



Memorandum

To : Mr. Timothy R. Hanna

Date : March 10, 1988

From : Ken McManigal

Subject: Michael Herod - Yield Tax 103692

This is in response to your March 3, 1988, memorandum wherein you stated that Mr. Herod had been billed for four United States Forest Service timber sales in 1979-80, that he had apparently failed to perform the majority of the contracts, and that the contracts had been assumed and performed by his Surety, Michael Mann/Intercoast Timber; and you asked whether you had a legal right to bill Mr. Mann/Intercoast Timber.

Attached to your memorandum were a January 14, 1980, letter from Mr. Mann to Mr. Bob Devlin of the Forest Service and a February 8, 1988, letter from Mr. Blaine L. Cornell of the Forest Service to you. Per the former, Mr. Mann advised that he was Mr. Herod's Surety for two of the contracts, that Mr. Herod had left the area and was unreachable, and that he, as Surety, was prepared to complete the contracts. Per the latter, Mr. Cornell advised that almost all logging done with respect to the contracts after December 31, 1979, had been done by the Surety, presumably, Mr. Mann.

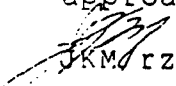
The California Civil Code defines a surety or guarantor as one who promises to answer for the default of another (Civ. Code, § 2787). Generally, a suretyship contract must be in writing, the parties thereto must have the capacity and power to contract, and there must be an agreement of some sort on the part of the surety to be bound. Copies of sections 16-23 of 59 Cal.Jur.3d, Suretyship and Guaranty, in these regards are attached for your information and review. An extensive explanation of all aspects of suretyship and guaranty is set forth in 59 Cal.Jur.3d, Suretyship and Guaranty, sections 1 through 124.

Presumably, Mr. Mann was a surety for purposes of the Civil Code, there was a suretyship contract, etc., and a suretyship relationship existed. As indicated, Mr. Mann claimed/acknowledged that he was Mr. Herod's Surety in his January 14, 1980, letter to Mr. Devlin. And the Forest Service permitted Mr. Mann, the Surety, to perform the contracts on and after January 1, 1980, according to the February 8, 1988, letter.

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Accordingly, on and after January 1, 1980, Mr. Mann became the timber owner as defined in section 38104, for purposes of sections 38115 and 38301. As such, he was liable for timber yield taxes and timber reserve fund taxes applicable to the timber he harvested pursuant to the contracts he had assumed and performed.

As to billing Mr. Mann for such taxes, as we discussed, section 38417 requires that notices of deficiency determinations be mailed within three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires later. But in cases involving failure to make returns, such notices may be mailed within eight years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined, a date that is fast approaching for 1Q80.


JKM/rz

Attachment

cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Paul Crebbin
Mr. Earle Gutman
Legal