



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date:	08/07/12	Bill No:	<u>Assembly Bill 1492</u>
Tax Program:	Lumber Products Assessment	Author:	Committee on Budget
Sponsor:	Budget Bill	Code Sections:	PRC Article 9.5 (Sec. 4629)
Related Bills:		Effective Date:	Upon enactment, but assessment operative 01/01/13

This analysis only addresses the provisions that impact the BOE

BILL SUMMARY

Among other things, this bill imposes a 1% assessment on purchasers of lumber products or engineered wood products to be collected by a retailer at the time of the sale, to be administered and collected by the State Board of Equalization (BOE).

ANALYSIS

CURRENT LAW

Timber Tax. Under existing law, Section 38115 of the Revenue and Taxation Code imposes a timber yield tax on the following:

- Every timber owner who harvests his or her timber or causes it to be harvested, and
- Every timber owner of felled or downed timber who acquires title to such felled or downed timber in this state from an exempt person or agency, as described, and
- Every person who, without authorization, intentionally or unintentionally harvests or causes to be harvested timber owned by another.

The timber yield tax rate is currently set at 2.9 percent. The amount of tax is calculated according to the volume of timber harvested, the established value for the species harvested, and the tax rate.

The timber yield tax is collected by the State Board of Equalization (BOE) and deposited in the Timber Tax Fund. After administrative costs are deducted, remaining revenues are returned to local agencies, as specified.

Sales and Use Tax. Under existing law, a state and local sales and use tax is imposed on the sale or use of tangible personal property in this state, including lumber products, unless specifically exempted in the law. Currently, the total combined sales and use tax rate is between 7.25 and 9.75 percent, depending on the location in which the merchandise is sold.

The statewide sales and use tax rate (7.25%) imposed on taxable sales and purchases of tangible personal property is made up of the following components (the additional transactions and use taxes, also known as district taxes, levied by various local jurisdictions are not reflected in this chart):

REVISED COST AND REVENUE ESTIMATES

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	For general state purposes (Revenue and Taxation Code (RTC) Sections 6051, 6051.3, 6201, and 6201.3)
0.25%	State (Fiscal Recovery Fund)	For repayment of the Economic Recovery Bonds (RTC Sections 6051.5 and 6201.5, operative 7/1/04)
1.0625%	State (Local Revenue Fund 2011)	For counties to fund public safety programs (RTC Sections 6051.15 and 6201.15)
0.50%	State (Local Revenue Fund)	For local governments to fund health and welfare programs (RTC Sections 6051.2 and 6201.2)
0.50%	State (Local Public Safety Fund)	Local governments to fund public safety services (Section 35, Article XIII, State Constitution)
1.00%	Local (City/County) 0.75% City and County 0.25% County	For county transportation purposes For general city and county operations (RTC Section 7203.1, operative 7/1/04)
7.25%	Total Statewide Rate	

PROPOSED LAW

This bill would add Article 9.5 (commencing with Section 4629) to Chapter 8 of Part 2 of Division 4 of the Public Resources Code to impose, on and after January 1, 2013, an assessment on a person who purchases a lumber product or an engineered wood product for the storage, use, or other consumption in this state, at the rate of 1 percent of the sales price.

Assessment Liability. A retailer would be required to charge and collect the assessment from the purchaser at the time of sale as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser. The retailer would be required to separately state the amount of the assessment imposed on the sales receipt given by the retailer to the person at the time of sale.

Any excess assessment collected by the retailer under the representation that it was owed as an assessment that is unreturned to the purchaser constitutes debts owed to the state.

Every person who purchases a lumber product or an engineered wood product for storage, use, or other consumption in this state is liable for the assessment until it has been paid, except that payment to a retailer relieves the person from further liability for the assessment.

The retailer would be authorized to retain an amount of the assessment equal to the amount of reimbursement, as determined by the BOE pursuant to emergency 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.

