reasons for
Proposed Adoption of California Code of Regulations,
Title 18, Sections 2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention***

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY,
AND ANTICIPATED BENEFITS

Current Law

Public Resources Code section 4629.5

Public Resources Code (PRC) section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products (Lumber Products Assessment) to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the State Board of Equalization (Board) to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain compliance costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, PRC section 4629.5 and the legislative analyses of AB 1492 do not expressly indicate how the Board is to determine the amount of reimbursement that retailers may retain. However, the statute does appear to provide that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers' first returns or next consecutive returns filed immediately after the retailers are required to begin collecting the Lumber Products Assessment on January 1, 2013. And, the statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for "costs to set up collection systems." (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p. 2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3) provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to

set up collection systems prior to the commencement of their collection duties on January 1, 2013. Neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of amounts in excess of the Board-specified reimbursement amount to compensate retailers for ongoing collection costs.

Emergency Regulation 2000

In addition, PRC section 4629.5, subdivision (a)(3), as added by AB 1492, authorizes the Board to “adopt emergency regulations,” pursuant to Government Code section 11346.1, to prescribe the amount retailers may retain from the Lumber Products Assessments they collect, and provides that the adoption of any such regulations “shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.” Therefore, on October 23, 2012, the Board voted to:

- Added new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the Lumber Products Assessment imposed by PRC section 4629.5 can be codified in the new chapter; and
- Adopt California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, which is codified in new chapter 4.1, as an emergency regulation, in order to determine the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), before retailers started collecting the new assessment on January 1, 2013.

Emergency Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

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 no more than \$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.

The \$250 retention amount in emergency Regulation 2000 is based on the Board’s understanding of the amount of retailer reimbursement discussed when AB 1492 was drafted. Staff also estimated the \$250 retention amount in emergency Regulation 2000 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 (PricewaterhouseCoopers report). And, emergency Regulation 2000 recognizes that an affected retailer’s start-up costs will be affected by the number of retail locations the retailer must get ready to collect the new assessment on January 1, 2013.

An emergency regulation adopted pursuant to Government Code section 11346.1 is effective for a 180-day period. The Office of Administrative Law (OAL) may approve two readoptions of the same emergency regulation, under specified circumstances, each for an effective period of 90 days. However, an emergency regulation will automatically be repealed and deleted from the California Code of Regulations, unless the regulation is readopted through the regular rulemaking process before the emergency regulation ceases to be effective. (Gov. Code, § 11346.1, subs. (e), (g), and (h).)

Emergency Regulation 2000 became effective on January 1, 2013. The Board subsequently readopted emergency Regulation 2000 in accordance with Government Code section 11346.1, subdivision (h). OAL approved the readoption on June 25, 2013, and indicated that readopted emergency Regulation 2000 will not expire until September 24, 2013. Therefore, OAL still has discretion to approve one more readoption of emergency Regulation 2000 before that time, which may extended the effective period of the regulation by an additional 90 days.

Specific Purpose of, Problem Intended to be Addressed by, Necessity for, and Anticipated Benefits from the Proposed Regulations

Business Taxes Committee Process

The California Forestry Association supported the initial adoption of emergency Regulation 2000 and the \$250 reimbursement amount established by the regulation. However, the Board did not immediately propose to adopt emergency Regulation 2000 through the regular rulemaking process because other interested parties, including the California Retailers’ Association and the West Coast Lumber & Building Material Association (West Cost), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee (BTC) process to meet with interested parties and discuss the adoption of a regulation, through the regular rulemaking process, to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by PRC section 4629.5 beginning January 1, 2013. However,

Board staff was not able to reach a consensus with all of the interested parties regarding the substantive provisions of the permanent regulation during the BTC process. Therefore, Board staff summarized the BTC process and the remaining areas of disagreement in Formal Issue Paper 13-005, and distributed it to the interested parties and Board Members on May 31, 2013.

Start-up Costs and Ongoing Costs

Formal Issue Paper 13-005 explains that some interested parties read PRC section 4629.5, subdivision (a)(3), as providing for reimbursement of “any costs” associated with the collection of the Lumber Products Assessment, including ongoing costs. However, as previously discussed, Board staff believes that PRC section 4629.5, subdivision (a)(3) authorizes the Board to determine and prescribe a specific one-time amount of reimbursement for start-up costs to implement the Lumber Products Assessment on January 1, 2013, that may be retained by all affected retailers, regardless of their actual costs; and staff does not believe that the statute allows retailers to retain a percentage of the assessments they collect or retain unique amounts of reimbursement for their actual start-up or ongoing costs. This is primarily because:

- PRC section 4629.5 expressly provides that retailers may only retain “an amount” determined by the Board and does not authorize retailers to calculate and retain other amounts;
- PRC section 4629.5 requires a retailer to retain the Board prescribed amount of reimbursement from the assessments reported on its “first return or next consecutive returns until the entire reimbursement amount is retained”; and
- PRC section 4629.5 does not expressly provide for the ongoing retention of a percentage of collected assessments, as do the California Tire Fee Law and Covered Electronic Waste Recycling Fee Law, which both expressly authorize retail sellers to retain 1.5 percent (PRC § 42885) and 3 percent (PRC § 42464), respectively, of the fees they collect as ongoing reimbursement of collection costs.

