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840.0050 Imposition. Imposition of the tax is not conditioned upon the existence of a timber harvest plan, upon approval or disapproval by the Coastal Commission, or upon any other such contingency.
C 11/13/78; C 4/24/80; C 1/12/83.

(916) 445-8485

November 28, 1978

This is in response to your October 31, 1978, letter wherein you enclosed Redacted Manufacturing Company's check for payment of timber yield taxes on logs purchased from the Redacted Timber Corporation and you protested the payment on several grounds.

If Redacted Manufacturing Company desires to pursue the matter, a claim for refund must be filed, in writing, setting forth the specific grounds upon which the claim is founded (Rev. & Tax. Code, § 38603). If a hearing is desired, a request for hearing must be made also. In any event, if a claim for refund is filed, the Board shall rule on the claim, and such a claim is a prerequisite to the filing of any legal action (Rev. & Tax. Code, § 38612).

Provisions pertaining to refunds are found in Sections 38601-38607 of the Revenue and Taxation Code. The hearing procedure for such claims is set forth in Article 2.5, Timber Yield Tax Law, of the Board's Hearing Procedure Regulations, copy enclosed.

We also enclosed for your review a copy of the Legislative Counsel's June 18, 1975, Opinion to Assemblyman Boatwright to the effect that the Legislature has the power to impose a yield tax on timber harvested from federal land after title to such timber has passed into private ownership.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr
Enclosures

bc: Mr. Glenn L. Rigby
Mr. Paul Crebbin
Miss Michele M. Hughes
Legal Section

(916) 445-6964

November 13, 1978

YT-103020

Reference is made to your November 5, 1978, petition for redetermination of timber taxes, interest, and penalty determined for the period April 1, 1978, to June 30, 1978. Per your petition, standing and downed timber on your residential property was harvested during the period, but no approval was required by the Coastal Commission nor was a Timber Harvest Plan required to be filed due to the small seals of the operation.

Pursuant to the Timber Yield Tax Law, Sections 38101 through 38908 of the Revenue and Taxation Code, copy enclosed, beginning on April 1, 1977, taxes are imposed on timber harvested from privately owned land based on the volume of timber harvested, the immediate harvest value of the timber, and the tax rates (Sections 38115 and 38301). Accordingly, when you harvested timber on our property in the second quarter of 1978, you became liable for the timber yield tax and the timber reserve fund tax. As you will note, imposition of the taxes is not conditioned upon the existence of a timber harvest plan, although the Report of Investigation indicates that one exists; upon approval or lack of approval by the Coastal Commission, or upon any other such contingency.

In your petition, you also noted that upon the enactment of the timber yield tax and the timber reserve fund tax, property taxes on standing timber were to be eliminated by removing the value of such timber from county tax rolls; but you indicated that this has not yet been done with respect to your property. Thus, you asserted that you have been paying property taxes on timber, and now the timber yield and timber reserve fund tax are being imposed on the same timber.

Beginning with the 1977-78 fiscal year, timber, for the most part, is fully exempt from annual and valorem property taxation. Section 436 of the Revenue and Taxation Code provides, as follow, in this regard:

“On the lien date for the 1977-78 fiscal year and thereafter, all timber on both privately and publicly owned lands shall be exempt from property taxations, including possessory interest taxation and shall not be assessed for taxation purposes. Nothing herein shall preclude the assessment of trees standing on land not zoned as timberland preserve under this article for purposes of property taxation based on their aesthetic or amenity value.”

Thus, if your property was not zoned as timberland preserve, and if the trees on your property were not assessed for purposes of property taxation based on their aesthetic or amenity value, the trees are exempt from property taxation for the 1977-78 fiscal year and thereafter. And if, as you have asserted, the trees have not been so exempted, such in a matter to be pursued with the appropriate county officials, the assessor to exempt any trees which were improperly assessed, and the board of supervisors to claim refund or refunds of those property taxes improperly collected.

