



October 21, 2012

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

RE: Emergency Regulation 200 – AB 1492 Lumber Assessment

Dear Chairman Horton:

Thank you for the opportunity to provide feedback and comments on the Board's proposed emergency regulation 2000 relating to retailer reimbursement retention as allowed under the recently enacted Lumber Products Assessment. CRA would like to acknowledge the work that all involved stakeholders have put into this effort thus far. However, we remain concerned with the proposed level of retailer reimbursement and do not believe that the proposed reimbursement amount would adequately account for the true costs that our members will incur as a direct result of complying with this new law.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, fast food restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home 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. The retail industry in California represents one in every four jobs in the State, a total of nearly 5 million jobs (2009), and accounts for 17.8% of the State's GDP.

As you know, effective January 1, 2013, retailers will be required to collect a one-percent assessment on the purchase of lumber products from consumers at the point of sale. In order to do this, our members will have to carry out an exhaustive effort in the next two months reconfiguring their computer systems, taking inventory of what they sell, making a determination among thousands of products on whether the product is subject to the assessment, testing the system for accuracy, among a host of other things in order to be fully compliant by January 1, 2013. It is also key to mention that this exhaustive administrative effort will overlap with the busiest time of year for retailers with the holiday season nearing.

Additionally, AB 1492 (Chapter 289, Statutes of 2012) provides that retailers "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..." However, despite feedback from impacted companies, emergency regulation 2000 will only allow retailers to retain \$250 per location to reimburse them for costs associated with the collection of the assessment. While we appreciate the acknowledgement that retailers WILL incur costs for collection and remittance of the assessment, we believe that the figure proposed shortchanges our members by significantly limiting cost recovery. Nothing in AB 1492 specifies that reimbursement was intended to be paid on a one-time basis, nor does it propose to reimburse retailers on a per-location basis. However, the proposed regulation has been formulated based upon interpretations that this was the intent of AB 1492.

The BOE memorandum dated October 12, 2012 provides that there is support for an interpretation that AB 1492 provides for affected retailers to retain a one-time amount for the reimbursement of costs to set up new collection systems. We would respectfully disagree as the language as provided above simply states that we may retain "an amount equal to the amount of reimbursement." Also noted in the memorandum was a recent study of sales tax collection costs. This study analyzed the costs associated with sales tax compliance and found that \$250 reflects an average cost for programming and servicing cash registers. Using this as a foundation for determining reimbursement for the lumber products assessment raises the important question of whether or not setting up a tax collection system for lumber products would be the same as the general cost of administration of a sales tax. We would argue that comparing the two would be like comparing apples to oranges given that select (lumber product) SKUs will have to be programmed into the system as opposed to sales tax which applies to most products universally.

Also cited in the memorandum were examples of retailer reimbursement for the California Tire Fee Law and the Covered Electronics Waste Recycling Fee Law, where retailers receive reimbursement in the amounts of 1.5 percent and 3 percent respectively. It was further noted that these programs explicitly provided guidance that reimbursement will be provided on an ongoing basis and that AB 1492 did not provide such specificity. However, again, nothing in AB 1492 limited cost recovery in the manner that we see in emergency regulation 2000. We would also argue that given the E-Waste Law and the Tire Fee Law, there is established precedent for this type of reimbursement in California Law. What the Board is prepared to adopt at the October 23rd hearing runs counter to precedent and is very disappointing.

We are, however, heartened by the possibility, as expressed on page 3 of the BOE memorandum, that there may be a future opportunity to substantiate through documentation from retailers what costs we have incurred through our efforts to comply with AB 1492. We would appreciate and look forward to the opportunity to work with the BOE to look into that issue in the near future.

We thank you for the opportunity to provide comment on this important issue. If you have any questions, please feel free to call me at (916) 443-1975.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dombrowski". The signature is written in a cursive, slightly slanted style.

BILL DOMBROWSKI
President & CEO
California Retailers Association

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