The formal issue paper also explains that staff’s understanding of PRC section 4629.5, subdivision (a)(3), is consistent with the Senate and Assembly floor analyses of AB 1492, which refer to retailers being reimbursed for “...costs to set up collection systems,” not ongoing costs of collection. The formal issue paper further explains that the interested parties that supported AB 1492, including the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, have confirmed that staff’s understanding of PRC section 4629.5, subdivision (a)(3) is consistent with the intent of AB 1492. In addition, the formal issue paper indicates that California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson have recommended to the Board that reimbursement be limited to startup costs.

Amount of Reimbursement for Start-up Costs

In addition, Formal Issue Paper 13-005 explains that Board staff and some interested parties continue to disagree about the “amount” that affected retailers should be permitted to retain as reimbursement for start-up costs. These interested parties believe that the reimbursement amount in emergency Regulation 2000 is too low and that the amount should be increased to compensate most retailers for their actual start-up costs. For example, the formal issue paper explains that Caseywood estimated that it cost \$7,000 to implement computer system, internal process, and accounting changes necessary to comply with the new law. Other retailers advised staff that their current accounting systems could not be updated to calculate the new assessment, and that they were forced to update both software and hardware, at an estimated cost of \$45,000, in order to implement the assessment. Also, West Coast surveyed its members and informed staff that that the members’ average cost to implement the assessment was \$5,480 per location.

The formal issue paper explains that, to get a better idea of retailers’ average costs to update their software for the Lumber Products Assessment, staff contacted three software companies that provide software packages for the retail lumber industry. One company indicated that it included the update to collect the assessment in its annual software update and did not charge an additional amount to its existing customers, and the other software providers advised staff that for current customers they generally charged \$250 per location to update their software to collect the assessment. The latter providers also explained that they priced their updates to match the amount provided in the Board’s emergency regulation as a courtesy to existing customers and as a selling point to attract new customers. The software providers also explained that their charges (if any) did not include the hours spent reviewing inventory and coding SKU’s (stock keeping units) for products subject to the assessment. These tasks were typically completed by a retailer’s employees with the expense incurred directly by the retailer. Further, staff learned that retailers who use custom or proprietary accounting software were not able to take advantage of pricing discounts from package software providers and generally paid hourly rates for software technicians to update their systems. Furthermore, staff found that one company estimated that for a new retail account, they would charge about \$30,000 plus a monthly fee to set up a whole new accounting system that performed various functions, including collecting the Lumber Products Assessment.

The formal issue paper also explains that, to get a better idea of retailers’ average costs to update their software for the assessment, staff continued to review the available cost data, including the PricewaterhouseCoopers Report, referred to above, and found another reasonable alternative method that could be used to estimate affected retailers’ average start-up costs. First, staff found that “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” and that the amount of allowed retention directly affects the revenue the fund receives. Second, in Board staff’s September 11, 2012, Legislative Enrolled Bill Analysis of AB 1492, staff estimated that the new one-percent Lumber Products Assessment would generate annual revenue of \$35 million from approximately \$3.5 billion of sales subject to the assessment. Third, during the BTC process, staff estimated, using U.S. Census Bureau data, that there were close to 10,000 retail locations

that were required to begin collecting the new assessment on January 1, 2013, and that each location would collect an annual average of \$3,500 in assessments on average annual sales of \$350,000 subject to the assessment.

Fourth, during the BTC process, staff also analyzed the PricewaterhouseCoopers Report in more detail, and found that the \$250 amount in emergency Regulation 2000 accounted for costs to program and service cash registers (and other point-of-sale systems), but did not account for the following seven other categories of compliance costs, included in the study: (1) training personnel; (2) documenting exempt sales; (3) customer service relating to assessment issues other than documenting exempt sales; (4) assessment-related software acquisition and license fees; (5) return preparation, making remittances, refund and credit claims, and research relating to the assessment; (6) dealing with audits and appeals; and (7) other costs (such as costs related to data storage, registration, etc.). Further, staff found that the PricewaterhouseCoopers Report shows an average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry. Furthermore, staff recognized that the percentage was derived from looking at some costs that were not properly classified as start-up costs, such as costs to deal with audits and appeals, but that the percentage also failed to account for some costs that were properly classified as start-up costs, such as costs to identify and code products subject to the assessment. Therefore, staff concluded that it would be reasonable to use the percentage to calculate start-up costs.