In sum, we are not aware of any basis for exempting your timber from the timber yield tax and the timber reserve fund tax. Accordingly, we propose to recommend to the Board that your petition for redetermination be denied. In this event, you will receive notice of the Board's action in due course.

In the event that you do not agree with this proposed disposition and you wish to appear in Sacramento at a preliminary hearing before a member of the Board's legal staff to pursue the matter further, please so advise me, in writing, within the next 15 days. Please also suggest a date and time which will be convenient to you.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

Enclosure

cc: Mr. Arthur Church
Mendocino County Assessor
Mr. Paul Crebbin
Mr. Lee Lehn

(916) 445-6964

April 24, 1980

Re: YT-103978

Redacted

Gentlemen:

In a recent telephone conversation, you expressed disagreement with the amount recommended by our report of investigation dated April 1, 1980. This report covers timber yield taxes not reported on timber harvested under U.S. Forest Service Contract #Redacted – “Chair 4 Settlement Sale.” The timber was cut to clear ski runs.

You contend that the tax should not be applicable to this harvest of U.S. Forest Service timber since you were required to pay higher than average values for the timber and that little or no revenue was derived from the sale.

The California Yield Tax Law enacted in 1976, which became effective April 7, 1977, is applicable to timber harvested on both privately and publicly owned lands. The timber tax is the liability of the “timber owner.” Section 38104 of the Yield Tax Law defines timber owner to include the first person to acquire legal or beneficial title to timber after it has been felled from land owned by a federal agency.

The California timber tax is a yield tax imposed upon the harvesting of timber, not the sale thereof. Accordingly, the harvesting of timber under U.S. Forest Service Contracts are not exempted from taxes whether or not any profit is realized from the operation.

The timber tax is not measured by the selling price of the timber but by an “immediate harvest value” established by this Board. Immediate harvest value is the average price that each species of timber would sell for on the stump at a voluntary sale at the date of harvest. The attached harvest value schedule applicable to your area includes the immediate harvest values for the semiannual period of July 1, 1977 through December 31, 1979. This is the period that the Forest Service indicated that the timber was harvested.

At this time, I find no basis for relief from, or change to, the amount recommended by the report of investigation and Notice of Determination will be issued soon. If you are still in disagreement, your next court of action is to file a petition for redetermination upon receipt of the Notice of Determination. Information concerning the filing of a petition for redetermination can be found on the back of the Notice of Determination.

I hope this adequately explains the law which we contend applies in this matter.

Sincerely,

L. H. Leim
Supervising Auditor

LHL: dmh
Eno

(916) 445-6964

January 12, 1983

Re: YT-105925

Redacted

Dear Mr. Redacted:

As promised during our telephone conversation on January 7, 1983, I shall try to answer the questions you raised at that time as well as answering your letter dated December 29, 1982.

The Timber Yield Tax Law does not provide for exemption from the tax of timber removed for site-clearance purposes whether subject to timber harvest plan requirements, or not. The basic factor is ownership of a forest produce, which has little to do with conducting a timber harvesting or lumber business.

Use of "immediate harvest values" (rather than actual selling prices) is stipulated in the law. That is "the amount that each species would sell for on the stump at a voluntary sale made in the ordinary course of business for purposes of immediate harvest," and makes "reasonable and adequate allowances for age, size, quality, costs of removal, accessibility to point of conversion, market conditions and all other relevant factors as determined by the board." These values are determined as averages within eleven timber value areas.

Since the volume used to arrive at the determination was obtained from the mill which received the timber, young growth values were applied, and the allowable small volume adjustment was made, I do not foresee much possibility for revising the determination. If the data is wrong, you may, however, petition for redetermination within thirty days of the notice, form PF-432, sent to you on January 4, 1983. If you pay the amount due, and subsequently find the figures to be in error, you may file a claim for refund anything within three years after the due date of the period involved (in this case by January 31, 1985 for the fourth quarter of 1981).

Sincerely,

Earle P. Gutman
Supervising Tax Auditor
Timber Tax Division

EPG: re