

Mr. Paul Crebbin

April 23, 1979

Ken McManigal

Hoopa Valley Indian Reservation
Hoopa Timber Corporation - Export Logs

With respect to Mr. [redacted]'s inquiry concerning the applicability of timber yield taxes to timber felled by Hoopa Timber Corporation and exported*, important is the point in time at which the goods enter the "process of exportation".

Where goods have been produced in California, the California Supreme Court has determined that the process of exportation does not commence until the goods have been delivered on board ship or entered with a common carrier for transportation to another country in a continuous route (Farmers' Rice Cooperative v. Yolo County, (1975) 14 Cal. 3d 616. Thus, delivery to a port district's elevators was insufficient and exportation did not begin until the rice had crossed the water's edge. Although on the basis of a pre-existing contract of sale the Cooperative had argued that exportation of the rice was a certainty, the court held that the owner's intent, regardless of the degree of certainty, has no bearing on the rule which looks only to the actual movement of the goods.

Similarly, delivery to a common carrier for purely intrastate transportation does not begin the process of exportation. And commencement of transportation to, or storage of goods in, a warehouse or other collection point within the state of the goods' production does not begin the process.

Accordingly, whether timber felled by Hoopa Timber Corporation for export has or has not entered the "export process" will be determinative as to the applicability of timber yield taxes. If, for example, Hoopa Timber Corporation

* We are, of course, proceeding from the premise that "timber owner"- "first person who acquires either the legal title or beneficial title to timber after it has been felled" means the first non-exempt person who acquires such title from the Hoopa Timber Corporation (Cal-Pacific Manufacturing Company Claims for Refund Matter, presently before the Board).

contracted to fell timber and to deliver it to the purchaser in Japan and it did so, the Corporation would have owned the timber at the time it entered the "export process", and Article I, Section 9(5) of the United States Constitution would preclude application of the timber yield taxes. If, on the other hand, the Corporation contracted to fell timber and to deliver it to the purchaser in California for export and it did so, a non-exempt purchaser would have owned the timber prior to its entry into the "export process" and Article I, Section 9(5) would not preclude the application of the timber yield taxes.

Whether such timber has or has not entered the "export process" must be determined on a case-by-case basis however, since contract provisions, export procedures, sequences of events, etc. can take different forms and vary from transaction to transaction. Accordingly, if Mr. LeMieux has a specific situation in mind, he should forward a copy of the contract and any exportation documentation he might have, together with a statement setting forth the details of the transaction, and we will review the situation and advise as to the applicability of the timber yield taxes.

JKM:fr

cc: Mr. J. J. Delaney
Mr. Glenn L. Rigby