



September 24, 2012

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

RE: Emergency Regulations – AB 1492 Timber Assessment

Dear Boardmember Horton:

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

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

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

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

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

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

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

Some questions include:

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

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

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

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

Sincerely,



BILL DOMBROWSKI
President & CEO
California Retailers Association

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