Definitions. The bill would define the following key terms:

- “Lumber product” means a product in which wood or wood fiber is a principal component part, including, but not limited to, a solid wood product, or an engineered wood product, as defined in regulations adopted by the State Board of Forestry and Fire Protection (Fire Board). Specifically excluded from the definition of “lumber product” is furniture, paper products, indoor flooring products such as hardwood or laminated flooring, bark or cork products, firewood, or other products not typically regarded as lumber products.
- “Principal component part” means 10 percent of the total content by volume.
- “Engineered wood product” means a building product, including, but not limited to, veneer-based sheeting material, plywood, laminated veneer lumber (LVL), parallel-laminated veneer (PLV), laminated beams, I-joists, edge-glued material, or composite material such as cellulosic fiberboard, hardboard, decking, particleboard, waferboard, flakeboard, oriented strand board (OSB), or any other panel or composite product where wood is a component part, that is identified in regulations by the Fire Board. An engineered wood product would only include products that consist of at least 10 percent wood.

The regulations to interpret and make specific the lumber products and engineered wood products subject to the lumber products assessment would be adopted by the Fire Board on or before October 1, 2012. The Fire Board would be required to annually update the regulations, and products identified in the annually updated regulations would become subject to the assessment on the first day of the calendar quarter commencing more than 60 days after adoption of the updated regulation.

The bill also defines the terms “purchase,” “retailer,” “sales price,” “storage,” and “use” to have the same meaning as those terms are defined under the Sales and Use Tax Law.

Administration. The BOE would administer and collect the assessment pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The references in the Fee Collection Procedures Law to “fee” would include the assessment imposed by this bill.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the BOE. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, and it provides the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

The BOE would be authorized to prescribe, adopt, and enforce regulations relating to the administration and enforcement of the assessment, including, but not limited to, collections, reporting, refunds, and appeals.

Registration, Reporting, and Payment. Persons required to pay the lumber products assessment would be required to register with the BOE on a form prescribed by the BOE.

The assessment would be due and payable to the BOE quarterly on or before the last day of the month next succeeding each quarterly period. In addition, a return for the preceding quarterly period would be required to be filed with the BOE using electronic media. The return would be due on or before the last day of the month following each quarterly period.

The electronic application for registration and returns would be authenticated in a form or pursuant to a method as may be prescribed by the BOE.

The BOE would deposit all assessment revenues received, less refunds and reimbursements, into the Timber Regulation and Forest Restoration Fund (Fund). Moneys in the Fund would, upon appropriation by the Legislature, only be expended for the following purposes:

- To reimburse the BOE for its administrative costs associated with the administration, collection, audit, and issuance of refunds related to the lumber products and engineered wood assessment.
- To pay refunds issued pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.
- To support the activities and costs of the Department of Forestry and Fire Protection (CAL FIRE), the Department of Conservation, the Department of Fish and Game, the State Water Resources Control Board, and regional water quality control boards associated with the review of projects or permits necessary to conduct timber operations.
- For transfer to CAL FIRE's Forest Improvement Program for forest resources improvement grants and projects administered by the department, as described.
- To fund existing restoration grant programs.
- To CAL FIRE for fuel treatment grants and projects pursuant to authorities under the Wildland Fire Protection and Resources Management Act of 1978.
- To CAL FIRE to provide grants to local agencies responsible for fire protection, qualified nonprofits, recognized tribes, local and state governments, and resources conservation districts, undertaken on a state responsibility area (SRA) or on wildlands not in an SRA that pose a threat to the SRA, to reduce the costs of wildland fire suppression, reduce greenhouse gas emissions, promote adaptation of forested landscapes to changing climate, improve forest health, and protect homes and communities.

Implementation Costs. The bill would authorize the Director of Finance to authorize a loan from the General Fund to the Fund to implement the administration and collection of the assessment. Any loan made would be repaid, with interest at the pooled money investment rate, from assessment revenues.

As an urgency statute, the bill would become effective immediately upon enactment, but the assessment would become operative January 1, 2013.

BACKGROUND

During the 2003-04 Legislative Session, SB 557 (Kuehl) would have imposed an excise tax at a rate of one-cent per board foot on distributors or purchasers of timber products. Among other things, the tax would have provided funding for the administration and review of timber harvest plans. That bill was held under submission in the Assembly Appropriations Committee.

