



Memorandum

To : Mr. Paul Crebbin

Date : September 23, 1976

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SEP 24 1976

Timber Tax Division
State Income Equalization

From : J. J. Delaney

Subject: Timber Yield Tax - Christmas Trees

As you know questions have arisen concerning the proper treatment of Christmas trees under the timber yield tax laws. Although such trees are included within the definition of timber they are excluded if they constitute nursery stock. The basic problem therefor is to define the term nursery stock.

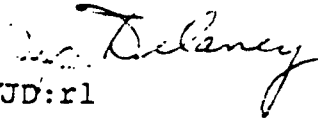
Reviewing the California Agricultural Code and the United States Code Annotated, I found that the definition of nursery stock in each is extremely broad and could include all Christmas trees (See Ag. Code § 5005 and 7 U.S.C.A. § 152). These definitions, however, are intentionally broad in order to afford governmental control of plant pests, plant identification and other aspects of the nursery plant business. I do not think they are determinative of the proper definition of the term "nursery stock" found in Sections 431 and 38103 of the Revenue and Taxation Code.

Obviously, if Christmas trees are regarded as nursery stock a conflict would exist in the language of the revenue code sections mentioned above since they both define Christmas trees as timber except when they are nursery stock. It is, therefore, my opinion that Christmas trees should be regarded as nursery stock for purposes of taxation only when they are grown for transplanting. If the trees are grown in a forest, on a tree farm or even on property owned by a person who is in the nursery business they should be regarded as timber if they are to be severed for sale. If, however, trees are grown for sale and transplanting as seedlings or as more mature trees to forest or tree farm operators or for sale and transplanting in residential property they should be regraded as not subject to the timber tax.

The suggested interpretation appears to conform to the intent of the timber tax legislation, i.e., that timber tax results from the harvesting of timber. We have previously concluded that in the case of turf grass a transplanting is not harvesting for purposes of the growing crops exemption. The same

conclusion appears appropriate in this instance. Finally, I checked with the Department of Agriculture and was informed that they do not license as nurserymen those in the business of growing Christmas trees that are cut for sale.

Since there may be some lack of uniformity among the counties in interpreting "nursery stock" it would be appropriate to issue a letter to assessors. I defer to you to determine whether such a letter is to be sent by the Timber Tax Division or the Division of Assessment Standards.


JJD:rl

cc: Mr. Jack Eisenlauer

December 1, 1976

TO COUNTY ASSESSORS:

Questions have arisen concerning the distinction between Christmas trees as lumber (see Government Code Section 51180) and those that may be properly classified as nursery stock.

Trees, including the various conifers grown as Christmas trees, have already been recognized as personal property (Jackson and Perkins vs. Stanislaus County, 168 Cal. App. 2d. 599) when they are sold as living plants in the normal course of business. It follows that this can be considered as nursery stock when field or container grown for sale as live trees to be transplanted.

We do not believe this is in conflict with the inclusion of Christmas trees in the definition of timber in Section 51100 of the Government Code and Section 431 of the Revenue and Taxation Code. These sections specify trees (including Christmas trees) that are maintained for eventual harvest for forest products purposes and exclude nursery stock.

If there is remaining doubt as to the meaning of the phrase "harvest for forest products purposes," Section 38109, Revenue and Taxation Code, includes as a measure of the immediate harvest value of Christmas trees, "... the sale price of the Christmas trees in quantities of 100 trees or more in the market area nearest to the place where the trees are cut ..." (emphasis added.) We may further note that Section 38104 defines a timber owner as a person who owns timber immediately prior to felling (emphasis added) or the first person who acquires title to timber after it has been felled (emphasis added) from tax exempt land.

We conclude that there is no conflict between Christmas trees taxable as nursery stock that are maintained to be sold live and Christmas trees as timber that are maintained to be eventually harvested by cutting and any subject to the timber yield tax rather than the now existing system of ad valorem taxation.

Sincerely,

Jack F. Eisenlayer, Chief
Assessment Standards Division

JFE:by



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April 21, 1977

#77/65

TO COUNTY ASSESSORS:

TAXATION OF CHRISTMAS TREES

We issued a county assessors' letter #76/184 on December 1, 1976 titled "Christmas Trees and Nursery Stock" wherein we attempted to explain the timber yield tax and ad valorem tax applications to Christmas tree operations. Apparently the letter left some confusion since we are still receiving inquiries.

Christmas trees held for sale as living trees in containers and trees which are to be sold as living trees with their root system intact are subject to ad valorem taxation as nursery stock. This would apply even where the trees are grown for sale and transplanting to forest or tree farm operators either as seedlings or as more mature trees.

Conversely, where the trees are grown in a forest, or a tree farm, or even on property operated by a person in the nursery business, they would be treated as subject to the timber yield tax if they are to be severed for sale.

In summary, if the trees are to be sold as living trees, the ad valorem taxation applies; if they are to be severed from the root system, then the timber yield tax applies.

Sincerely,

Jack F. Eisenlauer, Chief
Assessment Standards Division

JFE:ebv