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840.0145 **Timber Owner.** When an exempt governmental entity enters into a contract for the sale of standing timber, the non-exempt buyer obtains title with the right to sever and is the timber owner for timber yield tax purposes. If the contract specifies a date by which the timber must be removed, the ownership of any timber still standing after that date reverts to the governmental entity. C 8/17/83.

August 17, 1983

Dear [Redacted]:

This is in response to your August 12, 1983, letter wherein you enclosed a copy of an April 6, 1983, Stipulation For Entry of Judgment in United States of America v. City And County of San Francisco, USDC, ND CAL., Civil No. C08104847 RFP, and a copy of a proposed Timber Sale Agreement to be executed by the City and County and the successful bidder/purchaser of the timber, and you asked which party thereto will be the timber owner for timber yield tax purposes.

Per the Stipulation, in pertinent part:

"4. Defendant City and County of San Francisco hereby conveys to plaintiff United States of America and its assigns the land known as Ike Dye, containing 163.68 acres, more or less, situate in the County of Tuolumne, State of California, and described as follows:

"Lot 1,7, and 8 in Section 7, Township 1 South Range 19 East, Mount Diablo Base and Meridian.

"Said conveyance is subject to a reservation in favor of defendant, its successors and assigns until November 1, 1984, of the right to cut and remove from the above-described land all dead and down timber and all live Ponderosa Pine and Incense Cedar twenty (20) inches and over in diameter, diameters to be measured outside the bark at the point four and one-half (4-1/2) feet above the ground. Plaintiff, through the United States Forest Service, shall mark all live timber subject to this reservation within a reasonable time prior to cutting and removal of said timber. The cutting and removal of the timber as aforesaid shall be accomplished in accordance with conditions substantially the same as those contained in a standard Forest Service timber sale contract with respect to protection of the land and the resources thereon."

As the City owned the land and timber initially, and as in conveying the land it reserved its right to all dead and down timber and all live Ponderosa Pine and Incense Cedar 20 inches and over in diameter until November 1, 1984, the City continues to own all dead and down timber and all such live Ponderosa Pine and Incense Cedar. And as such timber is located outside the City's boundaries, it is not exempt from taxation pursuant to Article XIII, Section 3(b) of the California Constitution. Thus, either the City or the successful bidder/purchaser will be liable for applicable timber yield tax.

Per the proposed Timber Sale Agreement, in part:

"The CITY AND COUNTY OF SAN FRANCISCO, herein called 'Seller', agrees to sell to _____, County, _____, herein called 'Buyer', and Buyer agrees to purchase from Seller the hereinafter described timber located on the following described parcel of real property, subject to the terms and conditions hereinafter set forth.

"1. The parcel of real property from which the described timber is to be removed (hereafter 'sale area') is Section 7, Township 1 South, Range 19 East, Mt. Diablo Base & Meridian, in Tuolumne County, California, a parcel of National Forest land owned by the United States of America subject to a reservation in favor of Seller of the right to harvest the described timber.

"2. The timber sold under this agreement is described as follows: Live Sugar Pine of a minimum diameter of 20"; Live Ponderosa Pine of a minimum diameter of 20"; Live Incense Cedar of a minimum diameter of 20"; and All dead and down timber.

"The diameters of live timber have been measured outside the bark at a point 4-1/2 feet above the ground, and the live timber has been designated on behalf of Seller for cutting both at 4-1/2 feet above the ground and a ground level with orange paint.

"Buyer has the option to remove whatever dead and down timber that he desires.

"3. Buyer shall pay to Seller as the full price for any and all sound timber sold under this agreement and removed from said real property by Buyer as follows:

Sound Sugar pine	\$ _____	per MBF;
Sound Ponderosa pine	\$ _____	per MBF;
Sound Incense cedar	\$ _____	per MBF.

"4. Buyer shall pay to Seller the purchase price for all timber removed from said real property in any calendar month on or before the fifteenth day of the following calendar month. All such payments shall be accompanied by a scaler's report by the scaler hereinafter named showing their correctness, and shall be delivered to Seller at the address hereinafter specified.

* * *

"6. Buyer shall fell and remove the timber sold under this agreement from said real property in a good and workmanlike manner on or before October 31, 1984.

* * *

Revenue and Taxation Code Section 38115 states that timber yield tax is imposed on every timber owner who harvests his timber or caused it to be harvested. California Commercial Code Section 2107(2) states, in pertinent part:

"A contract for the sale apart from the land... of timber to be cut is a contract for the sale of goods within this division whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance."

August 17, 1983

California Commercial Code Section 2106 defines "contract for sale: as including a present sale of goods, "sale" as consisting of the passing of title from a seller to the buyer for a price, and "present sale" as meaning a sale which is accomplished by the making of the contract.

In this instance, the City is selling certain designated timber to a buyer, and the buyer by purchasing the timber is acquiring the right to cut, fell and remove the timber up to and including October 31, 1984, in return for agreed-upon amounts. Consistent with Section 2107(2), we would regard the Agreement, upon its execution, as a present sale before severance, with title to the timber passing to the buyer before severance, with the buyer being the timber owner liable for applicable timber yield tax on timber harvested on or before October 31, 1984, and with title to any timber remaining after October 31, 1984, reverting to the United States of America.

In an attempt to avoid any misunderstandings, we would appreciate your making the opinion expressed herein known to potential bidders and your providing the enclosed copy of this letter to the successful bidder.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

Enclosure

cc: Mr. Paul Crebbin
Chief, Timber Tax Divison

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Earle Gutman
Legal Section