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COMMENTS

1. **Intent.** The intent of this bill is, among other things, to ensure continued sustainable funding for the state's forest practice program to protect the state's forest resources and to replace the current piecemeal funding structure with a single funding source.
2. **What is subject to the assessment?** The bill would impose an assessment on the purchase of a lumber product or an engineered wood product. Although the definition for the terms "lumber product" and "engineered wood product" are defined in the bill, the definitions themselves create some uncertainty as to how far reaching the specific products are that would be subject to the assessment. To address this uncertainty, the bill provides clarification that lumber product "does not include furniture, paper products, indoor flooring products such as hardwood or laminated flooring, bark or cork products, firewood, **or other products not typically regarded as lumber products.**" The bill also provides certainty by requiring the Fire Board to adopt a regulation that interprets and makes specific the lumber products and engineered wood products subject to the assessment.
3. **Retailer cost reimbursement provision is for start-up costs only.** The bill allows retailers to retain an amount equal to the amount of reimbursement for any costs associated with the collection of the assessment, as determined by the BOE pursuant to emergency regulations authorized by the bill. According to the Governor's office, the intent of this provision is to allow reimbursement to retailers for start-up costs associated with implementation of the assessment only, and not for reimbursement to retailers with respect to their ongoing costs. And, while the language is not perfectly clear to reflect that intent, it is our understanding that a clarifying letter to the file will be prepared by the author.

Of the 34 tax and fee programs currently administered by the BOE, reimbursement is only 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.

4. **Petitions for redetermination.** The bill authorizes the Fire Board to adopt an emergency regulation by October 1, 2012, to make specific the lumber products and engineered wood products subject to the assessment. However, the BOE would retain the authority to hear appeals for disputed underpayments by retailers required to collect the assessment. It is imperative that the regulation adopted describe the products subject to the assessment in a very detailed, comprehensive manner in order to achieve compliance by affected retailers. At a minimum, it is suggested that the Fire Board work with the BOE in addressing this concern. Otherwise, significant confusion, underpayments or overpayments, tax disputes, and appeals could result.
5. **This bill could complicate lumber product retailers' records and reporting.** Lumber product retailers already must collect and remit sales and use tax on the retail sale of lumber products in California. Lumber product retailers most likely sell other tangible personal property subject to sales and use tax. Adding an additional assessment that would be collected from lumber product purchasers would require

retailers to keep track of lumber product sales separately from other sales of tangible personal property.

Additionally, smaller lumber product retailers may find collecting the assessment burdensome. Larger retailers would have the ability to program into their computer system the various products subject to the assessment. Therefore, the assessment would be automatically added to the purchase price once the product code or UPC is entered at the register. Cashiers at smaller supply stores, which are typically not computerized, would have to determine if the product is identified in the Fire Board's regulation for each product sold, which could likely lead to collection and reporting errors.

6. **Bill could set a precedent.** Imposing varying taxes or fees on specific commodities complicates tax administration and could set a precedent for establishing multiple taxes or fees on other classes of tangible personal property. This results in increasing administrative costs to the BOE, and increased costs and a record-keeping burden on retailers.

COST ESTIMATE

The BOE would incur non-absorbable costs to administer this bill. These costs would be attributable to, among other things, identifying, notifying and registering taxpayers, developing regulations, revising manuals and publications, creating a new tax return, computer programming, training staff, and answering numerous inquiries from the public.

The BOE's budget was augmented by \$1.9 million for fiscal year 2012-13, \$2.3 million for fiscal year 2013-14, \$1.8 million for fiscal year 2014-15, and \$1.7 million for fiscal year 2015-16 and each fiscal year thereafter to implement and administer the proposed lumber products assessment program. Additional funding needs of approximately \$995,000 in fiscal year 2012-13, \$657,000 in fiscal year 2013-14, and \$572,000 in fiscal year 2014-15 and each fiscal year thereafter have been identified as a result of assessment provisions amended into this bill, which differ from the language for which the original administrative cost numbers were estimated.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

The economic recession that started December 2007 had a dramatic impact on California's housing and building material industry. Housing permits have declined by over 51% percent since the beginning of the recession. However, there are signs that indicate that the industry will experience a rebound in the coming years. Based on the information we gathered from the 2007 Economic Census and from the Department of Finance's economic tables, we estimate that the retail value of lumber products and engineered wood will amount to \$3.5 billion in California during FY 2012-13. An assessment of one percent on the retail value on those products would amount to \$35 million in annual state revenues.

REVENUE SUMMARY

This bill could generate an additional \$35 million in annual state revenues for the Timber Regulation and Forest Restoration Fund.

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