As a result, in the formal issue paper, staff calculated that the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, was approximately \$735 per retail location by multiplying the average amount of annual sales subject to the assessment that staff estimated would be made by each retail location (\$350,000) by 0.21 percent. Staff also proposed that affected retailers be permitted to retain an additional \$485 (\$735 - \$250) from the assessments they collect, for start-up costs, beginning January 1, 2014.

Alternative Recommendations

Based upon the above discussion, Formal Issue Paper 13-005 contained the following three recommendations:

1. Staff's recommendation that the Board propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and that the Board also propose to adopt new Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*, through the regular rulemaking process, to provide that "[b]eginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as [additional] reimbursement for startup costs associated with the collection of the assessment";
2. An alternative recommendation that the Board only propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, which is supported by the California Forestry Association, California

Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, and was recommended by California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson; and

3. Another alternative recommendation that the Board adopt a regulation, through the regular rulemaking process, that permits retailers to initially retain \$5,500 per retail lumber location and annually retain an additional \$1,500 per location on an ongoing basis, based upon a recommendation from West Coast.

BTC Meeting

The Board considered Formal Issue Paper 13-005 during its BTC meeting on June 11, 2013. The Board agreed that the purpose of AB 1492 was to ensure continued sustainable funding for California's forest program to protect the state's forest resources and that it was reasonable to consider how the amount of reimbursement established by the Board affects the revenue available for such purpose. The Board agreed with staff that PRC section 4629.5, subdivision (a)(3) authorizes the Board to determine and prescribe a specific one-time amount of reimbursement for start-up costs to implement the Lumber Products Assessment on January 1, 2013, that may be retained by all affected retailers, regardless of their actual costs. The Board also tentatively agreed with staff's revised calculation of the average amount of start-up costs to implement the Lumber Products Assessment on January 1, 2013, of approximately \$735 per retail location. Therefore, the Board voted to propose to adopt emergency Regulation 2000, through the regular rulemaking process, without making any changes, and also to propose to adopt new Regulation 2001, through the regular rulemaking process, to provide an additional \$485 per location, in addition to the \$250 allowed by Regulation 2000, as reimbursement for startup costs associated with the collection of the Lumber Products Assessment.

However, staff's revised calculation of the average start-up costs per retail location relied upon:

- Staff's estimate that the new one-percent Lumber Products Assessment would generate annual revenue of \$35 million from approximately \$3.5 billion of sales;
- Staff's estimate that there were close to 10,000 retail locations that were required to begin collecting the new assessment on January 1, 2013;
- The conclusion, drawn from those estimates, that each retail location would make average annual sales of \$350,000, subject to the assessment; and
- Staff opinion that it was reasonable to use the average gross compliance cost of 0.21 percent of taxable sales for the Building and Garden Supplies industry from the PricewaterhouseCoopers Report to estimate the average start-up costs for the Lumber Products Assessment.

As a result, additional information may change staff's estimates, conclusions, and opinions, help staff identify other, more reliable methods to calculate the average start-up costs per retail location, or both. Therefore, at the conclusion of the BTC meeting, the Board also directed staff to continue to monitor the implementation of the Lumber

Products Assessment and review the returns filed for the first and second quarters of 2013 to try to obtain additional information to help verify the number of retail locations that were required to begin collecting the new assessment on January 1, 2013, and the amount of revenue they are actually collecting. And, the Board indicated that, depending upon the additional information obtained, including information regarding the effectiveness of AB 1492 as a source of funding, and staff's recommendation at the public hearing, the Board may decide to adopt proposed Regulation 2000 without making any changes and not adopt proposed Regulation 2001, the Board may decide to adopt both proposed regulations without making any changes, or the Board may decide to adopt both regulations and change the total amount of reimbursement provided to affected retailers.

PRC section 4629.5 creates a problem, within the meaning of Government Code section 11346.2, because it permits affected retailers to retain a Board-prescribed amount of the Lumber Product Assessments they collect as reimbursement for collection costs, but section 4629.5 and the legislative analyses of AB 1492 do not expressly indicate how the Board is to determine the amount of reimbursement. The Board has determined that the adoption of proposed Regulations 2000 and 2001 is reasonably necessary for the specific purpose of specifying the amount of reimbursement that affected retailers may retain pursuant to PRC section 4629.5, and addressing this problem. The regulations are anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

The adoption of proposed Regulations 2000 and 2001 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to proposed Regulation 2000 or 2001.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 13-005, the exhibits to the formal issue paper, and the comments made during the Board's discussion of the formal issue paper during its June 11, 2013, BTC meeting in deciding to propose the adoption of Regulations 2000 and 2001 described above.

