State of California

Board of Equalization
Legal Department-MIC:83
Office of the Chief Counsel
(916) 445-4380
Fax: (916) 322-0341

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: July 23, 2013

From: Randy Ferris
Chief Counsel

Subject: **Board Meeting, August 13, 2013**
Chief Counsel Matters – Item J – Rulemaking
Second Readoption of Emergency Regulation 2000 – Lumber Products Assessment

We recommend and request your second readoption of attached emergency Regulation 2000, *Retailer Reimbursement Retention*, to maintain the status quo while the Board considers the adoption of a permanent regulation or regulations to specify the amount of reimbursement a retailer may retain pursuant to Public Resources Code (PRC) section 4629.5, subdivision (a)(3). If the Board's second readoption of the emergency regulation is approved by the Office Administrative Law (OAL), then the effective period of emergency Regulation 2000 will be extended for up to 90 additional days.

Background Regarding Lumber Products Assessment

Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289) was enacted on September 11, 2012. AB 1492 added section 4629.5 to the PRC to impose, beginning January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products (Lumber Products Assessment) to be collected by the retailer at the time of sale. In addition, AB 1492 established the Timber Regulation and Forest Restoration Fund and requires that revenues received from the new Lumber Products Assessment be deposited into the fund. Furthermore, AB 1492 provides for the Legislature to appropriate revenue from the fund to pay for:

- Specified administrative costs;
- The costs of the Department of Forestry and Fire Protection and other state and local agencies involved in the management of forest lands;
- The costs of managing forest resource programs in the state;
- Certain grants to state and local public agencies, qualified nonprofit organizations, and recognized Indian tribes for fire protection and suppression; and
- Grants to fund restoration on timberland.

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 Lumber Products Assessments they collect as reimbursement for certain compliance costs associated with the commencement of their collection duties on January 1, 2013. Subdivision (a)(3) also authorizes the Board to adopt

emergency regulations, and this additional authorization was intended to allow the Board to specify the amount of reimbursement retailers may retain in the short period of time provided between the enactment of AB 1492 on September 11, 2012, and the commencement of the retailers' collection duties on January 1, 2013. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides that:

> 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. For purposes of this paragraph, the State Board of Equalization may adopt emergency regulations pursuant to Section 11346.1 of the Government Code.

As to legislative history, both the pertinent Senate and Assembly floor analyses refer to retailers being reimbursed for "costs to set up collection systems."

The Board initially adopted Regulation 2000, as an emergency regulation, on October 23, 2012, and the emergency regulation became effective on January 1, 2013. Emergency Regulation 2000 provides that retailers, as of January 1, 2013, may retain collected assessment amounts of $250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., for the costs to set up collection systems).

Business Taxes Committee Process

Emergency regulations are temporary. Therefore, the Board must adopt a regulation through the regular rulemaking process in order 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.

In addition, the California Forestry Association supported the initial adoption of emergency Regulation 2000 and the $250 reimbursement amount established by the regulation. However, 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 unanimously voted to begin a Business Taxes Committee process to conduct two interested parties meetings to discuss the adoption of a regulation to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment.

Board staff issued its first discussion paper regarding the adoption of a permanent regulation on December 18, 2012, and discussed the paper with the interested parties at an interested parties meeting on January 10, 2013. Board staff issued its second discussion paper regarding the adoption of a permanent regulation on February 22, 2013, and discussed the second paper with the interested parties at an interested parties meeting on March 7, 2013.

Board staff subsequently issued Formal Issue Paper 13-005 on May 31, 2013, and the formal issue paper contains 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." The Board considered Formal Issue Paper 13-005 during its Business Taxes Committee meeting on June 11, 2013, and 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 at that time. The public hearing regarding the proposed adoption of emergency Regulation 2000 and Regulation 2001 through the regular rulemaking process is scheduled for the Board's September 10, 2013, meeting in San Francisco.

Request for Readoption of Emergency Regulation

An emergency regulation that is approved by OAL is only effective for a maximum of 180 days, unless OAL approves a readoption of the emergency regulation during that time period. (Gov. Code, § 11346.1, subd. (e).) OAL may approve two readoptions of the same or substantially equivalent emergency regulation if an agency has made substantial progress and proceeded with due diligence to permanently adopt the emergency regulation through the regular rulemaking process, and each approved readoption will extend the emergency regulation's effective period for up to 90 days. (Gov. Code, § 11346.1, subd. (h).)

The Board readopted emergency Regulation 2000 on May 22, 2013. OAL approved the readoption on June 25, 2013, and OAL indicated that readopted emergency Regulation 2000 will expire on September 24, 2013, unless the Board readopts emergency Regulation 2000 or a substantially equivalent regulation, as an emergency regulation, and submits the rulemaking file for the readoption to OAL at least 10 calendar days prior to the expiration date. Therefore, Board staff is recommending and requesting that the Board vote to readopt Regulation 2000, as an emergency regulation, to maintain the status quo while the Board considers the adoption of permanent Regulations 2000 and 2001 to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). Board staff believes that OAL is likely to approve the second readoption of emergency Regulation 2000 because the Board has made substantial progress and proceeded with due diligence to adopt emergency Regulation 2000 as a permanent regulation, through the regular rulemaking process.

If you have any questions, please feel free to contact me.

Approved:

Cynthia Bridges
Executive Director

RF:kbs:yg

Attachment: Regulation 2000, *Retailer Reimbursement Retention*

cc:	Ms. Cynthia Bridges	MIC:73
	Mr. Robert Tucker	MIC:82
	Mr. Stephen Smith	MIC:82
	Mr. Bradley Heller	MIC:82
	Mr. Kevin Smith	MIC:82
	Ms. Michele Pielsticker	MIC:66
	Mr. Bill Benson	MIC:67
	Mr. Joe Fitz	MIC:67
	Mr. Jeffrey McGuire	MIC:43
	Ms. Susanne Buehler	MIC:92

Regulation 2000, *Retailer Reimbursement Retention*

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain $250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

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

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