



Memorandum

Mr. Earle Gutman

Date : September 20, 1990

From : Ken McManigal

Subject : Logging Agreement - Trucking and Logging

This is in response to your July 5, 1990, memorandum, whereto you attached a copy of a December 4, 1990, Logging Agreement between and Trucking and Logging and you asked who is the timber owner for timber yield tax purposes.

The Agreement provides, in part, as follows:

"SALE AND TERM

For the consideration hereinafter specified, SELLER exclusively sells to BUYER and BUYER purchases from SELLER on the terms and conditions herein stated, all standing timber, as herein defined, growing on and forming a part of the real property located in Amador County.... This agreement shall terminate on September 15, 1990. At the expiration of the term of this agreement, title to all merchantable timber remaining on PROPERTY and all rights and privileges conveyed to or given BUYER hereunder shall automatically revert to SELLER.

"DESCRIPTION OF TIMBER TO BE CUT AND REMOVED

BUYER shall remove and pay for the following described timber:

1. All logs defined as merchantable....
2. Other forest products to be cut and removed shall consist of:
 - A. Larger saw logs.

- B. Logs which may be smaller than twelve (12) inches on the small end, at the stump and 2ft. above ground, no tree smaller than 16 in. except in groups of three (3) or more if desired.
- C. Logs which may be shorter than 8 feet in length.

"PRICE AND TERMS OF PAYMENT

Timber removed during the first quarter of operation will be paid by BUYER to SELLER at the price agreed on.... SELLER may, at reasonable times, scale the logs cut by BUYER at the mills or consumption points of BUYER.

"SCALING

Timber removed will be scaled at BUYER'S expense at a location agreeable to the parties. BUYER shall provide scale certificates to SELLER at no cost to SELLER.

"TITLE AND RISK OF LOSS

Title to timber designated for removal shall pass to BUYER at the time and place of scaling. Risk of loss to timber subject to removal and on insurable interest in such timber shall pass to BUYER to the time of felling.

"WARRANTY OF TITLE

SELLER warrants that it is the true and lawful owner of the real property described in Section One to the Agreement and has full power to convey the standing timber situated thereon. Timber yield tax for said timber is the responsibility of SELLER.

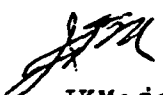
"TIMBER PRICE AGREEMENT

Below are the prices to be paid for timber logged as agreed between BUYER and SELLER:

1. Pine (Ponderosa and Sugar) \$100.00 M Board Feet
2. Fir (Douglas and White) \$ 70.00 M Board Feet
3. Incense Cedar \$ 75.00 M Board Feet"

Pursuant to these provisions, the sold specific standing timber on the site to but the parties provided that title to timber harvested would pass to subsequent to harvesting at the time and place of scaling. Thus, at the time of harvesting the timber, the Uptons remained the timber owners for timber yield tax purposes and the persons liable for applicable timber yield taxes as the result of such harvesting. Consistent therewith is the provision providing that timber yield taxes are the responsibility of the Uptons.

Apparently, the believe that should pay applicable timber yield taxes, but their reason or reasons therefor are not clear. While the sold standing timber, the inclusion of the specific title provision in the Agreement renders California Commercial Code Sections 2107(2), Goods (Timber) to be Severed From Realty, and 2401, Passing of Title, inapplicable. And, as indicated, as between the parties themselves, the accepted responsibility for timber yield taxes. Finally in this regard, that paid the Uptons \$4,000 prior to harvesting, apparently for road construction costs, does not alter or impact upon the specific title provision in the Agreement.



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cc: Mr. John Hagerty
Mr. Paul Crebbin
Mr. Dave Barbeiró