ALTERNATIVES CONSIDERED

As previously discussed, the Board considered two alternatives to the proposed regulatory action. The first alternative was for the Board to only propose to adopt emergency Regulation 2000 through the regular rulemaking process. The second alternative was for the Board to adopt a regulation, through the regular rulemaking

process, that permits retailers to initially retain \$5,500 per retail lumber location and annually retain an additional \$1,500 per location on an ongoing basis.

The Board has not decided to pursue the first or second alternatives at this time. However, the Board has decided to propose to adopt emergency Regulation 2000 through the rulemaking process, and the Board has indicated that it may eventually decide to adopt emergency Regulation 2000 without adopting proposed Regulation 2001. Therefore, the Board is still considering and has not rejected the first alternative.

In addition, the Board has indicated that it may decide to increase the amount of reimbursement for start-up costs provided to affected retailers by the proposed regulations prior to their adoption. Therefore, the Board is still considering and has not completely rejected the part of the second alternative pertaining to the amount of reimbursement for start-up costs, although it does not appear likely that new information will support increasing the amount of reimbursement provided for start-up costs from \$735 to \$5,500 per retail location.

The Board has rejected the part of the second alternative regarding the proposed adoption of a regulation providing retailers with reimbursement of ongoing costs because the Board determined that providing reimbursement for ongoing costs is inconsistent with PRC section 4629.5.

No other alternatives have been identified and brought to the Board's attention, and no reasonable alternative has been identified and brought to the Board's attention that would be less burdensome and equally effective in achieving the purposes of the proposed regulatory action in a manner that ensures full compliance with PRC section 4629.5 and achieves the purpose of AB 1492.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2,
SUBDIVISION (b)(6) AND ECONOMIC IMPACT ANALYSIS REQUIRED BY
GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

PRC section 4629.5 imposes the Lumber Products Assessment and any start-up or ongoing costs that retailers incur in compliance with PRC section 4629.5 are imposed by that statute and not a regulatory action. PRC section 4629.5 also provides that affected retailers may retain a Board-prescribed amount, as reimbursement for start-up costs. However, the statute is silent as to how the Board should determine the amount. And, there is no single amount that will compensate all affected retailers for their actual start-up costs, but not more. Therefore, the Board is proposing to adopt Regulations 2000 and 2001 to implement, interpret and make specific PRC section 4629.5 by prescribing \$735 per retail location as a reasonable, average amount of reimbursement for start-up costs based upon information indicating that some retailers will incur more and some retailers will incur less actual start-up costs, and information indicating that providing more reimbursement may impair the effectiveness of the Lumber Products Assessment as a source of revenue.

Further, the proposed regulations will allow affected retailers to retain the Board-prescribed amount of reimbursement without having to incur additional, non-reimbursable costs to substantiate their actual start-up costs. Therefore, there is no basis to conclude that affected retailers will incur any costs in reasonable compliance with proposed Regulations 2000 and 2001.

Furthermore, the adoption of proposed Regulations 2000 and 2001 is anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

Therefore, the Board understands that the enactment of PRC section 4629.5 may have an economic impact on business. However, the Board has determined that the adoption of proposed Regulations 2000 and 2001 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

In addition, proposed Regulations 2000 and 2001 will not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed regulations will not affect the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of proposed Regulations 2000 and 2001 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

**Proposed Text of California Code of Regulations, Title 18, Sections
2000, *Retailer Reimbursement Retention*, and
2001, *Additional Allowed Retailer Reimbursement Retention***

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 no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

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

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

Regulation 2001. Additional Allowed Retailer Reimbursement Retention

Beginning January 1, 2014, a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, 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.

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

Regulation History

Type of Regulation: Lumber Products Assessment

Regulations: 2000 and 2001

Title: 2000, *Retailer Reimbursement Retention*

2001, *Additional Allowed Retailer Reimbursement Retention*

Preparation: Bradley Heller

Legal Contact: Bradley Heller

The proposed adoption of Lumber Products Assessment Regulations 2000, *Retailer Reimbursement Retention*, and 2001, *Additional Allowed Retailer Reimbursement Retention*, to prescribe the amount of reimbursement retailers may retain pursuant to Public Resources Code section 4629.5.

History of Proposed Regulation:

September 10, 2013	Public Hearing
July 26, 2013	OAL publication date; 45-day public comment period begins; Interested Parties mailing
July 16, 2013	Notice to OAL
June 11, 2013	Business Tax Committee, Board Authorized Publication (Vote 3-2)

Sponsor: NA

Support: NA

Oppose: NA